

§ 21.4252

38 CFR Ch. I (7-1-08 Edition)

will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, *i.e.*, 55 miles or more from the original location.

(Authority: 38 U.S.C. 3680A(e))

(f) *Change of ownership.* (1) A change of ownership of a proprietary educational institution occurs when—

- (i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or
- (ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

- (i) The sale of the educational institution;
- (ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;
- (iii) The merger of 2 or more educational institutions; and
- (iv) The division of one educational institution into 2 or more educational institutions.

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

- (i) The owner’s parent, sibling, spouse, child, spouse’s parent or sibling, or sibling’s or child’s spouse; or
- (ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer.

(Authority: 38 U.S.C. 3680A(e))

(g) *Substantially the same faculty, student body, and courses.* VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and

(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution after the move or change in ownership.

(Authority: 38 U.S.C. 3680A(e) and (f)(1))

[65 FR 81741, Dec. 27, 2000, as amended at 72 FR 16974, Apr. 5, 2007]

§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

(a) *Bartending and personality development.* Enrollment will not be approved in any bartending or personality development course.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraphs (b)(1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or

(2) Any music course, instrumental or vocal, public speaking course, or

Department of Veterans Affairs

§ 21.4252

course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(3) Any other type of course which the Department of Veterans Affairs determines to be avocational or recreational.

(Authority: 38 U.S.C. 3523(a), 3680A(b))

(4) To overcome the presumption that a course is avocational or recreational in character, the veteran or eligible person will be required to establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(c) *Flight training.* The Department of Veterans Affairs may approve an enrollment in any of the following types of courses of flight training if an institution of higher learning offers the course for credit toward the standard college degree the veteran or eligible person is pursuing. The Department of Veterans Affairs otherwise will not approve an enrollment in:

(1) A course of flight training to obtain a private pilot's license or equivalent level training; or

(2) Any course of flight training under Chapter 35.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3034(d), 3241(b), 3523(b), 3680A(b))

(d) *Courses by radio.* Enrollment in such courses will not be approved.

(e) *Correspondence courses.* (1) VA will not approve the enrollment of an individual under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapter 30, 32, or 35 in a correspondence course or the correspondence portion of a correspondence-residence course unless the course is accredited and meets the requirements of §§ 21.4253, 21.4256, and 21.4279, as appropriate.

(2) VA will not approve the enrollment of an eligible child under 38 U.S.C. Chapter 35 in a correspondence

course or the correspondence portion of a correspondence-residence course.

(Authority: 38 U.S.C. 3534(b))

(f) *Alternative teacher certification program.* VA will not approve the enrollment of an eligible person under 38 U.S.C. Chapter 35 in an alternative teacher certification program unless that program is offered by an institution of higher learning as defined in § 21.4200(h).

(Authority: 38 U.S.C. 3452(c), 3501(a)(6))

(g) *Independent study.* (1) Effective October 29, 1992, VA may pay educational assistance to a veteran who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if—

(i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran to complete his or her program of education; and the veteran—

(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and

(B) Has remained continuously enrolled in that program of education from October 29, 1992, to the date the veteran enrolls in the nonaccredited independent study course or unit subject; or

(ii) Was enrolled in and receiving educational assistance for the nonaccredited independent study course or unit subject on October 29, 1992, and remains continuously enrolled in that course or unit subject.

(2) Whether or not the veteran is enrolled will be determined by the regularly prescribed standards and practices of the educational institution.

(Authority: 38 U.S.C. 3680A; sec. 313(b), Pub. L. 102-568, 106 Stat. 4331-4332)

(h) *Erroneous, deceptive, or misleading practices.* For the purposes of this paragraph, "educational institution" includes an organization or entity offering licensing or certification tests.

(1) If an educational institution uses advertising, sales, enrollment practices, or candidate handbooks that are erroneous, deceptive, or misleading by

§ 21.4252

38 CFR Ch. I (7-1-08 Edition)

actual statement, omission, or intimation, VA will not approve:

- (i) An enrollment in any course such an educational institution offers; and
- (ii) Payment of educational assistance as reimbursement to a veteran or eligible person for taking a licensing or certification test that the educational institution offers.

(2) VA will use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement:

- (i) To carry out investigations; and
- (ii) To decide whether an educational institution uses advertising, sales, or enrollment practices, or candidate handbooks, described in paragraph (h)(1) of this section.

(3) Any educational institution offering courses approved for the enrollment of veterans, reservists, and/or eligible persons, or offering licensing or certification tests approved for payment of educational assistance as reimbursement to veterans or eligible persons who take the tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks (and copies of each) that the educational institution or its agents have used during the preceding 12-month period. The State approving agency and VA may inspect this record. The materials in this record shall include but are not limited to:

- (i) Any direct mail pieces,
- (ii) Brochures,
- (iii) Printed literature used by sales people,
- (iv) Films, video cassettes and audio tapes disseminated through broadcast media,
- (v) Material disseminated through print media,
- (vi) Tear sheets,
- (vii) Leaflets,
- (viii) Handbills,
- (ix) Fliers, and
- (x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution.

(Authority: 38 U.S.C. 3689, 3696)

(i) *Audited courses.* The school's certifications shall exclude courses which are being audited by the veteran or eli-

gible person, since no educational assistance allowances shall be paid for such courses.

(Authority: 38 U.S.C. 3680(a))

(j) *Nonpunitive graded courses.* The school shall report any course for which a nonpunitive grade is assigned and no payment shall be authorized for such a course. If payment has already been made, in whole or in part, by the Department of Veterans Affairs at the time the grade is assigned, an overpayment shall be created against the account of the student for such a course, unless the Department of Veterans Affairs determines there are mitigating circumstances.

(Authority: 38 U.S.C. 3680(a))

(k) *Courses with suspended approval.* When a State approving agency has suspended the approval of a course for new enrollments, new enrollments in the course shall not be approved until the suspense is lifted. If the State approving agency does not lift the suspense, but disapproves the course instead, new enrollments beginning on or after the date the suspense was effective shall not be approved. See § 21.4259.

(Authority: 38 U.S.C. 3672(a))

(l) *Courses taken by a nonmatriculated student who is pursuing a degree.* The provisions of this paragraph apply to veterans and eligible persons who are pursuing a degree, but who have not matriculated. The Department of Veterans Affairs considers a student to have matriculated when he or she has been formally admitted to a college or university as a degree-seeking student.

(1) Some colleges or universities admit students provisionally, pending receipt of test results or transcripts. The Department of Veterans Affairs may approve such a veteran's or eligible person's enrollment in a course or subject only if the veteran or eligible person matriculates during the first two terms, quarters or semesters following his or her admission.

(2) The first portion of the courses leading to a single degree may be offered at one college or university. The remaining courses are not offered at

Department of Veterans Affairs

§ 21.4252

the college or university, but are offered at a second college or university which grants the degree based upon the combined credits earned by the student. If the student is not required to matriculate during the portion of the program offered at the first college or university, VA may approve an enrollment in a course or subject that is part of that portion of the program only when the certifications described in either paragraph (1)(2)(i) or (ii) of this section are made.

(i) The college or university granting the degree certifies concurrently with the student's enrollment in the first portion of the program, that

(A) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university;

(B) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program;

(C) At least 90 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted;

(D) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

(ii) The college or university offering the first part of the program:

(A) Certifies to the appropriate State approving agency that as a result of an agreement between that college or university and the college or university offering the second part of the program, all of the courses taken by the veteran or eligible person in the first part of the program, will be accepted by the college or university offering the second part of the program without any loss of credit in partial fulfillment of the requirements for an associate or higher degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person has stated to an appropriate official of the college or university offering the first part of the program that he or she is pursuing the program.

(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an associate degree may be given at a 2-year college, while the remainder may be offered at a 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional study at the 2-year college, VA may approve an enrollment in a course offered in the program at the 2-year college only if the certifications described in either paragraph (1)(3)(i) or (ii) of this section are made.

(i) The college or university granting the baccalaureate degree certifies that:

(A) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree,

(B) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and

(C) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.

(ii) Either the 2-year college or the college or university granting the baccalaureate degree:

(A) Certifies to the appropriate State approving agency that as a result of agreement between the 2-year college and the college or university offering the baccalaureate degree all of the courses pursued beyond the associate degree will be accepted without any loss of credit in partial fulfillment of the requirements for a baccalaureate degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person is enrolled in courses covered by the agreement.

(4) Except as provided in paragraphs (1)(1), (2), and (3) of this section, the Department of Veterans Affairs will not approve a veteran's or eligible person's enrollment in a course or subject if the veteran or eligible person:

(i) Is pursuing a degree, and

(ii) Is not matriculated.

(5) Nothing in this paragraph shall prevent a State approving agency from

§ 21.4253

including more restrictive matriculation requirements in its approval criteria.

(Authority: 38 U.S.C. 3452)

(m) *Courses offered under contract.* VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by §§ 21.4253, 21.4254, 21.4256, 21.4257, 21.4260, 21.4261, 21.4263, 21.4264, 21.4265, 21.4266, or 21.4267, as appropriate.

(Authority: 38 U.S.C. 3680A(f) and (g))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0073, 2900-0156, and 2900-0682)

[31 FR 6774, May 6, 1966, as amended at 32 FR 13404, Sept. 23, 1967; 35 FR 9817, June 16, 1970; 40 FR 31763, July 29, 1975; 43 FR 35302, Aug. 9, 1978; 45 FR 31063, June 12, 1980; 48 FR 14379, Apr. 4, 1983; 48 FR 37991, Aug. 22, 1983; 49 FR 5116, Feb. 10, 1984; 49 FR 8439, Mar. 7, 1984; 51 FR 19331, May 29, 1986; 55 FR 28028, July 9, 1990; 61 FR 6783, Feb. 22, 1996; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 65 FR 81742, Dec. 27, 2000; 72 FR 16974, Apr. 5, 2007]

§ 21.4253 Accredited courses.

(a) *General.* A course may be approved as an accredited course if it meets one of the following requirements:

(1) The course has been accredited and approved by a nationally recognized accrediting agency or association. "Candidate for accreditation" status is not a basis for approval of a course as accredited.

(2) Credit for such course is approved by the State department of education for credit toward a high school diploma.

(3) The course is conducted under the Act of February 23, 1917 (20 U.S.C. 11 *et seq.*).

(4) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree.

38 CFR Ch. I (7-1-08 Edition)

(5) The course is approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).

(Authority: 38 U.S.C. 3675(a))

(b) *Course objective.* Any curriculum offered by an educational institution which is a member of one of the nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will be accepted as an accredited course when approved as such by the State approving agency. Any curriculum accredited by one of the specialized nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will also be accepted as an accredited course when approved as such by the State approving agency. Approval of the individual subjects, required or elective, which are designated as a part of a degree curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum. The course objective may be educational (high school diploma or a standard college degree) or it may be vocational or professional (an occupation).

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Secretary of Education as required by 38 U.S.C. 3675(a). The State approving agencies may use the accreditation of these accrediting agencies or associations for approval of the course specifically accredited and approved by the agency or association.

(d) *School qualification.* A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency: