

## Department of Veterans Affairs

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(ii) Prescribe those standards for State approving agency use in the development of qualification and performance standards for State approving agency personnel carrying out approval responsibilities under a contract or agreement as provided in § 21.4153(a) of this part; and

(iii) Review the prototype qualification and performance standards with the State approving agencies no less frequently than once every five years.

(2) In developing and applying standards described in paragraph (d)(1) of this section, a State approving agency may take into consideration the State's merit system requirements and other local requirements and conditions. However, no State approving agency may develop, adopt or apply qualification or performance standards that do not meet the requirements of paragraph (d)(3) of this section.

(3) The qualification and performance standards adopted by the State approving agency shall describe a level of qualification and performance which shall equal or exceed the level of qualification and performance described in the prototype qualification and performance standards developed by VA with the State approving agencies. The State approving agency may amend or modify its adopted qualification and performance standards annually as circumstances may require.

(4) VA shall provide assistance in developing these standards to a State approving agency that requests it.

(5) After November 19, 1989, each State approving agency carrying out a contract or agreement with VA under § 21.4153(a) shall:

(i) Apply qualification and performance standards based on the standards developed under this paragraph, and

(ii) Make available to any person, upon request, the criteria used to carry out its functions under a contract or agreement entered into under § 21.4153(a) of this part.

(6) A State approving agency may not apply these standards to any person employed by the State approving agency on May 20, 1988, as long as that

person remains in the position in which the person was employed on that date.

(Authority: 38 U.S.C. 3674 A(b); Pub. L. 100-323)

[54 FR 49757, Dec. 1, 1989, as amended at 61 FR 29296, June 10, 1996]

### SCHOOLS

#### § 21.4200 Definitions.

The definitions in this section apply to this subpart, except as otherwise provided. The definitions of terms defined in this section also apply to subparts C, G, H, K, L, and P if they are not otherwise defined for purposes of those subparts.

(a) *School, educational institution, institution.* The terms *school, educational institution* and *institution* mean:

(1) A vocational school or business school;

(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;

(3) A public or private elementary school or secondary school;

(4) A training establishment as defined in paragraph (c) of this section;

(5) Any entity other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program; or

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

(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

(Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

(b) *Divisions of the school year.* (1) *Ordinary School Year* is generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(2) *Term*, any regularly established division of the ordinary school year under which the school operates.

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(3) *Quarter*, a division of the ordinary school year, usually a period from 10 to 13 weeks long.

(4) *Semester*, a division of the ordinary school year, usually a period from 15 to 19 weeks long.

(5) *Summer term*, the whole of the period of instruction at a school which takes place between ordinary school years. A summer term may be divided into several summer sessions.

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

(6) *Summer session*, any division of a summer term.

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

(c) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training.

(Authority: 38 U.S.C. 3452(e), 3501(a)(9))

(d) *External degree*. This term means a standard college degree given by an accredited college or university based on satisfactory completion of a prescribed program of independent study. The program may require occasional attendance for a workshop or seminar and may include some regular residence course work.

(e) *Standard college degree*. The term means an associate or higher degree awarded by:

(1) An institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or

(2) An institution of higher learning that is a *candidate* for accreditation, as that term is used by the regional or the national accrediting agencies; or

(3) An institution of higher learning upon completion of a course which is accredited by an agency recognized to

accredit specialized degree-level programs.

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

(f) *Undergraduate college degree*. The term means a college or university degree obtained through the pursuit of unit subjects which are below the graduate level. Included are associate degrees, bachelors' degrees and first professional degrees.

(g) *Standard class session*. The term *standard class session* means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit. It is not less than 1 hour (or one 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours (or three 50-minute periods) of workshop training.

(Authority: 38 U.S.C. 3688(c))

(h) *Institution of higher learning*. This term means:

(1) A college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(2) When there is no State law to authorize the granting of a degree, a school which:

(i) Is accredited for degree programs by a recognized accrediting agency, or

(ii) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(3) A hospital offering medical-dental internships or residencies approved in accordance with § 21.4265(a) without regard to whether the hospital grants a post-secondary degree.

(4) An educational institution which:

(i) Is not located in a State,

(ii) Offers a course leading to a standard college degree or the equivalent, and

(iii) Is recognized as an institution of higher learning by the secretary of

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education (or comparable official) of the country in which the educational institution is located.

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

(i) *Audited course.* The term means any credit course which a student attends as a listener only with a prior understanding between school officials and the student that such attendance will not result in credit being granted toward graduation. See § 21.4252(i).

(Authority: 38 U.S.C. 3680(a)(3))

(j) *Nonpunitive grade.* The term means any grade assigned for pursuit of a course, whether upon completion of the course or at the time of withdrawal from the course, which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation. No credit toward the school's requirements for graduation is granted for such a grade, nor does the grade affect any other criteria for graduation by the policies of the school, such as a grade point average. Therefore, it has the same effect as an audited course. See § 21.4135(e).

(k) *Punitive grade.* The term means a grade assigned for pursuit of a course which is used in determining the student's overall progress toward completion of the school's requirements for graduation. Unlike the nonpunitive grade, the punitive grade does affect the criteria to be met by the student for graduation, *i.e.*, it is a factor in computing the student's grade average or grade point average, for example. For this reason it is not the same as an audited course, since it does have an effect upon the student's ability to meet the school's criteria for graduation. See § 21.4135(e).

(l) *Drop-add period.* The term means a reasonably brief period at the beginning of a term, not to exceed 30 days, officially designated by a school for unrestricted enrollment changes by students.

(Authority: 38 U.S.C. 3680(a)(4))

(m) *Normal commuting distance.* Two locations that are within 55 miles of each other are within normal commuting distance. Furthermore, a

branch, extension or additional facility of a school located more than 55 miles from the school's main campus or parent facility will be considered within normal commuting distance only if:

(1) School records show that, prior to the establishment of the additional teaching site, at least 20 students or 5 percent of the enrollment, whichever is the lesser, on the main campus or parent facility were regularly commuting from the area where the additional teaching site is located; or

(2) Other comparable evidence clearly shows that students commute regularly between the two locations.

(Authority: 38 U.S.C. 3689(c))

(n) *Enrollment.* This term means the state of being on that roll, or file of a school which contains the names of active students.

(o) *Pursuit of a program of education.* (1) This term means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institution policy and regulations and applicable criteria of Title 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through:

- (i) Resident courses,
- (ii) Independent study courses,
- (iii) Correspondence courses,
- (iv) An apprenticeship or other on-the-job training program,
- (v) Flight courses,
- (vi) A farm cooperative course,
- (vii) A cooperative course, or
- (viii) A graduate program of research in absentia.

(2) The Department of Veterans Affairs will consider a veteran or eligible person who qualifies under § 21.4138 for payment during an interval or school closing, or who qualifies for payment but whose work is interrupted by a holiday vacation as defined in § 21.7020(b)(16), to be in pursuit of a program of education during the interval, school closing or holiday vacation.

(p) *Enrollment period.* (1) This term means an interval of time during which a veteran or eligible person:

- (i) Is enrolled in an educational institution; and
- (ii) Is pursuing his or her program of education.

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(2) This term applies to each unit course or subject in the veteran's or eligible person's program of education.

(q) *Attendance*. This term means the presence of a veteran or eligible person:

(1) In the class where the approved course is being taught in which he or she is enrolled;

(2) At a training establishment; or

(3) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or eligible person is enrolled and is pursuing a program of education.

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

(r) *In residence on a standard quarter- or semester-hour basis*. This term means study at a site or campus of a college or university, or off-campus at an official resident center, requiring pursuit of regularly scheduled weekly class instruction at the rate of one standard class session per week throughout a standard quarter or semester for one quarter- or one semester-hour credit.

(Authority: 38 U.S.C. 3688(c))

(s) *Deficiency course*. This term means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(t) *Remedial course*. This term means a special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(u) *Refresher course*. This term means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

(Authority: 38 U.S.C. 3491(a)(2))

(v) *Reservist*. The term *reservist* means a member of the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces who is eligible to receive educational assistance

under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606.

(Authority: 38 U.S.C. 3002)

(w) *Alternative teacher certification program*. The term *alternative teacher certification program*, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (a)(5) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

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

(x) *State*. The term *State* has the same meaning as provided in §3.1(i) of this chapter.

(Authority: 38 U.S.C. 101(20))

(y) *Pilot certificate*. A *pilot certificate* is a pilot certificate issued by the Federal Aviation Administration. The term means a pilot's license as that term is used in 10 U.S.C. chapter 1606 and 38 U.S.C. chapters 30 and 32.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(z) *Proprietary educational institution*. The term *proprietary educational institution* (including a proprietary profit or proprietary nonprofit educational institution) means an educational institution that:

(1) Is not a public educational institution;

(2) Is in a State; and

(3) Is legally authorized to offer a program of education in the State where the educational institution is physically located.

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

(aa) *High technology industry*: The term *high technology industry* includes the following industries:

(1) Biotechnology;

(2) Life science technologies;

(3) Opto-electronics;

(4) Computers and telecommunications;

(5) Electronics;

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(6) Computer-integrated manufacturing;

(7) Material design;

(8) Aerospace;

(9) Weapons;

(10) Nuclear technology; and

(11) Any other identified advanced technologies in the biennial Science and Engineering Indicators report published by the National Science Foundation.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(bb) *Employment in a high technology industry. Employment in a high technology industry* means employment in a high technology occupation specific to a high technology industry.

(Authority: 38 U.S.C. 3014A)

(cc) *High technology occupation.* The term *high technology occupation* means an occupation that leads to employment in a high technology industry. These occupations consist of:

- (1) Life and physical scientists;
- (2) Engineers;
- (3) Mathematical specialists;
- (4) Engineering and science technicians;
- (5) Computer specialists; and
- (6) Engineering, scientific, and computer managers.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(dd) *Computer specialists.* The term *computer specialists* includes the following occupations:

- (1) Database, system, and network administrators;
- (2) Database, system, and network developers;
- (3) Computer and network engineers;
- (4) Systems analysts;
- (5) Programmers;
- (6) Computer, database, and network support specialists;
- (7) All computer scientists;
- (8) Web site designers;
- (9) Computer and network service technicians;
- (10) Computer and network electronics specialists; and
- (11) All certified professionals, certified associates and certified technicians in the information technology field.

(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(ee) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(ff) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(gg) *Organization or entity offering a licensing or certification test.* (1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to the individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test but does not issue the license or certificate; or

(ii) An organization or entity that administers a test but does not issue the license or certificate if that administering organization or entity cannot provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(hh) *Tuition assistance top-up.* The term *tuition assistance top-up* means a

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payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c).

(Authority: 38 U.S.C. 3014(b))

(ii) *VA Regional Processing Office*. The term *VA Regional Processing Office* means a VA office where claims for educational assistance under 38 U.S.C. chapters 30, 32, and 35 and 10 U.S.C. chapter 1606 are allowed or disallowed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3685, 3689)

(jj) [Reserved]

(kk) *Fugitive felon*. The term *fugitive felon* means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of—

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(Authority: 38 U.S.C. 5313B)

(ll) *Felony*. The term *felony* means a major crime or offense defined as such under the law of the place where the offense was committed or under Federal law. It includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.

(Authority: 38 U.S.C. 5313B)

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4200, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

## 38 CFR Ch. I (7–1–10 Edition)

### § 21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General*. Except as otherwise provided in this section the Department of Veterans Affairs shall not approve an enrollment in any course for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by VA under title 38, U.S.C., or under title 10, U.S.C. This restriction may be waived in whole or in part.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(b) *Affected schools*. The requirements of paragraph (a) of this section apply to all courses not otherwise exempt or waived offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

(c) *Affected courses*. (1) The following courses or programs are exempt from the requirements of paragraph (a) of this section:

(i) Any farm cooperative course; and

(ii) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as *nonappropriated sundry fund activities* which are governmental instrumentalities.

(2) The provisions of paragraph (a) of this section apply to the enrollment of a serviceperson in a course leading to a high school diploma, equivalency certificate, or a refresher, remedial or deficiency course, but they do not apply to the enrollment of a veteran in such a course.

(3) Except as provided in paragraph (c)(2) of this section, the provisions of paragraph (a) of this section do not apply to an approved course which:

(i) Is offered under contract with the Department of Defense,

(ii) Is on or immediately adjacent to a military base, or a facility of the National Guard (including the Air National Guard) or the Selected Reserve,