Code of Federal Regulations, Title 38

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CHAPTER I -- DEPARTMENT OF VETERANS AFFAIRS
PART 0 -- STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES (§§ 0.735-1 - 0.735-12)
PART 1 -- GENERAL PROVISIONS (§§ 1.9 - 1.994)
PART 2 -- DELEGATIONS OF AUTHORITY (§§ 2.1 - 2.101)
PART 3 -- ADJUDICATION (§§ 3.1 - 3.2600)
PART 4 -- SCHEDULE FOR RATING DISABILITIES (§§ 4.1 - 4.150)
PART 6 -- UNITED STATES GOVERNMENT LIFE INSURANCE (§§ 6.1 - 6.21)
PART 7 -- SOLDIERS' AND SAILORS' CIVIL RELIEF (§§ 7.2 - 7.8)
PART 8 -- NATIONAL SERVICE LIFE INSURANCE (§§ 8.0 - 8.33)
PART 8A -- VETERANS MORTGAGE LIFE INSURANCE (§§ 8a.1 - 8a.4)
PART 9 -- S VICEMEMBERS’ GROUP LIFE INSURANCE AND VETERANS’ GROUP LIFE INSURANCE (§§ 9.1 - 9.14)
PART 10 -- ADJUSTED COMPENSATION (§§ 10.0 - 10.53)
PART 11 -- LOANS BY BANKS ON AND PAYMENT OF ADJUSTED SERVICE CERTIFICATES (§§ 11.75 - 11.130)
PART 12 -- DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS (§§ 12.0 - 12.24)
PART 13 -- VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES (§§ 13.1 - 13.111)
PART 14 -- LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS (§§ 14.500 - 14.810)
PART 15 -- ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERAN AFFAIRS (§§ 15.101 - 15.171)
PART 16 -- PROTECTION OF HUMAN SUBJECTS (§§ 16.101 - 16.124)
PART 17 -- MEDICAL (§§ 17.30 - 17.1008)
PART 18A -- DELEGATION OF RESPONSIBILITY IN CONNECTION WITH TITLE VI, CIVIL RIGHTS ACT OF 1964 (§§ 18a.1 - 18a.5)
PART 18B -- PRACTICE AND PROCEDURE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND PART 18 OF THIS CHAPTER (§§ 18b.1 - 18b.95)
PART 19 -- BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS (§§ 19.1 - 19.102)
PART 20 -- BOARD OF VETERANS' APPEALS: RULES OF PRACTICE (§§ 20.1 - 20.1411)
PART 23 -- NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE (§§ 23.100 - 23.605)
PART 25 -- UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS
PART 26 -- ENVIRONMENTAL EFFECTS OF THE DEPARTMENT OF VETERANS AFFAIRS (VA) ACTIONS (§§ 25.1 - 26.9)
PART 36 -- LOAN GUARANTY (§§ 36.4201 - 36.4709)
PART 38 -- NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS (§§ 38.600 - 38.633)
PART 39 -- AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS' CEMETERIES (§§ 39.1 - 39.26)
PART 40 -- INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF VETERANS AFFAIRS PROGRAMS AND ACTIVITIES (§§ 40.1 - 40.13)
PART 41 -- AUDITING REQUIREMENTS (§§ 41.1 - 41.20)
PART 42 -- STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT (§§ 42.1 - 42.47)
PART 43 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS (§§ 43.1 - 43.52)
PART 44 -- GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) (§§ 44.25 - 44.1020)
PART 45 -- NEW RESTRICTIONS ON LOBBYING (§§ 45.100 - 45.605)
PART 46 -- POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK (§§ 46.1 - 46.8)
PART 47 -- POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS (§§ 47.1 - 47.2)
PART 48 -- GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE) (§§ 48.100 - 48.670)
PART 49 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS
PART 51 -- PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES (§§ 51.1 - 51.210)
PART 52 -- PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES (§§ 52.1 - 52.220)
PART 58 -- FORMS (§§ 58.10 - 58.17)
PART 59 -- GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES (§§ 59.1 - 59.170)
PART 60 -- FISHER HOUSES AND OTHER TEMPORARY LODGING (§§ 60.1 - 60.10)
PART 61 -- VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM (§§ 61.0 - 61.82)
TITLE 38 -- PENSIONS, BONUSES, AND VETERANS' RELIEF

CHAPTER I -- DEPARTMENT OF VETERANS AFFAIRS
CHAPTER I -- DEPARTMENT OF VETERANS AFFAIRS

PART 0 -- STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES
PART 1 -- GENERAL PROVISIONS
PART 2 -- DELEGATIONS OF AUTHORITY
PART 3 -- ADJUDICATION
PART 4 -- SCHEDULE FOR RATING DISABILITIES
PART 6 -- UNITED STATES GOVERNMENT LIFE INSURANCE
PART 7 -- SOLDIERS' AND SAILORS' CIVIL RELIEF
PART 8 -- NATIONAL SERVICE LIFE INSURANCE
PART 8A -- VETERANS MORTGAGE LIFE INSURANCE
PART 9 -- SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE
PART 10 -- ADJUSTED COMPENSATION
PART 11 -- LOANS BY BANKS ON AND PAYMENT OF ADJUSTED SERVICE CERTIFICATES
PART 12 -- DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS
PART 13 -- VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES
PART 14 -- LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS
PART 15 -- ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERAN AFFAIRS
PART 16 -- PROTECTION OF HUMAN SUBJECTS
PART 17 -- MEDICAL
PART 18 -- NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS -- EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
PART 18A -- DELEGATION OF RESPONSIBILITY IN CONNECTION WITH TITLE VI, CIVIL RIGHTS ACT OF 1964
PART 18B -- PRACTICE AND PROCEDURE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND PART 18 OF THIS CHAPTER
PART 19 -- BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS
PART 20 -- BOARD OF VETERANS' APPEALS: RULES OF PRACTICE
PART 21 -- VOCATIONAL REHABILITATION AND EDUCATION
PART 23 -- NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE
PART 25 -- UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS
PART 26 -- ENVIRONMENTAL EFFECTS OF THE DEPARTMENT OF VETERANS AFFAIRS (VA) ACTIONS
PART 36 -- LOAN GUARANTY
PART 39 -- AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS' CEMETERIES
PART 40 -- INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF VETERANS AFFAIRS PROGRAMS AND ACTIVITIES
PART 41 -- AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS
PART 42 -- STANDARDS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT
PART 43 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS
PART 44 -- GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)
PART 45 -- NEW RESTRICTIONS ON LOBBYING
PART 46 -- POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK
PART 47 -- POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS
PART 48 -- GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)
PART 49 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS
PART 51 -- PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES
PART 52 -- PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES
PART 58 -- FORMS
PART 59 -- GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES
PART 60 -- FISHER HOUSES AND OTHER TEMPORARY LODGING
PART 61 -- VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

PART 0 -- STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

SUBPART A -- GENERAL PROVISIONS
SUBPART B -- STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES OF EMPLOYEES

EDITORIAL NOTE: Nomenclature changes to Part 0 appear at 61 FR 7216, Feb. 27, 1996.
§ 0.735-1 Agency ethics officials.
§ 0.735-2 Government-wide standards.

§ 0.735-1 Agency ethics officials.

(a) Designated Agency Ethics Official (DAEO). The Assistant General Counsel (023) is the designated agency ethics official (DAEO) for the Department of Veterans Affairs. The Deputy Assistant General Counsel (023C) is the alternate DAEO, who is designated to act in the DAEO's absence. The DAEO has primary responsibility for the administration, coordination, and management of the VA ethics program, pursuant to 5 CFR 2638.201-204.

(b) Deputy ethics officials. (1) The Regional Counsel are deputy ethics officials. They have been delegated the authority to act for the DAEO within their jurisdiction, under the DAEO's supervision, pursuant to 5 CFR 2638.204.

(2) The alternate DAEO, the DAEO's staff, and staff in the Offices of Regional Counsel, may also act as deputy ethics officials pursuant to delegations of one or more of the DAEO's duties from the DAEO or the Regional Counsel.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995; 61 FR 11308, 11309, March 20, 1996, which redesignated this section, became effective March 20, 1996.]

[CROSS REFERENCE: This section was formerly § 0.735-3.]

§ 0.735-2 Government-wide standards.

For government-wide standards of ethical conduct and related responsibilities for Federal employees, see 5 CFR Part 735 and Chapter XVI.

[61 FR 11308, 11309, March 20, 1996; redesignated at 63 FR 33579, June 19, 1998]

[EFFECTIVE DATE NOTE: 63 FR 33579, June 19, 1998, redesignated this section, effective June 19, 1998.]

[CROSS REFERENCE: This section was formerly § 0.735-3.]
SUBPART B -- STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES OF EMPLOYEES

§ 0.735-10 Cross-reference to employee ethical and other conduct standards and financial disclosure regulations.
§ 0.735-11 Other conduct on the job.
§ 0.735-12 Standards of conduct in special areas

§ 0.735-10 Cross-reference to employee ethical and other conduct standards and financial disclosure regulations.
Employees of the Department of Veterans Affairs (VA) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the executive branch-wide Employee Responsibilities and Conduct at 5 CFR part 735, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

[EFFECTIVE DATE NOTE: 58 FR 61814, Nov. 23, 1993, which revised this section, provides that the revision is effective Nov. 23, 1993.]

§ 0.735-11 Other conduct on the job.
Relationship with beneficiaries and claimants. Employees are expected to be helpful to beneficiaries, patients and claimants, but:
(a) An employee shall not procure intoxicants or drugs for, or attempt to sell intoxicants or drugs to, patients or members, or give or attempt to give intoxicants or drugs to them unless officially prescribed for medical use;
(b) An employee shall not abuse patients, members, or other beneficiaries, whether or not provoked.

[EFFECTIVE DATE NOTE: 58 FR 61814, Nov. 23, 1993, which revised this section, provides that the revision is effective Nov. 23, 1993.]

§ 0.735-12 Standards of conduct in special areas
(a) Safety. (1) Employees will observe safety instructions, signs, and normal safety practices and precautions, including the use of protective clothing and equipment.
(2) An employee shall report each work-connected injury, accident or disease he or she suffers.
(b) Furnishing testimony. Employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters. Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be ground for disciplinary action. An employee, however, will not be required to give testimony against himself or herself in any matter in which there is indication that he or she may be or is involved in a violation of law wherein there is a possibility of self-incrimination.
Subparts C and D [Removed]
4. Subparts C and D are removed.
[FR Doc. 93-27912 Filed 11-22-93; 8:45 am]
BILLING CODE 8320-01-U

[EFFECTIVE DATE NOTE: 58 FR 61814, Nov. 23, 1993, which revised this section, provides that the revision is effective Nov. 23, 1993.]
PART 1 -- GENERAL PROVISIONS

DEPARTMENT OF VETERANS AFFAIRS OFFICIAL SEAL AND
DISTINGUISHING FLAG
THE UNITED STATES FLAG FOR BURIAL PURPOSES
QUARTERS FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES
OVERSEAS
PROGRAM EVALUATION
REFERRALS OF INFORMATION REGARDING CRIMINAL VIOLATIONS
SECURITY AND LAW ENFORCEMENT AT DEPARTMENT OF VETERANS
AFFAIRS FACILITIES
PARKING FEES AT VA MEDICAL FACILITIES
RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS
AFFAIRS RECORDS RELATING TO DRUG ABUSE, ALCOHOLISM OR
ALCOHOL ABUSE, INFECTION WITH THE HUMAN IMMUNODEFICIENCY
VIRUS (HIV), OR SICKLE CELL ANEMIA
Disclosures With Patient's Consent
Disclosures Without Patient Consent
Court Orders Authorizing Disclosures and Use
RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS
AFFAIRS CLAIMANT RECORDS
RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS
AFFAIRS RECORDS OTHER THAN CLAIMANT RECORDS
SAFEGUARDING PERSONAL INFORMATION IN DEPARTMENT OF
VETERANS AFFAIRS RECORDS
INFRINGEMENTS BY EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS
ADMINISTRATIVE CONTROL OF FUNDS
USE OF OFFICIAL MAIL IN THE LOCATION AND RECOVERY OF MISSING
CHILDREN
HOMELESS CLAIMANTS
APPEALS FROM DECISIONS OF CONTRACTING OFFICERS UNDER THE
CONTRACT DISPUTES ACT OF 1978
PART-TIME CAREER EMPLOYMENT PROGRAM
STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION OR
TERMINATION OF COLLECTION EFFORT, AND REFERRAL OF CIVIL
CLAIMS FOR MONEY OR PROPERTY
STANDARDS FOR COLLECTION OF CLAIMS
STANDARDS FOR COLLECTION OF CLAIMS
STANDARDS FOR COMPROMISE OF CLAIMS
STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION
REFERRALS TO GAO, DEPARTMENT OF JUSTICE, OR IRS
REGIONAL OFFICE COMMITTEES ON WAIVERS AND COMPROMISES
SALARY OFFSET PROVISIONS
Authority: 38 U.S.C. 501(a), and as noted in specific sections.
§ 1.9 Description, use, and display of VA Seal and Flag.

(a) General. This section describes the official seal and distinguishing flag of the Department of Veterans Affairs, and prescribes the rules for their custody and use.

(b) Definitions.

(1) VA means all organizational units of the Department of Veterans Affairs.

(2) Embossed seal means an image of the official seal made on paper or other medium by using an embosser with a negative and positive die to create a raised impression.

(3) Official seal means the original(s) of the VA seal showing the exact form, content, and colors thereof.

(4) Replica means a copy of the official seal displaying the identical form, content, and colors thereof.

(5) Reproduction means a copy of the official seal displaying the identical form and content, reproduced in only one color.

(6) Secretary means the Secretary of Veterans Affairs.

(7) Deputy Secretary means the Deputy Secretary of Veterans Affairs.

(c) Custody of official seal and distinguishing flags. The Secretary or designee shall:

(1) Have custody of:

   (i) The official seal and prototypes thereof, and masters, molds, dies, and other means of producing replicas, reproductions, and embossing seals and

   (ii) Production, inventory, and loan records relating to items specified in paragraph (c)(1)(i) of this section, and

(2) Have custody of distinguishing flags, and be responsible for production, inventory, and loan records thereof.

(d) Official Seal.

(1) Description of official seal. The Department of Veterans Affairs prescribes as its official seal, of which judicial notice shall be taken pursuant to 38 U.S.C. 302, the imprint illustrated below:

   Click to view image

   (i) The official seal includes an American eagle clutching a cord in its talons. The cord binds a 13-star U.S. flag and a 50-star U.S. flag. In the field over the eagle is a pentagon formation of stars, with one point down. The words Department of Veterans Affairs and United States of America surround the eagle, stars, and flags. A rope motif makes up the outermost ring of the seal.

   (ii) The eagle represents the eternal vigilance of all our nation's veterans. The stars represent the five branches of military service. The crossed flags represent our nation's history. The gold cord that binds the two flags, which is shown clutched in the eagle's talons is symbolic of those who have fallen in the defense of liberty. Each of the various individual items placed together in the seal is a salute to the past, present, and future.

   (iii) The colors used in the configuration are gold, brown, blue, white, silver, yellow, black, and red.
(iv) The colors are derived from the American flag and from nature. By invoking this symbolism, the color scheme represents the Nation's commitment to its veterans.

(2) Use of the official seal, replicas, reproductions, and embossing seals.

(i) The Secretary or designees are authorized to affix replicas, reproductions, and embossed seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(ii) Replicas may be used only for:

(A) Display in or adjacent to VA facilities, in Department auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms.

(B) Offices of senior officials.

(C) Official VA distinguishing flags, adopted and utilized pursuant to paragraph (e)(2) of this section.

(D) Official awards, certificates, medals, and plaques.

(E) Motion picture film, video tape, and other audiovisual media prepared by or for VA and attributed thereto.

(F) Official prestige publications which represent the achievements or mission of VA.

(G) For other similar official purposes.

(H) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.

(iii) Reproductions may be used only on:

(A) VA letterhead stationery.

(B) Official VA identification cards and security credentials.

(C) Business cards for VA employees.

(D) Official VA signs.

(E) Official publications or graphics issued by and attributed to VA, or joint statements of VA with one or more Federal agencies, State or local governments, or foreign governments.

(F) Official awards, certificates, and medals.

(G) Motion picture film, video tape, and other audiovisual media prepared by and for VA and attributed thereto.

(H) For other similar official purposes.

(I) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.

(iv) Use of the official seal and embossed seals:

(A) Embossed seals may be used only on VA legal documents, including interagency or intergovernmental agreements with States, foreign patent applications, and similar official documents.

(B) The official seal may be used only for those purposes related to the conduct of Departmental affairs in furtherance of the VA mission.

(e) Distinguishing flag.

(1) Description of distinguishing flag.

(i) The base or field of the flag shall be blue and a replica of the official seal shall appear on both sides thereof.

(ii) A Class 1 flag shall be of nylon banner, measure 4'4" on the hoist by 5'6" on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2 1/2" wide.
(iii) A Class 2 flag shall be of nylon banner, measure 3' on the hoist by 5' on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2 1/2 " wide.
(iv) Each flag shall be manufactured in accordance with Department of Veterans Affairs Specification X-497G. The replica of the official seal shall be screen printed or embroidered on both sides.

(2) Use of distinguishing flag.
(i) VA distinguishing flags may be used only:
(A) In the offices of the Secretary, Deputy Secretary, Assistant Secretaries, Deputy Assistant Secretaries and heads of field locations designated below:
(1) Regional Offices.
(2) Medical Centers and Outpatient Clinics.
(3) Domiciliaries.
(4) Marketing Centers and Supply Depots.
(5) Data Processing Centers.
(6) National Cemetery Offices.
(7) Other locations as designated by the Deputy Assistant Secretary for Administration.
(B) At official VA ceremonies.
(C) In Department auditoriums, official presentation rooms, hearing rooms, lobbies, public document rooms, and in non-VA facilities in connection with events or displays sponsored by VA, and public appearances of VA officials.
(D) On or in front of VA installation buildings.
(E) Other such official VA purposes or purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Deputy Assistant Secretary for Administration.

(f) Unauthorized uses of the seal and flag.
(1) The official seal, replicas, reproductions, embossed seals, and the distinguished flag shall not be used, except as authorized by the Secretary or Deputy Secretary, in connection with:
(i) Contractor-operated facilities.
(ii) Souvenir or novelty items.
(iii) Toys or commercial gifts or premiums.
(iv) Letterhead design, except on official Departmental stationery.
(v) Matchbook covers, calendars and similar items.
(vi) Civilian clothing or equipment.
(vii) Any article which may disparage the seal or flag or reflect unfavorably upon VA.
(viii) Any manner which implies Departmental endorsement of commercial products or services, or of the commercial user's policies or activities.

(2) Penalties for unauthorized use. Any person who uses the distinguishing flag, or the official seal, replicas, reproductions or embossed seals in a manner inconsistent with this section shall be subject to the penalty provisions of 18 U.S.C. 506, 701, or 1017, providing penalties for their wrongful use, as applicable.
[55 FR 49518, Nov. 29, 1990]

THE UNITED STATES FLAG FOR BURIAL PURPOSES

§ 1.10 Eligibility for and disposition of the United States flag for burial purposes.

§ 1.10 Eligibility for and disposition of the United States flag for burial purposes.  
(a) Eligibility for burial flags -- (1) Persons eligible. (i) A veteran of any war, of Mexican border service, or of service after January 31, 1955, discharged or released from active duty under conditions other than dishonorable. (For the purpose of this section, the term Mexican border service means active military, naval, or air service during the period beginning on January 1, 1911, and ending on April 5, 1917, in Mexico, on the borders thereof, or in the waters adjacent thereto.)
(ii) A peacetime veteran discharged or released, before June 27, 1950, from the active military, naval, or air service, under conditions other than dishonorable, after serving at least one enlistment, or for a disability incurred or aggravated in line of duty.
(iii) Any person who has died while in military or naval service of the United States after May 27, 1941. This subdivision authorizes and requires the furnishing of a flag only where the military or naval service does not furnish a flag immediately. The only cases wherein a flag is not supplied immediately are those of persons whose remains are interred outside the continental limits of the United States, or whose remains are not recovered or are recovered and not identified.
(iv) Any person who served in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President of the United States, dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who dies after separation from such service under conditions other than dishonorable, on or after April 25, 1951.
(Authority: 38 U.S.C. 107(a))
(v) Any deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10 and who:
(A) Completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve;
(B) Was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in the line of duty; or
(C) Died while a member of the Selected Reserve.
(Authority: 38 U.S.C. 2301(f)(1))
(b) Disposition of burial flags. (1) When a flag is actually used to drape the casket of a deceased veteran, it must be delivered to the next of kin following interment. Where the flag is not claimed by the next of kin it may be given upon request to a close friend or associate of the deceased veteran. Such action will constitute final and conclusive determination of rights under this section. (38 U.S.C. 2301)
(2) The phrase next of kin for the purpose of disposing of the flag used for burial purposes is defined as follows, with preference to entitlement in the order listed:
(i) Widow or widower.
(ii) Children, according to age (minor child may be issued a flag on application signed by guardian).
(iii) Parents, including adoptive, stepparents, and foster parents.
(iv) Brothers or sisters, including brothers or sisters of the halfblood.
(v) Uncles or aunts.
(vi) Nephews or nieces.
(vii) Others -- cousins, grandparents, etc. (but not in-laws).

(3) The phrase close friend or associate for the purpose of disposing of the burial flag means any person who because of his or her relationship with the deceased veteran arranged for the burial or assisted in the burial arrangements. In the absence of a person falling in either of these categories, any person who establishes by evidence that he or she was a close friend or associate of the veteran may be furnished the burial flag. Where more than one request for the burial flag is received and each is accompanied by satisfactory evidence of relationship or association, the head of the field facility having jurisdiction of the burial flag quota will determine which applicant is the one most equitably entitled to the burial flag.


(72 Stat. 1114, 1169, as amended; 38 U.S.C. 501, 2301)
QUARTERS FOR DEPARTMENT OF VETERANS AFFAIRS EMPLOYEES OVERSEAS

§ 1.11 Quarters for Department of Veterans Affairs employees in Government-owned or -rented buildings overseas.

Pursuant to the provisions of 5 U.S.C. 5912, a U.S. citizen employee of the Department of Veterans Affairs permanently stationed in a foreign country may be furnished, without cost to him or her, living quarters, including heat, fuel, and light, in a Government-owned or -rented building. When in the interest of the service and when administratively feasible, an agreement may be entered into by the Under Secretary for Benefits or designee with another Federal agency, which is authorized to furnish quarters, to provide such quarters for Department of Veterans Affairs employees under the provisions of 31 U.S.C. 686. Quarters provided will be in lieu of any living quarters allowance to which the employee may otherwise be entitled.

[33 FR 362, Jan. 10, 1968]

(72 Stat. 1114; 38 U.S.C. 501)
PROGRAM EVALUATION

§ 1.15 Standards for program evaluation.

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

§ 1.18 Guidelines for establishing presumptions of service connection for former prisoners of war.

§ 1.15 Standards for program evaluation.

(a) The Department of Veterans Affairs will evaluate all programs authorized under title 38 U.S.C. These evaluations will be conducted so as to determine each program's effectiveness in achieving its stated goals and in achieving such goals in relation to their cost. In addition, these evaluations will determine each program's impact on related programs and its structure and mechanism for delivery of services. All programs will be evaluated on a continuing basis and all evaluations will be conducted by Department of Veterans Affairs staff assigned to an organizational entity other than those responsible for program administration. These evaluations will be conducted with sufficient frequency to allow for an assessment of the continued effectiveness of the programs.

(b) The program evaluation will be designed to determine if the existing program supports the intent of the law. A program evaluation must identify goals and objectives that support this intent, contain a method to measure fulfillment of the objectives, ascertain the degree to which goals and objectives are met, and report the findings and conclusions to Congress, as well as make them available to the public.

(c) The goals must be clear, specific, and measurable. To be clear they must be readily understood, free from doubt or confusion, and specific goals must be explicitly set forth. They must be measurable by objective means. These means can include use of existing record systems, observations, and information from other sources.

(d) All program evaluations require a detailed evaluation plan. The evaluation plan must clearly state the objectives of the program evaluation, the methodology to be used, resources to be committed, and a timetable of major phases.

(e) Each program evaluation must be objective. It must report the accomplishments as well as the shortcomings of the program in an unbiased way. The program evaluation must have findings that give decision-makers information which is of a level of detail and importance to enable decisions to be made affecting either direction or operation. The information in the program evaluation must be timely, and must contain information of sufficient currency that decisions based on the data in the evaluation can be made with a high degree of confidence in the data.

(f) Each program evaluation requires a systematic research design to collect the data necessary to measure the objectives. This research design should conform to the following:

(1) Rationale. The research design for each evaluation should contain a specific rationale and should be structured to determine possible cause and effect relationships.

(2) Relevancy. It must deal with issues currently existing within the program, within the Department, and within the environment in which the program operates.
(3) Validity. The degree of statistical validity should be assessed within the research design. Alternatives include an assessment of cost of data collection vs. results necessary to support decisions.

(4) Reliability. Use of the same research design by others should yield the same findings.

(g) The final program evaluation report will be reviewed for comments and concurrence by relevant organizations within the Department of Veterans Affairs, but in no case should this review unreasonably delay the results of the evaluation. Where disagreement exists, the dissenting organization's position should be summarized for a decision by the Secretary.

(h) The final program evaluation report will be forwarded, with approved recommendations, to the concerned organization. An action plan to accomplish the approved recommendations will be forwarded for evaluation by the evaluating entity.

(i) Program evaluation results should be integrated to the maximum extent possible into Department of Veterans Affairs plans and budget submissions to ensure continuity with other Department of Veterans Affairs management processes.

[47 FR 53735, Nov. 29, 1982, as amended at 54 FR 34980, Aug. 23, 1989]

(38 U.S.C. 527)

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

(a) From time to time, the Secretary shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to a herbicide containing 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin (dioxin) and/or exposure to ionizing radiation in the "Notices" section of the Federal Register.

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable.

(2) Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study.

(4) Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(c) When the Secretary determines, based on the evaluation of scientific or medical studies and after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards and applying the reasonable doubt doctrine as set forth in paragraph (d)(1) of this section, that a significant statistical association exists between any disease and exposure to a herbicide containing dioxin or exposure to ionizing radiation, §§ 3.311a or 3.311b of this title, as appropriate, shall be amended to provide guidelines for the establishment of service connection.

(d)(1) For purposes of paragraph (c) of this section a significant statistical association shall be deemed to exist when the relative weights of valid positive and negative studies permit the conclusion that it is at least as likely as not that the purported relationship between a particular type of exposure and a specific adverse health effect exists.

(2) For purposes of this paragraph a valid study is one which:

(i) Has adequately described the study design and methods of data collection, verification and analysis;
(ii) Is reasonably free of biases, such as selection, observation and participation biases; however, if biases exist, the investigator has acknowledged them and so stated the study's conclusions that the biases do not intrude upon those conclusions; and
(iii) Has satisfactorily accounted for known confounding factors.

(3) For purposes of this paragraph a valid positive study is one which satisfies the criteria in paragraph (d)(2) of this section and whose findings are statistically significant at a probability level of .05 or less with proper accounting for multiple comparisons and subgroup analyses.

(4) For purposes of this paragraph a valid negative study is one which satisfies the criteria in paragraph (d)(2) of this section and has sufficient statistical power to detect an association between a particular type of exposure and a specific adverse health effect if such an association were to exist.

(e) For purposes of assessing the relative weights of valid positive and negative studies, other studies affecting epidemiological assessments including case series, correlational studies and studies with insufficient statistical power as well as key mechanistic and animal studies which are found to have particular relevance to an effect on human organ systems may also be considered.

(f) Notwithstanding the provisions of paragraph (d) of this section, a significant statistical association may be deemed to exist between a particular exposure and a specific disease if, in the Secretary's judgment, scientific and medical evidence on the whole supports such a decision.


Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

§ 1.18 Guidelines for establishing presumptions of service connection for former prisoners of war.

(a) Purpose. The Secretary of Veterans Affairs will establish presumptions of service connection for former prisoners of war when necessary to prevent denials of benefits in significant numbers of meritorious claims.

(b) Standard. The Secretary may establish a presumption of service connection for a disease when the Secretary finds that there is at least limited/suggestive evidence that an increased risk of such disease is associated with service involving detention or internment as a prisoner of war and an association between such detention or internment and the disease is biologically plausible.

(1) Definition. The phrase "limited/suggestive evidence" refers to evidence of a sound scientific or medical nature that is reasonably suggestive of an association between prisoner-of-war experience and the disease, even though the evidence may be limited because matters such as chance, bias, and confounding could not be ruled out with confidence or because the relatively small size of the affected population restricts the data available for study.

(2) Examples. "Limited/suggestive evidence" may be found where one high-quality study detects a statistically significant association between the prisoner-of-war experience and disease, even though other studies may be inconclusive. It also may be
satisfied where several smaller studies detect an association that is consistent in magnitude and direction. These examples are not exhaustive.

(c) Duration of detention or internment. In establishing a presumption of service connection under paragraph (b) of this section, the Secretary may, based on sound scientific or medical evidence, specify a minimum duration of detention or internment necessary for application of the presumption.

(d) Association. The requirement in paragraph (b) of this section that an increased risk of disease be "associated" with prisoner-of-war service may be satisfied by evidence that demonstrates either a statistical association or a causal association.

(e) Evidence. In making determinations under paragraph (b) of this section, the Secretary will consider, to the extent feasible:

(1) Evidence regarding the increased incidence of disease in former prisoners of war;
(2) Evidence regarding the health effects of circumstances or hardships similar to those experienced by prisoners of war (such as malnutrition, torture, physical abuse, or psychological stress);
(3) Evidence regarding the duration of exposure to circumstances or hardships experienced by prisoners of war that is associated with particular health effects; and
(4) Any other sound scientific or medical evidence the Secretary considers relevant.

(f) Evaluation of studies. In evaluating any study for the purposes of this section, the Secretary will consider:

(1) The degree to which the study's findings are statistically significant;
(2) The degree to which any conclusions drawn from the study data have withstood peer review;
(3) Whether the methodology used to obtain the data can be replicated;
(4) The degree to which the data may be affected by chance, bias, or confounding factors; and
(5) The degree to which the data may be relevant to the experience of prisoners of war in view of similarities or differences in the circumstances of the study population.

(g) Contracts for Scientific Review and Analysis. To assist in making determinations under this section, the Secretary may contract with an appropriate expert body to review and summarize the scientific evidence, and assess the strength thereof, concerning the association between detention or internment as a prisoner of war and the occurrence of any disease, or for any other purpose relevant to the Secretary's determinations.


(38 U.S.C. 501(a), 1110)
REFERRALS OF INFORMATION REGARDING CRIMINAL VIOLATIONS

§ 1.200 Purpose.
§ 1.201 Employee's duty to report.
§ 1.203 Information to be reported to VA Police.
§ 1.204 Information to be reported to the Office of Inspector General.
§ 1.205 Notification to the Attorney General or United States Attorney's Office.

§ 1.200 Purpose.
This subpart establishes a duty upon and sets forth the mechanism for VA employees to report information about actual or possible criminal violations to appropriate law enforcement entities.
[68 FR 17549, 17550, Apr. 10, 2003]

[EFFECTIVE DATE NOTE: 68 FR 17549, 17550, Apr. 10, 2003, added this section, effective Apr. 10, 2003.]

§ 1.201 Employee's duty to report.
All VA employees with knowledge or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, any management official, or directly to the Office of Inspector General.
[68 FR 17549, 17550, Apr. 10, 2003]

[EFFECTIVE DATE NOTE: 68 FR 17549, 17550, Apr. 10, 2003, added this section, effective Apr. 10, 2003.]

§ 1.203 Information to be reported to VA Police.
Information about actual or possible violations of criminal laws related to VA programs, operations, facilities, or involving VA employees, where the violation of criminal law occurs on VA premises, will be reported by VA management officials to the VA police component with responsibility for the VA station or facility in question. If there is no VA police component with jurisdiction over the offense, the information will be reported to Federal, state or local law enforcement officials, as appropriate.
[68 FR 17549, 17551, Apr. 10, 2003]

(38 U.S.C. 902)
[EFFECTIVE DATE NOTE: 68 FR 17549, 17551, Apr. 10, 2003, added this section, effective Apr. 10, 2003.]

§ 1.204 Information to be reported to the Office of Inspector General.
Criminal matters involving felonies will also be immediately referred to the Office of Inspector General, Office of Investigations. VA management officials with information about possible criminal matters involving felonies will ensure and be responsible for prompt referrals to the OIG. Examples of felonies include but are not limited to, theft of
Government property over $1000, false claims, false statements, drug offenses, crimes involving information technology systems and serious crimes against the person, i.e., homicides, armed robbery, rape, aggravated assault and serious physical abuse of a VA patient.
[68 FR 17549, 17551, Apr. 10, 2003]

§ 1.205 Notification to the Attorney General or United States Attorney's Office.
VA police and/or the OIG, whichever has primary responsibility within VA for investigation of the offense in question, will be responsible for notifying the appropriate United States Attorney's Office, pursuant to 28 U.S.C. 535.
[68 FR 17549, 17551, Apr. 10, 2003]

[EFFECTIVE DATE NOTE: 68 FR 17549, 17551, Apr. 10, 2003, added this section, effective Apr. 10, 2003.]
SECURITY AND LAW ENFORCEMENT AT DEPARTMENT OF VETERANS AFFAIRS FACILITIES

§ 1.218 Security and law enforcement at VA facilities.

§ 1.218 Security and law enforcement at VA facilities.
(a) Authority and rules of conduct. Pursuant to 38 U.S.C. 901, the following rules and regulations apply at all property under the charge and control of VA (and not under the charge and control of the General Services Administration) and to all persons entering in or on such property. The head of the facility is charged with the responsibility for the enforcement of these rules and regulations and shall cause these rules and regulations to be posted in a conspicuous place on the property.

(1) Closing property to public. The head of the facility, or designee, shall establish visiting hours for the convenience of the public and shall establish specific hours for the transaction of business with the public. The property shall be closed to the public during other than the hours so established. In emergency situations, the property shall be closed to the public when reasonably necessary to ensure the orderly conduct of Government business. The decision to close a property during an emergency shall be made by the head of the facility or designee. The head of the facility or designee shall have authority to designate areas within a facility as closed to the public.

(2) Recording presence. Admission to property during periods when such property is closed to the public will be limited to persons authorized by the head of the facility or designee. Such persons may be required to sign a register and/or display identification documents when requested to do so by VA police, or other authorized individual. No person, without authorization, shall enter upon or remain on such property while the property is closed. Failure to leave such premises by unauthorized persons shall constitute an offense under this paragraph.

(3) Preservation of property. The improper disposal of rubbish on property; the spitting on the property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from a building; the climbing upon the roof or any part of the building, without permission; or the willful destruction, damage, or removal of Government property or any part thereof, without authorization, is prohibited. The destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited.

(4) Conformity with signs and emergency conditions. The head of the facility, or designee, shall have authority to post signs of a prohibitory and directory nature. Persons, in and on property, shall comply with such signs of a prohibitory or directory nature, and during emergencies, with the direction of police authorities and other authorized officials. Tampering with, destruction, marrin, or removal of such posted signs is prohibited.

(5) Disturbances. Conduct on property which creates loud or unusual noise; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; which prevents one from obtaining medical or other services provided on the property in a timely manner; or the use of loud, abusive, or otherwise improper language; or unwarranted loitering, sleeping, or assembly is prohibited. In addition to measures designed to secure voluntary
terminations of violations of this paragraph the head of the facility or designee may cause the issuance of orders for persons who are creating a disturbance to depart the property. Failure to leave the premises when so ordered constitutes a further disturbance within the meaning of this rule, and the offender is subject to arrest and removal from the premises.

(6) Gambling. Participating in games for money or for tangible or intangible things, or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited.

(7) Alcoholic beverages and narcotics. Operating a motor vehicle on property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering property under the influence of any narcotic drug, hallucinogen, marijuana, barbiturate, amphetamine, or alcoholic beverage (unless prescribed by a physician) is prohibited. The use on property of any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) is prohibited. The introduction or possession of alcoholic beverages or any narcotic drug, hallucinogen, marijuana, barbiturate, and amphetamine on property is prohibited, except for liquor or drugs prescribed for use by medical authority for medical purposes.

Provided such possession is consistent with the laws of the State in which the facility is located, liquor may be used and maintained in quarters assigned to employees as their normal abode, and away from the abode with the written consent of the head of the facility which specifies a special occasion for use and limits the area and period for the authorized use.

(8) Soliciting, vending, and debt collection. Soliciting alms and contributions, commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in or on property is prohibited. This rule does not apply to (i) national or local drives for funds for welfare, health, or other purposes as authorized under Executive Order 12353, Charitable Fund Raising (March 23, 1982), as amended by Executive Order 12404 (February 10, 1983), and regulations issued by the Office of Personnel Management implementing these Executive Orders; (ii) concessions or personal notices posted by employees on authorized bulletin boards; and (iii) solicitation of labor organization membership or dues under 5 U.S.C. chapter 71.

(9) Distribution of handbills. The distributing of materials such as pamphlets, handbills, and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere on property is prohibited, except as authorized by the head of the facility or designee or when such distributions or displays are conducted as part of authorized Government activities.

(10) Photographs for news, advertising, or commercial purposes. Photographs for advertising or commercial purposes may be taken only with the written consent of the head of the facility or designee. Photographs for news purposes may be taken at entrances, lobbies, foyers, or in other places designated by the head of the facility or designee.

(11) Dogs and other animals. Dogs and other animals, except seeing-eye dogs, shall not be brought upon property except as authorized by the head of the facility or designee.

(12) Vehicular and pedestrian traffic. Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of police and all posted traffic signs. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited; parking in unauthorized locations or in locations reserved for other persons or contrary to the
direction of posted signs is prohibited. Creating excessive noise on hospital or cemetery premises by muffler cut out, the excessive use of a horn, or other means is prohibited. Operation of a vehicle in a reckless or unsafe manner, drag racing, bumping, overriding curbs, or leaving the roadway is prohibited.

(13) Weapons and explosives. No person while on property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

(14) Demonstrations. (i) All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited. Jogging, bicycling, sledding and other forms of physical recreation on cemetery grounds is prohibited.

(ii) For the purpose of the prohibition expressed in this paragraph, unauthorized demonstrations or services shall be defined as, but not limited to, picketing, or similar conduct on VA property; any oration or similar conduct to assembled groups of people, unless the oration is part of an authorized service; the display of any placards, banners, or foreign flags on VA property unless approved by the head of the facility or designee; disorderly conduct such as fighting, threatening, violent, or tumultuous behavior, unreasonable noise or coarse utterance, gesture or display or the use of abusive language to any person present; and partisan activities, i.e., those involving commentary or actions in support of, or in opposition to, or attempting to influence, any current policy of the Government of the United States, or any private group, association, or enterprise.

(15) Key security. The head of the facility of designee, will determine which employees, by virtue of their duties, shall have access to keys or barrier-card keys which operate locks to rooms or areas on the property. The unauthorized possession, manufacture, and/or use of such keys or barrier cards is prohibited. The surreptitious opening or attempted opening of locks or card-operated barrier mechanisms is prohibited.

(16) Sexual misconduct. Any act of sexual gratification on VA property involving two or more persons, who do not reside in quarters on the property, is prohibited. Acts of prostitution or solicitation for acts of prostitution on VA property is prohibited. For the purposes of this paragraph, an act of prostitution is defined as the performance or the offer or agreement to perform any sexual act for money or payment.

(b) Schedule of offenses and penalties. Conduct in violation of the rules and regulations set forth in paragraph (a) of this section subjects an offender to arrest and removal from the premises. Whomever shall be found guilty of violating these rules and regulations while on any property under the charge and control of VA is subject to a fine as stated in the schedule set forth herein or, if appropriate, the payment of fixed sum in lieu of appearance (forfeiture of collateral) as may be provided for in rules of the United States District Court. Violations included in the schedule of offenses and penalties may also subject an offender to a term of imprisonment of not more than six months, as may be determined appropriate by a magistrate or judge of the United States District Court:

(1) Improper disposal of rubbish on property, $ 200.
(2) Spitting on property, $ 25.
(3) Throwing of articles from a building or the unauthorized climbing upon any part of a building, $ 50.
(4) Willful destruction, damage, or removal of Government property without authorization, $ 500.
(5) Defacement, destruction, mutilation or injury to, or removal, or disturbance of, gravemarker or headstone, $ 500.
(6) Failure to comply with signs of a directive and restrictive nature posted for safety purposes, $ 50.
(7) Tampering with, removal, marring, or destruction of posted signs, $ 150.
(8) Entry into areas posted as closed to the public or others (trespass), $ 50.
(9) Unauthorized demonstration or service in a national cemetery or on other VA property, $ 250.
(10) Creating a disturbance during a burial ceremony, $ 250.
(11) Disorderly conduct which creates loud, boisterous, and unusual noise, or which obstructs the normal use of entrances, exits, foyers, offices, corridors, elevators, and stairways or which tends to impede or prevent the normal operation of a service or operation of the facility, $ 250.
(12) Failure to depart premises by unauthorized persons, $ 50.
(13) Unauthorized loitering, sleeping or assembly on property, $ 50.
(14) Gambling-participating in games of chance for monetary gain or personal property; the operation of gambling devices, a pool or lottery; or the taking or giving of bets, $ 200.
(15) Operation of a vehicle under the influence of alcoholic beverages or nonprescribed narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, $ 500.
(16) Entering premises under the influence of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines, $ 200.
(17) Unauthorized use on property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines, $ 300.
(18) Unauthorized introduction on VA controlled property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or the unauthorized giving of same to a patient or beneficiary, $ 500.
(19) Unauthorized solicitation of alms and contributions on premises, $ 50.
(20) Commercial soliciting or vending, or the collection of private debts on property, $ 50.
(21) Distribution of pamphlets, handbills, and flyers, $ 25.
(22) Display of placards or posting of material on property, $ 25.
(23) Unauthorized photography on premises, $ 50.
(24) Failure to comply with traffic directions of VA police, $ 25.
(25) Parking in spaces posted as reserved for physically disabled persons, $ 50.
(26) Parking in no-parking areas, lanes, or crosswalks so posted or marked by yellow borders or yellow stripes, $ 25.
(27) Parking in emergency vehicle spaces, areas and lanes bordered in red or posted as EMERGENCY VEHICLES ONLY or FIRE LANE, or parking within 15 feet of a fire hydrant, $ 50.
(28) Parking within an intersection or blocking a posted vehicle entrance or posted exit lane, $ 25.
(29) Parking in spaces posted as reserved or in excess of a posted time limit, $ 15.
(30) Failing to come to a complete stop at a STOP sign, $ 25.
(31) Failing to yield to a pedestrian in a marked and posted crosswalk, $ 25.
(32) Driving in the wrong direction on a posted one-way street, $ 25.
(33) Operation of a vehicle in a reckless or unsafe manner, too fast for conditions, drag racing, overriding curbs, or leaving the roadway, $ 100.
(34) Exceeding posted speed limits:
   (i) By up to 10 mph, $ 25.
   (ii) By up to 20 mph, $ 50.
   (iii) By over 20 mph, $ 100.
(35) Creating excessive noise in a hospital or cemetery zone by muffler cut out, excessive use of a horn, or other means, $ 50.
(36) Failure to yield right of way to other vehicles, $ 50.
(37) Possession of firearms, carried either openly or concealed, whether loaded or unloaded (except by Federal or State law enforcement officers on official business, $ 500.
(38) Introduction or possession of explosives, or explosive devices which fire a projectile, ammunition, or combustibles, $ 500.
(39) Possession of knives which exceed a blade length of 3 inches; switchblade knives; any of the variety of hatchets, clubs and hand-held weapons; or brass knuckles, $ 300.
(40) The unauthorized possession of any of the variety of incapacitating liquid or gas-emitting weapons, $ 200.
(41) Unauthorized possession, manufacture, or use of keys or barrier card-type keys to rooms or areas on the property, $ 200.
(42) The surreptitious opening, or attempted opening, of locks or card-operated barrier mechanisms on property, $ 500.
(43) Soliciting for, or the act of, prostitution, $ 250.
(44) Any unlawful sexual activity, $ 250.
(45) Jogging, bicycling, sledding or any recreational physical activity conducted on cemetery grounds, $ 50.

(c) Enforcement procedures. (1) VA administration directors will issue policies and operating procedures governing the proper exercise of arrest and other law enforcement actions, and limiting the carrying and use of weapons by VA police officers. VA police officers found qualified under respective VA administration directives and duly appointed heads of facilities for the purposes of 38 U.S.C. 902(b)(1), will enforce these rules and regulations and other Federal laws on VA property in accordance with the policies and operating procedures issued by respective VA administration directors and under the direction of the head of the facility.
(2) VA administration directors will prescribe training for VA police officers of the scope and duration necessary to assure the proper exercise of the law enforcement and arrest authority vested in them and to assure their abilities in the safe handling of situations involving patients and the public in general. VA police officers will successfully complete prescribed training in law enforcement procedures and the safe handling of patients as a condition of their retention of statutory law enforcement and arrest authority.
(3) Nothing contained in the rules and regulations set forth in paragraph (a) of this section shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13, or any State or local laws and regulations applicable to the area in which the property is situated.
[50 FR 29226, July 18, 1985]
(38 U.S.C. 901)
PARKING FEES AT VA MEDICAL FACILITIES

§ 1.300 Purpose.
§ 1.301 Definitions.
§ 1.302 Applicability and scope.
§ 1.303 Policy.

§ 1.300 Purpose.
Sections 1.300 through 1.303 prescribe policies and procedures for establishing parking fees for the use of Department of Veterans Affairs controlled parking spaces at VA medical facilities.
[53 FR 25490, July 7, 1988]

(38 U.S.C. 501, 8109)

§ 1.301 Definitions.
As used in §§ 1.300 through 1.303 of this title:
(a) Secretary means the Secretary of Veterans Affairs.
(b) Eligible person means any individual to whom the Secretary is authorized to furnish medical examination or treatment.
(c) Garage means a structure or part of a structure in which vehicles may be parked.
(d) Medical facility means any facility or part thereof which is under the jurisdiction of the Secretary for the provision of health-care services, including any necessary buildings and structures, garage or parking facility.
(e) Parking facilities includes all surface and garage parking spaces at a VA medical facility.
(f) Volunteer worker means an individual who performs services, without compensation, under the auspices of VA Voluntary Service (VAVS) at a VA medical facility, for the benefit of veterans receiving care at that medical facility.
[53 FR 25490, July 7, 1988]

(38 U.S.C. 8109)

§ 1.302 Applicability and scope.
(a) The provisions of §§ 1.300 through 1.303 apply to VA medical facility parking facilities in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, and to such parking facilities for the use of VA medical facilities jointly shared by VA and another Federal agency when the facility is operated by the VA. Sections 1.300 through 1.303 apply to all users of those parking facilities. Fees shall be assessed and collected at medical facilities where parking garages are constructed, acquired, or altered at a cost exceeding $ 500,000 (or, in the case of acquisition by lease, $ 100,000 per year). The Secretary, in the exercise of official discretion, may also determine that parking fees shall be charged at any other VA medical facility.
(b) All fees established shall be reasonable under the circumstances and shall cover all parking facilities used in connection with such VA medical facility.
§ 1.303 Policy.
(a) General. Parking spaces at VA medical facilities shall only be provided under the following conditions:
(1) VA and its employees shall not be liable for any damages to vehicles (or their contents) parked in VA parking facilities, unless such damages are directly caused by such employees acting in the course of their VA employment.
(2) Parking facilities at VA medical facilities shall only be made available at each medical facility for such periods and under such terms as prescribed by the facility director, consistent with §§ 1.300 through 1.303.
(3) VA will limit parking facilities at VA medical facilities to the minimum necessary, and administer those parking facilities in full compliance with ridesharing regulations and Federal laws.
(b) Fees. (1) As provided in § 1.302, VA will assess VA employees, contractor employees, tenant employees, visitors, and other individuals having business at a VA medical facility where VA parking facilities are available, a parking fee for the use of that parking facility. All parking fees shall be set at a rate which shall be equivalent to one-half of the appropriate fair rental value (i.e., monthly, weekly, daily, hourly) for the use of equivalent commercial space in the vicinity of the medical facility, subject to the terms and conditions stated in paragraph (a) of this section. Fair rental value shall include an allowance for the costs of management of the parking facilities. The Secretary will determine the fair market rental value through use of generally accepted appraisal techniques. If the appraisal establishes that there is no comparable commercial rate because of the absence of commercial parking facilities within a two-mile radius of the medical facility, then the rate established shall be not less than the lowest rate charged for parking at the VA medical facility with the lowest established parking fees. Rates established shall be reviewed biannually by the Secretary to reflect any increase or decrease in value as determined by appraisal updating.
(2) No parking fees shall be established or collected for parking facilities used by or for vehicles of the following:
(i) Volunteer workers in connection with such workers performing services for the benefit of veterans receiving care at the medical facility;
(ii) A veteran or an eligible person in connection with such veteran or eligible person receiving examination or treatment;
(iii) An individual transporting a veteran or eligible person seeking examination or treatment; and
(iv) Federal Government employees using Government owned or leased or private vehicles for official business.
[53 FR 25490, July 7, 1988]
§ 1.460 Definitions.
§ 1.461 Applicability.
§ 1.462 Confidentiality restrictions.
§ 1.463 Criminal penalty for violations.
§ 1.464 Minor patients.
§ 1.465 Incompetent and deceased patients.
§ 1.466 Security for records.
§ 1.467 Restrictions on the use of identification cards and public signs.
§ 1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.
§ 1.469 Patient access and restrictions on use.
§ 1.470 [Reserved]
§ 1.471 [Reserved]
§ 1.472 [Reserved]
§ 1.473 [Reserved]
§ 1.474 [Reserved]
38 USC 1751-1754 and 7331-7334.

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.460 Definitions.
For purposes of §§ 1.460 through 1.499 of this part, the following definitions apply:
Alcohol abuse. The term "alcohol abuse" means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.
Contractor. The term "contractor" means a person who provides services to VA such as data processing, dosage preparation, laboratory analyses or medical or other professional services. Each contractor shall be required to enter into a written agreement subjecting such contractor to the provisions of §§ 1.460 through 1.499 of this part; 38 U.S.C. 5701 and 7332; and 5 U.S.C. 552a and 38 CFR 1.576(g).

Diagnosis. The term "diagnosis" means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse or any reference to sickle cell anemia or infection with the human immunodeficiency virus which is made for the purpose of treatment or referral for treatment. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by §§ 1.460 through 1.499 of this part. These regulations do not apply to a diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

Disclose or disclosure. The term "disclose" or "disclosure" means a communication of patient identifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Drug abuse. The term "drug abuse" means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Infection with the human immunodeficiency virus (HIV). The term "infection with the human immunodeficiency virus (HIV)" means the presence of laboratory evidence for human immunodeficiency virus infection. For the purposes of §§ 1.460 through 1.499 of this part, the term includes the testing of an individual for the presence of the virus or antibodies to the virus and information related to such testing (including tests with negative results).

Informant. The term "informant" means an individual who is a patient or employee or who becomes a patient or employee at the request of a law enforcement agency or official and who at the request of a law enforcement agency or official observes one or more patients or employees for the purpose of reporting the information obtained to the law enforcement agency or official.

Patient. The term "patient" means any individual or subject who has applied for or been given a diagnosis or treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in order to determine that individual's eligibility to participate in a treatment or rehabilitation program. The term patient includes an individual who has been diagnosed or treated for alcoholism, drug abuse, HIV infection, or sickle cell anemia for purposes of participation in a VA program or activity relating to those four conditions, including a program or activity consisting of treatment, rehabilitation, education, training, evaluation, or research. The term "patient" for the purpose of infection with the human immunodeficiency virus or sickle cell anemia, includes one tested for the disease.

Patient identifying information. The term "patient identifying information" means the name, address, social security number, fingerprints, photograph, or similar information
by which the identity of a patient can be determined with reasonable accuracy and speed
either directly or by reference to other publicly available information. The term does not
include a number assigned to a patient by a treatment program, if that number does not
consist of, or contain numbers (such as social security, or driver's license number) which
could be used to identify a patient with reasonable accuracy and speed from sources
external to the treatment program.

Person. The term "person" means an individual, partnership, corporation, Federal, State
or local government agency, or any other legal entity.

Records. The term "records" means any information received, obtained or maintained,
whether recorded or not, by an employee or contractor of VA, for the purpose of seeking
or performing VA program or activity functions relating to drug abuse, alcoholism, tests
for or infection with the human immunodeficiency virus, or sickle cell anemia regarding
an identifiable patient. A program or activity function relating to drug abuse, alcoholism,
infection with the human immunodeficiency virus, or sickle cell anemia includes
evaluation, treatment, education, training, rehabilitation, research, or referral for one of
these conditions. Sections 1.460 through 1.499 of this part apply to a primary or other
diagnosis, or other information which identifies, or could reasonably be expected to
identify, a patient as having a drug or alcohol abuse condition, infection with the human
immunodeficiency virus, or sickle cell anemia (e.g., alcoholic psychosis, drug
dependence), but only if such diagnosis or information is received, obtained or
maintained for the purpose of seeking or performing one of the above program or activity
functions. Sections 1.460 through 1.499 of this part do not apply if such diagnosis or
other information is not received, obtained or maintained for the purpose of seeking or
performing a function or activity relating to drug abuse, alcoholism, infection with the
human immunodeficiency virus, or sickle cell anemia for the patient in question.

Whenever such diagnosis or other information, not originally received or obtained for the
purpose of obtaining or providing one of the above program or activity functions, is
subsequently used in connection with such program or activity functions, those original
entries become a "record" and §§ 1.460 through 1.499 of this part thereafter apply to
those entries. Segregability: these regulations do not apply to records or information
contained therein, the disclosure of which (the circumstances surrounding the disclosure
having been considered) could not reasonably be expected to disclose the fact that a
patient has been connected with a VA program or activity function relating to drug abuse,
alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia.

(1) The following are examples of instances whereby records or information related to
alcoholism or drug abuse are covered by the provisions of §§ 1.460 through 1.499 of this
part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification. The patient is
offered treatment in a VA alcohol rehabilitation program which he declines.

(ii) A patient who is diagnosed as a drug abuser applies for and is provided VA drug
rehabilitation treatment.

(iii) While undergoing treatment for an unrelated medical condition, a patient discusses
with the physician his use and abuse of alcohol. The physician offers VA alcohol
rehabilitation treatment which is declined by the patient.
(2) The following are examples of instances whereby records or information related to alcoholism or drug abuse are not covered by the provisions of §§ 1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification, treated and released with no counseling or treatment for the underlying condition of alcoholism.

(ii) While undergoing treatment for an unrelated medical condition, a patient informs the physician of a history of drug abuse fifteen years earlier with no ingestion of drugs since. The history and diagnosis of drug abuse is documented in the hospital summary and no treatment is sought by the patient or offered or provided by VA during the current period of treatment.

(iii) While undergoing treatment for injuries sustained in an accident, a patient's medical record is documented to support the judgment of the physician to prescribe certain alternate medications in order to avoid possible drug interactions in view of the patient's enrollment and treatment in a non-VA methadone maintenance program. The patient states that continued treatment and follow-up will be obtained from private physicians and VA treatment for the drug abuse is not sought by the patient nor provided or offered by the staff.

(iv) A patient is admitted to the emergency room suffering from a possible drug overdose. The patient is treated and released; a history and diagnosis of drug abuse may be documented in the hospital summary. The patient is not offered treatment for the underlying conditions of drug abuse, nor is treatment sought by the patient for that condition.

Third party payer. The term "third party payer" means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his or her family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment. The term "treatment" means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term includes testing for the human immunodeficiency virus or sickle cell anemia.

Undercover agent. The term "undercover agent" means an officer of any Federal, State, or local law enforcement agency who becomes a patient or employee for the purpose of investigating a suspected violation of law or who pursues that purpose after becoming a patient or becoming employed for other purposes.

[60 FR 63926, 63929, Dec. 13, 1995]

(38 U.S.C. 7334)

§ 1.461 Applicability.

(a) General.

(1) Restrictions on disclosure. The restrictions on disclosure in these regulations apply to any information whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser, an individual tested for or infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual with sickle cell anemia, either directly, by reference to other publicly

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available information, or through verification of such an identification by another person; and
(ii) Is provided or obtained for the purpose of treating alcohol or drug abuse, infection
with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a
referral for that treatment as well as for education, training, evaluation, rehabilitation and
research program or activity purposes.
(2) Restriction on use. The restriction on use of information to initiate or substantiate any
criminal charges against a patient or to conduct any criminal investigation of a patient
applies to any information, whether or not recorded, which is maintained for the purpose
of treating drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell
anemia, making a diagnosis for that treatment, or making a referral for that treatment as
well as for education, training, evaluation, rehabilitation, and research program or activity
purposes.
(b) Period covered as affecting applicability. The provisions of §§ 1.460 through 1.499 of
this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any
given individual maintained over any period of time which, irrespective of when it begins,
does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse;
or before May 14, 1974, in the case of diagnosis or treatment for alcoholism or alcohol
abuse; or before September 1, 1973, in the case of testing, diagnosis or treatment of sickle
cell anemia; or before May 20, 1988, in the case of testing, diagnosis or treatment for an
infection with the HIV.
(c) Exceptions.
(1) Department of Veterans Affairs and Armed Forces. The restrictions on disclosure in
§§ 1.460 through 1.499 of this part do not apply to communications of information
between or among those components of VA who have a need for the information in
connection with their duties in the provision of health care, adjudication of benefits, or in
carrying out administrative responsibilities related to those functions, including personnel
of the Office of the Inspector General who are conducting audits, evaluations, healthcare
inspections, or non-patient investigations, or between such components and the Armed
Forces, of information pertaining to a person relating to a period when such person is or
was subject to the Uniform Code of Military Justice. Information obtained by VA
components under these circumstances may be disclosed outside of VA to prosecute or
investigate a non-patient only in accordance with § 1.495 of this part. Similarly, the
restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to
communications of information to the Department of Justice or U.S. Attorneys who are
providing support in civil litigation or possible litigation involving VA.
(2) Contractor. The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not
apply to communications between VA and a contractor of information needed by the
contractor to provide his or her services.
(3) Crimes on VA premises or against VA personnel. The restrictions on disclosure and
use in §§ 1.460 through 1.499 of this part do not apply to communications from VA
personnel to law enforcement officers which:
(i) Are directly related to a patient's commission of a crime on the premises of the facility
or against personnel of VA or to a threat to commit such a crime; and
(ii) Are limited to the circumstances of the incident, including the patient status of the
individual committing or threatening to commit the crime, that individual's name and
address to the extent authorized by 38 U.S.C. 5701(f)(2), and that individual's last known whereabouts.

(4) Undercover agents and informants.

(i) Except as specifically authorized by a court order granted under § 1.495 of this part, VA may not knowingly employ, or admit as a patient, any undercover agent or informant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program.

(ii) No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient unless authorized pursuant to the provisions of § 1.494 of this part.

(iii) The enrollment of an undercover agent or informant in a treatment unit shall not be deemed a violation of this section if the enrollment is solely for the purpose of enabling the individual to obtain treatment for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(d) Applicability to recipients of information.

(1) Restriction on use of information. In the absence of a proper § 1.494 court order, the restriction on the use of any information subject to §§ 1.460 through 1.499 of this part to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from VA, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with §§ 1.460 through 1.499 of this part. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see paragraph (c) of this section) or through patient access (see § 1.469 of this part) is subject to the restriction on use.

(2) Restrictions on disclosures-third-party payers and others. The restrictions on disclosure in §§ 1.460 through 1.499 of this part apply to third-party payers and persons who, pursuant to a consent, receive patient records directly from VA and who are notified of the restrictions on redisclosure of the records in accordance with § 1.476 of this part.

[60 FR 63926, 63931, Dec. 13, 1995]

(38 U.S.C. 7332(e) and 7334)

§ 1.462 Confidentiality restrictions.

(a) General. The patient records to which §§ 1.460 through 1.499 of this part apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) Unconditional compliance required. The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part apply whether the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted...
by §§ 1.460 through 1.499 of this part. These provisions do not prohibit VA from acting accordingly when there is no disclosure of information.

(c) Acknowledging the presence of patients: responding to requests.
(1) The presence of an identified patient in a VA facility for the treatment or other VA program activity relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia may be acknowledged only if the patient's written consent is obtained in accordance with § 1.475 of this part or if an authorizing court order is entered in accordance with §§ 1.490 through 1.499 of this part. Acknowledgment of the presence of an identified patient in a facility is permitted if the acknowledgment does not reveal that the patient is being treated for or is otherwise involved in a VA program or activity concerning drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia.

(2) Any answer to a request for a disclosure of patient records which is not permissible under §§ 1.460 through 1.499 of this part must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia. These regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

[60 FR 63926, 63932, Dec. 13, 1995]

(38 U.S.C. 7334)

§ 1.463 Criminal penalty for violations.
Under 38 U.S.C. 7332(g), any person who violates any provision of this statute or §§ 1.460 through 1.499 of this part shall be fined not more than $ 5,000 in the case of a first offense, and not more than $ 20,000 for a subsequent offense.

[60 FR 63926, 63932, Dec. 13, 1995]

(38 U.S.C. 7332(g))

§ 1.464 Minor patients.
(a) Definition of minor. As used in §§ 1.460 through 1.499 of this part the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) State law not requiring parental consent to treatment. If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. Sections 1.460 through 1.499 of this part do not prohibit a VA facility from refusing to provide nonemergent treatment to an otherwise ineligible minor patient until the minor patient consents to the disclosure necessary to obtain reimbursement for services from a third party payer.

(c) State law requiring parental consent to treatment.
(1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with § 1.475 of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the appropriate VA facility director under paragraph (d) of this section.

(d) Minor applicant for service lacks capacity for rational choice. Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the appropriate VA facility director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under § 1.475 of this part to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

[60 FR 63926, 63932, Dec. 13, 1995]

§ 1.465 Incompetent and deceased patients.

(a) Incompetent patients other than minors. In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under §§ 1.460 through 1.499 of this part may be given by a court appointed legal guardian.

(b) Deceased patients.

(1) Vital statistics. Sec. 1.460 through 1.499 of this part do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) Consent by personal representative. Any other disclosure of information identifying a deceased patient as being treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia is subject to §§ 1.460 through 1.499 of this part. If a written consent to the disclosure is required, the Under Secretary for Health or designee may, upon the prior written request of the next of kin, executor/executrix, administrator/administratrix, or other personal representative of such deceased patient, disclose the contents of such records, only if the Under Secretary for Health or designee determines such disclosure is necessary to obtain survivorship benefits for the deceased patient's survivor. This would include not only VA benefits, but also payments by the
Social Security Administration, Worker's Compensation Boards or Commissions, or other Federal, State, or local government agencies, or nongovernment entities, such as life insurance companies.

(3) Information related to sickle cell anemia. Information related to sickle cell anemia may be released to a blood relative of a deceased veteran for medical follow-up or family planning purposes.

[60 FR 63926, 63932, Dec. 13, 1995]

(38 U.S.C. 7332(b)(3))

§ 1.466 Security for records.
(a) Written records which are subject to §§ 1.460 through 1.499 of this part must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. Access to information stored in computers will be limited to authorized VA employees who have a need for the information in performing their duties. These security precautions shall be consistent with the Privacy Act of 1974 (5 U.S.C. 552a).
(b) Each VA facility shall adopt in writing procedures related to the access to and use of records which are subject to §§ 1.460 through 1.499 of this part.

[60 FR 63926, 63933, Dec. 13, 1995]

(38 U.S.C. 7334)

§ 1.467 Restrictions on the use of identification cards and public signs.
(a) No facility may require any patient to carry on their person while away from the facility premises any card or other object which would identify the patient as a participant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program. A facility may require patients to use or carry cards or other identification objects on the premises of a facility. Patients may not be required to wear clothing or colored identification bracelets or display objects openly to all facility staff or others which would identify them as being treated for drug or alcohol abuse, HIV infection, or sickle cell anemia.
(b) Treatment locations should not be identified by signs that would identify individuals entering or exiting these locations as patients enrolled in a drug or alcohol abuse, HIV infection, or sickle cell anemia program or activity.

[60 FR 63926, 63933, Dec. 13, 1995]

(38 U.S.C. 7334)

§ 1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.
(a) Research privilege description. There may be concurrent coverage of patient identifying information by the provisions of §§ 1.460 through 1.499 of this part and by administrative action taken under Sec. 303(a) of the Public Health Service Act (42 U.S.C. 241(d) and the implementing regulations at 42 CFR Part 2a); or Sec. 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These "research privilege" statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not
connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) Effect of concurrent coverage. Sections 1.460 through 1.499 of this part restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under §§ 1.490 through 1.499 of this part of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any information which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with §§ 1.490 through 1.499 of this part authorizes a VA facility to disclose certain information about its patients, the facility may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

[60 FR 63926, 63933, Dec. 13, 1995]

(38 U.S.C. 7334)

§ 1.469 Patient access and restrictions on use.

(a) Patient access not prohibited. Sections 1.460 through 1.499 of this part do not prohibit a facility from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that VA maintains about the patient, subject to the provisions of the Privacy Act (5 U.S.C. 552a(d)(1)) and 38 CFR 1.577. If the patient is accompanied, giving access to the patient and the accompanying person will require a written consent by the patient which is provided in accordance with § 1.475 of this part.

(b) Restrictions on use of information. Information obtained by patient access to patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 1.461(d)(1) of this part.

[60 FR 63926, 63933, Dec. 13, 1995]

(38 U.S.C. 7334)

§ 1.470 [Reserved]

§ 1.471 [Reserved]

§ 1.472 [Reserved]

§ 1.473 [Reserved]

§ 1.474 [Reserved]
Disclosures With Patient's Consent

§ 1.475 Form of written consent.
§ 1.476 Prohibition on redisclosure.
§ 1.477 Disclosures permitted with written consent.
§ 1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the HIV.
§ 1.479 Disclosures to elements of the criminal justice system which have referred patients.
§ 1.480 [Reserved]
§ 1.481 [Reserved]
§ 1.482 [Reserved]
§ 1.483 [Reserved]
§ 1.484 [Reserved]

§ 1.475 Form of written consent.
(a) Required elements. A written consent to a disclosure under §§ 1.460 through 1.499 of this part must include:
(1) The name of the facility permitted to make the disclosure (such a designation does not preclude the release of records from other VA health care facilities unless a restriction is stated on the consent).
(2) The name or title of the individual or the name of the organization to which disclosure is to be made.
(3) The name of the patient.
(4) The purpose of the disclosure.
(5) How much and what kind of information is to be disclosed.
(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 1.464 of this part; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 1.465 of this part in lieu of the patient.
(7) The date on which the consent is signed.
(8) A statement that the consent is subject to revocation at any time except to the extent that the facility which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.
(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.
(b) Expired, deficient, or false consent. A disclosure may not be made on the basis of a consent which:
(1) Has expired;
(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;
(3) Is known to have been revoked; or
(4) Is known, or through a reasonable effort could be known, by responsible personnel of VA to be materially false.

(c) Notification of deficient consent. Other than the patient, no person or entity may be advised that a special consent is required in order to disclose information relating to an individual participating in a drug abuse, alcoholism or alcohol abuse, HIV, or sickle cell anemia program or activity. Where a person or entity presents VA with an insufficient written consent for information protected by 38 U.S.C. 7332, VA must, in the process of obtaining a legally sufficient consent, correspond only with the patient whose records are involved, or the legal guardian of an incompetent patient or next of kin of a deceased patient, and not with any other person.

(d) It is not necessary to use any particular form to establish a consent referred to in paragraph (a) of this section, however, VA Form 10-5345, titled Request for and Consent to Release of Medical Records Protected by 38 U.S.C. 7332, may be used for such purpose.

[60 FR 63926, 63933, Dec. 13, 1995]

38 U.S.C. 7332(a)(2) and (b)(1).

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974).

§ 1.476 Prohibition on redisclosure.

Each disclosure under §§ 1.460 through 1.499 of this part made with the patient's written consent must be accompanied by a written statement similar to the following:

This information has been disclosed to you from records protected by Federal confidentiality rules ((38 CFR Part 1). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 38 CFR Part 1. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient or patient with sickle cell anemia or HIV infection.
Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.477 Disclosures permitted with written consent.
If a patient consents to a disclosure of his or her records under § 1.475 of this part, a facility may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 1.478 and 1.479 of this part, respectively.

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the

§ 1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the HIV.

(a) Definitions.
For purposes of this section:
(1) Central registry means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.
(2) Detoxification treatment means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.
(3) Maintenance treatment means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.
(4) Member program means a non-VA detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.
(b) Restrictions on disclosure. VA may disclose patient records to a central registry which is located in the same State or is not more than 125 miles from any border of the State or to any non-VA detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:
(1) The disclosure is made when:
(i) The patient is accepted for treatment;
(ii) The type or dosage of the drug is changed; or
(iii) The treatment is interrupted, resumed or terminated.
(2) The disclosure is limited to:
(i) Patient identifying information;
(ii) Type and dosage of the drug; and
(iii) Relevant dates.
(3) The disclosure is made with the patient's written consent meeting the requirements of § 1.475 of this part, except that:
(i) The consent must list the name and address of each central registry and each known non-VA detoxification or maintenance treatment program to which a disclosure will be made; and
(ii) The consent may authorize a disclosure to any non-VA detoxification or maintenance treatment program established within 200 miles after the consent is given without naming any such program.
(c) Use of information limited to prevention of multiple enrollments. A central registry and any non-VA detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under §§ 1.490 through 1.499 of this part.
§ 1.479 Disclosures to elements of the criminal justice system which have referred patients.

(a) VA may disclose information about a patient from records covered by §§ 1.460 through 1.499 of this part to those persons within the criminal justice system which have made participation in a VA treatment program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

1. The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

2. The patient has signed a written consent as a condition of admission to the treatment program meeting the requirements of § 1.475 of this part (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) Duration of consent. The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

1. The anticipated length of the treatment recognizing that revocation of consent may not generally be effected while treatment is ongoing;

2. The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

3. Such other factors as the facility, the patient, and the person(s) who will receive the disclosure consider pertinent.
(c) Revocation of consent. The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no earlier than the individual's completion of the treatment program and no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) Restrictions on redisclosure and use. A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given, including parole.

[60 FR 63926, 63934, Dec. 13, 1995]


Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.480 [Reserved]

§ 1.481 [Reserved]

§ 1.482 [Reserved]

§ 1.483 [Reserved]

§ 1.484 [Reserved]
Disclosures Without Patient Consent

§ 1.485 Medical emergencies.
§ 1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.
§ 1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.
§ 1.488 Research activities.
§ 1.489 Audit and evaluation activities.

§ 1.485 Medical emergencies.

(a) General rule. Under the procedures required by paragraph (c) of this section, patient identifying information from records covered by §§ 1.460 through 1.499 of this part may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) Special rule. Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) Procedures. Immediately following disclosure, any VA employee making an oral disclosure under authority of this section shall make an accounting of the disclosure in accordance with the Privacy Act (5 U.S.C. 552a(c) and 38 CFR 1.576(c)) and document the disclosure in the patient's records setting forth in writing:
(1) The name and address of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
(2) The name of the individual making the disclosure;
(3) The date and time of the disclosure;
(4) The nature of the emergency (or error, if the report was to FDA);
(5) The information disclosed; and
(6) The authority for making the disclosure (§ 1.485 of this part).

[60 FR 63926, 63935, Dec. 13, 1995]


Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle

§ 1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.
(a) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the HIV, information may be disclosed to a Federal, State, or local public health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. In the case of a State law, such law must, in order for VA to be able to release patient name and address information in accordance with 38 U.S.C. 5701(f)(2), provide for a penalty or fine or other sanction to be assessed against those individuals who are subject to the jurisdiction of the public health authority but fail to comply with the reporting requirements.
(b) A person to whom a record is disclosed under this section may not redisclose or use such record for a purpose other than that for which the disclosure was made.
[60 FR 63926, 63935, Dec. 13, 1995]


Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.
(a) Subject to paragraph (b) of this section, a physician or a professional counselor may disclose information or records indicating that a patient is infected with the HIV if the disclosure is made to the spouse of the patient, or to an individual whom the patient has, during the process of professional counseling or of testing to determine whether the patient is infected with such virus, identified as being a sexual partner of such patient.

(b) A disclosure under this section may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably believes that the patient will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(c) A disclosure under this section may be made by a physician or counselor other than the physician or counselor referred to in paragraph (b) of this section if such physician or counselor is unavailable by reason of extended absence or termination of employment to make the disclosure.

[60 FR 63926, 63935, Dec. 13, 1995]

38 U.S.C. 7332(b).

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.488 Research activities.

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500-1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575-1.584 and the following paragraphs, patient medical record information covered by §§ 1.460 through 1.499 of this part may be disclosed for the purpose of conducting scientific research.

(a) Information in individually identifiable form may be disclosed from records covered by §§ 1.460 through 1.499 of this part for the purpose of conducting scientific research if the Under Secretary for Health or designee makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research.

(2) Has a research protocol under which the information:
(i) Will be maintained in accordance with the security requirements of § 1.466 of this part (or more stringent requirements); and
(ii) Will not be redisclosed except as permitted under paragraph (b) of this section.
(3) Has furnished a written statement that the research protocol has been reviewed by an independent group of three or more individuals who found that the rights of patients would be adequately protected and that the potential benefits of the research outweigh any potential risks to patient confidentiality posed by the disclosure of records.
(b) A person conducting research may disclose information obtained under paragraph (a) of this section only back to VA and may not identify any individual patient in any report of that research or otherwise disclose patient identities.
[60 FR 63926, 63935, Dec. 13, 1995]

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.489 Audit and evaluation activities.
Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500-1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575-1.584, and the following paragraphs, patient medical records covered by §§ 1.460 through 1.499 of this part may be disclosed outside VA for the purposes of conducting audit and evaluation activities.
(a) Records not copies. If patient records covered by §§ 1.460 through 1.499 of this part are not copied, patient identifying information may be disclosed in the course of a review of records on VA facility premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and:
(1) Where audit or evaluation functions are performed by a State or Federal governmental agency on behalf of VA; or
(2) Who is determined by the VA facility director to be qualified to conduct the audit or evaluation activities.
(b) Copying of records. Records containing patient identifying information may be copied by any person who:

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(1) Agrees in writing to:
(i) Maintain the patient identifying information in accordance with the security requirements provided in § 1.466 of this part (or more stringent requirements);
(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and
(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section.
(2) The VA medical facility director determines to be qualified to conduct the audit or evaluation activities.

(c) Congressional oversight. Records subject to §§ 1.460 through 1.499 of this part upon written request may be released to congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee.

(d) Limitation on disclosure and use. Records containing patient identifying information disclosed under this section may be disclosed only back to VA and used only to carry out an audit or evaluation purpose, or, to investigate or prosecute criminal or other activities as authorized by a court order entered under § 1.494 of this part.

[60 FR 63926, 63936, Dec. 13, 1995]


Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).
§ 1.490 Legal effect of order.
§ 1.491 Confidential communications.
§ 1.492 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.
§ 1.493 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.
§ 1.494 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.
§ 1.495 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.
§ 1.496 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.
§ 1.497 [Reserved]
§ 1.498 [Reserved]
§ 1.499 [Reserved]

§ 1.490 Legal effect of order.
The records to which §§ 1.460 through 1.499 of this part apply may be disclosed if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is statutorily required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, is required by statute to impose appropriate safeguards against unauthorized disclosure. An order of a court of competent jurisdiction to produce records subject to §§ 1.460 through 1.499 of this part will not be sufficient unless the order reflects that the court has complied with the requirements of 38 U.S.C. 7332(b)(2)(D). Such an order from a Federal court compels disclosure. However, such an order from a State court only acts to authorize the Secretary to exercise discretion pursuant to 38 U.S.C. 5701(b)(5) and 38 CFR 1.511 to disclose such records. It does not compel disclosure.
[60 FR 63926, 63936, Dec. 13, 1995]

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse,
alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.491 Confidential communications.
(a) A court order under §§ 1.490 through 1.499 of this part may authorize disclosure of confidential communications made by a patient to a treatment program in the course of diagnosis, treatment, or referral for treatment only if:
(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;
(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or
(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.
[60 FR 63926, 63936, Dec. 13, 1995]

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.492 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.
A court order under §§ 1.460 through 1.499 of this part may not authorize qualified personnel, who have received patient identifying information from VA without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 1.495 of this part may authorize disclosure and use of records to investigate or prosecute VA personnel.
[60 FR 63926, 63936, Dec. 13, 1995]

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.493 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.
(a) Application. An order authorizing the disclosure of patient records covered by §§ 1.460 through 1.499 of this part for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of § 1.475 of this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.
(b) Notice. The patient and VA facility from whom disclosure is sought must be given:
(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and
(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on whether the statutory and regulatory criteria for the issuance of the court order are met.
(c) Review of evidence: Conduct of hearing. Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or VA, unless the patient requests an open hearing in a manner which meets the written consent requirements of § 1.475 of this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) Criteria for entry of order. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

1. Other ways of obtaining the information are not available or would not be effective; and
2. The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) Content of order. An order authorizing a disclosure must:

1. Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;
2. Limit disclosure to those persons whose need for information is the basis for the order; and
3. Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

[60 FR 63926, 63936, Dec. 13, 1995]


Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 7501 and 7502. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.494 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.
(a) Application. An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally investigate or prosecute a patient may be applied for by VA or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) Notice and hearing. Unless an order under § 1.495 of this part is sought with an order under this section, VA must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel.

(c) Review of evidence: Conduct of hearings. Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or VA. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) Criteria. A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including, but not limited to, homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of VA to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function, VA has been represented by counsel independent of the applicant.

(e) Content of order. Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the applications; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

[60 FR 63926, 63937, Dec. 13, 1995]
38 U.S.C. 7332(c).

Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.495 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.

(a) Application.
(1) An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally or administratively investigate or prosecute VA (or employees or agents of VA) may be applied for by an administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over VA activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against VA (or agents or employees of VA) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 1.475 of this part) to that disclosure.

(b) Notice not required. An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to VA or to any patient whose records are to be disclosed, upon implementation of an order so granted VA or the patient must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) Requirements for order. An order under this section must be entered in accordance with, and comply with the requirements of, § 1.493(d) and (e) of this part.

(d) Limitations on disclosure and use of patient identifying information.
(1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.
(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 1.494 of this part.

[60 FR 63926, 63937, Dec. 13, 1995]


Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974).

The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans’ Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.496 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.

(a) Application. A court order authorizing the placement of an undercover agent or informant in a VA drug or alcohol abuse, HIV infection, or sickle cell anemia treatment program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the VA treatment program are engaged in criminal misconduct.

(b) Notice. The VA facility director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The VA facility director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The VA facility director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) Criteria. An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of a VA treatment program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and
(3) The public interest and need for the placement of an undercover agent or informant in the VA treatment program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) Content of order. An order authorizing the placement of an undercover agent or informant in a VA treatment program must:

(1) Specifically authorize the placement of an undercover agent or an informant;
(2) Limit the total period of the placement to six months;
(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the VA treatment program; and
(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) Limitation on use of information. No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 1.494 of this part.

[60 FR 63926, 63938, Dec. 13, 1995]


Note: Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. §§ 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. § 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. § 552a (The Privacy Act of 1974). The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is Sec. 111 of Pub. L. 94-581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. §§ 7331 through 7334), the authority for the human immunodeficiency virus provisions is Sec. 121 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. § 7332); the authority for the sickle cell anemia provisions is Sec. 109 of Pub. L. 93-82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. §§ 1751-1754).

§ 1.497 [Reserved]

§ 1.498 [Reserved]

§ 1.499 [Reserved]
RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS CLAIMANT RECORDS

§ 1.500 General.
§ 1.501 Release of information by the Secretary.
§ 1.502 Disclosure of the amount of monetary benefits.
§ 1.503 Disclosure of information to a veteran or his or her duly authorized representative as to matters concerning the veteran alone.
§ 1.504 Disclosure of information to a widow, child, or other claimant.
§ 1.505 Genealogy.
§ 1.507 Disclosures to members of Congress.
§ 1.508 Disclosure in cases where claimants are charged with or convicted of criminal offenses.
§ 1.509 Disclosure to courts in proceedings in the nature of an inquest.
§ 1.510 Disclosure to insurance companies cooperating with the Department of Justice in the defense of insurance suits against the United States.
§ 1.511 Disclosure of claimant records in connection with judicial proceedings generally.
§ 1.512 Disclosure of loan guaranty information.
§ 1.513 Disclosure of information contained in Armed Forces service and related medical records in Department of Veterans Affairs custody.
§ 1.514 Disclosure to private physicians and hospitals other than Department of Veterans Affairs.
§ 1.514a Disclosure to private psychologists.
§ 1.515 To commanding officers of State soldiers' homes.
§ 1.516 Disclosure of information to undertaker concerning burial of a deceased veteran.
§ 1.517 Disclosure of vocational rehabilitation and education information to educational institutions cooperating with the Department of Veterans Affairs.
§ 1.518 Addresses of claimants.
§ 1.519 Lists of names and addresses.
§ 1.520 Confidentiality of social data.
§ 1.521 Special restrictions concerning social security records.
§ 1.522 Determination of the question as to whether disclosure will be prejudicial to the mental or physical health of claimant.
§ 1.523 [Reserved]
§ 1.524 Persons authorized to represent claimants.
§ 1.525 Inspection of records by or disclosure of information to recognized representatives of organizations and recognized attorneys.
§ 1.526 Copies of records and papers.
§ 1.527 Administrative review.
NOTE: Sections 1.500 through 1.527 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs records other than claimant records, see §§ 1.550 through 1.558.
Sections 1.500 through 1.526 implement the provisions of 38 U.S.C. 5701, 5702.

§ 1.500 General.
(a) Files, records, reports, and other papers and documents pertaining to any claim filed with the Department of Veterans Affairs, whether pending or adjudicated, and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Department of Veterans Affairs, will be deemed confidential and privileged, and no disclosure therefrom will be made except in the circumstances and under the conditions set forth in §§ 1.501 through 1.526.
(b) A claimant may not have access to or custody of official Department of Veterans Affairs records concerning himself or herself nor may a claimant inspect records concerning himself or herself. Disclosure of information from Department of Veterans Affairs records to a claimant or his or her duly authorized agent or representative may be made, however, under the provisions of §§ 1.501 through 1.526.
(c) Each administration, staff office, and field facility head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of §§ 1.501 through 1.526 unless the regulations in this part currently contain such designations. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Assistance Officer in the nearest VA regional office, or to the VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m., Monday through Friday, for VA Central Office and most field facilities. Any legal question arising in a field facility concerning the release of information will be referred to the appropriate Regional Counsel for disposition as contemplated by § 13.401 of this chapter. In central office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate administration or staff office head.
(d) Upon denial of a request under paragraph (c) of this section, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial and advise him or her that he or she may appeal the denial. The requester will also be furnished the title and address of the Department of Veterans Affairs official to whom the appeal should be addressed. (See § 1.527.) In each instance of denial of a request, the denial will be made a matter of record and the record will contain a citation to the specific provision of Department of Veterans Affairs regulations upon which the denial is based.
§ 1.501 Release of information by the Secretary.
The Secretary of Veterans Affairs or the Deputy Secretary may release information, statistics, or reports to individuals or organizations when in the Secretary's or Deputy Secretary's judgment such release would serve a useful purpose.  

§ 1.502 Disclosure of the amount of monetary benefits.
The monthly rate of pension, compensation, dependency and indemnity compensation, retirement pay, subsistence allowance, or educational assistance allowance of any beneficiary shall be made known to any person who applies for such information.  
[32 FR 10848, July 25, 1967]

§ 1.503 Disclosure of information to a veteran or his or her duly authorized representative as to matters concerning the veteran alone.
Information may be disclosed to a veteran or his or her duly authorized representative as to matters concerning himself or herself alone when such disclosure would not be injurious to the physical or mental health of the veteran. If the veteran be deceased, matters concerning him or her may be disclosed to his widow, children, or next of kin if such disclosure will not be injurious to the physical or mental health of the person in whose behalf information is sought or cause repugnance or resentment toward the decedent.  
[13 FR 6999, Nov. 27, 1948]

§ 1.504 Disclosure of information to a widow, child, or other claimant.
Information may be disclosed to a widow, widower, child, or other dependent parent or other claimant, or the duly authorized representative of any of these persons as to matters concerning such person alone when such disclosure will not be injurious to the physical or mental health of the person to whom the inquiry relates. If the person concerning whom the information is sought is deceased, matters concerning such person may be disclosed to the next of kin if the disclosures will not be injurious to the physical or mental health of the person in whose behalf the information is sought or cause repugnance or resentment toward the decedent.  
[13 FR 6999, Nov. 27, 1948, as amended at 54 FR 34980, Aug. 23, 1989]

§ 1.505 Genealogy.
Information of a genealogical nature when its disclosure will not be detrimental to the memory of the veteran and not prejudicial, so far as may be apparent, to the interests of any living person or to the interests of the Government may be released by the Department of Veterans Affairs or in the case of inactive records may be released by the Archivist of the United States if in the Archivist's custody.  
[13 FR 6999, Nov. 27, 1948]

(a) All records or documents required for official purposes by any department or other agency of the U.S. Government or any state unemployment compensation agency acting in an official capacity for the Department of Veterans Affairs shall be furnished in response to an official request, written, or oral, from such department or agency. If the requesting department or agency does not indicate the purpose for which the records or documents are requested and there is doubt as to whether they are to be used for official purposes, the requesting department or agency will be asked to specify the purpose for which they are to be used.

(b) The Under Secretary for Benefits, Director of Insurance Service, or designee of either in Central Office, is authorized to release information to OSGLI (Office of Servicemembers’ Group Life Insurance) for the purpose of aiding in the settlement of a particular insurance case.


§ 1.507 Disclosures to members of Congress.

Members of Congress shall be furnished in their official capacity in any case such information contained in the Department of Veterans Affairs files as may be requested for official use. However, in any unusual case, the request will be presented to the Secretary, Deputy Secretary, or staff or administration head for personal action. When the requested information is of a type which may not be furnished a claimant, the member of Congress shall be advised that the information is furnished to him or her confidentially in his official capacity and should be so treated by him or her. (See 38 U.S.C. 5701.) Information concerning the beneficiary designation of a United States Government Life Insurance or National Service Life Insurance policy is deemed confidential and privileged and during the insured's lifetime shall not be disclosed to anyone other than the insured or his or her duly appointed fiduciary unless the insured or the fiduciary authorizes the release of such information.

[32 FR 10848, July 25, 1967]

§ 1.508 Disclosure in cases where claimants are charged with or convicted of criminal offenses.

(a) Where incompetent claimants are charged with, or convicted of, offenses other than those growing out of their relationship with the Department of Veterans Affairs and in which it is desired to disclose information from the files and records of the Department of Veterans Affairs, the Regional Counsel, Under Secretary for Benefits, Veterans Benefits Administration, or the General Counsel if the General Counsel deems it necessary and proper, may disclose to the court having jurisdiction so much of the information from the files and records of the Department of Veterans Affairs relating to the mental condition of such beneficiaries, the same to be available as evidence, as may be necessary to show the mental condition of the accused and the time of its onset. This provision, however, does
not alter the general procedure for handling offenses growing out of relations with the Department of Veterans Affairs.
(b) When desired by a U.S. district court, the Regional Counsel or the General Counsel may supply information as to whether any person charged with crime served in the military or naval service of the United States and whether the Department of Veterans Affairs has a file on such person. If the file is desired either by the court or by the prosecution or defense, it may be produced only in accord with §§ 1.501 through 1.526.


§ 1.509 Disclosure to courts in proceedings in the nature of an inquest.
The Under Secretary for Benefits, Veterans Benefits Administration, Regional Counsel, and facility heads are authorized to make disclosures to courts of competent jurisdiction of such files, records, reports, and other documents as are necessary and proper evidence in proceedings in the nature of an inquest into the mental competency of claimants and other proceedings incident to the appointment and discharge of guardians, curators, or conservators to any court having jurisdiction of such fiduciaries in all matters of appointment, discharge, or accounting in such courts.

§ 1.510 Disclosure to insurance companies cooperating with the Department of Justice in the defense of insurance suits against the United States.
Copies of records from the files of the Department of Veterans Affairs will, in the event of litigation involving commercial insurance policies issued by an insurance company cooperating with the Department of Justice in defense of insurance suits against the United States, be furnished to such companies without charge, provided the claimant or his or her duly authorized representative has authorized the release of the information contained in such records. If the release of information is not authorized in writing by the claimant or his or her duly authorized representative, information contained in the files may be furnished to such company if to withhold same would tend to permit the accomplishment of a fraud or miscarriage of justice. However, before such information may be released without the consent of the claimant, the request therefor must be accompanied by an affidavit of the representative of the insurance company, setting forth that litigation is pending, the character of the suit, and the purpose for which the information desired is to be used. If such information is to be used adversely to the claimant, the affidavit must set forth facts from which it may be determined by the General Counsel or Regional Counsel whether the furnishing of the information is necessary to prevent the perpetration of a fraud or other injustice. The averments contained in such affidavit should be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, workmen's compensation, or similar board in which the litigation is pending upon receipt of a subpoena duces tecum addressed to the Secretary of Veterans Affairs, or the head of the office in which the records desired are located. In the event the
§ 1.511 Disclosure of claimant records in connection with judicial proceedings generally.

(a)(1) Where a suit (or legal proceeding) has been threatened or instituted against the Government, or a prosecution against a claimant has been instituted or is being contemplated, the request of the claimant or his or her duly authorized representative for information, documents, reports, etc., shall be acted upon by the General Counsel in Central Office, or the Regional Counsel for the field facility, who shall determine the action to be taken with respect thereto. Where the records have been sent to the Department of Justice in connection with any such suit (or legal proceeding), the request will be referred to the Department of Justice, Washington, DC, through the office of the General Counsel, for attention. Where the records have been sent to an Assistant U.S. Attorney, the request will be referred by the appropriate Regional Counsel to the Assistant U.S. Attorney. In all other cases where copies of documents or records are desired by or on behalf of parties to a suit (or legal proceeding), whether in a Federal court or any other, such copies shall be disclosed as provided in paragraphs (b) and (c) of this section where the request is accompanied by court process, or paragraph (e) of this section where the request is not accompanied by court process. A court process, such as a court order or subpoena duces tecum should be addressed to either the Secretary of Veterans Affairs or to the head of the field facility at which the records desired are located. The determination as to the action to be taken upon any request for the disclosure of claimant records received in this class of cases shall be made by the component having jurisdiction over the subject matter in Central Office, or the division having jurisdiction over the subject matter in the field facility, except in those cases in which representatives of the component or division have determined that the records desired are to be used adversely to the claimant, in which event the process will be referred to the General Counsel in Central Office or to the Regional Counsel for the field facility for disposition.

(2) Where a claim under the provisions of the Federal Tort Claims Act has been filed, or where such a claim can reasonably be anticipated, no information, documents, reports, etc., will be disclosed except through the Regional Counsel having jurisdiction, who will limit the disclosure of information to that which would be available under discovery proceedings, if the matter were in litigation. Any other information may be disclosed only after concurrence in such disclosure is provided by the General Counsel.

(b) Disclosures in response to Federal court process. -- (1) Court order. Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where the records sought are maintained in a VA Privacy Act system of records, and are retrieved by the name or other personal identifier of a living claimant who is a citizen of the United States or an alien lawfully admitted for permanent residence, a Federal court order is the process necessary.
for the disclosure of such records. Upon receipt of a Federal court order directing
disclosure of claimant records, such records will be disclosed. Disclosure of records
protected under 38 U.S.C. 7332 will be made in accordance with provisions of paragraph
(g) of this section.

(2) Subpoena. Except for drug and alcohol abuse, human immunodeficiency virus and
sickle cell anemia treatment records, which are protected under 38 U.S.C. 7332, where
the records sought are maintained in a VA Privacy Act system of records, and are
retrieved by the name or other personal identifier of a claimant, a subpoena is not
sufficient authority for the disclosure of such records and such records will not be
disclosed, unless the claimant is deceased, or either is not a citizen of the United States,
or is an alien not lawfully admitted for permanent residence. Where one of these
exceptions applies, upon receipt of a Federal court subpoena, such records will be
disclosed. Additionally, where the subpoena is accompanied by authorization from the
claimant, disclosure will be made. Regarding the disclosure of medical records pertaining
to drug and alcohol abuse, human immunodeficiency virus and sickle cell anemia
treatment, a subpoena is insufficient for such disclosure. Specific provisions for the
disclosure of these records are set forth in paragraph (g) of this section.

(3) A disclosure of records in response to the receipt of a Federal court process will be
made to those individuals designated in the process to receive such records, or to the
court from which the process issued. Where original records are produced, they must
remain at all times in the custody of a representative of the Department of Veterans
Affairs, and, if offered and received in evidence, permission should be obtained to
substitute a copy so that the original may remain intact in the record. Where a court
process is issued by or on behalf of a party litigant other than the United States, such
party litigant must prepay the costs of copies in accordance with fees prescribed by §
1.526(i) and any other costs incident to producing the records.

(c) Disclosures in response to state or local court process. -- (1) State or local court order.
Except for drug and alcohol abuse, human immunodeficiency virus and sickle cell
anemia treatment records, which are protected under 38 U.S.C. 7332, where the records
sought are maintained in a VA Privacy Act system of records, and are retrieved by the
name or other personal identifier of a living claimant who is a citizen of the United States
or an alien lawfully admitted for permanent residence, a State or local court order is the
process necessary for disclosure of such records. Upon receipt of a State or local court
order directing disclosure of claimant records, disclosure of such records will be made in
accordance with the provisions set forth in paragraph (c)(3) of this section. Disclosure of
records protected under 38 U.S.C. 7332 will be made in accordance with provisions of
paragraph (g) of this section.

(2) State or local court subpoena. Except for drug and alcohol abuse, human
immunodeficiency virus and sickle cell anemia treatment records, which are protected
under 38 U.S.C. § 7332, where the records sought are maintained in a VA Privacy Act
system of records, and are retrieved by the name or other personal identifier of a claimant,
a subpoena is not sufficient authority for disclosure of such records and such records will
not be disclosed unless the claimant is deceased, or, either is not a citizen of the United
States, or is an alien not lawfully admitted for permanent residence. Where one of these
exceptions applies, upon receipt of a State or local court subpoena directing disclosure of
claimant records, disclosure of such records will be made in accordance with the
provisions set forth in paragraph (c)(3), of this section. Regarding the disclosure of 7332 records, a subpoena is insufficient for such disclosure. Specific provisions for the disclosure of these records are set forth in paragraph (g) of this section.

(3) Where the disclosure provisions of paragraph (c) (1) or (2) of this section apply, disclosure will be made as follows:

(i) When the process presented is accompanied by authority from the claimant; or,

(ii) In the absence of claimant disclosure authority, the Regional Counsel having jurisdiction must determine whether the disclosure of the records is necessary to prevent the perpetration of fraud or other injustice in the matter in question. To make such a determination, the Regional Counsel may require such additional documentation, e.g., affidavit, letter of explanation, or such other documentation which would detail the need for such disclosure, set forth the character of the pending suit, and the purpose for which the documents or records sought are to be used as evidence. The claimant's record may also be considered in the making of such determination. Where a court process is received, and the Regional Counsel finds that additional documentation will be needed to make the foregoing determination, the Regional Counsel, or other employee having reasonable knowledge of the requirements of this regulation, shall contact the person causing the issuance of such court process, and advise that person of the need for additional documentation. Where a court appearance is appropriate, and the Regional Counsel has found that there is an insufficient basis upon which to warrant a disclosure of the requested information, the Regional Counsel, or other employee having reasonable knowledge of the requirement of this regulation and having consulted with the Regional Counsel, shall appear in court and advise the court that VA records are confidential and privileged and may be disclosed only in accordance with applicable Federal regulations, and to further advise the court of such regulatory requirements and how they have not been satisfied. Where indicated, the Regional Counsel will take appropriate action to have the matter of disclosure of the affected records removed to Federal court.

(4) Any disclosure of records in response to the receipt of State or local court process will be made to those individuals designated in the process to receive such records, or to the court from which such process issued. Payment of the fees as prescribed by § 1.526(i), as well as any other cost incident to producing the records, must first be deposited with the Department of Veterans Affairs by the party who caused the process to be issued. The original records must remain at all times in the custody of a representative of the Department of Veterans Affairs, and, if there is an offer and admission of any record or document contained therein, permission should be obtained to substitute a copy so that the original may remain intact in the record.

(d) Notice requirements where disclosures are made pursuant to court process. Whenever a disclosure of Privacy Act protected records is made in response to the process of a Federal, State, or local court, the custodian of the records disclosed will make reasonable efforts to notify the subject of such records that such subject's records were disclosed to another person under compulsory legal process. Such notice should be accomplished when the process compelling disclosure becomes a matter of public record. Generally, a notice sent to the last known address of the subject would be sufficient to comply with this requirement.

(e) Disclosures in response to requests when not accompanied by court process. Requests received from attorneys or others for copies of records for use in suits in which the
Government is not involved, not accompanied by a court process, will be handled by the component or division having jurisdiction over the subject matter. If the request can be complied with under § 1.503 or § 1.504, and under the Privacy Act (to the extent that such records are protected by the Privacy Act), the records requested will be disclosed upon receipt of the required fee. If, however, the records cannot be furnished under such authority, the applicant will be advised of the procedure to obtain copies of records as set forth in paragraphs (b) and (c) of this section.

(f) Suits by or against the Secretary under 38 U.S.C. 3720. Records pertaining to the loan guaranteed, insured, or made by the Department of Veterans Affairs may be made available by the General Counsel or the Regional Counsel subject to the usual rules of evidence, and where authorized under the Privacy Act, after clearance with the Department of Justice or U.S. Attorney if appropriate.

(g) Disclosure of drug abuse, alcohol abuse, human immunodeficiency virus and sickle cell anemia treatment or related records under court process. Disclosure of these types of records, which are protected from unauthorized disclosure under 38 U.S.C. 7332, may be made only in response to an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore. In assessing good cause the court is required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. The court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure. As to a Federal court order satisfying the requirements of this paragraph, the records will be disclosed as provided in such order. As to a State or local court order satisfying the requirements of this subsection, the disclosure of the records involved is conditioned upon satisfying the provisions set forth in paragraph (c)(3) of this section. If the aforementioned section is satisfied, and a disclosure of records is to be forthcoming, the records will be disclosed as provided in the court order.

[56 FR 15833, Apr. 18, 1991; 61 FR 7215, 7216, Feb. 27, 1996]


§ 1.512 Disclosure of loan guaranty information.

(a) The disclosure of records or information contained in loan guaranty files is governed by the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the confidentiality provisions of 38 U.S.C. 5701, and the provisions of 38 CFR 1.500-1.584. In addition, the release of names and addresses and the release of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems shall be governed by paragraphs (b), (c), (d), and (e) of this section.

(b)(1) Upon request, any person is entitled to obtain copies of certificates of reasonable value, appraisal reports, property inspection reports, or reports of inspection on individual water supply and sewage disposal systems provided that the individual identifiers of the veteran-purchaser(s) or dependents are deleted prior to release of such documents. However, individual identifiers may be disclosed in accordance with paragraph (b)(2) of this section. The address of the property being appraised or inspected shall not be considered an individual identifier.

(Authority: 38 U.S.C. 5701(a), (c))
(2) Individual identifiers of veteran purchasers or dependents may be disclosed when disclosure is made to the following:
(i) The individual purchasing the property;
(ii) The current owner of the property;
(iii) The individual that requested the appraisal or report;
(iv) A person or entity which is considering making a loan to an individual with respect to the property concerned; or
(v) An attorney, real estate broker, or any other agent representing any of these persons.

(Authority: 38 U.S.C. 5701(c), (h)(2)(D))

(c)(1) The Secretary may release the name, address, or both, and may release other information relating to the identity of an applicant for or recipient of a Department of Veterans Affairs-guaranteed, insured, or direct loan, specially adapted housing grant, loan to finance acquisition of Department of Veterans Affairs-owned property, release of liability, or substitution of entitlement to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies for any of the purposes specified in paragraph (c)(2) of this section.

(2) A release may be made under paragraph (c)(1) of this section:
(i) To enable such parties to provide the Department of Veterans Affairs with data which assists in determining the creditworthiness, credit capacity, income or financial resources of the applicant for or recipient of loan guaranty administered benefits, or verifying whether any such data previously received is accurate; or
(ii) To enable the Secretary to offer for sale or other disposition any loan or installment sale contract.

(Authority; 38 U.S.C. 5701(h)(2)(A), (B), (C))

(d) Upon request, the Secretary may release information relating to the individual's loan transaction to credit reporting agencies, companies or individuals extending credit, depository institutions, insurance companies, investors, lenders, employers, landlords, utility companies and governmental agencies where necessary in connection with a transfer of information on the status of a Department of Veterans Affairs loan account to persons or organizations proposing to extend credit or render services or other benefits to the borrower in order that the person or organization may determine whether to extend credit or render services or other benefits to the borrower. Such releases shall be made only if the person or organization seeking the information furnishes the individual's name, address or other information necessary to identify the individual.

(Authority; 38 U.S.C. 5701(e), (h)(2)(A) and (D))

(e) The Secretary shall maintain information in the loan guaranty file consisting of the date, notice and purpose of each disclosure, and the name and address of the person to whom the disclosure is made from the loan guaranty files.

[47 FR 11279, Mar. 16, 1982]

(38 U.S.C. 5701(h)(2)(D), 5 U.S.C. 552a(c))

§ 1.513 Disclosure of information contained in Armed Forces service and related medical records in Department of Veterans Affairs custody.

(a) Service records. Information received by the Department of Veterans Affairs from the Departments of the Army, Navy, Air Force, and the Department of Transportation
relative to the military or naval service of a claimant is furnished solely for the official use of the Department of Veterans Affairs but such information may be disclosed under the limitations contained in §§ 1.501 through 1.526.

(b) Medical records. Information contained in the medical records (including clinical records and social data) may be released under the following conditions:

(1) Complete transcript of resume or medical records on request to:
   (i) The Department of the Army.
   (ii) The Department of the Navy (including naval aviation and United States Marine Corps).
   (iii) The Department of the Air Force.
   (iv) The Department of Transportation (Coast Guard).
   (v) Selective Service (in case of registrants only).
   (vi) Federal or State hospitals or penal institutions when the veteran is a patient or inmate therein.
   (vii) United States Public Health Service, or other governmental or contract agency in connection with research authorized by, or conducted for, the Department of Veterans Affairs.
   (viii) Registered civilian physicians, on the request of the individual or his or her legal representative, when required in connection with the treatment of the veteran. (The transcript or resume should be accompanied by the statement "it is expected that the information contained herein will be treated as confidential, as is customary in civilian professional medical practice."
   (ix) The veteran on request, except information contained in the medical record which would prove injurious to his or her physical or mental health.
   (x) The next of kin on request of the individual, or legal representative, when the information may not be disclosed to the veteran because it will prove injurious to his or her physical or mental health, and it will not be injurious to the physical or mental health of the next of kin or cause repugnance or resentment toward the veteran; and directly to the next of kin, or legal representative, when the veteran has been declared to be insane or is dead.
   (xi) Health and social agencies, on the authority of the veteran or his or her duly authorized representative.

(2) In addition to the authorizations in paragraph (b)(1) of this section, the Department of Justice, the Department of the Treasury, and the U.S. Postal Service may, on request, be given pertinent information from medical records for use in connection with investigations conducted by these departments. Each such request shall be considered on its merits, and the information released should be the minimum necessary in connection with the investigation conducted by these departments.

(3) Compliance with court orders calling for the production of medical records in connection with litigation or criminal prosecutions will be effected in accordance with § 1.511.


§ 1.514 Disclosure to private physicians and hospitals other than Department of Veterans Affairs.
(a) When a beneficiary elects to obtain medical attention as a private patient from a private practitioner or in a medical center other than a Department of Veterans Affairs hospital, there may be disclosed to such private practitioner or head of such medical center (Federal, State, municipal, or private), such information as to the medical history, diagnosis, findings, or treatment as is requested, including the loan of original X-ray films, whether Department of Veterans Affairs clinical X-rays or service department entrance and separation X-rays, provided there is also submitted a written authorization from the beneficiary or his or her duly authorized representative. The information will be supplied without charge directly to the private physician or medical center head and not through the beneficiary or representative. In forwarding this information, it will be accompanied by the stipulations that it is released with consent of or on behalf of the patient and that the information will be treated as confidential, as is customary in civilian professional medical practice.

(b) Such information may be released without charge and without consent of the patient or his or her duly authorized representative when a request for such information is received from:

1. The superintendent of a State hospital for psychotic patients, a commissioner or head of a State department of mental hygiene, or head of a State, county, or city health department; or
2. Any fee basis physician or institution in connection with authorized treatment of the veteran as a Department of Veterans Affairs beneficiary; or
3. Any physician or medical installation treating the veteran under emergency conditions.

[34 FR 13368, Aug. 19, 1969, as amended at 54 FR 34980, Aug. 23, 1989]

§ 1.514a Disclosure to private psychologists.
When a beneficiary elects to obtain therapy or analysis as a private patient from a private psychologist, such information in the medical record as may be pertinent may be released. Generally, only information developed and documented by Department of Veterans Affairs psychologists will be considered pertinent, although other information from the medical record may be released if it is determined to be pertinent and will serve a useful purpose to the private psychologist in rendering his or her services. Information will be released under this section upon receipt of the written authorization of the beneficiary or his or her duly authorized representative. Information will be forwarded to private psychologists directly, not through the beneficiary or representative, without charge and with the stipulation that it is released with consent of or on behalf of the patient and must be treated as confidential as is customary in regular professional practice.

[34 FR 13368, Aug. 19, 1969]

§ 1.515 To commanding officers of State soldiers' homes.
When a request is received in a Department of Veterans Affairs regional office, center, or medical center from the commanding officer of a State soldiers' home for information other than information relative to the character of the discharge from a Department of Veterans Affairs center or medical center concerning a veteran formerly domiciled or hospitalized therein, the provisions of § 1.500 are applicable, and no disclosure will be
made unless the request is accompanied by the authorization outlined in § 1.503. However, station heads, upon receipt of a request from the commanding officer of a State soldiers' home for the character of the discharge of a veteran from a period of hospital treatment or domiciliary care as a beneficiary of the Department of Veterans Affairs, will comply with the request, restricting the information disclosed solely to the character of the veteran's discharge from such treatment or care. Such information will be disclosed only upon receipt of a specific request therefor from the commanding officer of a State soldiers' home.
[30 FR 6435, May 8, 1965]

§ 1.516 Disclosure of information to undertaker concerning burial of a deceased veteran.
When an undertaker requests information believed to be necessary in connection with the burial of a deceased veteran, such as the name and address of the beneficiary of the veteran's Government insurance policy, name and address of the next of kin, rank or grade of veteran and organization in which he or she served, character of the veteran's discharge, or date and place of birth of the veteran, and it appears that the undertaker is holding the body awaiting receipt of the information requested, the undertaker, in such instances, may be considered the duly authorized representative of the deceased veteran for the purpose of obtaining said information. In ordinary cases, however, the undertaker will be advised that information concerning the beneficiary of a Government insurance policy is confidential and cannot be disclosed; the beneficiary will be advised immediately of the inquiry, and the furnishing of the desired information will be discretionary with the beneficiary. In no case will the undertaker be informed of the net amount due under the policy or furnished information not specifically mentioned in this paragraph.

§ 1.517 Disclosure of vocational rehabilitation and education information to educational institutions cooperating with the Department of Veterans Affairs.
Requests from educational institutions and agencies cooperating with the Department of Veterans Affairs in the vocational rehabilitation and education of veterans for the use of vocational rehabilitation and education records for research studies will be forwarded to central office with the facility head's recommendation for review by the Under Secretary for Benefits. Where the request to conduct a research study is approved by the Under Secretary for Benefits, the facility head is authorized by this section to release information for such studies from vocational rehabilitation and education records as required: Provided, however, That any data or information obtained shall not be published without prior approval of the Under Secretary for Benefits and that data contained in published material shall not identify any individual veteran.
[30 FR 6435, May 8, 1965]

§ 1.518 Addresses of claimants.
(a) It is the general policy of the Department of Veterans Affairs to refuse to furnish addresses from its records to persons who desire such information for debt collection, canvassing, harassing or for propaganda purposes.
(b) The address of a Department of Veterans Affairs claimant as shown by Department of Veterans Affairs files may be furnished to:
(1) Duly constituted police or court officials upon official request and the submission of a certified copy either of the indictment returned against the claimant or of the warrant issued for his or her arrest.
(2) Police, other law enforcement agencies, or Federal, State, county, or city welfare agencies upon official written request showing that the purpose of the request is to locate a parent who has deserted his or her child or children and that other reasonable efforts to obtain an address have failed. The address will not be released when such disclosure would be prejudicial to the mental or physical health of the claimant. When an address is furnished it will be accompanied by the stipulation that it is furnished on a confidential basis and may not be disclosed to any other individual or agency.
(c) When an address is requested that may not be furnished under §§ 1.500 through 1.526, the person making the request will be informed that a letter, or in those cases involving judicial actions, the process or notice in judicial proceedings, enclosed in an unsealed envelope showing no return address, with the name of the addressee thereon, and bearing sufficient postage to cover mailing costs will be forwarded by the Department of Veterans Affairs. If a request indicates that judicial action is involved in which a process or notice in judicial proceedings is required to be forwarded, the Department of Veterans Affairs will inform the person who requests the forwarding of such a document that the envelope must bear sufficient postage to cover costs of mailing and certified or registered mailing fees, including cost of obtaining receipt for the certified or registered mail when transmission by this type special mail is desired. At the time the letter, process, or notice in judicial proceedings is forwarded, the facility's return address will be placed on the envelope. When the receipt for certified or registered mail or the undelivered envelope is returned to the Department of Veterans Affairs, the original sender will be notified thereof: However, the receipt or the envelope will be retained by the Department of Veterans Affairs. This provision will be applicable only when it does not interfere unduly with the functions of the Service or division concerned. In no event will letters be forwarded to aid in the collection of debts or for the purpose of canvassing, harassing, or propaganda. Neither will a letter be forwarded if the contents could be harmful to the physical or mental health of the recipient.
(d) Subject to the conditions set forth in § 1.922, the Department of Veterans Affairs may disclose to consumer reporting agencies information contained in a debtor's claims folder. Such information may include the debtor's name and/or address, Department of Veterans Affairs file number, Social Security number, and date of birth.


(38 U.S.C. 5701(g))

§ 1.519 Lists of names and addresses.
(a) Any organization wanting a list of names and addresses of present or former personnel of the armed services and their dependents from the Department of Veterans Affairs must make written application to the Department of Veterans Affairs Controller, except lists of educationally disadvantaged veterans should be requested from the Director of the nearest regional office. The application must:

(1) Clearly identify the type or category of names and addresses sought;
(2) Furnish proof satisfactory to the Department of Veterans Affairs that the organization seeking the list is a "nonprofit organization." Normally, evidence establishing that the organization is exempt from taxation in accordance with the provisions of 26 U.S.C. 501 or is a governmental body or institution will be accepted as satisfying this criteria;
(3) Contain a statement clearly setting forth the purpose for which the list is sought, the programs and the resources the organization proposes to devote to this purpose, and establish how such purpose is "directly connected with the conduct of programs and the utilization of benefits" under title 38, U.S.C.; and
(4) Contain a certification that the organization, and all members thereof who will have access to the list, are aware of the penalty provisions of 38 U.S.C. 5701(f) and will not use the list for any purpose other than that stated in the application.

(b) If the Director of the regional office concerned finds that the organization requesting the list of names and addresses of educationally disadvantaged veterans is a nonprofit organization and operates an approved program of special secondary, remedial, preparatory or other educational or supplementary assistance to veterans as provided under subchapter V, title 38 U.S.C., then he or she may authorize the release of such names and addresses to the organization requesting them.

(c) The Associate Deputy Assistant Secretary for Information Resources Management, with the concurrence of the General Counsel, is authorized to release lists of names and addresses to organizations which have applied for such lists in accordance with paragraph (a) of this section if he or she finds that the purpose for which the organization desires the names and addresses is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. Lists of names and addresses authorized to be released pursuant to this paragraph shall not duplicate lists released to other elements, segments, or chapters of the same organization.

(d) If the list requested is one that the Department of Veterans Affairs has previously compiled or created, in the same format, to carry out one or more of its basic program responsibilities and it is determined that it can be released, the list may be furnished without charge. For other types of lists, a charge will be made in accordance with the provisions of § 1.526.

(e) Upon denial of a request, the Department of Veterans Affairs Controller or Regional Office Director will inform the requester in writing of the denial and the reasons therefor and advise the organization that it may appeal the denial to the General Counsel. In each instance of a denial of a request, the denial and the reasons therefor will be made a matter of record.

(f) Section 5701(f), title 38 U.S.C., provides that any organization, or member thereof, which uses the names and addresses furnished it for any purpose other than one directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C., shall be fined not more than $ 500 in the case of the first offense and not more than $ 5,000 in the case of the subsequent offenses. Any instance in which there is
evidence of a violation of these penal provisions will be reported in accordance with § 14.560.
(Amended by the Office of Management and Budget under control number 2900-0438)

§ 1.520 Confidentiality of social data.
Persons having access to social data will be conscious of the fact that the family, acquaintances, and even the veteran have been willing to reveal these data only on the promise that they will be held in complete confidence. There will be avoided direct, ill-considered references which may jeopardize the personal safety of these individuals and the relationship existing among them, the patient, and the social worker, or may destroy their mutual confidence and influence, rendering it impossible to secure further cooperation from these individuals and agencies. Physicians in talking with beneficiaries will not quote these data directly but will regard them as indicating possible directions toward which they may wish to guide the patient's self-revelations without reproaching the patient for his or her behavior or arousing natural curiosity or suspicion regarding any informant's statement. The representatives of service organizations and duly authorized representatives of veterans will be especially cautioned as to their grave responsibility in this connection.

§ 1.521 Special restrictions concerning social security records.
Information received from the Social Security Administration may be filed in the veteran's claims folder without special provisions. Such information will be deemed privileged and may not be released by the Department of Veterans Affairs except that information concerning the amount of social security benefits paid to a claimant or the amount of social security tax contributions made by the claimant may be disclosed to the claimant or his or her duly authorized representative. Any request from outside the Department of Veterans Affairs for other social security information will be referred to the Social Security Administration for such action as they deem proper.
[27 FR 9599, Sept. 28, 1962]

§ 1.522 Determination of the question as to whether disclosure will be prejudicial to the mental or physical health of claimant.
Determination of the question when disclosure of information from the files, records, and reports will be prejudicial to the mental or physical health of the claimant, beneficiary, or other person in whose behalf information is sought, will be made by the Chief Medical Director; Chief of Staff of a hospital; or the Director of an outpatient clinic.
[33 FR 19009, Dec. 20, 1968]

§ 1.523 [Reserved]

§ 1.524 Persons authorized to represent claimants.
A duly authorized representative will be:
(a) Any person authorized in writing by the claimant to act for him or her,
(b) An attorney who has filed the declaration required by § 14.629(b)(1) of this chapter, or
(c) His or her legally constituted fiduciary, if the claimant is incompetent. Where for proper reasons no legally constituted fiduciary has been or will be appointed, his or her spouse, his or her children, or, if the claimant is unmarried, either of his or her parents shall be recognized as the fiduciary of the claimant.

[33 FR 6536, Apr. 30, 1968]

§ 1.525 Inspection of records by or disclosure of information to recognized representatives of organizations and recognized attorneys.

(a)(1) The accredited representatives of recognized organizations (§ 14.627 of this chapter) holding appropriate power of attorney and recognized attorneys (§ 14.629(b) of this chapter) with the written authorization of the claimant may, subject to the restrictions imposed by paragraph (a)(2) of this section, inspect the claims, insurance and allied folders of any claimant upon the condition that only such information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him or her to the claimant or, if the claimant is incompetent, to his or her legally constituted fiduciary. Under the same restrictions, it is permissible to release information from and permit inspection of loan guaranty folders in which a request for a waiver of the debt of a veteran or his or her spouse has been received, or where there has been a denial of basic eligibility for loan guaranty benefits. All other information in the files shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Department of Veterans Affairs of the claim of the claimant. The heads of field facilities and the directors of the services concerned in Central Office will each designate a responsible officer to whom requests for all files must be made, except that managers of centers with insurance activities will designate two responsible officials, recommended by the division chiefs concerned, one responsible for claims and allied folders and the other for insurance files. The term claimant as used in this paragraph includes insureds.

(2) In the case of a living veteran a representative acting under a power of attorney from any person not acting on behalf of the veteran will not be permitted to review the records of the veteran or be furnished any information therefrom to which the person is not entitled, i.e., information not relating to such person alone. Powers of attorney submitted by the other person will be considered "Limited" and will be so noted when associated with the veteran's records. The provisions of this subparagraph are also applicable to recognized attorneys and the requisite declarations filed by them.

(3) When power of attorney does not obtain, the accredited representative will explain to the designated officer of the Department of Veterans Affairs the reason for requesting information from the file, and the information will be made available only when in the opinion of the designated officer it is justified; in no circumstances will such representatives be allowed to inspect the file; in such cases a contact report will be made out and attached to the case, outlining the reasons which justify the verbal or written release of the information to the accredited representative.
(4) In any case where there is an unrevoked power of attorney or declaration of representation, no persons or organizations other than the one named in such document shall be afforded information from the file except under the conditions set forth in § 14.629(b)(2) of this chapter. When any claimant has filed notice with the Department of Veterans Affairs that he or she does not want his or her file inspected, such file will not be made available for inspection.

(b)(1) Inspection of folders by accredited representatives or recognized attorneys holding a written authorization where such cases are being processed shall be in space assigned for such inspection. Otherwise station heads may permit inspection of folders at the desks of the accredited representatives, in the office(s) which they regularly occupy.

(2) An insured or after maturity of the insurance by death of the insured, the beneficiary, may authorize the release to a third person of such insurance information as the insured or the beneficiary would be entitled to receive, provided there is submitted to the Department of Veterans Affairs, a specific authorization in writing for this purpose.

(3) Unless otherwise authorized by the insured or the beneficiary, as the case may be, such authorized representative, recognized attorney or accredited representative shall not release information as to the designated beneficiary to anyone other than the insured or to the beneficiary after death of the insured. Otherwise, information in the insurance file shall be subject to the provisions of §§ 1.500 through 1.526.

(4) Clinical records and medical files, including files for outpatient treatment, may be inspected by accredited representatives or recognized attorneys holding a written authorization only to the extent such records or parts thereof are incorporated in the claims folder, or are made available to Department of Veterans Affairs personnel in the adjudication of the claim. Records or data in clinical or medical files which are not incorporated in the claims folder or which are not made available to Department of Veterans Affairs personnel for adjudication purposes will not be inspected by anyone other than those employees of the Department of Veterans Affairs whose duties require same for the purpose of clinical diagnosis or medical treatment.

(5) Under no circumstances shall any paper be removed from a file, except by a Department of Veterans Affairs employee, for purpose of having an authorized copy made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney or requisite declaration of a recognized attorney.

(6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the General Counsel or Regional Counsel, except that in insurance suits under 38 U.S.C. 1975, 1984, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the Department of Justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.

(c) Facility heads and the directors of the services concerned in central office will be responsible for the administrative compliance with and accomplishment of the foregoing within their jurisdiction, and any violations of the prescribed conditions for inspection of files or release of information therefrom will be brought to the immediate attention of the Secretary.

(d) Any person holding power of attorney, a recognized attorney who has filed the requisite declaration, or the accredited representative of a recognized organization
holding power of attorney shall be supplied with a copy of each notice to the claimant respecting the adjudication of the claim. If a claimant dies before action on the claim is completed, the person or organization holding power of attorney or the attorney who has filed the requisite declaration may continue to act until the action is completed except where the power of attorney or requisite declaration was filed on behalf of a dependent.

(e) When in developing a claim the accredited representative of a recognized organization finds it necessary to call upon a local representative to assemble information or evidence, he or she may make such disclosures to the local representative as the circumstances of the case may warrant, provided the power of attorney to the recognized organization contains an authorization permitting such disclosure.


§ 1.526 Copies of records and papers.

(a) Any person desiring a copy of any record or document in the custody of the Department of Veterans Affairs, which is subject to be furnished under §§ 1.501 through 1.526, must make written application for such copy to the Department of Veterans Affairs installation having custody of the subject matter desired, stating specifically: (1) The particular record or document the copy of which is desired and whether certified and validated, or uncertified, (2) the purpose for which such copy is desired to be used.

(b) The types of services provided by the Department of Veterans Affairs for which fees will be charged are identified in paragraph (i) of this section.

(c) This section applies to the services furnished in paragraph (b) of this section when rendered to members of the public by the Department of Veterans Affairs. It does not apply to such services when rendered to or for other agencies or branches of the Federal Government, or State and local governments when furnishing the service will help to accomplish an objective of the Department of Veterans Affairs, or when performed in connection with a special research study or compilation when the party requesting such services is charged an amount for the whole job.

(d) When copies of a record or document are furnished under §§ 1.506, 1.507, 1.510, and 1.514, such copies shall be supplied without charge. Moreover, free service may be provided, to the extent of one copy, to persons who have been required to furnish original documents for retention by the Department of Veterans Affairs.

(e) The following are circumstances under which services may be provided free at the discretion of facility heads or responsible Central Office officials:

(1) When requested by a court, when the copy will serve as a substitute for personal court appearance of a Government witness.

(2) When furnishing the service free saves costs or yields income equal to the direct costs of the agency providing the service. This includes cases where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(3) When a service is occasional and incidental, not of a type that is requested often, and if it is administratively determined that a fee would be inappropriate in such an occasional case.
(f) When information, statistics, or reports are released or furnished under § 1.501 or § 1.519, the fee charge, if any, will be determined upon the merits of each individual application.

(g) In those cases where it is determined that a fee shall be charged, the applicant will be advised to deposit the amount of the lawful charge for the copy desired. The amount of such charge will be determined in accordance with the schedule of fees prescribed in paragraph (i) of this section. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposit of $1 or more over the lawful charge will be returned to the applicant. Excess deposits of less than $1 will be returned upon request. When a deposit is received with an application, such a deposit will be returned to the applicant should the application be denied.

(h) Copies of reports or records received from other Government departments or agencies will not be furnished except as provided in § 1.513.

(i) Fees to be charged:

(1) Schedule of fees:

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<tbody>
<tr>
<td>(i) Duplication of document by any type of reproduction process to produce plain one-sided paper copies of a standard size (8 1/2 &quot; x 11&quot;; 8 1/2 &quot; x 14&quot;; 11&quot; x 14&quot;)</td>
<td>$0.15 per page after first 100 one-sided pages.</td>
</tr>
<tr>
<td>(ii) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output</td>
<td>Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.</td>
</tr>
<tr>
<td>(iii) Duplication of documents by any type of reproduction process not covered by paragraphs (i)(1)(i) and (ii) of this section to produce a copy in a form reasonably usable by a requester to the extent that it pertains to the cost of duplication.</td>
<td>Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part.</td>
</tr>
<tr>
<td>(iv) Providing special information, statistics, reports, drawings, specifications, lists of names and addresses (either in paper or machine readable form), computer or other machine readable output and overhead expenses.</td>
<td>Actual cost to the Agency including computer and manual search costs, copying and material and labor.</td>
</tr>
<tr>
<td>(v) Attestation under the seal of the Agency certified.</td>
<td>$3.00 per document so certified.</td>
</tr>
<tr>
<td>(vi) Providing abstracts or copies of medical and dental records to insurance companies for other than litigation purposes</td>
<td>$10.00 per request.</td>
</tr>
<tr>
<td>(vii) Providing files under court subpoena</td>
<td>Actual direct cost to the Agency.</td>
</tr>
</tbody>
</table>
(Note. -- If VA regularly contracts for duplicating services related to providing the 
requested records, such as the duplication of microfilm or architect's plans and drawings, 
the contractor fees may be included in the actual direct cost to the Agency)

(2) Benefit records. When VA benefit records are requested by a VA beneficiary or 
applicant for VA benefits, the duplication fee for one complete set of such records will be 
waived.

(Authority: 38 U.S.C. 5702(b))

(j) If the copy is to be transmitted by certified or registered mail, airmail, or special 
delivery mail, the postal fees therefor shall be added to the other fees provided in 
paragraph (i) of this section (or the order must include postage stamps or stamped return 
envelopes for the purpose).

(k) Those Department of Veterans Affairs installations not having copying equipment are 
authorized to arrange with the nearest Department of Veterans Affairs installation having 
such equipment to make the necessary authorized copies of records or documents.

(l) Administration, staff office, and field facility heads are authorized to designate 
employees to certify copies of records and papers furnished under the provisions of 
paragraph (a) of this section.

[19 FR 3224, June 2, 1954, as amended at 32 FR 10850, July 25, 1967; 33 FR 9342, June 

(38 U.S.C. 5702(b))

§ 1.527 Administrative review.

(a) Any person may, in the event of a denial of his or her request to inspect or obtain 
information from or copies of records within the purview of §§ 1.501 through 1.526, 
appeal such denial. Such appeal, stating the circumstances of the denial, should be 
addressed, as appropriate, to the field facility, administration, or staff office head.

(b) A denial action not reversed by a field facility, administration, or staff office head on 
appeal, will be referred through normal channels to the General Counsel.

(c) The final agency decision in such appeals will be made by the General Counsel or the 
Deputy General Counsel.

CHAPTER 1
RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS RECORDS OTHER THAN CLAIMANT RECORDS

§ 1.550 General.
§ 1.551 [Reserved]
§ 1.552 Public access to information that affects the public when not published in the Federal Register as constructive notice.
§ 1.553 Public access to other reasonably described records.
§ 1.553a Time limits for Department of Veterans Affairs response to requests for records.
§ 1.554 Exemptions from public access to agency records.
§ 1.554a Predisclosure notification procedures for confidential commercial information.
§ 1.555 Fees.
§ 1.556 Requests for other reasonably described records.
§ 1.557 Administrative review.
§ 1.558 [Reserved]
§ 1.559 [Reserved]

§ 1.550 General.
The Department of Veterans Affairs policy is one of disclosure of information from agency records to the extent permitted by law. This includes the release of information which the Department of Veterans Affairs is authorized to withhold under 5 U.S.C. 552(b) (see § 1.554) if it is determined: (a) By the Secretary of Veterans Affairs or the Deputy Secretary that disclosure of such information will serve a useful purpose or (b) by an administration, staff office, or field facility head or designee under § 1.556(a) that disclosure will not adversely affect the proper conduct of official business or constitute an invasion of personal privacy.
[40 FR 12656, Mar. 20, 1975]

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.551 [Reserved]

§ 1.552 Public access to information that affects the public when not published in the Federal Register as constructive notice.
(a) All final orders in such actions as entertained by the Contract Appeals Board, those statements of policy and interpretations adopted by the Department of Veterans Affairs but not published in the FEDERAL REGISTER, and administrative manuals and staff instructions that affect any member of the public, unless promptly published and copies
offered for sale, will be kept currently indexed by the office of primary program responsibility or the Manager, Administrative Services, as determined by the Secretary or designee. Such index or indexes or supplements thereto will be promptly published, quarterly or more frequently, and distributed (by sale or otherwise) unless the Department of Veterans Affairs determines by order published in the FEDERAL REGISTER that publication would be unnecessary and impracticable, in which case the Department of Veterans Affairs will nonetheless provide copies of such index or indexes or supplements thereto on request at a cost not to exceed the direct cost of duplication. Both the index and the materials indexed as required by this paragraph will be made available to the public, for inspection and copying. Public reading facilities for this purpose will be maintained in Department of Veterans Affairs Central Office and Department of Veterans Affairs field facilities, open to the public during the normal duty hours of the office in which located. Orders made in the adjudication of individual claims under laws administered by the Department of Veterans Affairs are confidential and privileged by statute (38 U.S.C. 5701) and so are exempt from this requirement.

(b) The voting records of the Contract Appeals Board will be maintained in a public reading facility in the Office of the Board in Central Office and made available to the public upon request.

(c) When publishing or making available to the public any opinion, order, statement of policy, interpretation, staff manual or instruction to staff, identifying details will be deleted, and the deletion justified in writing, to the extent required to prevent a clearly unwarranted invasion of personal privacy.

(d) No final order, opinion, statement of policy, interpretation, staff manual or instruction which is issued, adopted, or promulgated after July 4, 1967, that affects any member of the public may be relied upon, used, or cited as precedent against any private party unless it has been indexed and either made available or published as provided in this section or unless that private party shall have actual and timely notice of the terms thereof.


NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.553 Public access to other reasonably described records.

(a) Except for requests for records which are processed under §§1.551 and 1.552 of this part, unless otherwise provided for in title 38, Code of Federal Regulations, all requests for records shall be processed under paragraph (b) of this section, as well as under any other VA law or regulation governing access to or confidentiality of records or information. Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished to the public without reference to paragraph (b) of this section. To the extent permitted by other laws and regulations, VA will also consider making available records which it is permitted to
withhold under the FOIA if it determines that such disclosure could be in the public interest.

(b) Reasonably described records in VA custody, or copies thereof, other than records made available to the public under provisions of §§ 1.551 and 1.552 of this part, or unless otherwise provided for in title 38, Code of Federal Regulations, requested in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, will be made promptly available, except as provided in § 1.554 of this part, to any person upon request. Such request must be in writing, over the signature of the requester and must contain a reasonable description of the record desired so that it may be located with relative ease. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Service Center Manager in the nearest VA regional office; the Director, or Chief, Medical Administration Service, or other responsible official of VA medical facility where most recently treated; or to the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through Friday for VA Central Office and most field facilities. [53 FR 10377, Mar. 31, 1988; 71 FR 28585, May 17, 2006]

(5 U.S.C. 552(a)(3))

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.553a Time limits for Department of Veterans Affairs response to requests for records.

(a) When a request for records made under § 1.551, § 1.552 or § 1.553 is received it will be promptly referred for action to the proper employee designated in accordance with § 1.556 to take initial action on granting or denying requests to inspect or obtain information from or copies of the records described.

(b) Any such request will then be promptly evaluated and a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Department of Veterans Affairs will comply with the request. Upon determination to comply or deny the request the person making the request will be notified immediately of the determination and the reasons therefor, and of the right of the person to appeal to the Secretary of Veterans Affairs any adverse determination. Records to be furnished will be supplied promptly.

(c) Upon receipt of such an appeal from an adverse determination it will be evaluated and a further determination made within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the appeal. If on appeal the denial is in whole or in part upheld the Department of Veterans Affairs will notify the requester of the provisions for judicial review of this determination. (See §§ 1.557 and 1.558.)

(d) In unusual circumstances, specifically as follows, the time limits in paragraphs (b) and (c) of this section may be extended by written notice to the requester setting forth the
reasons for such extension and the date on which a determination is expected to be dispatched. The date specified will not result in an extension for more than 10 working days. Unusual circumstances will be interpreted to mean, but only to the extent reasonably necessary to the proper processing of the particular request, as follows:
(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Department of Veterans Affairs having substantial subject-matter interest therein.
(e) Pursuant to section 552(a)(6), title 5 U.S.C., any person making a request to the Department of Veterans Affairs for records under section 552(a) (1), (2) or (3) (see §§ 1.551, 1.552 and 1.553) will be deemed to have exhausted his or her administrative remedies with respect to such request if the Department of Veterans Affairs fails to comply with the applicable time limit provisions of this section. If, however, the Government can show exceptional circumstances exist and that the Department of Veterans Affairs is exercising due diligence in responding to the request, the statute also permits the court to retain jurisdiction and allow the Department of Veterans Affairs additional time to complete its review of the records.
(f) Requests for the release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody pertaining to claims under any of the laws administered by the Department of Veterans Affairs (covered by §§ 1.500 through 1.527) may also be initiated under 5 U.S.C. 552. Such requests will also be evaluated, a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Department of Veterans Affairs will comply with the request, and the requester notified immediately of the determination and the reasons therefor, and of the right of the person to appeal to the Secretary of Veterans Affairs any adverse determination. Records to be furnished will be supplied promptly.
[40 FR 12657, Mar. 20, 1975]

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.554 Exemptions from public access to agency records.
(a) The exemptions in this paragraph constitute authority to withhold from disclosure certain categories of information in Department of Veterans Affairs records except that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.
(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy, and are in fact properly classified pursuant to such Executive order.
(2) Related solely to internal Department of Veterans Affairs personnel rules and practices.
(3) Specifically exempted from disclosure by statute other than 5 U.S.C. 552b, provided that such statute:
   (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
   (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.
(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential.
(5) Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Department of Veterans Affairs.
(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
   (i) Could reasonably be expected to interfere with enforcement proceedings;
   (ii) Would deprive a person of a right to a fair trial or an impartial adjudication;
   (iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
   (iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
   (v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
   (vi) Could reasonably be expected to endanger the life or physical safety of any individual.
   (Authority: 5 U.S.C. 552(b)(7))
(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.
(9) Geological and geophysical information and data (including maps) concerning wells.
(b) Information in the categories exempted under paragraph (a) of this section, other than in paragraph (a)(3) which is applicable to Department of Veterans Affairs claimant records, will be released only as authorized in § 1.550. The release of information from Department of Veterans Affairs claimant records will be made only in accordance with §§ 1.501 through 1.526.
(c)(1) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and
(i) The investigation or proceeding involves a possible violation of criminal law, and
(ii) There is reason to believe that
(A) The subject of the investigation or proceeding is not aware of its pendency, and
(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.
(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the Department may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.


(5 U.S.C. 552(c)(1) and (c)(2))

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.554a Predisclosure notification procedures for confidential commercial information.

(a) General. During the conduct of its business the Department of Veterans Affairs (VA) may acquire records which contain confidential commercial information, as defined in paragraph (b) of this section. Such records will not be released in response to a Freedom of Information Act (FOIA) request, except under the provisions of this section. This section establishes uniform VA procedures for giving submitters predisclosure notice of requests for their records which contain confidential commercial information that may be exempt from disclosure under § 1.554(a)(4). These procedures are required by Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, dated June 23, 1987.

(b) Definitions. (1) Confidential commercial information means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552 (b)(4), as implemented by § 1.554 of this part, because disclosure could reasonably be expected to cause substantial competitive harm.
(2) Submitter means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to corporations, State governments, and foreign governments.
(c) Notification to submitters of confidential commercial information. 1When a request is received, for a submitter's record(s), or information which contains confidential commercial information, and the request is being processed under the FOIA, 5 U.S.C. 552, the submitter will be promptly notified in writing of the request when required by
paragraph (d) of this section. The notification will advise the submitter that a request for its record(s) has been received and is being processed under the FOIA. The notice will describe the exact nature of the record(s) requested or will provide to the submitter copies of the record(s) or portions thereof containing the requested confidential commercial information. It will also inform the submitter of the opportunity to object to the disclosure in writing within 10 working days, and of the requirements for such a written objection, as described in paragraph (f) of this section. The notification will be sent by certified mail, return receipt requested.

(d) When notification is required. (1) For confidential commercial information submitted to VA prior to January 1, 1988, notification to submitters is required whenever:
   (i) The records are less than 10 years old and the requested information has been designated by the submitter as confidential commercial information; or
   (ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe that disclosure of the requested information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to VA on or after January, 1, 1988, notification is required whenever:
   (i) The submitter has in good faith designated the requested records as confidential information in accordance with paragraph (e) of this section; or
   (ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe that disclosure could reasonably be expected to cause substantial competitive harm.

(e) Designation by submitters of information as confidential commercial information. (1) When business records are provided to VA, the submitter may appropriately designate any records or portions thereof which contain confidential commercial information, the disclosure of which could reasonably be expected to cause substantial competitive harm. This designation may be made at the time the information or record is given to VA or within a reasonable period of time thereafter, but not later than 60 days after receipt of the information by VA. Information so designated will be clearly identified by marking it with the words "confidential commercial information" or by an accompanying detailed written description of the specific kinds of information that is designated. If a complete document or record is designated, the cover page of the document or record will be clearly marked "This entire (document, record, etc.) consists of confidential commercial information." If only portions of documents are designated, only those specific designated portions will be conspicuously annotated as "confidential commercial information."

(2) A designation described in paragraph (e)(1) of this section will remain in effect for a period of not more than 10 years after submission to VA, unless the submitter provides acceptable justification for a longer specific period. If a shorter designation period is adequate, the submitter's designation should include the earlier expiration date. Whenever possible, the submitter's designation should be supported by a statement or certification by an officer or authorized representative of the submitter that the records are in fact confidential commercial information and have not been published or made available to the public.

(f) Opportunity to object to disclosure. (1) When notification to a submitter is made pursuant to paragraph (c) of this section, the submitter or designee may object to the
disclosure of any specified portion of the record(s). Such objection will be in writing, will be addressed to the VA official who provided notice, will identify the specific record(s) or portion(s) of records that should not be disclosed, will specify all grounds upon which disclosure is opposed, and will explain in detail why the information is considered to be a trade secret or confidential commercial information, i.e., why disclosure of the specified records could reasonably be expected to cause substantial competitive harm. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) Any objection to disclosure must be submitted within 10 working days after receipt by the submitter of notification as provided for in paragraph (c) of this section.

(3) If an objection to disclosure is received within the 10 working day time period, careful consideration will be given to all specified grounds for nondisclosure prior to making an administrative determination whether to disclose the record. When it is determined to disclose the requested record(s) or portions of records which are the subject of an objection, the submitter will be provided a written statement of the VA decision, the reason(s) that the submitter's objections to disclosure were overruled, a description or copy of the exact information or record(s) to be disclosed which were the subject of an objection, and the specified date of disclosure. The date of disclosure will not be less than 10 working days from the date this notice is placed into mail delivery channels.

(g) Notices to requester. (1) When a request is received for records that may contain confidential commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(B)(4), the requester will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response.

(2) Whenever a submitter is notified, pursuant to paragraph (c) of this section, that VA has received a request for records which had been provided by such submitter, and that such request was being processed under the FOIA, the requester will be notified that the submitter is being provided an opportunity to comment on the request. The notice to the requester should not include any of the specific information contained in the records being requested.

(3) Whenever VA notifies a submitter of a final decision, the requester will also be notified by separate correspondence. This notification to the requester may be contained in VA's FOIA decision.

(h) Notices of lawsuit. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, the submitter of the information will be promptly notified.

(i) Exceptions to the notification requirements. The predisclosure notification requirements in paragraph (c) of this section need not be followed if:

(1) It is determined that the record(s) or information should not be disclosed;

(2) The record(s) requested have been published or have been officially made available to the public;

(3) Disclosure of the record(s) or information is required by law (other than the FOIA, 5 U.S.C. 552);

(4) Disclosure is required by an Agency rule that:

(i) Was adopted pursuant to notice and public comment;

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(ii) Specifies narrow classes of records submitted to VA that are to be released under the FOIA; and
(iii) Provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;
(5) The record(s) requested are not designated by the submitter as exempt from disclosure in accordance with paragraph (e) of this section, and the submitter had an opportunity to do so at the time of submission of the record(s) or a reasonable time thereafter, and VA does not have substantial reason to believe that disclosure of the information would result in competitive harm; or
(6) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous, except that, in such case, VA must still provide the submitter with advance written notice of any final administrative disclosure determination not less than 10 working days prior to the specified disclosure date.

(Amended by the Office of Management and Budget under control number 2900-0393)
[57 FR 2229, Jan. 21, 1992]

(38 U.S.C. 501; 5 U.S.C. 552(b)(4); E.O. 12600 (52 FR 23781))
NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.555 Fees.
(a) Definitions of terms. For the purpose of this section, the following definitions apply:
(1) Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. To determine whether a request properly belongs in this category, consideration must be given to the use to which a requester will put the documents requested. Where the use of the records sought is not clear in the request or where there is reasonable cause to doubt the use to which the requester will put the records sought, additional information may be sought from the requester before assigning the request to a specific category.
(2) Direct costs means those expenditures which VA actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) documents to respond to a Freedom of Information Act (FOIA) request. Direct costs include, for example, the salary of the employee performing work, i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting of the facility in which the records are stored.
(3) Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

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(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To determine whether a request properly belongs in this category, the request must be evaluated to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) Non-commercial scientific institution means an institution that is not operated on a commercial basis (as that term is referenced under Commercial use request of this paragraph) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media will be included in this category. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication history can be considered also. In any case, freelancers who do not qualify for inclusion in the representative of the news media category may seek a reduction or waiver of fees under paragraph (f) of this section.

(7) Review means the process of examining documents located in response to a commercial use request (see definition of commercial use request in this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure in response to a commercial use request, e.g., doing all that is necessary to excise them and otherwise prepare them for release. The term review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programs. The most efficient and least expensive manner of searching for material will be used to minimize costs to VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is the least expensive and quicker method of complying with a request. The term search does not cover the time spent to review documents to determine whether all or portions thereof can be withheld under one of the nine categories of exemptions identified in § 1.554 of this part.

(b) Fees to be charged. (1) Except as provided in paragraphs (c), (d), (f) and (g) of this section, the Department of Veterans Affairs will charge fees that recoup the full
allowable direct costs for responding to each request from the public. Such fees will be charged in accordance with the schedule of fees in paragraph (e) of this section, and other requirements or restrictions in this regulation. The most efficient and least costly methods will be used to comply with requests for documents made under the FOIA.

(2) If it is estimated that charges for duplication determined by using the fee schedule in §1.555(e) of this part are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each administration and staff office upon approval of the Secretary is authorized to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. If a contractor is used, the ultimate cost to the requester can be no greater than it would if the administration, staff office, or field facility performed the task, itself. In no case may a administration, staff office, or field facility contract out responsibilities which the FOIA provides that they alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service or the Government Printing Office, the requester of such documents will be informed of the steps necessary to obtain records from those sources, rather than from VA.

(c) Restrictions on assessing fees. With the exception of commercial use requests no charges will be assessed for the first 100 pages of duplication and the first two hours of search time. Moreover, no fees are to be charged any requester, including commercial use requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that, except for commercial use requests, fees will not be assessed until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and results in 105 reproduced pages of documents, fees can be charged for only 10 minutes of search time and for only five pages of reproduction. If this cost were equal to or less than the cost to VA of billing the requester and processing the fee collected, no charges would be assessed. (NOTE: The cost of collecting fees are VA's administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The cost is determined to be negligible. The per-transaction costs to the Treasury to handle such remittances is negligible and will not be considered in the Department's determination.)

(1) For purposes of the restriction on assessing fees, the word pages refers to one-sided paper copies of the standard sizes 8 1/2 X 11 X or 8 1/2 X 14 X or 11 X 14 X. Accordingly, requesters will not be entitled to 100 microfiche or 100 computer disks free. One microfiche containing the equivalent of 100 pages or 100 pages of computer printout might meet the terms of the restriction.

(2) The term search time in this context is based on manual searches. To calculate the computer search time for the purpose of applying the two-hour search restriction, the
hourly cost of operating the computer's central processing unit will be combined with the operator's hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, charges will begin to be assessed for a computer search.

(d) Categories of requesters and fees to be charged each category. There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutional requesters; requesters who are representatives of news media; and all other requesters. Specific levels of fees will be charged for each of these categories as follows:

(1) Commercial use requesters. When a request for documents for commercial use is received, the full direct costs of searching for, reviewing for release, and duplicating the records sought will be charged to the requester. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduced documents. Moreover, the commercial use requester will be charged the cost of searching for and reviewing records even if there is ultimately no disclosure of records. The requester must reasonably describe the records sought.

(2) Educational and non-commercial scientific institution requesters. These requesters will be charged only for the cost of reproduction, excluding charges for the first 100 pages. In order to be considered a member of this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use. If the request is from an educational institution, the requester must show that the records sought are in furtherance of scholarly research. If the request is from a non-commercial scientific institution, the requester has to show that the records are sought in furtherance of scientific research. Information necessary to support a claim of being categorized as an educational or non-commercial scientific institution requester will be provided by the requester, and the requester must reasonably describe the records sought.

(3) Representatives of news media. These requesters will be charged for the cost of reproduction, only, excluding charges for the first 100 pages. To be included in this category, a requester must fall within the definition of a representative of the news media specified in paragraph (a)(vi) of this section, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(4) All other requesters. Any requester that does not fit into any of the categories in this section will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. In addition, under certain circumstances specified in paragraph (f) of this section, fees will be waived or reduced at the discretion of field facility heads, their designee, or responsible Central Office officials. Requests from VA beneficiaries, applicants for VA benefits, or other individuals for records retrievable by their name or other personal identifier will initially be processed under 38 U.S.C. 5701 and 5 U.S.C. 552a and will be assessed fees in accordance with the applicable fee provisions of §§ 1.526(i) or 1.577(f) of this part. To the extent that records are not disclosable under these provisions, the
disclosure of such records will be evaluated under §§ 1.550 through 1.559 of this part, and fees will be assessed under paragraph (e) of this section. Requesters must reasonably describe the records sought.

(e) Schedule of fees:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duplication of documents by any type of reproduction process to produce</td>
<td>$0.15 per page.</td>
</tr>
<tr>
<td>plain one-sided paper copies of a standard size (8 1/2 &quot; x 11&quot;; 8 1/2</td>
<td></td>
</tr>
<tr>
<td>&quot; x 14&quot;; 11&quot; x 14&quot;)</td>
<td></td>
</tr>
<tr>
<td>Duplication of non-paper records, such as microforms, audiovisual</td>
<td>Actual direct cost to the</td>
</tr>
<tr>
<td>materials (motion pictures, slides, laser optical disks, video tapes,</td>
<td>Agency (See paragraph (a)(2)</td>
</tr>
<tr>
<td>audiotapes, etc.) computer tapes and disks, diskettes for personal</td>
<td>of this section and, if</td>
</tr>
<tr>
<td>computers, and any other automated media output</td>
<td>costs are likely to exceed</td>
</tr>
<tr>
<td>in a form reasonably usable by the requester are likely to exceed $25.00</td>
<td>paragraph (b)(2) of this</td>
</tr>
<tr>
<td>(See paragraph (a)(2) of this section and, if costs exceed $25.00,</td>
<td>section.)</td>
</tr>
<tr>
<td>see paragraph (g)(2) of this section.)</td>
<td></td>
</tr>
<tr>
<td>Duplication of documents by any type of reproduction process not</td>
<td>Actual direct cost to the</td>
</tr>
<tr>
<td>covered by paragraphs (e)(1) and (2) of this section to produce a copy</td>
<td>Agency. (See paragraph (a)(2)</td>
</tr>
<tr>
<td>of this section and, if costs in a form reasonably usable by the</td>
<td>of this section and, if</td>
</tr>
<tr>
<td>requester are likely to exceed $25.00, see paragraph (b)(2) of this</td>
<td>costs are likely to exceed</td>
</tr>
<tr>
<td>section.)</td>
<td>paragraph (g)(2) of this</td>
</tr>
<tr>
<td>Document search by manual (non-automated) methods</td>
<td>Basic hourly salary rate of</td>
</tr>
<tr>
<td>the employee(s) performing the search, plus 16 percent. (If costs are</td>
<td>employee(s) performing</td>
</tr>
<tr>
<td>likely to exceed $25.00, see paragraph (g)(2) of this section.)</td>
<td>the search, plus 16 percent.</td>
</tr>
</tbody>
</table>

(Note -- If a department, staff office or field station uses exclusively a single class of personnel, e.g., all administrative/clerical or all professional/executive, an average rate for the range of grades involved may be used).

(5) Document search using automated methods, such as by computer perform search. (See paragraph (c)(2) of this section, and, if costs are likely to exceed $25.00, see paragraph (g)(2) of this section.)

(6) Document review (use only for commercial use requesters) Basic hourly salary rate of employee(s) performing initial review to determine whether to release document(s) or portions of records, plus 16 percent.

(Note. -- Charge for document reviews covers only the time spent reviewing the document(s) at the initial administrative level to determine applicability of a specific FOIA exemption to a particular record or portion of a record. It does not cover any review incurred at the administrative appeal level once the
initial exemptions are applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review may be properly assessed.

(7) Other charges: Certifying that records are true copies; Sending records by special methods under provisions of §§ 1.526(i) and (j) of this part, otherwise actual direct cost of service performed.

(f) Waiving or reducing fees. (1) Fees for records and services provided in response to a FOIA request will be waived or reduced when it is determined by responsible Central Office officials or field station heads or their designee that furnishing the document(s) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The following factors will be considered in sequence in determining whether disclosure of information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) The following factors will be considered in sequence in determining whether disclosure of information is primarily in the commercial interest of the requester:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) An appeal from an adverse fee waiver or reduction determination will be processed in the same manner as described in § 1.557 of this part.

(g) Other administrative considerations to improve assessment and collection of fees--(1) Charging interest--notice and rate. The Department of Veterans Affairs may charge interest to those requesters who fail to timely pay fees assessed in accordance with these regulations. Determination to charge interest will be made by the responsible Central Office official or field facility head or designee. Interest will be assessed on the unpaid bill beginning on the 31st day following the day on which the original building was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue
from the date of the billing. Accounting procedures ensure that a requester who has remitted the full amount within the time period is properly credited with the payment. The fact that the fee has been received by VA, even if not processed, will suffice to stay the accrual of interest.

(2) Charges for unsuccessful search. When it is determined by the responsible Central Office official or field facility head or designee, charges for searching may be assessed, even if records are not located to satisfy a request or if records located are determined to be exempt from disclosure. If it is determined that search charges are likely to exceed $25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Aggregating requests. When the responsible Central Office official or field facility head or designee reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the responsible Central Office official, or field facility head or designee may aggregate (combine) any such requests and charge accordingly. One element to consider in determining whether a belief would be reasonable is the time period in which the requests occurred. For example, it is reasonable to presume that multiple requests within a 30-day time period that seek portion(s) of the same document(s) is an attempt to avoid payment of charges. For requests made over a longer period, however, such presumption becomes harder to sustain. In each case, there must be a solid basis for determining that aggregation is warranted. Caution will be exercised before aggregating requests from more than one requester. There must be a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment. In no case will multiple requests on unrelated subjects from one requester be aggregated.

(4) Advance payments. The Department of Veterans Affairs may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The allowable charges that a requester may be required to pay are likely to exceed $250. Then, the Department of Veterans Affairs should either notify the requester of the likely cost and obtain satisfactory assurance of full payment, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). Then, the Department of Veterans Affairs may require the requester to pay the full amount owed, plus any applicable interest as provided in paragraph (g)(1) of this section, or to demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the estimated fee before the Department begins to process a new request or a pending request from that requester.

(iii) If a requester is required to make advance payments, as described in this section, the time limits prescribed in § 1.553a of this part, for responding to initial requests and appeals from initial denials, will begin only after the Department has received the advance fee payments.
(5) Debt collection. In the event of non-payment of billed charges for disclosure of records, the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365) may be used. This may include disclosure to consumer reporting agencies and use of collection agencies. Sections 1.450 to 1.455 appear at 21 FR 10374, Dec. 28, 1956.

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.556 Requests for other reasonably described records.
Each administration, staff office, and field facility head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of § 1.553. This responsibility includes maintaining a uniform listing of such requests. Data logged will consist of: Name and address of requester; date of receipt of request; brief description of request; action taken on request, granted or denied; citation of the specific section when request is denied; and date of reply to the requester. In the field a denial of any such request may be made only by the Director or the designated employee and in Central Office only by the administration or staff office head or designee. The letter notifying the requester of the denial will be signed by the official making the denial decision. Any legal question arising in a field station concerning the release of information will be referred to the appropriate Regional Counsel for disposition as contemplated by § 13.401 n* of this chapter. In Central Office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate administration or staff office head. All denials or proposed denials at the Central Office level will be coordinated with the Director, Information Service as well as the General Counsel.

n* Editorial Note: At 42 FR 41410, Aug. 17, 1977, § 13.401 was removed.

[40 FR 12658, Mar. 20, 1975; 61 FR 7215, 7216, Feb. 27, 1996]


NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.557 Administrative review.
(a) Upon denial of a request, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial, cite the specific exemption in § 1.554 upon which the denial is based, set forth the names and titles or positions of each person responsible for the denial of such request, and advise that the denial may be appealed to the General Counsel.
(b) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.
[40 FR 12658, Mar. 20, 1975, as amended at 55 FR 21546, May 25, 1990]

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.558 [Reserved]

§ 1.559 [Reserved]
§ 1.575 Social security numbers in veterans' benefits matters.
§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.
§ 1.577 Access to records.
§ 1.578 [Reserved]
§ 1.579 Amendment of records.
§ 1.580 Administrative review.
§ 1.581 [Reserved]
§ 1.582 Exemptions.
§ 1.583 [Reserved]
§ 1.584 [Reserved]

§ 1.575 Social security numbers in veterans' benefits matters.
(a) Except as provided in paragraph (b) of this section, no one will be denied any right, benefit, or privilege provided by law because of refusal to disclose to the Department of Veterans Affairs a social security number.
(b) VA shall require mandatory disclosure of a claimant's or beneficiary's social security number (including the social security number of a dependent of a claimant or beneficiary) on necessary forms as prescribed by the Secretary as a condition precedent to receipt or continuation of receipt of compensation or pension payable under the provisions of chapters 11, 13 and 15 of title 38, United States Code, provided, however, that a claimant shall not be required to furnish VA with a social security number for any person to whom a social security number has not been assigned. VA may also require mandatory disclosure of an applicant's social security number as a condition for receiving loan guaranty benefits and a social security number or other taxpayer identification number from existing direct and vendee loan borrowers and as a condition precedent to receipt of a VA-guaranteed loan, direct loan or vendee loan, under chapter 37 of title 38, United States Code. (Pub. L. 97-365, sec. 4)
(c) A person requested by VA to disclose a social security number shall be told, as prescribed by § 1.578(c), whether disclosure is voluntary or mandatory. The person shall also be told that VA is requesting the social security number under the authority of title 38 U.S.C., or in the case of existing direct or vendee loan borrowers, under the authority of 26 U.S.C. 6109(a) in conjunction with sections 145 and 148 of Pub. L. 98-369, or in the case of loan applicants, under the authority of section 4 of Pub. L. 97-365. The person shall also be told that it will be used in the administration of veterans' benefits in the identification of veterans or persons claiming or receiving VA benefits and their records, that it may be used in making reports to the Internal Revenue Service where required by law, and to determine whether a loan guaranty applicant has been identified as a delinquent taxpayer by the Internal Revenue Service, and that such taxpayers may have their loan applications rejected, and that it may be used to verify social security benefit entitlement (including amounts payable) with the Social Security Administration and, for other purposes where authorized by both title 38 U.S.C., and the Privacy Act of 1974, (Pub. L. 93-579), or, where required by another statute. (Pub. L. 97-365, sec. 4)
§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.
(a) The Department of Veterans Affairs will safeguard an individual against an invasion of personal privacy. Except as otherwise provided by law or regulation its officials and employees will:
(1) Permit an individual to determine what records pertaining to him or her will be collected, maintained, used, or disseminated by the Department of Veterans Affairs.
(2) Permit an individual to prevent records pertaining to him or her, obtained by the Department of Veterans Affairs for a particular purpose, from being used or made available for another purpose without his or her consent.
(3) Permit an individual to gain access to information pertaining to him or her in Department of Veterans Affairs records, to have a copy made of all or any portion thereof, and to correct or amend such records.
(4) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is correct and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.
(5) Permit exemptions from records requirements provided in 5 U.S.C. 552a only where an important public policy need for such exemption has been determined pursuant to specific statutory authority.
(b) The Department of Veterans Affairs will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:
(1) To those officers and employees of the agency which maintains the record and who have a need for the record in the performance of their duties;
(2) Required under 5 U.S.C. 552;
(3) For a routine use of the record compatible with the purpose for which it was collected;
(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 U.S.C.;
(5) To a recipient who has provided the Department of Veterans Affairs with advance adequate written assurance that the record will be used solely as a statistical research or
reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department of Veterans Affairs specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

c) With respect to each system of records (i.e., a group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) under Department of Veterans Affairs control, the Department of Veterans Affairs will (except for disclosures made under paragraph (b)(1) or (2) of this section) keep an accurate accounting as follows:

(1) For each disclosure of a record to any person or to another agency made under paragraph (b) of this section, maintain information consisting of the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (c)(1) of this section for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting under paragraph (c)(1) of this section available to the individual named in the record at his or her request; and

(4) Inform any person or other agency about any correction or notation of dispute made by the agency in accordance with § 1.579 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

d) For the purposes of §§ 1.575 through 1.584, the parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

e) Section 552a(i), title 5 U.S.C., provides that:

(1) Any officer or employee of the Department of Veterans Affairs, who by virtue of his or her employment or official position, has possession of, or access to, Department of
Veterans Affairs records which contain individually identifiable information the disclosure of which is prohibited by 5 U.S.C. 552a or by § 1.575 series established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of the Department of Veterans Affairs who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4) (see § 1.578(d)) shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Department of Veterans Affairs under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(f) For purposes of § 1.575 series the following definitions apply:

(1) The term agency includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(2) The term individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

(3) The term maintain includes maintain, collect, use, or disseminate.

(4) The term record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(5) The term system of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(6) The term statistical record means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of title 13 U.S.C.

(7) The term routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(g) When the Department of Veterans Affairs provides by a contract for the operation by or on behalf of the Department of Veterans Affairs of a system of records to accomplish a Department of Veterans Affairs function, the Department of Veterans Affairs will, consistent with its authority, cause the requirements of 5 U.S.C. 552a (as required by subsection (m)) and those of the § 1.575 series to be applied to such system. For the purposes of 5 U.S.C. 552a(i) and § 1.576(e) any such contractor and any employee of such contractor, if such contract is agreed to on or after September 27, 1975, will be considered to be an employee of the Department of Veterans Affairs.

(h) The Department of Veterans Affairs will, for the purposes of 5 U.S.C. 552a, consider that it maintains any agency record which it deposits with the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 U.S.C. Any such record will be considered subject to the provisions of § 1.575 series.
implementing 5 U.S.C. 552a and any other applicable Department of Veterans Affairs regulations. The Administrator of General Services is not authorized to disclose such a record except to the Department of Veterans Affairs, or under regulations established by the Department of Veterans Affairs which are not inconsistent with 5 U.S.C. 552a.

(i) The Department of Veterans Affairs will, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and was transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are not subject to the provisions of 5 U.S.C. 552a except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of 5 U.S.C. 552a) will be published in the FEDERAL REGISTER.

(j) The Department of Veterans Affairs will also, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and is transferred to the National Archives on or after September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are exempt from the requirements of 5 U.S.C. 552a except subsections (e)(4)(A) through (G) and (e)(9) thereof.

[40 FR 33944, Aug. 12, 1975, as amended at 40 FR 58644, Dec. 18, 1975; 47 FR 16323, Apr. 16, 1982]

(38 U.S.C. 501)


NOTE: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see § 1.500 series. As to the release of information from Department of Veterans Affairs records other than claimant records see § 1.550 series. Section 1.575 series implement the provisions of Pub. L. 93-579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

§ 1.577 Access to records.

(a) Except as otherwise provided by law or regulation any individual upon request may gain access to his or her record or to any information pertaining to him or her which is contained in any system of records maintained by the Department of Veterans Affairs. The individual will be permitted, and upon his or her request, a person of his or her own choosing permitted to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. The Department of Veterans Affairs will require, however, a written statement from the individual authorizing discussion of that individual's record in the accompanying person's presence.

(b) Any individual will be notified, upon request, if any Department of Veterans Affairs system of records named contains a record pertaining to him or her. Such request must be
in writing, over the signature of the requester. The request must contain a reasonable description of the Department of Veterans Affairs system or systems of records involved, as described at least annually by notice published in the FEDERAL REGISTER describing the existence and character of the Department of Veterans Affairs system or systems of records pursuant to § 1.578(d). The request should be made to the office concerned (having jurisdiction over the system or systems of records involved) or, if not known, to the Director or Department of Veterans Affairs Officer in the nearest Department of Veterans Affairs regional office, or to the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Personal contact should normally be made during the regular duty hours of the office concerned, which are 8:00 a.m. to 4:30 p.m., Monday through Friday for Department of Veterans Affairs Central Office and most field facilities. Identification of the individual requesting the information will be required and will consist of the requester's name, signature, address, and claim, insurance or other identifying file number, if any, as a minimum. Additional identifying data or documents may be required in specified categories as determined by operating requirements and established and publicized by the promulgation of Department of Veterans Affairs regulations. (5 U.S.C. 552a(f)(1))

(c) The department or staff office having jurisdiction over the records involved will establish appropriate disclosure procedures and will notify the individual requesting disclosure of his or her record or information pertaining to him or her of the time, place and conditions under which the Department of Veterans Affairs will comply to the extent permitted by law and Department of Veterans Affairs regulation. (5 U.S.C. 552a(f)(2))

(d) Access to sensitive material in records, including medical and psychological records, is subject to the following special procedures. When an individual requests access to his or her records, the Department of Veterans Affairs official responsible for administering those records will review them and identify the presence of any sensitive records. Sensitive records are those that contain information which may have a serious adverse effect on the individual's mental or physical health if they are disclosed to him or her. If, on review of the records, the Department of Veterans Affairs official concludes that there are sensitive records involved, the official will refer the records to a Department of Veterans Affairs physician, other than a rating board physician, for further review. If the physician who reviews the records believes that disclosure of the information directly to the individual could have an adverse effect on the physical or mental health of the individual, the responsible Department of Veterans Affairs official will then advise the requesting individual: (1) That the Department of Veterans Affairs will disclose the sensitive records to a physician or other professional person selected by the requesting individual for such redisclosure as the professional person may believe is indicated, and (2) in indicated cases, that the Department of Veterans Affairs will arrange for the individual to report to a Department of Veterans Affairs facility for a discussion of his or her records with a designated Department of Veterans Affairs physician and for an explanation of what is included in the records. Following such discussion, the records should be disclosed to the individual; however, in those extraordinary cases where a careful and conscientious explanation of the information considered harmful in the record has been made by a Department of Veterans Affairs physician and where it is still the physician's professional medical opinion that physical access to the information could be physically or mentally harmful to the patient, physical access may be denied. Such a
denial situation should be an unusual, very infrequent occurrence. When denial of a request for direct physical access is made, the responsible Department of Veterans Affairs official will: (1) Promptly advise the individual making the request of the denial; (2) state the reasons for the denial of the request (e.g., 5 U.S.C. 552a(f)(3), 38 U.S.C. 5701(b)(1)); and (3) advise the requester that the denial may be appealed to the General Counsel and of the procedure for such an appeal.
(Authority: 5 U.S.C. 552a(f)(3))

(e) Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of civil action or proceeding. (5 U.S.C. 552a(d)(5))

(f) Fees to be charged, if any, to any individual for making copies of his or her record shall not include the cost of any search for and review of the record, and will be as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size</td>
<td></td>
</tr>
<tr>
<td>(8 1/2 &quot; x 11&quot;; 8 1/2 &quot; x 14&quot;; 11&quot; x 14&quot;)</td>
<td>$0.15 per page after first 100 one-sided pages.</td>
</tr>
<tr>
<td>(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audio tapes, etc.), computer tapes and disks, diskettes for personal computers, and any other automated media output</td>
<td>Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.</td>
</tr>
<tr>
<td>(3) Duplication of document by any type of reproduction process not covered by paragraphs (f)(1) or (2) of this section to produce a copy in a form reasonably usable by the requester</td>
<td>Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.</td>
</tr>
</tbody>
</table>

Note. -- Fees for any activities other than duplication by any type of reproducing process will be assessed under the provisions of § 1.526(i) or (j) of this part of any other applicable law.)

(g) When VA benefit records, which are retrievable by name or individual identifier of a VA beneficiary or applicant for VA benefits, are requested by the individual to whom the record pertains, the duplication fee for one complete set of such records will be waived. [40 FR 33944, Aug. 12, 1975, as amended at 47 FR 16323, Apr. 16, 1982; 53 FR 10380, Mar. 31, 1988; 55 FR 21546, May 25, 1990]

NOTE: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see § 1.500 series. As to the release of information from Department of Veterans Affairs records other than claimant records see § 1.550 series. Section 1.575 series implement the provisions of Pub. L. 93-579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

§ 1.578 [Reserved]

§ 1.579 Amendment of records.
(a) Any individual may request amendment of any Department of Veterans Affairs record pertaining to him or her. Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date or receipt of such request, the Department of Veterans Affairs will acknowledge in writing such receipt. The Department of Veterans Affairs will complete the review to amend or correct a record as soon as reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal public holidays) unless unusual circumstances preclude completing action within that time. The Department of Veterans Affairs will promptly either:
(1) Correct any part thereof which the individual believes is not accurate, relevant, timely or complete; or
(2) Inform the individual of the Department of Veterans Affairs refusal to amend the record in accordance with his or her request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the Secretary or designee, and the name and address of such official.
(Authority: 5 U.S.C. 552a(c)(2))
(b) The administration or staff office having jurisdiction over the records involved will establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Department of Veterans Affairs of an initial adverse Department of Veterans Affairs determination, and for whatever additional means may be necessary for each individual to be able to exercise fully, his or her right under 5 U.S.C. 552a.
(1) Headquarters officials designated as responsible for the amendment of records or information located in Central Office and under their jurisdiction include, but are not limited to: Secretary; Deputy Secretary, as well as other appropriate individuals responsible for the conduct of business within the various Department of Veterans Affairs administrations and staff offices. These officials will determine and advise the requester of the identifying information required to relate the request to the appropriate record, evaluate and grant or deny requests to amend, review initial adverse determinations upon request, and assist requesters desiring to amend or appeal initial adverse determinations or learn further of the provisions for judicial review.
(2) The following field officials are designated as responsible for the amendment of records or information located in facilities under their jurisdiction, as appropriate: The Director of each Center, Domiciliary, Medical Center, Outpatient Clinic, Regional Office,
Supply Depot, and Regional Counsel. These officials will function in the same manner at field facilities as that specified in the preceding subparagraph for headquarters officials in Central Office. (Authority: 5 U.S.C. 552a(f)(4))

(c) Any individual who disagrees with the Department of Veterans Affairs refusal to amend his or her record may request a review of such refusal. The Department of Veterans Affairs will complete such review not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual request such review and make a final determination unless, for good cause shown, the Secretary extends such 30-day period. If, after review, the Secretary or designee also refuses to amend the record in accordance with the request the individual will be advised of the right to file with the Department of Veterans Affairs a concise statement setting forth the reasons for his or her disagreement with the Department of Veterans Affairs refusal and also advise of the provisions for judicial review of the reviewing official's determination. (5 U.S.C. 552a(g)(1)(A))

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (c) of this section, the Department of Veterans Affairs will clearly note any part of the record which is disputed and provide copies of the statement (and, if the Department of Veterans Affairs deems it appropriate, copies of a concise statement of the Department of Veterans Affairs reasons for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed. (5 U.S.C. 552a(d)(4)) (38 U.S.C. 501) [47 FR 16324, Apr. 16, 1982; 61 FR 7215, 7216, Feb. 27, 1996]


NOTE: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see § 1.500 series. As to the release of information from Department of Veterans Affairs records other than claimant records see § 1.550 series. Section 1.575 series implement the provisions of Pub. L. 93-579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

§ 1.580 Administrative review.

(a) Upon denial or a request under 38 CFR 1.577 or 1.579, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial, cite the reason or reasons and the Department of Veterans Affairs regulations upon which the denial is based, and advise that the denial may be appealed to the General Counsel.

(b) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.
NOTE: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see § 1.500 series. As to the release of information from Department of Veterans Affairs records other than claimant records see § 1.550 series. Section 1.575 series implement the provisions of Pub. L. 93-579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

§ 1.581 [Reserved]

§ 1.582 Exemptions.

(a) Certain systems of records maintained by the Department of Veterans Affairs are exempted from provisions of the Privacy Act in accordance with exemptions (j) and (k) of 5 U.S.C. 552a.

(b) Exemption of Inspector General Systems of Records. The Department of Veterans Affairs provides limited access to Inspector General Systems of Records as indicated.

1. The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4) (G), (H) and (I), (e)(5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a:
   - (i) Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA and Federal Laws, Regulations, Programs, etc. -- VA (11 VA51); and
   - (ii) Inspector General Complaint Center Records -- VA (66VA53).

2. These exemptions apply to the extent that information in those systems is subject to exemptions pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

3. For the reasons set forth, the systems of records listed under paragraph (b)(1) of this section are exempted under sections 552a (j)(2) and (k)(2) from the following provisions of 5 U.S.C. 552a:
   - (i) 5 U.S.C. 552a(c)(3) requires that upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects to the existence of the investigation and identify that such persons are subject of that investigation. Since release of such information to subjects would provide them with significant information concerning the nature of the investigation, it could result in the altering or destruction of derivative evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.
   - (ii) 5 U.S.C. 552a(c)(4), (d), (e)(4) (G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for
identifying an individual who requests access to records; the agency procedures relating
to access to records and the amendment of information contained in such records; and the
civil remedies available to the individual in the event of adverse determinations by an
agency concerning access to or amendment of information contained in record systems.
This system is exempt from the foregoing provisions for the following reasons: To notify
an individual at the individual's request of the existence of records in an investigative file
pertaining to such individual or to grant access to an investigative file could interfere with
investigative and enforcement proceedings, threaten the safety of individuals who have
cooperated with authorities, constitute an unwarranted invasion of personal privacy of
others, disclose the identity of confidential sources, reveal confidential information
supplied by these sources, and disclose investigative techniques and procedures.

(iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records
in each system of records. The application of this provision could disclose investigative
techniques and procedures and cause sources to refrain from giving such information
because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.
This could compromise the ability to conduct investigations and to identify, detect and
apprehend violators. Even though the agency has claimed an exemption from this
particular requirement, it still plans to generally identify the categories of records and the
sources for these records in this system. However, for the reasons stated in paragraph
(b)(3)(ii) of this section, this exemption is still being cited in the event an individual
wants to know a specific source of information.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such
information about an individual that is relevant and necessary to accomplish a purpose of
the agency required by statute or Executive order. These systems of records are exempt
from the foregoing provisions because:

(A) It is not possible to detect the relevance or necessity of specific information in the
early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant
and necessary may ultimately be determined to be unnecessary. It is only after the
information is evaluated that the relevance and necessity of such information can be
established.

(C) In any investigation the Inspector General may obtain information concerning the
violations of laws other than those within the scope of his/her jurisdiction. In the interest
of effective law enforcement, the Inspector General should retain this information as it
may aid in establishing patterns of criminal activity and provide leads for those law
enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent
practicable directly from the subject individual when the information may result in
adverse determinations about an individual's rights, benefits, and privileges under Federal
programs. The application of this provision would impair investigations of illegal acts,
violations of the rules of conduct, merit system and any other misconduct for the
following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or
an individual under investigation must be obtained from third parties such as witnesses
and informers. It is not feasible to rely upon the subject of the investigation as a source
for information regarding his/her activities because of the subject's rights against
self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

(A) The authority under which the information is sought and whether disclosure of the information is mandatory or voluntary;
(B) The purposes for which the information is intended to be used;
(C) The routine uses which may be made of the information; and
(D) The effects on the subject, if any, of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:
(1) The disclosure to the subject of the purposes of the investigation as stated in paragraph (b)(3)(vi)(B) of this paragraph would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.
(2) If the complainant or the subject were informed of the information required by this provision, it could seriously interfere with undercover activities requiring disclosure of the authority under which the information is being requested. This could conceivably jeopardize undercover agents' identities and impair their safety, as well as impair the successful conclusion of the investigation.
(3) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.
(vii) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines maintain to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not always possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.
(viii) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The notice requirement of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.
(c) Exemption of Loan Guaranty Service, Veterans Benefits Administration, Systems of Records. The Department of Veterans Affairs provides limited access to Loan Guaranty Service, Veterans Benefits Administration, systems of records as indicated:
(1) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1) and (e)(4)(G), (H) and (I) and (f):
   (i) Loan Guaranty Fee Personnel and Program Participant Records -- VA (17VA26); and
   (ii) Loan Guaranty Home Condominium and Mobile Home Loan Applicant Records and Paraplegic Grant Application Records -- VA (55VA26).
(2) These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).
(3) For the reasons set forth, the systems of records listed under paragraph (c)(1) of this section are exempted under 5 U.S.C. 552a(k)(2) from the following provisions of 5 U.S.C. 552a:
   (i) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses and other activities that could impede or compromise the investigation.
   (ii) 5 U.S.C. 552a(d), (e)(4)(G) and (H) and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by these sources and disclose investigative techniques and procedures.
   (iii) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct investigations. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources for these records in this system. However, for the reasons stated above, this exemption is still being cited in the event an individual wanted to know a specific source of information.
   (iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of
the agency required by statute or Executive order. This system of records is exempt from the foregoing provision because:
(A) It is not possible to detect relevance or necessity of specific information in the early stages of an investigation.
(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.
(C) In interviewing persons or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated.
(4) The following system of records is exempt pursuant to the provisions of 5 U.S.C. 552a(k)(5) from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I) and (f): Loan Guaranty Fee Personnel and Program Participant Records -- VA (17 VA 26).
(5) This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).
(6) For the reasons set forth, the system of records listed in paragraph (c)(4) of this section is exempt under 5 U.S.C. 552a(k)(5) from the following provisions of 5 U.S.C. 552a:
(i) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of background suitability investigations to the existence of the investigation and reveal that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in revealing the identity of a confidential source.
(ii) 5 U.S.C. 552a(d), (e)(4) (G) and (H) and (f) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; and the agency procedures relating to access to records and the contest of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such an individual or to grant access to an investigative file would disclose the identity of confidential sources and reveal confidential information supplied by these sources.
(iii) 5 U.S.C. 552a(e)(4)(l) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose sufficient information to disclose the identity of a confidential source and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This would compromise the ability to conduct background suitability investigations.
(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of
the agency required by statute or Executive order. This system of records is exempt from the foregoing provision because:

(A) It is not possible to detect relevance and necessity of specific information from a confidential source in the early stages of an investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established regarding suitability for VA approval as a fee appraiser or compliance inspector.

(C) In interviewing persons or obtaining other forms of evidence during an investigation for suitability for VA approval, information may be supplied to the investigator which relates to matters incidental to the main purpose of the investigation but which is appropriate in a thorough investigation. Oftentimes, such information cannot readily be segregated and disclosure might jeopardize the identity of a confidential source.

(d) Exemption of Police and Security Records. VA provides limited access to one Security and Law Enforcement System of Records, Police and Security Records -- VA (103VA07B).

(1) The investigations records and reports contained in this System of Records are exempted [pursuant to 5 U.S.C. 552a(j)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3) and (c)(4); (d); (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), and (e)(8); (f); and (g); in addition, they are exempted [pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974] from Privacy Act subsections (c)(3); (d); (e)(1), (e)(4)(G) through (e)(4)(I); and (f).

(2) These records contained in the Police and Security Records -- VA (103VA076B) are exempted for the following reasons:

(i) The application of Privacy Act subsection (c)(3) would alert subjects to the existence of the investigation and reveal that they are subjects of that investigation. Providing subjects with information concerning the nature of the investigation could result in alteration or destruction of evidence which is obtained from third parties, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(ii) The application of Privacy Act subsections (c)(4); (d); (e)(4)(G) and (e)(4)(H); (f); and (g) could interfere with investigative and enforcement proceedings, threaten the safety of individuals who have cooperated with authorities, constitute an unwarranted invasion of personal privacy of others, disclose the identity of confidential sources, reveal confidential information supplied by these sources, and disclose investigative techniques and procedures.

(iii) The application of Privacy Act subsection (e)(4)(I) could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality. This could compromise the ability to conduct investigations and to identify, detect and apprehend violators. Even though the agency has claimed an exemption from this particular requirement, it still plans to generally identify the categories of records and the sources of these records in this system. However, for the reason stated in paragraph (d)(2)(ii) of this section, this exemption is still being cited in the event an individual wants to know a specific source of information.
(iv) These records contained in the Police and Security Records -- VA (103VA076B) are exempt from Privacy Act subsection (e)(1) because it is not possible to detect the relevance or necessity of specific information in the early stages of a criminal or other investigation. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established. In any investigation, the Office of Security and Law Enforcement may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Office of Security and Law Enforcement should retain this information as it may aid in establishing patterns of criminal activity and provide leads for those law enforcement agencies charged with enforcing other segments of civil or criminal law.

(v) The application of Privacy Act subsection (e)(2) would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In order to successfully verify a complaint, most information about a complainant or an individual under investigation must be obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his/her activities because of the subject's rights against self-incrimination and because of the inherent unreliability of the suspect's statements. Similarly, it is not always feasible to rely upon the complainant as a source of information regarding his/her involvement in an investigation.

(B) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(vi) The reasons for exempting these records in the Police and Security Records -- VA (103VA07B) from Privacy Act subsection (e)(3) are as follows:

(A) The disclosure to the subject of the purposes of the investigation would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(B) Informing the complainant or the subject of the information required by this provision could seriously interfere with undercover activities, jeopardize the identities of undercover agents and impair their safety, and impair the successful conclusion of the investigation.

(C) Individuals may be contacted during preliminary information gathering in investigations before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(vii) Since the Privacy Act defines "maintain" to include the collection of information, complying with subsection (e)(5) would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation, it is not always possible to make this determination prior to collecting the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material that may seem unrelated, irrelevant, incomplete, untimely, etc., may
take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(viii) The notice requirement of Privacy Act subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

[48 FR 29847, June 29, 1983; 68 FR 35297, 35298, June 13, 2003]

(5 U.S.C. 552a (j) and (k); 38 U.S.C. 501)

NOTE: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see § 1.500 series. As to the release of information from Department of Veterans Affairs records other than claimant records see § 1.550 series. Section 1.575 series implement the provisions of Pub. L. 93-579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

[EFFECTIVE DATE NOTE: 68 FR 35297, 35298, June 13, 2003, added paragraph (d), effective Aug. 12, 2003.]

§ 1.583 [Reserved]

§ 1.584 [Reserved]
INVENTIONS BY EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS

§ 1.650 Purpose.
§ 1.651 Definitions.
§ 1.652 Criteria for determining rights to employee inventions.
§ 1.653 Delegation of authority.
§ 1.654 Patenting of Inventions.
§ 1.655 Government license in invention of employee.
§ 1.656 Information to be submitted by inventor.
§ 1.657 Determination of rights.
§ 1.658 Right of appeal.
§ 1.659 Relationship to incentive awards program.
§ 1.660 Expeditious handling.
§ 1.661 Information to be kept confidential.
§ 1.662 Provisions of regulations made a condition of employment.
§ 1.663 Licensing of Government-owned inventions.
§ 1.666 [Reserved]

§ 1.650 Purpose.
The purpose of these regulations is to prescribe the procedure to be followed in determining and protecting the respective rights of the United States Government and of Department of Veterans Affairs employees who make inventions.

(38 U.S.C. (501(a).)
[EFFECTIVE DATE NOTE: 61 FR 29657, 29658, June 12, 1996, which amended this section, became effective July 12, 1996.]

§ 1.651 Definitions.
The terms as used in the regulations concerning inventions by employees of the Department of Veterans Affairs are defined as follows:
(a) The term invention includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.
(b) The term employee or Government employee means any officer or employee, civilian or military, of the Department of Veterans Affairs. Part-time, without compensation (WOC) employees and part-time consultants are included.
(c) The term Secretary of Commerce means the Under Secretary of Commerce for Technology.

[EFFECTIVE DATE NOTE: 61 FR 29657, 29658, June 12, 1996, which revised paragraphs (b) and (c), became effective July 12, 1996.]
§ 1.652 Criteria for determining rights to employee inventions.
(a) The criteria to be applied in determining the respective rights of the Government and of the employee-inventor in and to any invention subject to these provisions shall be in accordance with the Uniform Patent Policy regulations found at 37 CFR 501.6 and 501.7.
(b) Ownership in and to inventions arising under Cooperative Research and Development Agreements (CRADAs) pursuant to 15 USC 3710a shall be governed by the provisions of the pertinent CRADA, as authorized by the Federal Technology Transfer Act.

(15 U.S.C. 3710a; 37 CFR part 501)
[EFFECTIVE DATE NOTE: 61 FR 29657, 29658, June 12, 1996, which revised this section, became effective July 12, 1996.]

§ 1.653 Delegation of authority.
The General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The determination of rights to an invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel, Deputy General Counsel or the Assistant General Counsel for Professional Staff Group IV, in accordance with 37 CFR part 500.


§ 1.654 Patenting of Inventions.
Any invention owned by the Government under the criteria as set forth in 37 CFR 501.6 should be protected by an application for a domestic patent and other necessary documents executed by the employee inventor prepared by or through the General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV unless some other agency has primary interest or it is decided to dedicate the invention to the public. Such dedication requires approval of the Secretary of Commerce. Applications on behalf of the Government for foreign patents may be made if determined to be in the public interest. The payment of necessary expenses in connection with any application filed or patent obtained under this section by the Department of Veterans Affairs is authorized.

[EFFECTIVE DATE NOTE: 62 FR 14822, March 28, 1997, added "Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV" following "The General Counsel" in the first sentence, effective March 28, 1997.]

§ 1.655 Government license in invention of employee.
If an invention is made by an employee and it is determined that the employee inventor is entitled to full ownership under 37 CFR 501.6, subject to a nonexclusive, irrevocable, royalty-free license in the Government with power to grant sublicenses for all Governmental purposes, it shall be the duty of the employee inventor to notify the Office of General Counsel of the status of the patent application, including the patent application number, so that the Department may protect the interests reserved to the Government under 37 CFR 501.6.


[EFFECTIVE DATE NOTE: 61 FR 29657, 29658, June 12, 1996, which revised this section, became effective July 12, 1996.]

§ 1.656 Information to be submitted by inventor.

(a) In the case of an invention or believed invention, the inventor will prepare a statement for submission to his or her immediate superior. It will be submitted regardless of where the ownership is believed to exist. The statement will consist of two parts:

(1) One part of the statement will be a disclosure of the invention sufficient to permit the preparation of a patent applicant. It shall consist of a description, including where applicable, of the parts or components of the invention as shown on the drawings or blueprints, accompanied further by a description of the construction and operation of the invention. Photographs of the invention may be included. The inventor should state pertinent prior art known to him or her, and set forth in detail as clearly as possible the respects which his or her invention differs.

(2) The other part of the statement will set forth the circumstances attending the making of the invention. It will include the full name and address of the inventor; the grade and title of his or her position; whether full time or part time; his or her duties at the time the invention was made; the facts pertinent to a determination whether the invention bore a direct relation to or was made in consequence of such official duties; whether there was, and if so, the terms of any special agreement or understanding with respect to use or manufacture of his or her invention; date of the invention; when and where it was conceived, constructed and tested; whether it was made entirely during working hours; whether, and to what extent there was a contribution by the Government of any of the following: Facilities; equipment; materials or supplies; funds; information; time or services of other Government employees on duty. When the invention is disclosed through publication, or in consultation with a manufacturer or attorney, simultaneous notification of the publication shall be given to the Office of General Counsel. A copy of the article will accompany the notification.

(b) The inventor's immediate superior shall promptly review the statement of the employee inventor for completeness and accuracy, and shall certify that the employee's statement of circumstances attending the invention is or is not correct, giving reasons if pertinent. The file should then be submitted through the facility head (or administration heads or top staff officials in the case of Central Office employees) to the General Counsel together with any comments or recommendations.

§ 1.657 Determination of rights.
The General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV will make a determination of rights subject to review where required by the Secretary of Commerce. The determination will be in accordance with 37 CFR 501.7.

§ 1.658 Right of appeal.
In accordance with 37 CFR 501.8, the employee has a right of appeal to the Secretary of Commerce within 30 days of receipt of the Department's determination of ownership rights. The decision reached by the Secretary of Commerce will be communicated to the employee.

§ 1.659 Relationship to incentive awards program.
Procedures set out in the regulations concerning inventions by employees of the Department of Veterans Affairs are not affected by the submission or proposed submission of an employee suggestion or idea on an item which may be patentable. Consideration of an item for a determination of ownership rights and also for an incentive award will proceed simultaneously, usually on separate correspondence. An employee suggestion or copies and extracts of the file may be forwarded to the General Counsel by the reviewing or awarding authority, or by the facility head, for an ownership determination where the employee idea or suggestion involves an invention. The employee shall be directed to submit a disclosure of invention in accordance with these regulations if such has not been previously submitted.

§ 1.660 Expeditious handling.
No patent may be granted where the invention has been in public use or publicly disclosed for more than one year before filing of a patent application. Hence, submission involving inventions should be made as promptly as possible in order to avoid delay which might jeopardize title to the invention or impair the rights of the inventor or the Government.
§ 1.661 Information to be kept confidential.
All information pertaining to inventions and pending patent applications is confidential, and employees having access to such information are forbidden to disclose or reveal the same except as required in the performance of their official duties.

[31 FR 5292, Apr. 2, 1966; redesignated and revised at 61 FR 29657, 29659, June 12, 1996]

§ 1.662 Provisions of regulations made a condition of employment.
The provisions of the regulations concerning inventions by employees of the Department of Veterans Affairs shall be a condition of employment of all employees.


§ 1.663 Licensing of Government-owned inventions.
(a) The licensing of Government-owned inventions under VA control and custody will be conducted pursuant to the regulations on the licensing of Government-owned inventions contained in 37 CFR part 404, and 15 U.S.C. 3710a, as appropriate.
(b) Any person whose application for a license in an invention under VA control and custody has been denied; whose license in such an invention has been modified or terminated, in whole or in part; or who timely filed a written objection in response to a proposal to grant an exclusive or partially exclusive license in an invention under VA control or custody, may, if damaged, appeal any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license to the Secretary of Veterans Affairs. Such appeal shall be in writing; shall set forth with specificity the basis of the appeal; and shall be postmarked not later than 60 days after the action being appealed. Upon request of the appellant, such appeal may be considered by one to three persons appointed on a case-by-case basis by the Secretary of Veterans Affairs. Such a request will be granted only if it accompanies the written appeal. Appellant may appear and be represented by counsel before such a panel, which will sit in Washington, DC. If the appeal challenges a decision to grant an exclusive or partially exclusive license in an invention under VA control or custody, the licensee shall be furnished a copy of the appeal, shall be given the opportunity to respond in writing, may appear and be represented by counsel at any hearing requested by appellant, and may request a hearing if appellant has not, under the same terms and conditions, at which the appellant may also appear and be represented by counsel.
[21 FR 10378, Dec. 28, 1956; redesignated and revised at 61 FR 29657, 29659, June 12, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29657, 29659, June 12, 1996, which redesignated and revised this section, became effective July 12, 1996.]
[CROSS REFERENCE: This section was formerly § 1.666.]

§ 1.666 [Reserved]
ADMINISTRATIVE CONTROL OF FUNDS

§ 1.670 Purpose.
§ 1.671 Definitions.
§ 1.672 Responsibilities.
§ 1.673 Responsibility for violations of the administrative subdivision of funds.

§ 1.670 Purpose.
The following regulations establish a system of administrative controls for all appropriations and funds available to the Department of Veterans Affairs to accomplish the following purposes:
(a) Establish an administrative subdivision of controls to restrict obligations and expenditures against each appropriation or fund to the amount of the apportionment or the reapportionment; and
(b) Fix responsibility for the control of appropriations or funds to high level officials who bear the responsibility for apportionment or reapportionment control.
Sections 1.670 to 1.673 issued at 48 FR 30622, July 5, 1983.

(31 U.S.C. 1514)

§ 1.671 Definitions.
For the purpose of §§ 1.670 through 1.673, the following definitions apply:
(a) Administrative subdivision of funds. An administrative subdivision of funds is any administrative subdivision of an appropriation or fund which makes funds available in a specified amount for the purpose of controlling apportionments or reapportionments.
(b) Allotment. An allotment is an authorization by the Director, Office of Budget and Finance, to department and staff office heads (allottees) to incur obligations within specified amounts, during a specified period, pursuant to an Office of Management and Budget apportionment or reapportionment action. The creation of an obligation in excess of an allotment is a violation of the administrative subdivision of funds.
(c) Allowance. An allowance is a subdivision below the allotment level, and is a guideline which may be issued by department or staff office heads (allottees) to facility directors and other officials, showing the expenditure pattern or operating budget they will be expected to follow in light of the program activities contemplated by the overall VA budget or plan of expenditure. The creation of an obligation in excess of an allowance is not a violation of the administrative subdivision of funds.
Sections 1.670 to 1.673 issued at 48 FR 30622, July 5, 1983.

(31 U.S.C. 1514)

§ 1.672 Responsibilities.
(a) The issuance of an allotment to the administration and staff office heads (allottees) is required and is the responsibility of the Director, Office of Budget and Finance. The sum of such allotments shall not be in excess of the amount indicated in the apportionment or reapportionment document.
(b) The issuance of an allowance is discretionary with department or staff office heads (allottees), as an allowance is merely a management device which allottees may utilize in carrying out their responsibilities. Allottees are responsible for keeping obligations within the amounts of their allotments, whether allowances are issued or not.

(c) The Director, Office of Budget and Finance, is responsible for requesting apportionments and reapportionments from the Office of Management and Budget. Administration and staff heads shall promptly request that an appropriation or fund be reapportioned if feasible whenever it appears that obligations may exceed the level of the apportionment.

Sections 1.670 to 1.673 issued at 48 FR 30622, July 5, 1983.

(31 U.S.C. 1514)

§ 1.673 Responsibility for violations of the administrative subdivision of funds.

(a) In the event an allotment or an apportionment is exceeded except in the circumstances described in paragraph (b) of this section, the following factors will be considered in determining which official, or officials, are responsible for the violation.

(1) Knowledge of circumstances which could lead to an allotment or apportionment being exceeded;

(2) Whether the official had received explicit instructions to continue or cease incurring obligations;

(3) Whether any action was taken in contravention of or with disregard for, instructions to monitor obligations incurred;

(4) Whether the official had the authority to curtail obligations by directing a change in the manner of operations of the department or staff office; or

(5) Any other facts which tend to fix the responsibility for the obligations which resulted in the allotment or apportionment being exceeded.

(b) In the event that the sum of the allotments made in a particular fiscal year exceeds the amount apportioned by the Office of Management and Budget, and the apportionment is subsequently exceeded because of this action, the official who made the excess allotments will be the official responsible for the violation.

Sections 1.670 to 1.673 issued at 48 FR 30622, July 5, 1983.

(31 U.S.C. 1514)
USE OF OFFICIAL MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

§ 1.700 Purpose.
§ 1.701 Contact person for missing children official mail program.
§ 1.702 Policy.
§ 1.703 Percentage estimates.
§ 1.704 [Reserved]
§ 1.705 Restrictions on use of missing children information.

§ 1.700 Purpose.
Sections 1.700 through 1.705 of this title provide a Missing Children Official Mail Program in the Department of Veterans Affairs.
[52 FR 10889, Apr. 6, 1987; 60 FR 48387, Sept. 19, 1995]

[EFFECTIVE DATE NOTE: 60 FR 48387, Sept. 19, 1995, which revised this section, became effective Sept. 19, 1995.]

§ 1.701 Contact person for missing children official mail program.
[52 FR 10889, Apr. 6, 1987, as amended at 54 FR 34980, Aug. 23, 1989; 60 FR 48387, 48388, Sept. 19, 1995]


§ 1.702 Policy.
(a) The Department of Veterans Affairs will supplement and expand the national effort to assist in the location and recovery of missing children by maximizing the economical use of missing children information in domestic official mail and publications directed to members of the public and Department of Veterans Affairs employees.
(b) The Department of Veterans Affairs will insert pictures and biographical information related to missing children in a variety of official mail originating at the Department of Veterans Affairs automation centers. In addition, pictures and biographical information are printed in self-mailers and other Department of Veterans Affairs publications (newsletters, bulletins, etc.).
(c) The National Center for Missing and Exploited Children (National Center) is the sole source from which the Department of Veterans Affairs will acquire the camera-ready and other photographic and biographical materials to be disseminated for use by Department of Veterans Affairs organizational units. The information is ordered and disseminated by the Information Management Service.
(d) The Department of Veterans Affairs will remove all printed inserts and other materials from circulation or other use within a three-month period from the date the National Center notifies the Department of Veterans Affairs that a child whose picture and biographical information have been made available to the Department of Veterans Affairs has been recovered or that permission of the parent(s) or guardian to use the child's photograph and biographical information has been withdrawn. The National Center is responsible for immediately notifying the Department of Veterans Affairs contact person, in writing, of the need to withdraw from circulation official mail and other materials related to a particular child. Photographs which were reasonably current as of the time of the child's disappearance shall be the only acceptable form of visual medium or pictorial likeness used in official mail.

(e) The Department of Veterans Affairs will give priority to official mail that is addressed to:

(1) Members of the public that will be received in the United States, its territories and possessions; and

(2) Inter- and intra-agency publications and other media that will also be widely disseminated to Department of Veterans Affairs employees.

(f) The Department of Veterans Affairs will avoid repetitive mailings of material to the same individuals.

(g) All Department of Veterans Affairs employee suggestions and/or recommendations for additional cost-effective opportunities to use photographs and biographical data on missing children will be provided to the Department of Veterans Affairs contact person.

(h) These shall be the sole regulations for the Department of Veterans Affairs and its component organizational units.

[52 FR 10889, Apr. 6, 1987; 60 FR 48387, 48388, Sept. 19, 1995]

§ 1.703 Percentage estimates.

It is the Department of Veterans Affairs objective that 20 percent of its first class official mail addressed to the public contain missing children photographs and information.

[52 FR 10889, Apr. 6, 1987; 60 FR 48387, 48388, Sept. 19, 1995]

§ 1.704 [Reserved]

§ 1.705 Restrictions on use of missing children information.

Missing children pictures and biographical data shall not be:

(a) Printed on official envelopes and other materials ordered and stocked in quantities that represent more than a 90-day supply.

(b) Printed on blank pages or covers of publications that may be included in the Superintendent of Documents Sales Program or be distributed to depository libraries.

(c) Inserted in any envelope or publication the contents of which may be construed to be inappropriate for association with the missing children program.

(d) Inserted in any envelope where the insertion would increase the postage cost for the item being mailed.
(e) Placed on letter-size envelopes on the official indicia, the area designated for optical character readers (OCRs), bar code read area, and return address area in accordance with the Office of Juvenile Justice and Delinquency Prevention guidelines and U.S. Postal Service standards.
[52 FR 10889, Apr. 6, 1987; 60 FR 48387, 48388, Sept. 19, 1995]

HOMELESS CLAIMANTS

§ 1.710 Homeless claimants: Delivery of benefit payments and correspondence.

(a) All correspondence and all checks for benefits payable to claimants under laws administered by the Department of Veterans Affairs shall be directed to the address specified by the claimant. The Department of Veterans Affairs will honor for this purpose any address of the claimant in care of another person or organization or in care of general delivery at a United States post office. In no event will a claim or payment of benefits be denied because the claimant provides no mailing address.

(Authority: 38 U.S.C. 5103; 5120)

(b) To ensure prompt delivery of benefit payments and correspondence, claimants who seek personal assistance from Veterans Benefits Counselors when filing their claims shall be counseled as to the importance of providing his or her current mailing address and, if no address is provided, the procedures for delivery described in paragraph (d) of this section.

(Authority: 38 U.S.C. 5103; 5120)

(c) The Department of Veterans Affairs shall prepare and distribute to organizations specially serving the needs of veterans and the homeless, including but not limited to shelters, kitchens and private outreach facilities, information encouraging such organizations to counsel individuals on the importance of providing mailing addresses to the Department of Veterans Affairs and advising them of this regulation.

(Authority: 38 U.S.C. 5103; 5120)

(d) If a claimant fails or refuses to provide a current mailing address to the Department of Veterans Affairs, all correspondence and any checks for benefits to which the claimant is entitled will be delivered to the Agent Cashier of the regional office which adjudicated or is adjudicating the claim in the case of compensation, pension or survivors’ benefits, to the Agent Cashier of the Department of Veterans Affairs facility closest to the educational institution or training establishment attended by a claimant in the case of education benefits, or to the Agent Cashier of any other Department of Veterans Affairs facility deemed by the Agency to be appropriate under the circumstances of the particular case. The claimant, within 30 days after issuance, may obtain delivery of any check or correspondence held by an Agent Cashier upon presentation of proper identification. Checks unclaimed after 30 days will be returned to the Department of the Treasury and the correspondence to the regional office or facility of jurisdiction. Thereafter, the claimant must request the reissuance of any such check or item of correspondence by written notice to the Department of Veterans Affairs.

[53 FR 22654, June 17, 1988]

(38 U.S.C. 5103; 5120)
§ 1.780 Board of Contract Appeals -- jurisdiction.
§ 1.781 Organization and address of the Board.
§ 1.782 Policy and procedure.
§ 1.783 Rules of the Board.

§ 1.780 Board of Contract Appeals -- jurisdiction.
The Department of Veterans Affairs Board of Contract Appeals (referred to in §§ 1.780 through 1.783 as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) relating to contracts made by (a) the Department of Veterans Affairs or (b) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.


§ 1.781 Organization and address of the Board.
(a) The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least 3 members who decide the case by a majority vote. Board Members are designated Administrative Judges.
(b) The Board's mailing address is 810 Vermont Avenue, NW., Washington, DC 20420.

Sections 1.780 through 1.783 appear at 47 FR 12340, Mar. 23, 1982.


§ 1.782 Policy and procedure.
(a) Rules of procedure. Appeals to the Board are processed in accordance with Rules of Procedure adopted by the Board in compliance with the guidelines issued by the Office of Federal Procurement Policy under the provisions of the Contract Disputes Act of 1978 (41 U.S.C. 601, 607(h)). There is no further administrative appeal within the Department of Veterans Affairs from final decisions rendered by the Board.
(b) Application and interpretation of rules. It is impracticable to articulate a rule to fit every possible circumstance which may be encountered. The rules, therefore, are applied and interpreted to provide, to the fullest extent practicable, informal expeditious, and inexpensive resolution of disputes. For that purpose, the Board is authorized to require contracting officers and other Department of Veterans Affairs officials to furnish the Board with such information, technical data, and other assistance as the Board may require in the performance of its duties.

Sections 1.780 through 1.783 appear at 47 FR 12340, Mar. 23, 1982.

§ 1.783 Rules of the Board.

(a) Rule 1; appeals from final decisions and requests for final decisions -- (1) Notice of appeal. Notice of an appeal shall be in writing and mailed to or otherwise furnished the Board within 90 days from the date of receipt of a contracting officer's final decision. A copy thereof shall be furnished the contracting officer from whose decision the appeal is taken.

(2) Failure to issue a final decision. (i) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and, in writing, has requested a decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a)(1) of this section, citing the failure of the contracting officer to issue a decision.

(ii) Where the contractor has submitted a properly certified claim in excess of $50,000 to the contracting officer, or pursuant to the Disputes Clause, has requested a decision by the contracting officer which presently involves no monetary amount, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in paragraph (a)(1) of this section, citing the failure of the contracting officer to issue a decision.

(3) Stay of proceedings. Upon the docketing of an appeal filed pursuant to the provisions of paragraph (a)(2) of this section, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as determined by the Board.

(4) Request for final decision. In lieu of filing a notice of appeal under paragraph(a)(2) of this section, the contractor, in the event of undue delay or refusal on the part of the contracting officer, may request that the Board direct the contracting officer to issue a decision in a specified period of time, as determined by the Board.

(b) Rule 2; notice of appeal, contents of. A notice of appeal should indicate that an appeal is being taken and should identify the contract by number, the department, agency, or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor taking the appeal) or by the appellant's duly authorized representative or attorney. The complaint referred to in paragraph (f) of this section (Rule 6) may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) Rule 3; docketing of appeals. When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of §§ 1.780 through 1.783 and to the contracting officer.

(d) Rule 4; preparation, content, organization, forwarding, and status of appeal file -- (1) Duties of contracting officer. Within 30 days of receipt of notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through the Office of General Counsel an appeal file consisting of all documents pertinent to the appeal, including:

(i) The decision from which the appeal is taken;

(ii) The contract, including specifications and pertinent amendments, plans, and drawings;
(iii) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;
(iv) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
(v) Any additional information considered relevant to the appeal.
Within the same time above specified, the Office of General Counsel shall furnish the appellant a copy of each document transmitted to the Board, except those in paragraph (d)(1)(ii) of this section. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.
(2) Duties of the appellant. Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which are considered to be relevant to the appeal, and shall furnish two copies of such documents to the government trial attorney.
(3) Organization of appeal file. Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.
(4) Lengthy documents. Upon request by either party the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when it would be burdensome to do so. At the time a party files with the Board a document as to which such a waiver has been granted the party shall notify the other party that the document or a copy thereof is available for inspection at the office of the Board or of the party filing same.
(5) Status of documents in appeal file. Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with paragraphs (m) and (t) of this section (Rules 13 and 20).
(6) Dispensing with appeal file requirements. Notwithstanding the provisions of paragraph (d)(1) through (5) of this section, the filing of the documents in paragraph (d)(1) and (2) of this section may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.
(e) Rule 5; dismissal for lack of jurisdiction. Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.
(f) Rule 6; pleadings and motions -- (1) Appellant. Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its
claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(2) Government. Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(3) Motions. The Board may entertain and rule upon appropriate motions.

(g) Rule 7; amendments of pleadings or record -- (1) More definite statement and reply. The Board, upon its own initiative or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. (2) Amendments. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable that party to meet such evidence.

(h) Rule 8; hearing election. After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it elects a hearing, as prescribed in paragraphs (q) through (y) of this section (Rules 17 through 25), or whether it elects to submit its case on the record without a hearing, as prescribed in paragraph (k) of this section (Rule 11).

(i) Rule 9; prehearing briefs. Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to paragraph (h) of this section (Rule 8). If the Board does not require prehearing briefs, either party may, upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be filed with the Board at least 15 days prior to the date set for hearing, and a copy simultaneously furnished to the other party.

(j) Rule 10; prehearing or presubmission conference. (1) Whether the case is to be submitted pursuant to paragraph (k) of this section (Rule 11), or heard pursuant to...
paragraphs (q) through (y) of this section (Rules 17 through 25), the Board may, upon its own initiative, or upon the application of either party, arrange a telephone conference or require the parties to appear before an Administrative Judge or examiner of the Board for a conference to consider:

(i) Simplification, clarification, or severence of the issues;
(ii) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;
(iii) Agreements and rulings to facilitate discovery;
(iv) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;
(v) The possibility of agreement disposing of any or all of the issues in dispute; and
(vi) Such other matters as may aid in the disposition of the appeal.

(2) The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

(k) Rule 11; submission without a hearing. Either party may elect to waive a hearing and submit its case upon the record as settled pursuant to paragraph (m) of this section (Rule 13). Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. In accordance with paragraph (m) of this section (Rule 13), affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the record. The Board may permit such submissions to be supplemented by oral argument (transcribed, if requested), and by briefs filed in accordance with paragraph (w) of this section (Rule 23).

(l) Rule 12; optional small claims (expedited) and accelerated procedures. These procedures are available solely at the election of the appellant.

(i) 12.1 Elections to utilize small claims (expedited) and accelerated procedures. (i) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (1)(2) of this section (Rule 12). An appellant may elect the accelerated procedure set forth in paragraph (l)(3) of this section (Rule 12) in any appeal eligible for small claims (expedited) procedure.

(ii) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in paragraph (l)(3) of this section (Rule 12).

(iii) The appellant's election of either the small claims (expedited) procedure or the accelerated procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good
cause. The election may not be withdrawn except with permission of the Board and for good cause.

(iv) In deciding whether the small claims (expedited) procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

(2) 12.2 The small claims (expedited) procedure. (i) In cases proceeding under the small claims (expedited) procedure, the following time periods shall apply:

(A) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the small claims (expedited) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under paragraph (d) of this section (Rule 4) shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(B) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (1) Identify and simplify the issues; (2) establish a simplified procedure appropriate to the particular appeal involved; (3) determine whether either party wants a hearing and, if so, fix a time and place therefor; (4) require the Government to furnish all the additional documents relevant to the appeal; and (5) establish an expedited schedule for resolution of the appeal.

(ii) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under this section 1.783, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(iii) Written decisions by the Board in cases processed under the small claims (expedited) procedure will be brief and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under paragraph (cc) of this section (Rule 29).

(iv) Decisions under this procedure shall have no value as precedent and, in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

(3) 12.3 The accelerated procedure. (i) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled or, if no hearing is
scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may shorten time periods prescribed or allowed under this § 1.783, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, and may reserve 30 days for preparation of the decision.

(ii) Written decisions by the Board in cases processed under the accelerated procedure will normally be brief and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair, Vice Chair, or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under paragraph (cc) of this section (Rule 29).

(4) 12.4 Motions for reconsideration in cases under paragraph (l) of this section (Rule 12). Motions for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated need not be decided within the original 120-day or 180-day limits, but all such motions shall be processed and decided rapidly so as to fulfill the intent of paragraph (l) of this section (Rule 12).

(m) Rule 13; settling the record. (1) The record upon which the Board's decision will be rendered consists of the documents furnished under paragraphs (d) and (l) of this section (Rules 4 and 12), to the extent admitted in evidence, and the following items, if any: pleadings prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(2) Except as the Board may otherwise order in its discretion, no evidence shall be received after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(3) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(n) Rule 14; discovery -- depositions -- (1) General policy and protective orders. The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provision for protecting the secrecy of confidential information or documents.

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(2) When depositions permitted. After an appeal has been docketed and complaint filed, the parties may agree to, or the Board may order, upon application of either party, the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(3) Orders on depositions. The time, place, and manner of taking depositions shall be as agreed upon by the parties or, failing such agreement, governed by order of the Board.

(4) Use as evidence. No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(5) Expenses. Each party shall bear its own expenses associated with the taking of any deposition.

(6) Subpoenas. Where appropriate, a party may request the issuance of a subpoena under the provisions of paragraph (u) of this section (Rule 21).

(o) Rule 15; interrogatories to parties, admissions of fact, and production and inspection of documents. After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (1) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days after service; (2) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 30 days after service, the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (3) a request for the production, inspection, and copying of any documents or objects, not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 30 days after service. Any discovery engaged in under this rule shall be subject to the provisions of paragraph (n)(1) of this section (Rule 14(A)) with respect to general policy and protective orders, and paragraph (ii) of this section (Rule 35) with respect to sanctions.

(p) Rule 16; service of papers other than subpoenas. Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers, replies, and briefs shall be filed directly with the Board for service. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in paragraph (u) of this section (Rule 21).

(q) Rule 17; hearings, where and when held. Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, requirements of paragraph (l) of this section (Rule 12), and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

(r) Rule 18; notice of hearings. The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the
desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.
(s) Rule 19; unexcused absence of a party. The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in paragraph (k) of this section (Rule 11).
(t) Rule 20; hearings, nature of and examination of witnesses -- (1) Nature of hearings. Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will depend on relevancy and materiality. Evidence which may not be admissible under the Federal Rules of Evidence may be admitted in the discretion of the presiding Administrative Judge or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.
(2) Examination of witnesses. Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his or her statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.
(u) Rule 21; subpoenas -- (1) General. Upon written request of either party filed with the Board, or on the Board's own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chair may issue a subpoena requiring:
(i) Testimony at a deposition -- the deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the Board;
(ii) Testimony at a hearing -- the attendance of a witness for the purpose of taking testimony at a hearing; and
(iii) Production of books and papers -- in addition to paragraph (u)(1)(i) or (ii) of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.
(2) Voluntary cooperation. Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.
(3) Requests for subpoenas -- (i) A request for a subpoena shall normally be filed at least:
(A) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;
(B) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.
In its discretion, the Board may honor requests for subpoenas not made within these time limitations.
(ii) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.
(4) Requests to quash or modify. Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.
(5) Form; issuance -- (i) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony and, if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his or her discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.
(ii) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.
(6) Service. (i) The party requesting issuance of a subpoena shall arrange for service.
(ii) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.
(iii) The party at whose request a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.
(7) Contumacy or refusal to obey a subpoena. In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.
(v) Rule 22; copies of papers. When books, records, papers, or documents have been
received in evidence, true copies thereof, or of such part thereof as may be material or
relevant, may be substituted therefor, during the hearing or at the conclusion thereof.
(w) Rule 23; posthearing briefs. Posthearing briefs may be submitted upon such terms as
may be agreed to by the parties and the presiding Administrative Judge or examiner at the
conclusion of the hearing.
(x) Rule 24; transcript of proceedings. Testimony and argument at hearings shall be
reported verbatim, unless the Board otherwise orders. Waiver of transcript may be
especially suitable for hearings under paragraph (l)(2) of this section (Rule 12.2).
Transcripts or copies of the proceedings shall be supplied to the parties at the actual cost
of duplication.
(y) Rule 25; withdrawal of exhibits. After a decision has become final, the Board may,
upon request and after notice to the other party, in its discretion, permit the withdrawal of
original exhibits, or any part thereof, by the party entitled thereto. The substitution of true
copies of exhibits or any part thereof may be required by the Board in its discretion as a
condition of granting permission for such withdrawal.
(z) Rule 26; representation -- the appellant. An individual appellant may appear before
the Board in person; a corporation by one of its officers; and a partnership or joint
venture by one of its members; or any of these by an attorney at law duly licensed in any
State, commonwealth, territory, the District of Columbia, or in a foreign country. An
attorney representing an appellant shall file a written notice of appearance with the
Board.
(aa) Rule 27; representation -- the government. Government counsel may, in accordance
with their authority, represent the interests of the Government before the Board. They
shall file notices of appearance with the Board, and notice thereof will be given appellant
or appellant's attorney in the form specified by the Board from time to time.
(bb) Rule 28; decisions. Decisions of the Board will be made in writing and authenticated
copies of the decision will be forwarded simultaneously to both parties. The rules of the
Board and all final orders and decisions (except those required for good cause to be held
confidential and not cited as precedents) shall be open for public inspection at the office
of the Board in Washington, DC. Decisions of the Board will be made solely upon the
record, as described in paragraph (m) of this section (Rule 13).
(cc) Rule 29; motions for reconsideration. A motion for reconsideration may be filed by
either party. It shall set forth specifically the grounds relied upon to support the motion.
The motion shall be filed within 30 days from the date of the receipt of a copy of the
decision of the Board by the party filing the motion.
(dd) Rule 30; suspension and dismissal without prejudice. Whenever appellant and the
Government counsel are in agreement as to disposition of the controversy, the Board may
suspend or terminate further processing of the appeal. If, thereafter, the Board is advised
by either party that the controversy has not been disposed of by agreement, the case shall
be restored to the Board's calendar without loss of position. In other cases where the
Board is unable to proceed with disposition for reasons not within the control of the
Board, an appeal may be placed in a suspense status. Where the suspension has continued,
or may continue, for an inordinate length of time, the Board, in its discretion, may
dismiss such appeal from its docket without prejudice to restoration when the cause of
suspension has been removed. Unless either party or the Board acts within three years to
reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to be with prejudice.

(ee) Rule 31; dismissal or default for failure to prosecute or defend. Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to paragraph (ii) of this section (Rule 35). If good cause is not shown, the Board may take appropriate action.

(ff) Rule 32; remand from court. Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

(gg) Rule 33; time, computation, and extensions. (1) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(2) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(hh) Rule 34; ex parte communications. No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

(ii) Rule 35; sanctions. If any party fails or refuses to obey an order issued by the Board, the Board may make such order as it considers necessary to the just and expeditious conduct of the appeal.

(jj) Rule 36; effective date and applicability. These rules shall apply (1) mandatorily, to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979 or initiated thereafter.

[47 FR 12340, Mar. 23, 1982; 60 FR 48028, 48029, Sept. 18, 1995]

PART-TIME CAREER EMPLOYMENT PROGRAM

§ 1.891 Purpose of program.
§ 1.892 Review of positions.
§ 1.893 Establishing and converting part-time positions.
§ 1.894 Annual goals and timetables.
§ 1.895 Review and evaluation.
§ 1.896 Publicizing vacancies.
§ 1.897 Exceptions.

§ 1.891 Purpose of program.
Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who requires a reduced workweek, providing parents opportunities to balance family responsibilities with the need for additional income, and assisting students who must finance their own education or vocational training. In view of this, the Department of Veterans Affairs will operate a part-time career employment program, consistent with the needs of its beneficiaries and its responsibilities.
[44 FR 55172, Sept. 25, 1979]
(5 U.S.C. 3401 note)

§ 1.892 Review of positions.
Positions becoming vacant, unless excepted as provided by § 1.897, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:
(a) Mission requirements.
(b) Workload.
(c) Employment ceilings and budgetary considerations.
(d) Availability of qualified applicants willing to work part time.
(e) Other criteria based on local needs and circumstances.
[44 FR 55172, Sept. 25, 1979]
(5 U.S.C. 3402)

§ 1.893 Establishing and converting part-time positions.
Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed in § 1.892 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.
[44 FR 55172, Sept. 25, 1979]
§ 1.894 Annual goals and timetables.
An departmentwide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, but may be supplemented by field facilities.
[44 FR 55172, Sept. 25, 1979]

§ 1.895 Review and evaluation.
The part-time career employment program will be reviewed through regular employment reports to determine levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

§ 1.896 Publicizing vacancies.
When applicants from outside the Federal service are desired, part-time vacancies may be publicized through various recruiting means, such as:
(a) Federal Job Information Centers.
(b) State Employment offices.
(c) VA Recruiting Bulletins.
[44 FR 55172, Sept. 25, 1979]

§ 1.897 Exceptions.
The Secretary of Veterans Affairs, or designees, may except positions from inclusion in this program as necessary to carry out the mission of the Department.
[44 FR 55172, Sept. 25, 1979]
STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION OR TERMINATION OF COLLECTION EFFORT, AND REFERRAL OF CIVIL CLAIMS FOR MONEY OR PROPERTY

§ 1.900 Prescription of standards.
§ 1.901 Omissions not a defense.
§ 1.902 Fraud, antitrust and tax claims excluded.
§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.
§ 1.904 Conversion claims.
§ 1.905 Subdivision of claims not authorized.
§ 1.906 Required administrative proceedings.
§ 1.907 Definitions.

Authority: Sections 1.900 through 1.953 are issued under the authority of 31 U.S.C. 3711 through 3720E; 38 U.S.C. 501, and as noted in specific sections.

§ 1.900 Prescription of standards.
(a) The standards contained in §§1.900 through 1.953 are issued pursuant to the Federal Claims Collection Standards, issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ) in parts 900 through 904 of 31 CFR, as well as other debt collection authority issued by Treasury in part 285 of 31 CFR, and apply to the collection, compromise, termination, and suspension of debts owed to VA, and the referral of such debts to Treasury (or other Federal agencies designated by Treasury) for offset and collection action and to DOJ for litigation, unless otherwise stated in this part or in other statutory or regulatory authority, or by contract.

(b) Standards and policies regarding the classification of debt for accounting purposes (for example, write-off of uncollectible debt) are contained in the Office of Management and Budget's Circular A-129 (Revised), "Policies for Federal Credit Programs and Non-Tax Receivables."


§ 1.901 Omissions not a defense.
Sections 1.900 through 1.953 do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of VA to comply with any of the provisions of §§ 1.900 through 1.953 be available to any debtor as a defense.


§ 1.902 Fraud, antitrust and tax claims excluded.
(a) The standards in §§ 1.900 through 1.953 relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct in violation of the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only the Department of Justice (DOJ) has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in §§ 1.900 through 1.953 relating to the administrative collection of claims do apply, but only to the extent authorized by DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, VA shall promptly refer the case to DOJ. At its discretion, DOJ may return the claim to VA for further handling in accordance with the standards in §§ 1.900 through 1.953.

(b) Sections 1.900 through 1.953 do not apply to tax debts.

(c) Sections 1.900 through 1.953 do not apply to claims between Federal agencies.

(d) Federal agencies should attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1980 Comp., pp. 409-412).


§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§ 1.900 through 1.953 precludes VA settlement, waiver, compromise, or other disposition of any claim under statutes and implementing regulations other than subchapter II of chapter 37 of Title 31 of the United States Code (Claims of the United States Government) and the standards in Title 31 CFR parts 900 through 904. See, for example, the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.) and applicable regulations, 28 CFR part 43. In such cases, the laws and regulations that are specifically applicable to claims collection activities of VA generally take precedence over 31 CFR parts 900 through 904.


§ 1.904 Conversion claims.

Claims may be paid in the form of money or, when a contractual basis exists, VA may demand the return of specific property or the performance of specific services.


§ 1.905 Subdivision of claims not authorized.
Debts may not be subdivided to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered as a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise, suspension, or termination of collection activity.

(31 U.S.C. 3711)

§ 1.906 Required administrative proceedings.
(a) In applying §§ 1.900 through 1.953, VA is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.
(b) Nothing contained in §§ 1.900 through 1.953 is intended to foreclose the right of any debtor to an administrative proceeding, including appeals, waivers, and hearings provided by statute, contract, or VA regulation (see 38 U.S.C. 3720(a)(4) and 5302 and 42 U.S.C. 2651-2653).


§ 1.907 Definitions.
(a) The definitions and construction found in the Federal Claims Collection Standards in 31 CFR 900.2(a) through (d), and the definitions in the provisions on administrative wage garnishment in 31 CFR 285.11(c) shall apply to §§ 1.900 through 1.953, except as otherwise stated.
(b) As used in §§ 1.900 through 1.953, referral for litigation means referral to the Department of Justice for appropriate legal actions, except in those specified instances where a case is referred to a VA Regional Counsel for legal action.
(c) As used in §§ 1.900 through 1.953, VA benefit program means medical care, home loan, and benefits payment programs administered by VA under Title 38 of the United States Code, except as otherwise stated.
(d) As used in §§ 1.900 through 1.953, Treasury means the United States Department of the Treasury.

(31 U.S.C. 3701, 3711)
[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in paragraph (c), became effective Oct. 1, 1995.]
STANDARDS FOR COLLECTION OF CLAIMS

§ 1.910 Aggressive collection action.
§ 1.911 Collection of debts owed by reason of participation in a benefits program.
§ 1.912 Collection by offset.
§ 1.912a Collection by offset -- from VA benefit payments.
§ 1.913 Liquidation of collateral.
§ 1.914 Collection in installments.
§ 1.915 Interest.
§ 1.916 Disclosure of debt information to consumer reporting agencies (CRA).
§ 1.917 Contracting for collection services.
§ 1.918 Use and disclosure of mailing addresses.
§ 1.919 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.
§ 1.920 Referral of VA debts.
§ 1.921 Analysis of costs.
§ 1.922 Exemptions.

§ 1.910 Aggressive collection action.
(a) VA will take aggressive collection action on a timely basis, with effective follow-up, to collect all claims for money or property arising from its activities.
(b) In accordance with 31 U.S.C. 3711(g) and the procedures set forth at 31 CFR 285.12, VA shall transfer to Treasury any non-tax debt or claim that has been delinquent for a period of 180 days or more so that Treasury may take appropriate action to collect the debt or terminate collection action. This requirement does not apply to any debt that:
   (1) Is in litigation or foreclosure;
   (2) Will be disposed of under an approved asset sale program;
   (3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary of the Treasury;
   (4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;
   (5) Will be collected under internal offset procedures within 3 years after the debt first became delinquent; or
   (6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the best interest of the United States. VA may request that the Secretary of the Treasury exempt specific classes of debts.
(c) In accordance with 31 U.S.C. 3716(c)(6) and the procedures set forth in 31 CFR part 285, VA shall notify Treasury of all past due, legally enforceable non-tax debt that is over 180 days delinquent for purposes of administrative offset, including tax refund offset and federal salary offset. (Procedures for referral to Treasury for tax refund offset are found at 31 CFR 285.2 and procedures for referral to Treasury for federal salary offset are found at 38 CFR 1.995 and 31 CFR 285.7.)

§ 1.911 Collection of debts owed by reason of participation in a benefits program.

(a) Scope. This section applies to the collection of debts resulting from an individual's participation in a VA benefit or home loan program. It does not apply to VA's other debt collection activities. Standards for the demand for payment of all other debts owed to VA are set forth in § 1.911a. School liability debts are governed by § 21.4009 of this title.

(b) Written demands. When VA has determined that a debt exists by reason of an administrative decision or by operation of law, VA shall promptly demand, in writing, payment of the debt. VA shall notify the debtor of his or her rights and remedies and the consequences of failure to cooperate with collection efforts. Generally, one demand letter is sufficient, but subsequent demand letters may be issued as needed.

(1) The Secretary determines that further demand would be futile;
(2) The debtor has indicated in writing that he or she does not intend to pay the debt;
(3) Judicial action to protect the Government's interest is indicated under the circumstances; or
(4) Collection by offset pursuant to § 1.912a can be made.

(c) Rights and remedies. Subject to limitations referred to in this paragraph, the debtor has the right to informally dispute the existence or amount of the debt, to request waiver of collection of the debt, to a hearing on the waiver request, and to appeal the Department of Veterans Affairs decision underlying the debt. These rights can be exercised separately or simultaneously. Except as provided in § 1.912a (collection by offset), the exercise of any of these rights will not stay any collection proceeding.

(1) Informal dispute. This means that the debtor writes to the Department of Veterans Affairs and questions whether he or she owes the debt or whether the amount is accurate. The Department of Veterans Affairs will, as expeditiously as possible, review the accuracy of the debt determination. If the resolution is adverse to the debtor, he or she may also request waiver of collection as indicated in paragraphs (c)(2) and (3) of this section.

(2) Request for waiver; hearing on request. The debtor has the right to request waiver of collection, in accordance with § 1.963 or § 1.964, and the right to a hearing on the request. Requests for waivers must be filed in writing. A waiver request must be filed within the time limit set forth in 38 U.S.C. 5302. If waiver is granted, in whole or in part, the debtor has a right to refund of amounts already collected up to the amount waived.

(3) Appeal. In accordance with parts 19 and 20 of this title, the debtor may appeal the decision underlying the debt.

(d) Notification. The Department of Veterans Affairs shall notify the debtor in writing of the following:

(1) The exact amount of the debt;
(2) The specific reasons for the debt, in simple and concise language;
§ 1.911a Collection of non-benefit debts.

(a) This section is written in accordance with 31 CFR 901.2 and applies to the demand for payment of all debts, except those debts arising out of participation in a VA benefit or home loan program. Procedures for the demand for payment of VA benefit or home loan program debts are set forth in § 1.911.

(b) Written demand as described in paragraph (c) of this section shall be made promptly upon a debtor of VA in terms that inform the debtor of the consequences of failing to cooperate with VA to resolve the debt. Generally, one demand letter is sufficient, but subsequent letters may be issued. In determining the timing of the demand letter, VA should give due regard to the need to refer debts promptly to the Department of Justice for litigation, in accordance with §§ 1.950 through 1.953. When necessary to protect VA's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under 38 CFR 1.900 through 1.953, including immediate referral for litigation.

(c) The written demand letter shall inform the debtor of:

1. The basis for the indebtedness and any rights the debtor may have to seek review within VA, including the right to request waiver;
2. The applicable standards for imposing any interest or other late payment charges;
(3) The date by which payment should be made to avoid interest and other late payment charges and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed;
(4) The name, address, and phone number of a contact person or office within the agency;
(5) The opportunity to inspect and copy VA records related to the debt; and
(6) The opportunity to make a written agreement to repay the debt.
(d) In addition to the items listed in paragraph (c) of this section, VA should include in the demand letter VA's willingness to discuss alternative methods of payment and its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies. The letter should also indicate the agency's remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, Federal salary offset, tax refund offset, administrative offset, and litigation) and the requirement that any debt delinquent for more than 180 days be transferred to Treasury for collection.
(e) VA should respond promptly to communications from debtors and should advise debtors who dispute debts, or request waiver, to furnish available evidence to support their contentions.
(f) Prior to referring a debt for litigation, VA should advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification may be given as part of a demand letter under paragraph (c) of this section or in a separate letter.
(g) When VA learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, VA should immediately seek legal advice from either VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless VA determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor should stop immediately.
(1) After VA seeks legal advice, a proof of claim should be filed in most cases with the bankruptcy court or the Trustee. VA should refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.
(2) If VA is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.
(3) Offset is prohibited in most cases by the automatic stay. However, VA should seek legal advice from VA's General Counsel or Regional Counsel to determine whether payments to the debtor and payments of other agencies available for offset may be frozen by VA until relief from the automatic stay can be obtained from the bankruptcy court. VA also should seek legal advice from VA's General Counsel or Regional Counsel to determine whether recoupment is available.
[69 FR 62188, Oct. 25, 2004]

§ 1.912 Collection by offset.

Discussion and Analysis in the Veterans Benefits Manual

(a) Authority and scope. In accordance with the procedures set forth in 31 CFR 901.3, as well as 31 CFR part 285, VA shall collect debts by administrative offset from
payments made by VA to a debtor indebted to VA. Also in accordance with 31 CFR 901.3(b), as well as 31 CFR part 285, VA shall refer past due, legally enforceable non-tax debts which are over 180 days delinquent to Treasury for collection by centralized administrative offset (further procedures are set forth in paragraph (g) of this section). This section does not pertain to offset from either VA benefit payments made under the authority of 38 U.S.C. 5314 or from current salary, but does apply to offset from all other VA payments, including an employee's final salary check and lump-sum leave payment. Procedures for offset from benefit payments are found in §1.912a. Procedures for offset from current Federal salary are found in §§ 1.980 through 1.995. NOTE: VA cannot offset, or refer for the purpose of offset, either under the authority of this section or under any other authority found in §§ 1.900 through 1.953 and §§ 1.980 through 1.995, any VA home loan program debt described in 38 U.S.C. 3726 unless the requirements set forth in that section have been met.

(b) Notification. Prior to initiation of administrative offset, if not provided in the initial notice of indebtedness, VA is required to provide the debtor with written notice of:

1. The nature and amount of the debt;
2. VA's intention to pursue collection by offset procedures from the specified VA payment, the date of commencement of offset, and the exact amount to be offset;
3. The opportunity to inspect and copy VA records pertaining to the debt;
4. The right to contest either the existence or amount of the debt or the proposed offset schedule, or if applicable, to request a waiver of collection of the debt, or to request a hearing on any of these matters;
5. That commencement of offset will begin, unless the debtor makes a written request for the administrative relief discussed in paragraph (b)(4) of this section within 30 days of the date of this notice; and
6. The opportunity to enter into a written agreement with VA to repay the debt in lieu of offset.

(c) Deferral of offset. (1) If the debtor, within 30 days of the date of the notification required by paragraph (b) of this section, disputes in writing the existence or amount of the debt or the amount of the scheduled offset, offset shall not commence until the dispute is reviewed and a decision is rendered by VA adverse to the debtor.
(2) If the debtor, within 30 days of the date of the required notification by VA, requests in writing the waiver of collection of the debt in accordance with §1.963, §1.963a, or §1.964, offset shall not commence until VA has made an initial decision to deny the waiver request.
(3) If the debtor, within 30 days of the required notification by VA, requests in writing a hearing on the issues found in paragraphs (c)(1) and (2) of this section, offset shall not commence until a decision is rendered by VA on the issue which is the basis of the hearing.
(d) Exceptions. (1) Offset may commence prior to either resolution of a dispute or decision on a waiver request as discussed in paragraph (c) of this section, if collection of the debt would be jeopardized by deferral of offset (for example, if VA first learns of the debt when there is insufficient time before a final payment would be made to the debtor to allow for prior notice and opportunity for review or waiver consideration). In such a case, notification pursuant to paragraph (b) of this section shall be made at the time offset begins or as soon thereafter as possible. VA shall promptly refund any
money that has been collected that is ultimately found not to have been owed to the Government.

(2) If the United States has obtained a judgment against the debtor, offset may commence without the notification required by paragraph (b) of this section. However, a waiver request filed in accordance with the time limits and other requirements of § 1.963, § 1.963a, or § 1.964 will be considered, even if filed after a judgment has been obtained against the debtor. If waiver is granted, in whole or in part, refund of amounts already collected will be made in accordance with § 1.967.

(3) The procedures set forth in paragraph (b) of this section may be omitted when the debt arises under a contract that provides for notice and other procedural protections.

(4) Offset may commence without the notification required by paragraph (b) of this section when the offset is in the nature of a recoupment. As defined in 31 CFR 900.2(d), recoupment is a special method for adjusting debts arising under the same transaction or occurrence.

(e) Hearing. (1) After a debtor requests a hearing, VA shall notify the debtor of the form of the hearing to be provided; i.e., whether the hearing will either be oral or paper. If an oral hearing is determined to be proper by the hearing official, the notice shall set forth the date, time, and location of the hearing. If the hearing is to be a paper review, the debtor shall be notified that he or she should submit his or her position and arguments in writing to the hearing official by a specified date, after which the record shall be closed. This date shall give the debtor reasonable time to submit this information.

(2) Unless otherwise required by law, an oral hearing under this paragraph is not required to be a formal evidentiary type of hearing.

(3) A debtor who requests a hearing shall be provided an oral hearing if VA determines that the matter cannot be resolved by review of documentary evidence. Whenever an issue of credibility or veracity is involved, an oral hearing will always be provided the debtor. For example, the credibility or veracity of a debtor is always an issue whenever the debtor requests a waiver of collection of the debt. Thus, a hearing held in conjunction with a waiver request will always be an oral hearing. If a determination is made to provide an oral hearing, the hearing official may offer the debtor the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official declines to offer a telephone conference call, the debtor shall be provided an oral hearing permitting the personal appearance of the debtor, his or her personal representative, and witnesses. Witnesses shall testify under oath or affirmation.

(4) In all other cases where a debtor requests a hearing, a paper hearing shall be provided. The debtor shall be provided an opportunity to submit material for the record. A paper hearing shall consist of a review of the written evidence of record by the designated hearing official.

(f) Statutes of limitation; multiple debts. When collecting multiple debts by administrative offset, VA shall apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation. In accordance with 31 CFR 901.3(a)(4), VA may not initiate offset to collect a debt more than 10 years after VA’s right to collect the debt first accrued (with certain exceptions as specified in 31 CFR 901.3(a)(4)).
(g) Centralized administrative offset. (1) When VA refers delinquent debts to Treasury for centralized administrative offset in accordance with 31 CFR part 285, VA must certify that:
(i) The debts are past due and legally enforceable; and
(ii) VA has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section.
(2) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.
(h) Computer Matching and Privacy Act waiver. In accordance with 31 U.S.C. 3716(f), the Secretary of the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from a creditor agency that the due process requirements enumerated in 31 U.S.C. 3716(a) and paragraphs (b) and (c) of this section have been met. The certification of a debt in accordance with paragraph (g) of this section will satisfy this requirement. If such a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g).
(i) Requests by creditor agencies for offset. Unless the offset would not be in VA's best interest, or would otherwise be contrary to law, VA will comply with requests by creditor agencies to offset VA payments (except for current salary or benefit payments) made to a person indebted to the creditor agency. However, before VA may initiate offset, the creditor agency must certify in writing to VA that the debtor has been provided:
(1) Written notice of the type and amount of the debt and the intent of the creditor agency to use administrative offset to collect the debt;
(2) The opportunity to inspect and copy agency records related to the debt;
(3) The opportunity for review within the agency of the determination of the indebtedness; and
(4) The opportunity to make a written agreement to repay the debt.

§ 1.912a Collection by offset -- from VA benefit payments.
(a) Authority and scope. VA shall collect debts governed by §1.911 of this part by offset against any current or future VA benefit payments to the debtor. Unless paragraphs (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. Certain military service debts shall be collected by offset against current or future compensation or pension benefit payments to the debtor under authority of 38 U.S.C. 5301(c), as provided in paragraph (e) of this section.
(b) Notification. Unless paragraph (d) of this section applies, offset shall not commence until the debtor has been notified in writing of the matters described in §1.911(c) and (d) and paragraph (c) of this section.
(c) Deferral of offset. (1) If the debtor, within thirty days of the date of the notification required by paragraph (b) of this section, disputes, in writing, the existence or amount of the debt in accordance with § 1.911(c)(1), offset shall not commence until the dispute is reviewed as provided in § 1.911(c)(1) and unless the resolution is adverse to the debtor.

(2) If the debtor, within thirty days of the date of notification required by paragraph (b) of this section, requests, in writing, waiver of collection in accordance with § 1.963 or § 1.964, as applicable, offset shall not commence until the Department of Veterans Affairs has made an initial decision on waiver.

(3) If the debtor, within thirty days of the notification required by paragraph (b) of this section, requests, in writing, a hearing on the waiver request, no decision shall be made on the waiver request until after the hearing has been held.

(4) VA will pursue collection action once an adverse initial decision is reached on the debtor's request for waiver and/or the debtor's informal dispute (as described in § 1.911(c)(1)) concerning the existence or amount of the debt, even if the debtor subsequently pursues appellate relief in accordance with parts 19 and 20 of this title.

(d) Exceptions. Offset may commence prior to the resolution of a dispute or a decision on a waiver request if collection of the debt would be jeopardized by deferral of offset. In such case, notification pursuant to § 1.911(d) shall be made at the time offset begins or as soon thereafter as possible.

(e) Offset of military service debts. (1) In accordance with 38 U.S.C. 5301(c), VA shall collect by offset from any current or future compensation or pension benefits payable to a veteran under laws administered by VA, the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of 10 U.S.C. chapter 73.

(2) Offsets of a veteran's compensation or pension benefit payments to recoup indebtedness to the military services as described in paragraph (e)(1) of this section shall only be made by VA when the military service owed the debt has:

(i) Determined the amount of the indebtedness of the veteran;

(ii) Certified to VA that due process in accordance with the procedures prescribed in 31 U.S.C. 3716 have been provided to the veteran; and

(iii) Requested collection of the total debt amount due.

(3) Offset from any compensation or pension benefits under the authority of 38 U.S.C. 5301(c) shall not exceed 15% of the net monthly compensation or pension benefit payment. The net monthly compensation or pension benefit payment is defined as the authorized monthly compensation or pension benefit payment less all current deductions.


(38 U.S.C. 5301(c) and 5314)

§ 1.913 Liquidation of collateral.

(a) VA should liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt, if the debtor fails to pay the debt within 180 days after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment.
by a surety, insurer, or guarantor, unless such action is expressly required by statute or contract.
(b) When VA learns that a bankruptcy petition has been filed with respect to a debtor, VA should seek legal advice from VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section. (Authority: 31 U.S.C. 3711; 38 U.S.C. 501).
[52 FR 42106, Nov. 3, 1987; renumbered from 1.916, revised 69 FR 62188, Oct. 25, 2004]

(31 U.S.C. 3711)
Former 1.913 "Personal interview with debtor" removed 69 FR 62188, Oct. 25, 2004

§ 1.914 Collection in installments.
(a) Whenever feasible, VA shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, VA may accept payment in regular installments. VA should obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible. If VA agrees to accept payments in regular installments, VA should obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and contains a provision accelerating the debt in the event of default.
(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in 3 years or less.
(c) Security for deferred payments should be obtained in appropriate cases. However, VA may accept installment payments if the debtor refuses to execute a written agreement or to give security.
[52 FR 42106, Nov.3, 1987; renumbered from 1.917, revised 69 FR 62188, Oct. 25, 2004]

(31 U.S.C. 3711)
Former 1.914 "Contact with debtor's employing agency" removed 69 FR 62188, Oct. 25, 2004

§ 1.915 Interest.
(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, and subject to 38 U.S.C. 3485(e) and 5302, VA shall assess:
(1) Interest on all indebtedness to the United States arising out of participation in a VA benefit, medical care, or home loan program under authority of Title 38, U.S. Code.
(2) Interest and administrative costs of collection on such debts described in paragraph (a)(1) of this section where repayment has become delinquent (as defined in 31 CFR 900.2(b)), and
(3) Interest, administrative costs, and penalties in accordance with 31 CFR 901.9 on all debts other than those described in paragraph (a)(1) of this section.
(b) Every party entering into an agreement with the Department of Veterans Affairs for repayment of indebtedness in installments shall be advised of the interest charges to be added to the debt. All debtors being provided notice of indebtedness, including those entering into repayment agreements, shall be advised that upon the debt becoming delinquent, or in the case of repayment of already delinquent debts, interest and the administrative costs of collection will be added to the principal amount of the debt.

(c) The rate of interest charged by VA shall be based on the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717 and shall be adjusted annually by VA on the first day of the calendar year. Once the rate of interest has been determined for a particular debt, the rate shall remain in effect throughout the duration of repayment of that debt. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, VA may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest shall not be compounded, that is, interest shall not be charged on accrued interest and administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, interest and administrative costs that accrued but were not collected under the defaulted agreement shall be added to the principal under the new agreement.

(d) Interest on amounts covered by this section shall accrue from the date the initial notice of the debt is mailed to the debtor. Notification shall be considered sufficient when effected by ordinary mail, addressed to the last known address, and such notice is not returned as undeliverable by postal authorities.

(e) Interest under this section shall not be charged if the debt is paid in full within 30 days of mailing of the initial notice described in paragraph (b) of this section. Once interest begins to accrue, and after expiration of the time period for payment of the debt in full to avoid assessment of interest and administrative costs, any amount received toward the payment of such debt shall be first applied to payment of outstanding administrative cost charges and then to accrued interest or costs, and then to principal, unless a different rule is prescribed by statute, contract, or other regulation.

(f) All or any part of the interest and administrative costs assessed under this section are subject to consideration for waiver under section 5302 of title 38 U.S.C., and appropriate administrative procedures.

(1) In general, interest and administrative costs may be waived only when the principal of the debt on which they are assessed is waived by a Committee on Waivers and Compromises. However, VA may forbear collection of interest and administrative costs, exclusive of collection of the principal of the debt on which they are assessed, as well as terminate further assessment of interest and administrative costs when the collection of such interest and costs are determined to be not in the government's best interest. Collection of interest and administrative costs shall not be considered to be in the best interest of the government when the amount of assessed interest and administrative cost is so large that there is a reasonable certainty that the original debt will never be repaid. The determination to forbear collection of interest and administrative cost, exclusive of collection of the principal of the debt, shall be made by the Chief of the Fiscal activity at the station responsible for the collection of the debt. Such a determination is not within the jurisdiction of a Committee on Waivers and Compromises.

(2) [Reserved]
(g) Administrative costs assessed under this section shall be the average costs of collection of similar debts, or actual collection costs as may be accurately determined in the particular case. No administrative costs of collection will be assessed under this section in any cases where the indebtedness is paid in full prior to the 30-day period specified in paragraph (e) of this section, or in any case where a repayment plan is proposed by the debtor and accepted by VA within that 30-day period, unless such repayment agreement becomes delinquent (as defined in 31 CFR 900.2(b)).


(38 U.S.C. 5315)

Former 1.915 "Suspension or revocation of eligibility" removed 69 FR 62188, Oct. 25, 2004

§ 1.916 Disclosure of debt information to consumer reporting agencies (CRA).

(a) The Department of Veterans Affairs may disclose all information determined to be necessary, including the name, address, Department of Veterans Affairs file number, Social Security number, and date of birth, to consumer reporting agencies for the purpose of--

(1) Obtaining the location of an individual indebted to the United States as a result of participation in any benefits program administered by VA or indebted in any other manner to VA;

(2) Obtaining a consumer report in order to assess an individual's ability to repay a debt when such individual has failed to respond to the Department's demand for repayment or when such individual has notified the Department that he/she will not repay the indebtedness; or

(3) Obtaining the location of an individual in order to conduct program evaluation studies as required by 38 U.S.C. 527 or any other law.

(b) Information disclosed by the Department of Veterans Affairs under paragraph (a) of this section to consumer reporting agencies shall neither expressly nor implicitly indicate that an individual is indebted to the United States nor shall such information be recorded by consumer reporting agencies in a manner that reflects adversely upon the individual. Prior to disclosing this information, the Department of Veterans Affairs shall ascertain that consumer reporting agencies with which it contracts are able to comply with this requirement. The Department of Veterans Affairs shall also make reasonable efforts to insure compliance by its contractor with this requirement.

(c) Subject to the conditions set forth in paragraph (d) of this section, information concerning individuals may be disclosed to consumer reporting agencies for inclusion in consumer reports pertaining to the individual, or for the purpose of locating the individual. Disclosure of the fact of indebtedness will be made if the individual fails to respond in accordance with written demands for repayment, or refuses to repay a debt to the United States. In making any disclosure under this section, VA will provide consumer reporting agencies with sufficient information to identify the individual, including the individual's name, address, if known, date of birth, VA file number, and Social Security number.
(d)(1) Prior to releasing information under paragraph (c) of this section, the Department of Veterans Affairs will send a notice to the individual. This notice will inform the individual that--
(i) The Department of Veterans Affairs has determined that he or she is indebted to the Department of Veterans Affairs;
(ii) The debt is presently delinquent; and
(iii) The fact of delinquency may be reported to consumer reporting agencies after 30 days have elapsed from the date of the notice.

(2)(i) In accordance with Sec. 1.911 and Sec. 1.911a, VA shall notify each individual of the right to dispute the existence and amount of the debt and to request a waiver of the debt, if applicable.
(ii) If the Department of Veterans Affairs has not previously notified the individual of the rights described in paragraph (d)(2)(i) of this section, the Department of Veterans Affairs will include this information in the notice described in paragraph (d)(1) of this section. The individual shall be afforded a minimum of 30 days from the date of the notice to respond to it before information is reported to consumer reporting agencies.

(3) The Department of Veterans Affairs will defer reporting information to a consumer reporting agency if the individual disputes the existence or amount of any debt or requests waiver of the debt within the time limits set forth in paragraph (d)(2)(ii) of this section. The Department of Veterans Affairs will review any dispute and notify the individual of its findings. If the original decision is determined to be correct, or if the individual's request for waiver is denied, the Department of Veterans Affairs may report the fact of delinquency to a consumer reporting agency. However, the individual shall be afforded 30 days from date of the notice of the agency's determination to repay the debt.

(4) Nothing in this section affects an individual's right to appeal an agency decision to the Board of Veterans Appeals. However, information concerning the debt may be disclosed while an appeal is pending before the Board of Veterans Appeals.

(5) Upon request, the Department of Veterans Affairs will notify an individual--
(i) Whether information concerning a debt has been reported to consumer reporting agencies;
(ii) Of the name and address of each consumer reporting agency to which information has been released; and
(iii) Of the specific information released.

A notice of the right to request this information will be sent with the notice described in paragraph (d)(1) of this section.

(e) Subsequent to disclosure of information to consumer reporting agencies as described in paragraph (c) of this section, the Department of Veterans Affairs shall:
(1) Notify on a monthly basis each consumer reporting agency concerned of any substantial change in the status or amount of indebtedness.
(2) Promptly verify any and all information disclosed if so requested by the consumer reporting agency concerned.

(f) In the absence of a different rule prescribed by statute, contract, or other regulation, an indebtedness is considered delinquent if not paid by the individual by the date due specified in the notice of indebtedness, unless satisfactory arrangements are made by such date.
(g) Notification shall be considered sufficient when effected by ordinary mail, addressed to the last known address, and such notice is not returned as undeliverable by postal authorities.

(h) The Privacy Act (5 U.S.C. 552a) does not apply to any contract between the Department of Veterans Affairs and a consumer reporting agency, nor does it apply to a consumer reporting agency and its employees. See 38 U.S.C. 5701(i). This paragraph does not relieve the Department of Veterans Affairs of its obligation to comply with the Privacy Act.

(i) The term "consumer reporting agency" means any person or agency which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties or to other consumer reporting agencies. The term "consumer reporting agency" shall also mean any person or agency which serves as a marketing agent under arrangements enabling third parties to obtain such information from consumer reporting agencies, or which obtain such information for the purpose of furnishing it to consumer reporting agencies.

(Authority: 31 U.S.C. 3711(e); 38 U.S.C. 501, 5701(g) and (i)).

§ 1.917 Contracting for collection services.
(a) VA has authority to contract for collection services to recover delinquent debts, provided that:
(1) The authority to resolve disputes, compromise claims, suspend or terminate collection and refer the matter for litigation shall be retained by VA;
(2) The contractor shall be subject to 38 U.S.C. 5701, and to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq.
(3) The contractor shall be required to strictly account for all amounts collected;
(4) Upon returning an account to VA for subsequent referral to the Department of Justice for litigation, the contractor must agree to provide any data contained in its files relating to § 1.951.

(b) In accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law, collection service contracts may be funded in the following manner:
(1) VA may fund a collection service contract on a fixed-fee basis (i.e., payment of a fixed fee determined without regard to the amount actually collected under the contract). Payment of the fee under this type of contract must be charged to available appropriations;
(2) VA may also fund a collection service contract on a contingent-fee basis (i.e., by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract). The fee should be based upon a percentage of the amount collected, consistent with prevailing commercial practice;
(3) VA may enter into a contract under paragraph (b)(1) of this section only if and to the extent that funding for the contract is provided for in advance by an appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute;

(4) Except as authorized under paragraphs (b)(2) and (b)(5) of this section, or unless otherwise specifically provided by law, VA shall deposit all amounts recovered under collection service contracts for Loan Guaranty debts into the Loan Guaranty Revolving Fund, and for all other debts in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(5) For benefit overpayments recovered under collection service contract, VA, pursuant to 31 U.S.C. 3302, shall deposit:

(i) Amounts equal to the original overpayments in the appropriations account from which the overpayments were made, and

(ii) Amount of interest or administrative costs in the Treasury as miscellaneous receipts.

(c) VA shall use government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. However, VA may refer debts to private collection contractors pursuant to a contract between VA and a private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for debt collection. See 31 U.S.C. 3711(g), 31 CFR 285.12(e), and 38 CFR 1.910.

(d) VA may enter into contracts for locating and recovering assets of the United States, such as unclaimed assets.

(e) VA may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges the agency for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.


Former 1.917 "Collection in installments" removed 69 FR 62188, Oct. 25, 2004

§ 1.918 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to compromise or collect a debt in accordance with §§ 1.900 through 1.953, VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor's most current mailing address from the records of the Internal Revenue Service.

(b) VA is authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

(c) VA will insure that procedures established under this section comply with the Privacy Act (5 U.S.C. 552a) and the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.


Former 1.918 "Exploration of compromise" removed 69 FR 62188, Oct. 25, 2004
§ 1.919 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.
(a) Unless otherwise prohibited by law or regulation, and in accordance with 31 CFR 901.3(d), VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or FERS be administratively offset in reasonable amounts in order to collect, in one full payment or a minimal number of payments, debts that are owed to VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management (OPM) in accordance with such regulations prescribed by the Director of OPM. (See 5 CFR 831.1801 through 831.1808). In addition, VA may also offset against a Federal employee's final salary check and lump sum leave payment. §§ 1.912 for procedures for offset against a final salary check and lump sum leave payment.
(b) When making a request to the Office of Personnel Management for administrative offset under paragraph (a) of this section, VA shall include a written certification that:
(1) The debtor owes VA a debt, including the amount of the debt;
(2) VA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and
(3) VA has complied with §§ 1.911, 1.911a, 1.912, 1.912a, and 31 CFR 901.3, to the extent applicable, including any required hearing or review.
(c) Once VA decides to request administrative offset from the Civil Service Retirement and Disability Fund or Federal Employees Retirement System (FERS) under paragraph (a) of this section, it shall make the request as soon as possible after completion of the applicable procedures in order that the Office of Personnel Management may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund or FERS. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statutes of limitations. At such time as the debtor makes a claim for payments from the Fund or FERS, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that such offset will create financial hardship.
(d) If VA collects all or part of the debt by other means before deductions are made or completed in accordance with paragraph (a) of this section, VA shall promptly act to modify or terminate its request for offset under paragraph (a) of this section.
(e) The Office of Personnel Management is neither required nor authorized by this section to review the merits of VA's determination with respect to the amount and validity of the debt waiver under 5 U.S.C. 5584 or 38 U.S.C. 5302, or providing or not providing an oral hearing.
Former 1.919 "Interest" removed 69 FR 62188, Oct. 25, 2004

§ 1.920 Referral of VA debts.
(a) When authorized, VA may refer an uncollectible debt to another Federal or State agency for the purpose of collection action. Collection action may include the offsetting
of the debt from any current or future payment, except salary (see paragraph (e) of this section), made by such Federal or State agency to the person indebted to VA.

(b) VA must certify in writing that the individual owes the debt, the amount and basis of the debt, the date on which payment became due, and the date VA's right to collect the debt first accrued.

(c) This certification will also state that VA provided the debtor with written notice of:
   (1) The nature and amount of the debt;
   (2) VA's intention to pursue collection by offset procedures;
   (3) The opportunity to inspect and copy VA records pertaining to the debt;
   (4) The right to contest both the existence and amount of the debt and to request a waiver of collection of the debt (if applicable), as well as the right to a hearing on both matters;
   (5) The opportunity to enter into a written agreement with VA for the repayment of the debt; and
   (6) Other applicable notices required by §§ 1.911, 1.911a, 1.912, and 1.912a.

(d) The written certification required by paragraphs (b) and (c) of this section will also contain (for all debts) a listing of all actions taken by both VA and the debtor subsequent to the notice, as well as the dates of such actions.

(e) The referral by VA of a VA debt to another agency for the purpose of salary offset shall be done in accordance with 38 CFR 1.980 through 1.995 and regulations prescribed by the Director of the Office of Personnel Management (OPM) in 5 CFR part 550, subpart K.


Former 1.920 "Documentation of collection action" removed 69 FR 62188, Oct. 25, 2004

§ 1.921 Analysis of costs.

VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.


Former 1.921 "Additional collection action" removed 69 FR 62188, Oct. 25, 2004

§ 1.922 Exemptions.

(a) Sections 1.900 through 1.953, to the extent they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716(c); or the tariff laws of the United States.

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These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA of 1996, to the extent that they are authorized under some other statute or the common law.

(b) This section should not be construed as prohibiting the use of §§ 1.900 through 1.953 when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section unless the debt arose under those laws.


Former 1.922 "Disclosure of debt information to consumer reporting agencies (CRA)" removed 69 FR 62188, Oct. 25, 2004

§ 1.923 Administrative wage garnishment.

(a) In accordance with the procedures set forth in 31 U.S.C. 3720D and 31 CFR 285.11, VA or Treasury may request that a non-Federal employer garnish the disposable pay of an individual to collect delinquent non-tax debt owed to VA. VA may pursue wage garnishment independently in accordance with this section or VA or Treasury may pursue garnishment after VA refers a debt to Treasury in accordance with Sec. 1.910 of this part and 31 CFR 285.12. For the purposes of this section, any reference to Treasury also includes any private collection agency under contract to Treasury.

(b) At least 30 days prior to the initiation of garnishment proceedings, VA or Treasury shall send a written notice, as described in 31 CFR 285.11(e), by first class mail to the debtor's last known address. This notice shall inform the debtor of:

1. The nature and amount of the debt;
2. The intention of VA or Treasury to initiate proceedings to collect the debt through deductions from the debtor's pay until the debt and all accumulated interest, and other late payment charges, are paid in full, and;
3. An explanation of the debtor's rights, including the opportunity:
   (i) To inspect and copy VA records pertaining to the debt;
   (ii) To enter into a written repayment agreement with VA or Treasury under terms agreeable to VA or Treasury, and;
   (iii) To a hearing in accordance with 31 CFR 285.11(f) and paragraph (c) of this section concerning the existence or amount of the debt or the terms of the proposed repayment schedule under the garnishment order. However, the debtor is not entitled to a hearing concerning the terms of the proposed repayment schedule if these terms have been established by written agreement under paragraph (b)(3)(ii) of this section.

(c) Any hearing conducted as part of the administrative wage garnishment process shall be conducted by the designated hearing official in accordance with the procedures set forth in 31 CFR 285.11(f). This hearing official may be any VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official. This hearing official may also conduct administrative wage garnishment hearings for other Federal agencies.

1. The hearing may be oral or written as determined by the designated hearing official. The hearing official shall provide the debtor with a reasonable opportunity for an oral hearing when the hearing official determines that the issue in dispute cannot be resolved by review of documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity. The hearing official shall establish the
time and place of any oral hearing. At the debtor's option, an oral hearing may be conducted either in person or by telephone conference call. A hearing is not required to be a formal, evidentiary-type hearing, but witnesses who testify in oral hearings must do so under oath or affirmation. While it is not necessary to produce a transcript of the hearing, the hearing official must maintain a summary record of the proceedings. All travel expenses incurred by the debtor in connection with an in-person hearing shall be borne by the debtor. VA or Treasury shall be responsible for all telephone expenses. In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

(2) If the hearing official determines that an oral hearing is not necessary, then he/she shall afford the debtor a "paper hearing." In a "paper hearing," the hearing official will decide the issues in dispute based upon a review of the written record.

(3) If the debtor's written request for a hearing is received by either VA or Treasury within 15 business days following the mailing of the notice described in paragraph (b) of this section, then VA or Treasury shall not issue a withholding order as described in paragraph (d) of this section until the debtor is afforded the requested hearing and a decision rendered. If the debtor's written request for a hearing is not received within 15 business days following the mailing of the notice described in paragraph (b) of this section, then the hearing official shall provide a hearing to the debtor, but will not delay issuance of a withholding order as described in paragraph (d) of this section, unless the hearing official determines that the delay in filing was caused by factors beyond the debtor's control.

(4) The hearing official shall notify the debtor of:
   (i) The date and time of a telephone conference hearing;
   (ii) The date, time, and location of an in-person oral hearing, or;
   (iii) The deadline for the submission of evidence for a written hearing.

(5) Except as provided in paragraph (c)(6) of this section, VA or Treasury shall have the burden of going forward to prove the existence or amount of the debt, after which the debtor must show, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect. In general, this means that the debtor must show that it is more likely than not that a debt does not exist or that the amount of the debt is incorrect. The debtor may also present evidence that terms of the repayment agreement are unlawful, would cause a financial hardship, or that collection of the debt may not be pursued due to operation of law.

(6) If the debtor has previously contested the existence and/or amount of the debt in accordance with Sec. 1.911(c)(1) or Sec. 1.911a(c)(1) and VA subsequently rendered a decision upholding the existence or amount of the debt, then such decision shall be incorporated by reference and become the basis of the hearing official's decision on such matters.

(7) The hearing official shall issue a written decision as soon as practicable, but not later than 60 days after the date on which the request for such hearing was received by VA or Treasury. The decision will be the final action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 et seq.). The decision shall include:
   (i) A summary of the facts presented;
   (ii) The hearing official's findings, analysis, and conclusions, and;
(iii) The terms of the repayment schedule, if applicable.
(d) In accordance with 31 CFR 285.11(g) and (h), VA or Treasury shall send a Treasury-approved withholding order and certification form by first class mail to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing. If a timely request for a hearing has been filed by the debtor, then VA or Treasury shall send a withholding order and certification form by first class mail to the debtor's employer within 30 days after a final decision is made to proceed with the garnishment. The employer shall complete and return the certification form as described in 31 CFR 285.11(h).
(e) After receipt of the garnishment order, the employer shall withhold the amount of garnishment as described in 31 CFR 285.11(i) from all disposable pay payable to the applicable debtor during each pay period.
(f) A debtor whose wages are subject to a wage withholding order under 31 CFR 285.11 may request a review, under the procedures set forth in 31 CFR 285.11(k), of the amount garnished. A request for review shall only be considered after garnishment has been initiated. The request must be based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship that limit the debtor's ability to provide food, housing, clothing, transportation, and medical care for himself/herself and his/her dependents.


[69 FR 62188, Oct. 25, 2004]

§ 1.924 Suspension or revocation of eligibility for federal loans, loan insurance, loan guarantees, licenses, permits, or privileges.
(a) In accordance with 31 U.S.C. 3720B and the procedures set forth in 31 CFR 285.13 and Sec. 901.6, a person owing an outstanding non-tax debt that is in delinquent status shall not be eligible for Federal financial assistance unless exempted under paragraph (d) of this section or waived under paragraph (e) of this section.
(b) Federal financial assistance or financial assistance means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.
(c) For the purposes of this section only, a debt is in a delinquent status if the debt has not been paid within 90 days of the payment due date or by the end of any grace period provided by statute, regulation, contract, or agreement. The payment due date is the date specified in the initial written demand for payment. Further guidance concerning the delinquent status of a debt may be found at 31 CFR 285.13(d).
(d) Upon the written request and recommendation of the Secretary of Veterans Affairs, the Secretary of the Treasury may grant exemptions from the provisions of this section. The standards for exemptions granted for classes of debts are set forth in 31 CFR 285.13(f).
(e)(1) VA's Chief Financial Officer or Deputy Chief Financial Officer may waive the provisions of paragraph (a) of this section only on a person-by-person basis.
(2) The Chief Financial Officer or Deputy Chief Financial Officer should balance the following factors when deciding whether to grant a waiver:

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(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal government; and
(ii) Whether the granting of the financial assistance to the person is contrary to the government's goal of reducing losses by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (e)(2)(i) and (e)(2)(ii) of this section, the Chief Financial Officer or Deputy Chief Financial Officer should consider:
(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and
(ii) The amount of the total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) A centralized record shall be retained of the number and type of waivers granted under this section.

(f) In non-bankruptcy cases, in seeking the collection of statutory penalties, forfeitures, or other similar types of claims, VA may suspend or revoke any license, permit, or other privilege granted a debtor when the debtor inexcusably or willfully fails to pay such a debt. The debtor should be advised in VA's written demand for payment of VA's ability to suspend or revoke licenses, permits, or privileges. VA may suspend or disqualify any lender, contractor, or broker who is engaged in making, guaranteeing, insuring, acquiring, or participating in loans from doing further business with VA or engaging in programs sponsored by VA if such lender, contractor, or broker fails to pay its debts to the Government within a reasonable time, or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by another Federal agency. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 should be reported to Treasury.

(g) In bankruptcy cases, before advising the debtor of the intention to suspend or revoke licenses, permits, or privileges, VA should seek legal advice from VA's General Counsel or Regional Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.


[69 FR 62188, Oct. 25, 2004]
STANDARDS FOR COLLECTION OF CLAIMS

§ 1.929 Reduction of debt through performance of work-study services.

§ 1.929 Reduction of debt through performance of work-study services.
(a) Scope. (1) Subject to the provisions of this section VA may allow an individual to reduce an indebtedness to the United States through offset of benefits to which the individual becomes entitled by performance of work-study services under 38 U.S.C. 3485 and 3537 when the debt arose by virtue of the individual’s participation in a benefits program provided under any of the following:
(i) 38 U.S.C. chapter 30;
(ii) 38 U.S.C. chapter 31;
(iii) 38 U.S.C. chapter 32;
(iv) 38 U.S.C. chapter 34;
(v) 38 U.S.C. chapter 35;
(vi) 38 U.S.C. chapter 36 (other than an education loan provided under subpart F, part 21 of this title); or
(vii) 10 U.S.C. chapter 1606 (other than an indebtedness arising from a refund penalty imposed under 10 U.S.C. 16135).
(2) This section shall not apply in any case in which the individual has a pending request for waiver of the debt under §§ 1.950 through 1.970.
(Authority: 38 U.S.C. 3485(e)(1); Pub. L. 102-16)
(b) Selection criteria. (1) If there are more candidates for a work-study allowance than there are work-study positions available in the area in which the services are to be performed, VA will give priority to the candidates who are pursuing a program of education or rehabilitation.
(2) Only after all candidates in the area described in paragraph (b)(1) of this section either have been given work-study contracts or have withdrawn their request for contracts will VA offer contracts to those who are not pursuing a program of education or rehabilitation and who wish to reduce their indebtedness through performance of work-study services.
(3) VA shall not offer a contract to an individual who is receiving compensation from another source for the work-study services the individual wishes to perform.
(4) VA shall not offer a contract to an individual if VA determines that the debt can be collected through other means such as collection in a lump sum, collection in installments as provided in § 1.917 or compromise as provided in § 1.918.
(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)
(c) Utilization. The work-study services to be performed under a debt-liquidation contract will be limited as follows:
(1) If the individual is concurrently receiving educational assistance in a program administered by VA, work-study services are limited to those allowed in the educational program under which the individual is receiving benefits.
(2) If the individual is not concurrently receiving educational assistance in a program administered by VA, the individual may perform only those work-study services and activities which are or were open to those students receiving a work-study allowance while pursuing a program of education pursuant to the chapter under which the debt was incurred.
(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

d) Contract to perform services. (1) The work-study services performed to reduce indebtedness shall be performed pursuant to a contract between the individual and VA.
(2) The individual shall perform the work-study services required by the contract at the place or places designated by VA.
(3) The number of hours of services to be performed under the contract must be sufficient to enable the individual to become entitled to a sum large enough to liquidate the debt by offset.
(4) The number of weeks in the contract will not exceed the lesser of-
(i) The number of weeks of services the individual needs to perform to liquidate his or her debt; or
(ii) 52.
(5) In determining the number of hours per week and the number of weeks under paragraphs (d)(3) and (d)(4) of this section necessary to liquidate the debt, VA will use the amount of the account receivable, including all accrued interest, administrative costs and marshall fees outstanding on the date the contract is offered to the individual and all accrued interest, administrative costs and marshall fees VA estimates will have become outstanding on the debt on the date the debt is to be liquidated.
(6) The contract will automatically terminate after the total amount of the individual's indebtedness described in paragraph (d)(5) of this section has been recouped, waived, or otherwise liquidated. An individual performing work-study services under a contract to liquidate a debt is released from the contract if the debt is liquidated by other means.
(7) The contract to perform work-study services for the purpose of liquidating indebtedness will be terminated if:
(i) The individual is liquidating his or her debt under this section while receiving either an educational assistance allowance for further pursuit of a program of education or a subsistence allowance for further pursuit of a program of rehabilitation;
(ii) The individual terminates or reduces the rate of pursuit of his or her program of education or rehabilitation; and
(iii) The termination or reduction causes an account receivable as a debt owed by the individual.
(8) VA may terminate the contract at any time the individual fails to perform the services required by the contract in a satisfactory manner.

(e) Reduction of indebtedness. (1) In return for the individual's agreement to perform hours of services totaling not more than 40 times the number of weeks in the contract, VA will reduce the eligible person's outstanding indebtedness by an amount equal to the higher of--
(i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the individual works; or
(ii) The hourly minimum wage under comparable law of the State in which the services are performed times the number of hours the individual works.
(2) VA will reduce the individual's debt by the amount of the money earned for the performance of work-study services after the completion of each 50 hours of services (or in the case of any remaining hours required by the contract, the amount for those hours).

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(f) Suspension of collections by offset. Notwithstanding the provisions of § 1.912a, during the period covered by the work-study debt-liquidation contract with the individual, VA will ordinarily suspend the collection by offset of a debt described in paragraph (a)(1) of this section. However, the individual may voluntarily permit VA to collect part of the debt through offset against other benefits payable while the individual is performing work-study services. If the contract is terminated before its scheduled completion date, and the debt has not been liquidated, collection through offset against other benefits payable will resume on the date the contract terminates.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

(g) Payment for additional hours. (1) If an individual, without fault on his or her part, performs work-study services for which payment may not be authorized, including services performed after termination of the contract, VA will pay the individual at the applicable hourly minimum wage for such services as the Director of the VA field station of jurisdiction determines were satisfactorily performed.

(2) The Director of the VA field station of jurisdiction shall determine whether the individual was without fault. In making this decision he or she shall consider all evidence of record and any additional evidence which the individual wishes to submit.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

[62 FR 15400, 15401, April 1, 1997]

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STANDARDS FOR COMPROMISE OF CLAIMS

§ 1.930 Scope and application.
§ 1.931 Bases for compromise.
§ 1.932 Enforcement policy.
§ 1.933 Joint and several liability.
§ 1.934 Further review of compromise offers.
§ 1.935 Consideration of tax consequences to Government.

§ 1.936 Mutual releases of the debtor and VA.

§ 1.937 [Removed].
§ 1.938 [Removed].

§ 1.930 Scope and application.
(a) The standards set forth in Sec. Sec. 1.930 through 1.936 of this part apply to the compromise of debts pursuant to 31 U.S.C. 3711. VA may exercise such compromise authority when the amount of the debt due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General.
(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the Department of Justice (DOJ). If VA receives an offer to compromise any debt in excess of $100,000, VA should evaluate the compromise offer using the same factors as set forth in Sec. 1.931 of this part. If VA believes the offer has merit, it shall refer the debt to the Civil Division or other appropriate division in DOJ using a Claims Collection Litigation Report (CCLR). The referral shall include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if VA decides to reject a compromise offer.
(c) The $100,000 limit in paragraph (b) of this section does not apply to debts that arise out of participation in a VA loan program under Chapter 37 of Title 38 of the U.S. Code. VA has unlimited authority to compromise debts arising out of participation in a Chapter 37 loan program, regardless of the amount of the debt.


§ 1.931 Bases for compromise.
(a) VA may compromise a debt if it cannot collect the full amount because:
(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;
(2) VA is unable to collect the debt in full within a reasonable time by enforced collection proceedings;
(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or
(4) There is significant doubt concerning VA's ability to prove its case in court.
(b) In determining the debtor's inability to pay, VA will consider relevant factors such as the following:
(1) Age and health of the debtor;
(2) Present and potential income;
(3) Inheritance prospects;
(4) The possibility that assets have been concealed or improperly transferred by the debtor; and
(5) The availability of assets or income that may be realized by enforced collection proceedings.
(c) VA will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. VA should consider the applicable exemptions available to the debtor under State and Federal law in determining the ability to enforce collection. VA also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the ability to enforce collection. A compromise effected under this section should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.
(d) If there is significant doubt concerning VA's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for VA's claim. In determining the risks involved in litigation, VA will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.
(e) VA may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, VA will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle.
(f) VA generally will not accept compromises payable in installments. If, however, payment of a compromise in installments is necessary, VA will obtain a legally enforceable written agreement providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated. Whenever possible, VA will also obtain security for repayment.
(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, VA will obtain a current financial statement from the debtor showing the debtor's assets, liabilities, income, and expenses. Agencies also may obtain credit reports or other financial information to assess compromise offers.
§ 1.932 Enforcement policy.
VA may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if VA's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by VA's acceptance of the sum to be agreed upon.

§ 1.933 Joint and several liability.
(a) When two or more debtors are jointly and severally liable, VA will pursue collection activity against all debtors, as appropriate. VA will not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.
(b) VA will ensure that a compromise agreement with one debtor does not release VA's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 1.934 Further review of compromise offers.
If VA is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within its delegated compromise authority, it may refer the offer to VA General Counsel or Regional Counsel or to the Civil Division or other appropriate division in the Department of Justice (DOJ), using a Claims Collection Litigation Report (CCLR) accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to the agency with instructions or advice.

§ 1.935 Consideration of tax consequences to the Government.
In negotiating a compromise, VA will consider the tax consequences to the Government. In particular, VA will consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

§ 1.936 Mutual releases of the debtor and VA.
In all appropriate instances, a compromise that is accepted by VA shall be implemented by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount, and VA and its officials, past and present, are released and discharged from any and all claims and causes of action that the debtor may have arising from the same transaction. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against VA and its officials related to the transaction giving rise to the compromised debt.


§ 1.937 [Removed].

§ 1.938 [Removed].
STANDARDS FOR SUSPENDING OR TERMINATING COLLECTION

§ 1.940 Scope and application.
§ 1.941 Suspension of collection activity.
§ 1.942 Termination of collection activity.
§ 1.943 Exception to termination.
§ 1.944 Discharge of indebtedness; reporting requirements.

§ 1.940 Scope and application.
(a) The standards set forth in §§1.940 through 1.944 apply to the suspension or termination of collection activity pursuant to 31 U.S.C. 3711 on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to the Department of Justice (DOJ) for litigation, VA may suspend or terminate collection under this part with respect to the debt.
(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If VA believes that suspension or termination of any debt in excess of $100,000 may be appropriate, it shall refer the debt to the Civil Division or other appropriate division in DOJ, using the Claims Collection Litigation Report (CCLR). The referral should specify the reasons for VA's recommendation. If, prior to referral to DOJ, VA determines that a debt is plainly erroneous or clearly without legal merit, VA may terminate collection activity regardless of the amount involved without obtaining DOJ concurrence.

§ 1.941 Suspension of collection activity.
(a) VA may suspend collection activity on a debt when:
(1) It cannot locate the debtor;
(2) The debtor's financial condition is expected to improve; or
(3) The debtor has requested a waiver or review of the debt.
(b) Based on the current financial condition of the debtor, VA may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:
(1) The applicable statute of limitations has not expired; or
(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, and with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or
(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

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(c) Collection action may also be suspended, in accordance with §§ 1.911, 1.911a, 1.912, and 1.912a, pending VA action on requests for administrative review of the existence or amount of the debt or a request for waiver of collection of the debt. However, collection action will be resumed once VA issues an initial decision on the administrative review or waiver request.

(d) When VA learns that a bankruptcy petition has been filed with respect to a debtor, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless VA can clearly establish that the automatic stay does not apply, has been lifted, or is no longer in effect. VA shall seek legal advice immediately from either the VA General Counsel or Regional Counsel and, if legally permitted, take the necessary steps to ensure that no funds or money are paid by VA to the debtor until relief from the automatic stay is obtained.


§ 1.942 Termination of collection activity.

Discussion and Analysis in the Veterans Benefits Manual

Termination of collection activity involves a final determination. Collection activity may be terminated on cases previously suspended. The Department of Veterans Affairs may terminate collection activity and consider closing the agency file on a claim which meets any one of the following standards:

(a) Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that VA cannot collect or enforce collection of any significant amount from the debtor, having due regard for the judicial remedies available to the agency, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, shall be considered: Age and health of the debtor, present and potential income, inheritance prospects, the possibility that assets have been concealed or improperly transferred by the debtor, the availability of assets or income which may be realized by means of enforced collection proceedings.

(b) Inability to locate debtor. The debtor cannot be located, no security remains to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote.

(c) Death of debtor. The debtor is determined to be deceased and the Government has no prospect of collection from his/her estate.

(d) Cost will exceed recovery. The cost of further collection effort is likely to exceed the amount recoverable.

(e) Claim legally without merit. Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(f) Claim cannot be substantiated by evidence. VA will terminate collection action on once asserted claims because of lack of evidence or unavailability of witnesses only in cases where efforts to induce voluntary payment are unsuccessful.

(g) Discharge in bankruptcy. Generally, VA shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. VA may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive
the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge.

(h) Before terminating collection activity, VA should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude VA from retaining a record of the account for purposes of:

1. Selling the debt, if the Secretary of the Treasury determines that such sale is in the best interests of the United States;
2. Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;
3. Offsetting against future income or assets not available at the time of termination of collection activity; or
4. Screening future applicants for prior indebtedness.


§ 1.943 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, VA may refer debts for litigation even though termination of collection activity may otherwise be appropriate.


(31 U.S.C. 3711)

§ 1.944 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), VA shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to Treasury or Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under §§ 1.940 through 1.943 and is governed by the Internal Revenue Code (see 26 U.S.C. 6050P). When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in §§ 1.900 through 1.953. When VA discharges a debt in full or in part, further collection action is prohibited. Therefore, VA should make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, VA must terminate debt collection action.

(b) Upon discharge of an indebtedness, VA must report the discharge to the Internal Revenue Service (IRS) in accordance with the requirements of 26 U.S.C. 6050P and 26
CFR 1.6050P-1. VA may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on VA's behalf.

(c) When discharging a debt, VA must request that any liens of record securing the debt be released.

(d) 31 U.S.C. 3711(i)(2) requires agencies to sell a delinquent nontax debt upon termination of collection action if the Secretary of the Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), VA may not discharge a debt until the requirements of § 3711(i)(2) have been met. (Authority: 31 U.S.C. 3711; 38 U.S.C. 501).

§ 1.950 Prompt referral.
§ 1.951 Claims Collection Litigation Report (CCLR).
§ 1.952 Preservation of evidence.
§ 1.953 Minimum amount of referrals to the Department of Justice.
§ 1.954 [Removed].

§ 1.950 Prompt referral.
(a) VA shall promptly refer debts to Department of Justice (DOJ) for litigation where aggressive collection activity has been taken in accordance with §§1.900 through 1.953, and such debts cannot be compromised, or on which collection activity cannot be suspended or terminated, in accordance with §1.930 through 1.936 and §1.940 through 1.944. Debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and other late payment charges, shall be referred to the Civil Division or other division responsible for litigating such debts at DOJ. Debts for which the principal amount is $1,000,000, or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, shall be referred to DOJ’s Nationwide Central Intake Facility as required by the Claims Collection Litigation Report (CCLR) instructions. Debts should be referred as early as possible, consistent with aggressive agency collection activity and the observance of the standards contained in §1.900 through 1.953, and, in any event, well within the period for initiating timely lawsuits against the debtors. VA shall make every effort to refer delinquent debts to DOJ for litigation within 1 year of the date such debts last became delinquent. In the case of guaranteed or insured loans, VA should make every effort to refer these delinquent debts to DOJ for litigation within 1 year from the date the loan was presented to VA for payment or reinsurance.
(b) DOJ has exclusive jurisdiction over the debts referred to it pursuant to this section. VA shall immediately terminate the use of any administrative collection activities to collect a debt at the time of the referral of that debt to DOJ. VA should advise DOJ of the collection activities that have been utilized to date, and their result. VA shall refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to DOJ. VA shall immediately notify DOJ of any payments credited to the debtor's account after referral of a debt under this section. DOJ shall notify VA, in a timely manner, of any payments it receives from the debtor.
[Revised 69 FR 62188, Oct. 25, 2004]
(31 U.S.C. 3711)

§ 1.951 Claims Collection Litigation Report (CCLR).
(a) Unless excepted by the Department of Justice (DOJ), VA shall complete the CCLR, accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. VA shall complete all of the sections of the CCLR appropriate to each claim as required by the CCLR instructions and furnish such other information as may be required in specific cases.
(b) VA shall indicate clearly on the CCLR the actions it wishes DOJ to take with respect to the referred claim.
(c) VA shall also use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate agency collection activity.

[Revised 69 FR 62188, Oct. 25, 2004]
(31 U.S.C. 3711)

§ 1.952 Preservation of evidence.
VA must take care to preserve all files and records that may be needed by the Department of Justice (DOJ) to prove its claims in court. VA ordinarily should include certified copies of the documents that form the basis for the claim when referring such claims to DOJ for litigation. VA shall provide originals of such documents immediately upon request by DOJ.

[Revised 69 FR 62188, Oct. 25, 2004]
(31 U.S.C. 3711)

§ 1.953 Minimum amount of referrals to the Department of Justice.
(a) Except as otherwise provided in paragraphs (b) and (c) of this section, VA shall not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other minimum amount as the Attorney General shall from time to time prescribe. The Department of Justice (DOJ) shall promptly notify referring agencies if the Attorney General changes this minimum amount.
(b) VA shall not refer claims of less than the minimum amount prescribed by the Attorney General unless:
(1) Litigation to collect such smaller claims is important to ensure compliance with VA's policies or programs;
(2) The claim is being referred solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to VA for enforcement; or
(3) The debtor has the clear ability to pay the claim and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.
(c) VA should consult with the Financial Litigation Staff of the Executive Office for United States Attorneys, in DOJ, prior to referring claims valued at less than the minimum amount.

[Revised 69 FR 62188, Oct. 25, 2004]
(31 U.S.C. 3711)

§ 1.954 [Removed].
§ 1.955 Regional office Committees on Waivers and Compromises.
§ 1.956 Jurisdiction.
§ 1.957 Committee authority.
§ 1.958 Finality of decisions.
§ 1.959 Records and certificates.
§ 1.960 Legal and technical assistance.
§ 1.961 Releases.
§ 1.962 Waiver of overpayments.
§ 1.963 Waiver; other than loan guaranty.
§ 1.963a Waiver; erroneous payment of pay and allowances.
§ 1.964 Waiver; loan guaranty.
§ 1.965 Application of standard.
§ 1.966 Scope of waiver decisions.
§ 1.967 Refunds.
§ 1.968 [Reserved]
§ 1.969 Revision of waiver decisions.
§ 1.970 Standards for compromise.

§ 1.955 Regional office Committees on Waivers and Compromises.
(a) Delegation of authority and establishment. (1) Sections 1.955 et seq. are issued to implement the authority for waiver consideration found in 38 U.S.C. 5302 and 5 U.S.C. 5584 and the compromise authority found 38 U.S.C. 3720(a) and 31 U.S.C. 3711. The duties, delegations of authority, and all actions required of the Committees on Waivers and Compromises are to be accomplished under the direction of, and authority vested in, the Director of the regional office. Delegations of authority and limitations for waiver actions under 5 U.S.C. 5584 are set forth in § 1.963a of this part.
(2) There is established in each regional office, a Committee on Waivers and Compromises to perform the duties and assume the responsibilities delegated by §§ 1.956 and 1.957. The term regional office, as used in § 1.955 et seq., includes VA Medical and Regional Office Centers and VA Centers where such are established.
(b) Selection. The Director shall designate the employees to serve as Chairperson, members, and alternates. Except upon specific authorization of the Under Secretary for Benefits, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.
(c) Control and staff. The administrative control of each Committee on Waivers and Compromises is the responsibility of the station’s Fiscal Officer. However, the station Director has the authority to reassign the administrative control function to another station activity, rather than the Fiscal Officer, whenever the Director determines that such reassignment is appropriate. The quality control of the professional and clerical staff of the Committee is the responsibility of the Chairperson.
(d) Overall control. The Assistant Secretary for Management is delegated complete management authority, including planning, policy formulation, control, coordination, supervision, and evaluation of Committee operations.
(e) Committee composition. (1) The Committee shall consist of a Chairperson and Alternate Chairperson and as many Committee members and alternate members as the Director may appoint. Members and alternates shall be selected so that in each of the debt claim areas (i.e., compensation, pension, education, insurance, loan guaranty, etc.) there are members and alternates with special competence and familiarity with the program area.

(2) When a claim is properly referred to the Committee for either waiver consideration or the consideration of a compromise offer, the Chairperson shall designate a panel from the available Committee members to consider the waiver request or compromise offer. If the debt for which the waiver request or compromise offer is made is $20,000 or less (exclusive of interest and administrative costs), the Chairperson will assign one Committee member as the panel. This one Committee member should have experience in the program area where the debt is located. The single panel member's decision shall stand as the decision of the Committee. If the debt for which the waiver request or compromise offer is made is more than $20,000 (exclusive of interest and administrative costs), the Chairperson shall assign two Committee members. One of the two members should be knowledgeable in the program area where the debt arose. If the two member panel cannot reach a unanimous decision, the Chairperson shall assign a third member of the Committee to the panel, or assign the case to three new members, and the majority vote shall determine the Committee decision.

(3) The assignment of a one or two member panel as described in paragraph (e)(2) of this section is applicable if the debtor files a Notice of Disagreement with a Committee decision to deny waiver. That is, if the Notice of Disagreement is filed with a decision by a one member panel to deny waiver of collection of a debt of $20,000 or less, then the Notice of Disagreement should also be assigned to one panel member. Likewise, a Notice of Disagreement filed with a decision by a two or three member panel to deny waiver of collection of a debt of more than $20,000 should also be assigned to a Committee panel of two members (three if these two members cannot agree). However, a Chairperson must assign the Notice of Disagreement to a different one, two, or three member panel than the panel that made the original Committee decision that is now the subject of the Notice of Disagreement.


§ 1.956 Jurisdiction.

(a) The regional office Committees are authorized, except as to determinations under § 2.6(e)(4)(i) of this chapter where applicable, to consider and determine as limited in §§ 1.955 et seq., settlement, compromise and/or waiver concerning the following debts and overpayments:

(1) Arising out of operations of the Veterans Benefits Administration:

(i) Overpayment or erroneous payments of pension, compensation, dependency and indemnity compensation, burial allowances, plot allowance, subsistence allowance, education (includes debts from work study and education loan defaults as well as from

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other overpayments of educational assistance benefits) or insurance benefits, clothing allowance and automobile or other conveyance and adaptive equipment allowances.

(ii) Debts arising out of the loan program under 38 U.S.C. ch. 37 after liquidation of security, if any.

(iii) Such other debts as may be specifically designated by the Under Secretary for Benefits.

(2) Arising out of operations of the Veterans Health Administration:

(i) Debts resulting from services furnished in error (§ 17.101(a) of this chapter).

(ii) Debts resulting from services furnished in a medical emergency (§ 17.101(b) of this chapter).

(iii) Other claims arising in connection with transactions of the Veterans Health Administration (§ 17.103(c) of this chapter).

(iv) Fiscal officers at VA medical facilities are authorized to waive veterans' debts arising from medical care copayments (§ 17.105(c) of this chapter).

(3) Claims for erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees (5 U.S.C. 5584).

(b) The Under Secretary for Benefits may, at his or her discretion, assume original jurisdiction and establish an ad hoc Board to determine a particular issue arising within this section.


§ 1.957 Committee authority.

(a) Regional office committee. On matters covered in § 1.956, the regional office Committee is authorized to determine the following issues:

(1) Waivers. A decision may be rendered to grant or deny waiver of collection of a debt in the following debt categories:

(i) Loan guaranty program (38 U.S.C. 5302(b)). Committees may consider waiver of the indebtedness of a veteran or spouse resulting from: (A) The payment of a claim under the guaranty or insurance of loans, (B) the liquidation of direct loans, (C) the liquidation of loans acquired under § 36.4318, and (D) the liquidation of vendee accounts. The phrase veteran or spouse includes a veteran-borrower, veteran-transferee, a veteran-purchaser on a vendee account, a former spouse or surviving spouse of a veteran.

(ii) Other than loan guaranty program. (38 U.S.C. 5302(a))

(iii) Services erroneously furnished (§ 17.101(a)).

(iv) [Removed. See 60 FR 53275, 53276, Oct. 13, 1995.]

(2) Compromises -- (i) Loan program debts (38 U.S.C. 3720(a)). Accept or reject a compromise offer irrespective of the amount of the debt (loan program matters under 38 U.S.C. chapter 37 are unlimited as to amount).

(ii) Other than loan program debts (31 U.S.C. 3711).

(A) Accept or reject a compromise offer on a debt which exceeds $ 1,000 but which is not over $ 100,000 (both amounts exclusive of interest and other late payment charges).
(B) Accept or reject a compromise offer on a debt of a $ 1,000 or less, exclusive of interest and other late payment charges, which is not disposed of by the Chief, Fiscal activity, pursuant to paragraph (b) of this section.
(C) Reject a compromise offer on a debt which exceeds $ 100,000, exclusive of interest and other late payment charges.
(D) Recommend approval of a compromise offer on a debt which exceeds $ 100,000, exclusive of interest and other late payment charges. The authority to accept a compromise offer on such a debt rests solely within the jurisdiction of the Department of Justice. The Committee should evaluate a compromise offer on a debt in excess of $ 100,000, using the factors set forth in §§ 1.930 through 1.938. If the Committee believes that the compromise offer is advantageous to the government, then the Committee members shall so state this conclusion in a written memorandum of recommendation of approval to the Chairperson. This recommendation, along with a Claims Collection Litigation Report (CCLR) completed in accordance with § 1.951, will be referred to VA Central Office, Office of Financial Management (047G7), for submission to the Department of Justice for final approval.

(Authority: 31 U.S.C. 3711)

(3) [Removed. See 69 FR 62188, Oct. 25, 2004.]

(b) Chief of Fiscal activity. The Chief of the Fiscal activity at both VBA and VHA offices has the authority, as to debts within his/her jurisdiction, to:

(1) On other than loan program debts under 38 U.S.C. chapter 37, accept compromise offers of 50% or more of a total debt not in excess of $ 1,000, exclusive of interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(2) On other than loan program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of $ 1,000, exclusive of interest and other late payment charges, regardless of whether or not there has been a prior denial of waiver.

(3) On other than loan guaranty program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of $ 1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver.


§ 1.958 Finality of decisions.

A decision by the regional office Committee, operating within the scope of its authority, denying waiver of all or part of a debt arising out of participation in a VA benefit or home loan program, is subject to appeal in accordance with 38 CFR parts 19 and 20. A denial of waiver of an erroneous payment of pay and allowances is subject to appeal in accordance with Sec. 1.963a(a). There is no right of appeal from a decision rejecting a compromise offer.


§ 1.959 Records and certificates.
The Chairperson of the Committee shall execute or certify any documents pertaining to its proceedings. He/she will be responsible for maintaining needed records of the transactions of the Committee and preparation of any administrative or other reports which may be required.
[44 FR 59906, Oct. 17, 1979]

(38 U.S.C. 501)

§ 1.960 Legal and technical assistance.
Legal questions involving a determination under § 2.6(e)(4) of this chapter will be referred to the Regional Counsel for action in accordance with delegations of the General Counsel, unless there is an existence a General Counsel's opinion or an approved Regional Counsel's opinion dispositive of the controlling legal principle. As to matters not controlled by § 2.6(e)(4) of this chapter, the Chairperson of the regional office Committee or at his/her instance, a member, may seek and obtain advice from the Regional Counsel on legal matters within his/her jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office staff.

(38 U.S.C. 501)
[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 1.961 Releases.
On matters within its jurisdiction, the Committee may authorize the release of any right, title, claim, lien or demand, however acquired, against any person obligated on a loan guaranteed, insured, or made by the Department of Veterans Affairs under the provisions of 38 U.S.C. ch. 37, or on an acquired loan, or on a vendee account.
[39 FR 26400, July 19, 1974]


§ 1.962 Waiver of overpayments.
There shall be no collection of an overpayment, or any interest thereon, which results from participation in a benefit program administered under any law by VA when it is determined by a regional office Committee on Waivers and Compromises that collection would be against equity and good conscience. For the purpose of this regulation, the term overpayment refers only to those benefit payments made to a designated living payee or beneficiary in excess of the amount due or to which such payee or beneficiary is entitled. The death of an indebted payee, either prior to a request for waiver of the indebtedness or during Committee consideration of the waiver request, shall not preclude waiver consideration. There shall be no waiver consideration of an indebtedness that results from the receipt of a benefit payment by a non-payee who has no claim or entitlement to such payment.
(a) Waiver consideration is applicable in an indebtedness resulting from work study and education loan default, as well as indebtedness of a veteran-borrower, veteran transferee,
or indebted spouse of either, arising out of participation in the loan program administered under 38 U.S.C. ch. 37. Also subject to waiver consideration is an indebtedness which is the result of VA hospitalization, domiciliary care, or treatment of a veteran, either furnished in error or on the basis of tentative eligibility.

(b) In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim, action on a request for waiver will be deferred pending appropriate disposition of the matter. However, the existence of a prima facie case of fraud shall, nevertheless, entitle a claimant to an opportunity to make a rebuttal with countervailing evidence; similarly, the misrepresentation must be more than non-willful or mere inadvertence. The Committee may act on a request for waiver concerning such debts, after the Inspector General or the Regional Counsel has determined that prosecution is not indicated, or the Department of Justice has notified VA that the alleged fraud or misrepresentation does not warrant action by that department, or the Department of Justice or the appropriate United States Attorney, specifically authorized action on the request for waiver.


(38 U.S.C. 501)

(EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in paragraph (b), became effective Oct. 1, 1995.)

§ 1.963 Waiver; other than loan guaranty.

(a) General. Recovery of overpayments of any benefits made under laws administered by the Department of Veterans Affairs shall be Waived if recovery of the indebtedness from the payee who received such benefits would be against equity and good conscience.

(b) Application. A request for waiver of an indebtedness under this section shall only be considered:

1. If made within 2 years following the date of a notice of indebtedness issued on or before March 31, 1983, by the Department of Veterans Affairs to the debtor, or
2. Except as otherwise provided herein, if made within 180 days following the date of a notice of indebtedness issued on or after April 1, 1983, by the Department of Veterans Affairs to the debtor. The 180 day period may be extended if the individual requesting waiver demonstrated to the Chairperson of the Committee on Waivers and Compromises that, as a result of an error by either the Department of Veterans Affairs or the postal authorities, or due to other circumstances beyond the debtor's control, there was a delay in such individual's receipt of the notification of indebtedness beyond the time customarily required for mailing (including forwarding). If the requester does substantiate that there was such a delay in the receipt of the notice of indebtedness, the Chairperson shall direct that the 180 day period be computed from the date of the requester's actual receipt of the notice of indebtedness.


(38 U.S.C. 5302(a))
§ 1.963a Waiver; erroneous payment of pay and allowances.

(a) The provisions applicable to VA (including refunds) concerning waiver actions relating to erroneous payments to VA employees of pay and allowances, and travel, transportation, and relocation expenses and allowances, are set forth in 5 U.S.C. 5584. The members of Committees on Waivers and Compromises assigned to waiver actions under § 1.955 of this part are delegated all authority granted the Secretary under 5 U.S.C. 5584 to deny waiver or to grant waiver in whole or in part of any debt regardless of the amount of the indebtedness. Committee members also have exclusive authority to consider and render a decision on the appeal of a waiver denial or the granting of a partial waiver. However, the Chairperson of the Committee must assign the appeal to a different Committee member or members than the member or members who made the original decision that is now the subject of the appeal. The following are the only provisions of §§ 1.955 through 1.970 of this part applicable to waiver actions concerning erroneous payments of pay and allowances, and travel, transportation, and relocation expenses and allowances, under 5 U.S.C. 5584: §§ 1.955(a) through (e)(2), 1.956(a)(introductory text) and (a)(3), 1.959, 1.960, 1.963a, and 1.967(c).

(b) Waiver may be granted under this section and 5 U.S.C. 5584 when collection would be against equity and good conscience and not in the best interest of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or other person having an interest in obtaining a waiver of the claim, and waiver would not otherwise be inequitable. Generally, waiver is precluded when an employee receives a significant unexplained increase in pay or allowances, or otherwise knows, or reasonably should know, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard will depend upon the facts existing in each case.

(c) An application for waiver must be received within 3 years immediately following the date on which the erroneous payment was discovered.


§ 1.964 Waiver; loan guaranty.

ix Discussion and Analysis in the Veterans Benefits Manual

(a) General. Any indebtedness of a veteran or the indebtedness of the spouse shall be waived only when the following factors are determined to exist:

(1) Following default there was a loss of the property which constituted security for the loan guaranteed, insured or made under chapter 37 of title 38 United States Code;

(2) There is no indication of fraud, misrepresentation, or bad faith on the part of the person or persons having an interest in obtaining the waiver; and

(3) Collection of such indebtedness would be against equity and good conscience.

(b) Spouse. The waiver of a veteran's indebtedness shall inure to the spouse of such veteran insofar as concerns said indebtedness, unless the obligation of the spouse is specifically excepted. However, the waiver of the indebtedness of the veteran's spouse

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shall not inure to the benefit of the veteran unless specifically provided for in the waiver decision.

(c) Surviving spouse or former spouse. A surviving spouse of a veteran or the former spouse of a veteran may be granted a waiver of the indebtedness provided the requirements of paragraph (a) of this section are met.

(d) Preservation of Government rights. In cases in which it is determined that waiver may be granted, the action will take such form (covenant not to sue, or otherwise) as will preserve the rights of the Government against obligors other than the veteran or the spouse.

(e) Application. A request for waiver of an indebtedness under this section shall be made within one year after the date on which the debtor receives, by Certified Mail-Return Receipt Requested, written notice from VA of the indebtedness. If written notice of indebtedness is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

(Authority: 38 U.S.C. 5302(b))

(f) Exclusion. Except as otherwise provided in this section, the indebtedness of a nonveteran obligor under the loan program is excluded from waiver.


(38 U.S.C. 5302 (b) and (c))

§ 1.965 Application of standard.

*Discussion and Analysis in the Veterans Benefits Manual

(a) The standard "Equity and Good Conscience", will be applied when the facts and circumstances in a particular case indicate a need for reasonableness and moderation in the exercise of the Government's rights. The decision reached should not be unduly favorable or adverse to either side. The phrase equity and good conscience means arriving at a fair decision between the obligor and the Government. In making this determination, consideration will be given to the following elements, which are not intended to be all inclusive:

(1) Fault of debtor. Where actions of the debtor contribute to creation of the debt.
(2) Balancing of faults. Weighing fault of debtor against Department of Veterans Affairs fault.
(3) Undue hardship. Whether collection would deprive debtor or family of basic necessities.
(4) Defeat the purpose. Whether withholding of benefits or recovery would nullify the objective for which benefits were intended.
(5) Unjust enrichment. Failure to make restitution would result in unfair gain to the debtor.
(6) Changing position to one's detriment. Reliance on Department of Veterans Affairs benefits results in relinquishment of a valuable right or incurrence of a legal obligation.

(b) In applying this single standard for all areas of indebtedness, the following elements will be considered, any indication of which, if found, will preclude the granting of waiver:

(1) Fraud or misrepresentation of a material fact (see § 1.962(b)).
(2) Bad faith. This term generally describes unfair or deceptive dealing by one who seeks to gain thereby at another's expense. Thus, a debtor's conduct in connection with a debt arising from participation in a VA benefits/services program exhibits bad faith if such conduct, although not undertaken with actual fraudulent intent, is undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the government.

(3) [Removed. See 69 FR 62188, Oct. 25, 2004]

§ 1.966 Scope of waiver decisions.

(a) Decisions will be based on the evidence of record. A hearing may be held at the request of the claimant or his/her representative. No expenses incurred by a claimant, his representative, or any witness incident to a hearing will be paid by the Department of Veterans Affairs.

(b) A regional office Committee may:

(1) Waive recovery as to certain persons and decline to waive as to other persons whose claims are based on the same veteran's service.

(2) Waive or decline to waive recovery from specific benefits or sources, except that:

(i) There shall be no waiver of recovery out of insurance of an indebtedness secured thereby; i.e., an insurance overpayment to an insured. However, recovery may be waived of any or all of such indebtedness out of benefits other than insurance then or thereafter payable to the insured.


§ 1.967 Refunds.

(a) Except as provided in paragraph (c) of this section, any portion of an indebtedness resulting from participation in benefits programs administered by the Department of Veterans Affairs which has been recovered by the U.S. Government from the debtor may be considered for waiver, provided the debtor requests waiver in accordance with the time limits of § 1.963(b). If collection of an indebtedness is waived as to the debtor, such portions of the indebtedness previously collected by the Department of Veterans Affairs will be refunded. In the event that waiver of collection is granted for either an education, loan guaranty, or direct loan debt, there will be a reduction in the debtor's entitlement to future benefits in the program in which the debt originated.

(b) The Department of Veterans Affairs may not waive collection of the indebtedness of an educational institution found liable under 38 U.S.C. 3685. Waiver of collection of educational benefit overpayments from all or a portion of the eligible persons attending an educational institution which has been found liable under 38 U.S.C. 3685 shall not relieve the institution of its assessed liability. (See 38 CFR 21.4009(f)).
(c) The regulatory provisions concerning refunds of indebtedness collected by the Department of Veterans Affairs arising from erroneous payments of pay and allowances and travel, transportation, and relocation expenses and allowances are set forth in 4 CFR Parts 91 and 92.
(d) Refund of the entire amount collected may not be made when only a part of the debt is waived or when collection of the balance of a loan guaranty indebtedness by the Department of Veterans Affairs from obligors, other than a husband or wife of the person requesting waiver, will be adversely affected. Only where the amount collected exceeds the balance of the indebtedness still in existence will a refund be made in the amount of the difference between the two. Otherwise, refunds will be made in accordance with paragraph (a) of this section.


§ 1.968 [Reserved]

§ 1.969 Revision of waiver decisions.
(a) Jurisdiction. A decision involving waiver may be reversed or modified on the basis of new and material evidence, fraud, a change in law or interpretation of law specifically stated in a Department of Veterans Affairs issue, or clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered by the same or any other regional office Committee.
(b) Finality of decisions. Except as provided in paragraph (a) of this section, a decision involving waiver rendered by the Committee having jurisdiction is final, subject to the provisions of:
(1) Sections 3.104(a), 19.153 and 19.154 of this chapter as to finality of decisions;
(2) Section 3.105 (a) and (b) of this chapter as to revision of decisions, except that the Central Office staff may postaudit or make an administrative review of any decision of a regional office Committee;
(3) Sections 3.103, 19.113 and 19.114 of this chapter as to notice of disagreement and the right of appeal;
(4) Section 19.124 of this chapter as to the filing of administrative appeals and the time limits for filing such appeals.
(c) Difference of opinion. Where reversal or amendment of a decision involving waiver is authorized under § 3.105(b) of this chapter because of a difference of opinion, the effective date of waiver will be governed by the principle contained in § 3.400(h) of this chapter.

[44 FR 59907, Oct. 17, 1979]

(38 U.S.C. 501)

§ 1.970 Standards for compromise.
Decisions of the Committee respecting acceptance or rejection of a compromise offer shall be in conformity with the standards in §§ 1.900 through 1.936. In loan guaranty cases the offer of a veteran or other obligor to effect a compromise must relate to an indebtedness established after the liquidation of the security, if any, and shall be reviewed by the Committee. An offer to effect a compromise may be accepted if it is deemed advantageous to the Government. A decision on an offer of compromise may be revised
or modified on the basis of any information which would warrant a change in the original decision.
SALARY OFFSET PROVISIONS

§ 1.980 Scope.
§ 1.981 Definitions.
§ 1.982 Salary offsets of debts involving benefits under the laws administered by VA.
§ 1.983 Notice requirements before salary offsets of debts not involving benefits under the laws administered by VA.
§ 1.984 Request for a hearing.
§ 1.985 Form, notice of, and conduct of hearing.
§ 1.986 Result if employee fails to meet deadlines.
§ 1.987 Review by the hearing official or administrative law judge.
§ 1.988 Written decision following a hearing requested under § 1.984.
§ 1.989 Review of VA records related to the debt.
§ 1.990 Written agreement to repay debt as alternative to salary offset.
§ 1.991 Procedures for salary offset: when deductions may begin.
§ 1.992 Procedures for salary offset.
§ 1.993 Non-waiver of rights.
§ 1.994 Refunds.
§ 1.995 Requesting recover through centralized administrative offset.

§ 1.980 Scope.
(a) In accordance with 5 CFR part 550, subpart K, the provisions set forth in Sec. Sec. 1.980 through 1.995 implement VA's authority for the use of salary offset to satisfy certain debts owed to VA.
(b) These regulations apply to offsets from the salaries of current employees of VA, or any other agency, who owe debts to VA. Offsets by VA from salaries of current VA employees who owe debts to other agencies shall be processed in accordance with procedures set forth in 5 CFR part 550, subpart K.
(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended, the Social Security Act, the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108) or prohibited by another statute.
(d) These regulations do not preclude an employee from requesting waiver of an overpayment under 38 U.S.C. 5302, 5 U.S.C. 5584, or any other similar provision of law, or in any way questioning the amount or validity of a debt not involving benefits under the laws administered by VA by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by that office.
(e) These regulations do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.
(f) These regulations do not apply to a routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon
thereafter as practicable, the individual is provided written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(g) These regulations do not apply to any adjustment to collect a debt amounting to $50 or less, if at the time of such adjustment, or as soon thereafter as practicable, the individual is provided with written notice of the nature and amount of the adjustment and a point of contact for contesting such adjustment.

(h) These regulations do not preclude the compromise, suspension, or termination of collection action under the Federal Claims Collection Standards (FCCS) (31 CFR parts 900-904) and VA regulations 38 CFR 1.930 through 1.944.

(i) The procedures and requirements of these regulations do not apply to salary offset used to recoup a Federal employee's debt where a judgment has been obtained against the employee for the debt.


(5 U.S.C. 5514)

§ 1.981 Definitions.

(a) Agency means:
1. An executive agency as defined in 5 U.S.C. 105, including the U.S. Postal Service, and the U.S. Postal Rate Commission, and
3. An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;
4. An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and
5. Other independent establishments that are entities of the Federal Government.

(b) Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(c) Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Excluded from this definition are deductions described in 5 CFR 581.105(b) through (f).

(d) Employee means a current employee of VA or other Federal agency including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(e) Salary offset means an attempt to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(f) Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to VA or another Federal agency as permitted or required by 5 U.S.C. 5584 or 38 U.S.C. 5302, or other similar statutes.
(g) Extreme hardship to an employee means an employee's inability to provide himself or herself and his or her dependents with the necessities of life such as food, housing, clothing, transportation, and medical care.

[52 FR 1905, Jan. 16, 1987; 52 FR 23824, June 25, 1987]

(5 U.S.C. 5514)

§ 1.982 Salary offsets of debts involving benefits under the laws administered by VA.

(a) VA will not collect a debt involving benefits under the laws administered by VA by salary offset unless the Secretary or appropriate designee first provides the employee with a minimum of 30 calendar days written notice.

(b) If the employee has not previously appealed the amount or existence of the debt under 38 CFR parts 19 and 20 and the time for pursuing such an appeal has not expired (§ 20.302), the Secretary or appropriate designee will provide the employee with written notice of the debt. The written notice will state that the employee may appeal the amount and existence of the debt in accordance with the procedures set forth in 38 CFR parts 19 and 20 and will contain the determination and information required by § 1.983(b)(1) through (5), (7), (9), (10), and (12) through (14). The notice will also state that the employee may request a hearing on the offset schedule under the procedures set forth in § 1.984 and such a request will stay the commencement of salary offset.

(c) If the employee previously appealed the amount or existence of the debt and the Board of Veterans Appeals decided the appeal on the merits or if the employee failed to pursue an appeal within the time provided by regulations, the Secretary or designee shall provide the employee with written notice prior to collecting the debt by salary offset. The notice will state:

1. The determinations and information required by § 1.983(b)(1)-(5), (7), and (12)-(14);
2. That the employee's appeal of the existence or amount of the debt was determined on the merits or that the employee failed to pursue an appeal within the time provided, and VA's decision is final except as otherwise provided in agency regulations;
3. That the employee may request a waiver of the debt pursuant to 38 CFR 1.911(c)(2) subject to the time limits of 38 U.S.C. 5302;
4. That the employee may request an oral or paper hearing on the offset schedule and receive a decision within 60 days of such request under the procedures and time limit set forth in § 1.984 and that such a request will stay the commencement of salary offset.

(d) If the employee has appealed the existence or amount of the debt and the Board of Veterans Appeals has not decided the appeal on the merits, collection of the debt by salary offset will be suspended until the appeal is decided or the employee ceases to pursue the appeal.


(5 U.S.C. 5514)

§ 1.983 Notice requirements before salary offsets of debts not involving benefits under the laws administered by VA.
(a) For a debt not involving benefits under the laws administered by VA, the Secretary or designee will review the records relating to the debt to assure that it is owed prior to providing the employee with a notice of the debt.

(b) Except as provided in § 1.980(e), salary offset of debts not involving benefits under the laws administered by VA will not be made unless the Secretary or designee first provides the employee with a minimum of 30 calendar days written notice. This notice will state:

1. The Secretary or designee's determination that a debt is owed;
2. The amount of the debt owed and the facts giving rise to the debt;
3. The Secretary or designee's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest and associated costs are paid in full;
4. The amount, frequency, approximate beginning date, and duration of the intended deductions;
5. An explanation of VA's requirements concerning interest, administrative costs, and penalties;
6. The employee's right to inspect and copy VA records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;
7. The employee's right to enter into a written agreement with the Secretary or designee for a repayment schedule differing from that proposed by the Secretary or designee, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary or designee;
8. The VA employee's right to request an oral or paper hearing on the Secretary or appropriate designee's determination of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a request is filed by the employee as prescribed by the Secretary. A VA Board of Contract Appeals Administrative Judge or Hearing Examiner shall conduct such a hearing for any VA employee. A VA Board of Contract Appeals Administrative Judge or Hearing Examiner, or any other VA hearing official, may also conduct an oral or paper hearing at the request of a non-VA employee on the determination by an appropriately designated official of the employing agency of the existence or amount of the debt, or the percentage of disposable pay to be deducted each pay period, so long as a hearing request is filed by the non-VA employee as prescribed by the employing agency;
9. The method and time period for requesting a hearing;
10. That the timely filing of a request for a hearing (oral or paper) will stay the commencement of salary offset;
11. That a final decision after the hearing will be issued at the earliest practical date, but no later than 60 calendar days after the filing of the request for the hearing, unless the employee requests and the hearing officer grants a delay in the proceedings;
12. That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:
   (i) Disciplinary procedures appropriate under 5 U.S.C. ch. 75, 5 CFR part 752, or any other applicable statutes or regulations;
   (ii) Penalties under the False Claims Act, 31 U.S.C. 3729-3731, or any other applicable statutory authority; or
(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority.

(13) The employee's right, if applicable, to request waiver under 5 U.S.C. 5584 and 38 CFR 1.963a and any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(14) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.


(5 U.S.C. 5514)

§ 1.984 Request for a hearing.

(a) Except as provided in paragraph (b) of this section and in § 1.982, an employee wishing a hearing on the existence or amount of the debt or on the proposed offset schedule must send such a request to the office which sent the notice of the debt. The employee must also specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence. The request must be received by the office which sent the notice of the debt not later than 30 calendar days from the date of the notice.

(b) If the employee files a request for a hearing after the expiration of the 30-day period provided for in paragraph (a) of this section, VA may accept the request if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive the written notice of the filing deadline (unless the employee has actual notice of the filing deadline).


(5 U.S.C. 5514)

§ 1.985 Form, notice of, and conduct of hearing.

(a) After an employee requests a hearing, the hearing official or administrative law judge shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location for the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit his or her position and arguments in writing to the hearing official or administrative law judge by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit this information.

(b) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official or administrative law judge determines that the matter cannot be resolved by review of documentary evidence, for example, when an issue of credibility or veracity is involved. If a determination is made to provide an oral hearing, the hearing official or administrative law judge may offer the employee the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official or administrative law judge declines to offer a telephone conference call hearing, the employee shall be provided an oral hearing permitting the personal appearance of the employee, his or her personal representative, and witnesses. A record or transcript of every oral hearing shall be made. Witnesses shall testify under oath or affirmation. VA
§ 1.986 Result if employee fails to meet deadlines.
An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule, if the employee:
(a) Fails to file a request for a hearing as prescribed in §§ 1.982, 1.984, or 19.1 through 19.200, whichever is applicable, unless such failure is excused as provided in § 1.984(b); or
(b) Fails to appear at an oral hearing of which he or she had been notified unless the administrative law judge or hearing official determines that failure to appear was due to circumstances beyond the employee's control.

(5 U.S.C. 5514)

§ 1.987 Review by the hearing official or administrative law judge.
(a) The hearing official or administrative law judge shall uphold VA's determination of the existence and amount of the debt unless determined to be erroneous by a preponderance of the evidence.
(b) The hearing official or administrative law judge shall uphold VA's offset schedule unless the schedule would result in extreme hardship to the employee.
[52 FR 1905, Jan. 16, 1987; 52 FR 23824, June 25, 1987]

(5 U.S.C. 5514)

§ 1.988 Written decision following a hearing requested under § 1.984.
(a) The hearing official or administrative law judge must issue a written decision not later than 60 days after the employee files a request for the hearing.
(b) Written decisions provided after a hearing requested under § 1.984 will include:
(1) A statement of the facts presented to support the nature and origin of the alleged debt;
(2) The hearing official or administrative law judge's analysis, findings and conclusions concerning as applicable:
   (i) The employee's or VA's grounds;
   (ii) The amount and validity of the alleged debt; and
   (iii) The repayment schedule.

(c) The decision in a case where a paper hearing was provided shall be based upon a review of the written record. The decision in a case where an oral hearing was provided shall be based upon the hearing and the written record.

(5 U.S.C. 5514)

§ 1.989 Review of VA records related to the debt.
(a) Notification by employee. An employee who intends to inspect or copy VA records related to the debt as permitted by a notice provided under § 1.983 must send a letter to the office which sent the notice of the debt stating his or her intention. The letter must be received by that office within 30 calendar days of the date of the notice.
(b) VA response. In response to timely notice submitted by the debtor as described in paragraph (a) of this section, VA will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(5 U.S.C. 5514)

§ 1.990 Written agreement to repay debt as alternative to salary offset.
(a) Notification by employee. The employee may propose, in response to a notice under § 1.983, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the office which sent the notice of the debt within 30 calendar days of the date of the notice.
(b) VA response. In response to timely notice by the debtor as described in paragraph (a) of this section, VA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within VA's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, VA will balance its interest in collecting the debt against the hardship to the employee. VA will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in extreme hardship.

(5 U.S.C. 5514)

§ 1.991 Procedures for salary offset: when deductions may begin.
(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the notice to collect from the employee's current pay as modified by a written decision issued under §§ 1.982 or Sec. 1.988, or parts 19 and 20 or by written agreement between the employee and the VA under § 1.990.
(b) If the employee filed a request for a hearing as provided by § 1.984 before the expiration of the period provided for in that section, deductions will not begin until after the hearing official or administrative law judge has provided the employee with a hearing, and has rendered a final written decision.
(c) If the employee failed to file a timely request for a hearing, deductions will begin on the date specified in the notice of intention to offset, unless a hearing is granted pursuant to § 1.984(b).
(d) If an employee retires, resigns, or his or her employment ends before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to procedures for administrative offset (see 5 CFR 831.1801 through 831.1808, 31 CFR 901.3, and 38 CFR 1.912).


(5 U.S.C. 5514)

§ 1.992 Procedures for salary offset.
(a) Types of collection. A debt will be collected in a lump-sum or in installments. Collection will be in a lump-sum unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of the employee's disposable pay. In these cases, deduction will be by installments.
(b) Installment deductions. (1) A debt to be collected in installments will be deducted at officially established pay intervals from an employee's current pay account unless the employee and the Secretary agree to alternative arrangements for repayment. The alternative arrangement must be in writing and signed by both the employee and Secretary or designee.
(2) Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be acceptable only in the most unusual circumstances.
(c) Imposition of interest, penalties, and administrative costs. Interest, penalties, and administrative costs shall be charged in accordance with 31 CFR 901.9 and 38 CFR 1.915.


§ 1.993 Non-waiver of rights.
So long as there are not statutory or contractual provisions to the contrary, an employee's involuntary payment (of all or a portion of a debt) under these regulations will not be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

(5 U.S.C. 5514)

§ 1.994 Refunds.
VA will refund promptly to the appropriate individual amounts offset under these regulations when:
(a) A debt is waived or otherwise found not owed the United States (unless expressly prohibited by statute or regulation); or
(b) VA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

(5 U.S.C. 5514)

§ 1.995 Requesting recover through centralized administrative offset.

(a) Under 31 U.S.C. 3716, VA and other creditor agencies must notify Treasury of all debts over 180 days delinquent so that recovery of such debts may be made by centralized administrative offset. This includes those debts that VA and other agencies seek from the pay account of an employee of another Federal agency via salary offset. Treasury and other disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payment will be offset to satisfy the debt in whole or part. (b) Prior to submitting a debt to Treasury for the purpose of collection by offset, including salary offset, VA shall provide written certification to Treasury that:
(1) The debt is past due and legally enforceable in the amount submitted to Treasury and that VA will ensure that any subsequent collections are credited to the debt and that Treasury shall be notified of such;
(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred to Treasury for offset within 10 years after VA's right of action accrues;
(3) VA has complied with the provisions of 31 U.S.C. 3716 and 38 CFR 1.912 and 1.912a including, but not limited to, those provisions requiring that VA provide the debtor with applicable notices and opportunities for a review of the debt; and
(4) VA has complied with the provisions of 5 U.S.C. 5514 (salary offset) and 38 CFR 1.980 through 1.994 including, but not limited to, those provisions requiring that VA provide the debtor with applicable notices and opportunities for a hearing.
(c) Specific procedures for notifying Treasury of debts for purposes of collection by centralized administrative offset are contained in the 31 CFR 285.7. VA and other creditor agencies may notify Treasury of debts that have been delinquent for 180 days or less, including debts that VA and other creditor agencies seek to recover from the pay of an employee via salary offset.
[69 FR 62188, Oct. 25, 2004]
PART 2 -- DELEGATIONS OF AUTHORITY

§ 2.1 General provisions.
§ 2.2 Delegation of authority to employees to issue subpoenas, etc.
§ 2.3 Delegation of authority to employees to take affidavits, to administer oaths, etc.
§ 2.4 Delegation of authority to order paid advertising for use in recruitment.
§ 2.5 Delegation of authority to certify copies of documents, records, or papers in Department of Veterans Affairs files.
§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).
§ 2.7 Delegation of authority to provide relief on account of administrative error.
§ 2.8 Delegation of authority to authorize allowances for Department of Veterans Affairs employees who are notaries public.
§ 2.98 Delegation of authority to Directors of VA field facilities to determine whether or not a school closing is based on Executive order of the President or due to an emergency situation and to the Director, Vocational Rehabilitation and Education Service, to review these decisions.
§ 2.100 Delegation of authority to the Under Secretary for Benefits or his or her designee to enter into Memoranda of Agreement with authorized representatives of Department of Defense or Department of Labor or both to implement programs authorized by §§ 21.4800 through 21.4856.
§ 2.101 Delegation of authority to the Under Secretary for Benefits, and to supervisory or adjudicative personnel within the jurisdiction of the Veterans Benefits Administration designated by him or her, to make findings and decisions of the Department of Veterans Affairs under the Service Members Occupational Conversion and Training Act, and the applicable regulations, precedents and instructions, relating to programs authorized by §§ 21.4800 through 21.4854.


§ 2.1 General provisions.

In addition to the delegations of authority in this part, numerous delegations of authority are set forth throughout this title.
(38 U.S.C. 512)


[EFFECTIVE DATE NOTE: 64 FR 47111, Aug. 30, 1999, added this section, effective Aug. 30, 1999.]

§ 2.2 Delegation of authority to employees to issue subpoenas, etc.

(a) Authority to issue subpoenas. Employees occupying or acting in the positions designated in paragraph (b) of this section shall have the power to issue subpoenas for (by countersigning VA Form 2-4003) and compel the attendance of witnesses within a
radius of 100 miles from the place of hearing and to require the production of books, papers, documents, and other evidence. Issuing officials shall use discretion when exercising this power.

(b) Designated positions. The positions designated pursuant to paragraph (a) of this section are: General Counsel, Deputy General Counsel, Chairman, Board of Veterans' Appeals, Heads of Regional Offices and Centers having insurance or regional office activities, Under Secretary for Health (for income matching programs), Director, Income Verification Match Center (for income matching programs), and the Associate Director for Operations, Income Verification Match Center (for income matching programs).

(c) Means of service. Subpoenas issued pursuant to this section may be served by registered or certified mail, return receipt requested, addressed to the witness only. Personal service by any VA employee or other authorized person may be made where authorized in writing by the issuing official.

(d) Fees and mileage; district courts of the United States. Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. In case of disobedience to any such subpoena, the aid of any district court of the United States may be invoked in requiring attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction in which the inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

§ 2.3 Delegation of authority to employees to take affidavits, to administer oaths, etc.

(a) An employee to whom authority is delegated by the Secretary in accordance with 38 U.S.C. 5711, or to whom authority was delegated by the Secretary in accordance with title III, Pub. L. 844, 74th Congress, section 616, Pub. L. 801, 76th Congress, and section 1211, Pub. L. 85-56, is by virtue of such delegated authority, until such authority is revoked or otherwise terminated, empowered to take affidavits, to administer oaths and affirmations, to aid claimants in the preparation and presentation of claims, and to make investigations, examine witnesses, and certify to the correctness of papers and documents upon any matter within the jurisdiction of the Department of Veterans Affairs. Such employee is not authorized to administer oaths in connection with the execution of affidavits relative to fiscal vouchers and is not authorized to take acknowledgments to policy loan agreements and applications for cash surrender value to United States Government life insurance and National Service life insurance.

38 U.S.C.A. 501, 5711

[EFFECTIVE DATE NOTE: 64 FR 47111, Aug. 30, 1999, redesignated this section, effective Aug. 30, 1999.]

[CROSS REFERENCE: This section was formerly § 2.1.]
(b) Any such oath, affirmation, affidavit, or examination, when certified under the hand of any such employee by whom it was administered or taken and authenticated by the seal of the Department of Veterans Affairs, may be offered or used in any court of the United States and, without further proof of the identity or authority of such employee, shall have like force and effect as if administered or taken before a clerk of such court.

(c) The delegated authority from the Secretary to employees to take affidavits, to administer oaths, etc., will be evidenced by VA Form 4505 series.

[24 FR 10018, Dec. 11, 1959; redesignated at 64 FR 47111, Aug. 30, 1999]

[EFFECTIVE DATE NOTE: 64 FR 47111, Aug. 30, 1999, redesignated this section, effective Aug. 30, 1999.]

[CROSS REFERENCE: This section was formerly § 2.2.]

§ 2.4 Delegation of authority to order paid advertising for use in recruitment.

Paid advertisements may be used in recruitment for VA competitive and excepted service positions. Authority to order such advertisements is hereby delegated to Administration Heads, Assistant Secretaries, Other Key Officials (the General Counsel; the Inspector General; the Chairman, Board of Veterans' Appeals; the Chairman, Board of Contract Appeals; and the Director, Office of Small and Disadvantaged Business Utilization), Deputy Assistant Secretaries, to the deputies of such officials, to the Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Human Resources Management, and to field facility Directors.


[EFFECTIVE DATE NOTE: 61 FR 20133, 20134, May 6, 1996, which revised this section, became effective May 6, 1996.]

§ 2.5 Delegation of authority to certify copies of documents, records, or papers in Department of Veterans Affairs files.

(a) Persons occupying or acting for the following positions in the Office of the General Counsel are authorized to certify copies of public documents, records, or papers belonging to or in the files of the Department of Veterans Affairs for the purposes of 38 U.S.C. 302: General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel, and the Regional Counsel for Puerto Rico.

(b) The person occupying or acting in the position of Chairman of the Department of Veterans Affairs Board of Contract Appeals is authorized to certify copies of decisions, orders, subpoenas, and other documents, records, or papers issued by, belonging to, or in the files of the Boards for the purposes of 38 U.S.C. 302.

(c) The person occupying or acting in the position of Chairman, Board of Veterans Appeals, is authorized to certify copies of decisions, orders, subpoenas, and other documents, records, or papers issued by, belonging to, or in the files of the Board for the purposes of 38 U.S.C. 302.


§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).
Employees occupying or acting in the positions designated below are delegated authority as indicated:

(a) Veterans Health Administration. The Under Secretary for Health is delegated authority:

(1) To act on all matters assigned to the Veterans Health Administration by statute (38 U.S.C. Ch. 73) and by regulation, except such matters as require the personal attention or action of the Secretary.

(2) To revise, exceed, delete, increase, or decrease fees contained in Department of Veterans Affairs Veterans Health Services and Research Administration Manual M-1, part I, appendix A (following agreement therefor as provided in the contract with the intermediary involved), in an approved State fee schedule, and to add additional fees when found to be necessary, provided such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(3) To designate the Deputy Under Secretary for Health, or other physician of the Veterans Health Administration, and authority is hereby delegated such designee to perform the functions prescribed in paragraph (a)(2) of this section.

(4) To revise, exceed, delete, increase or decrease dental fees established in Department of Veterans Affairs Veterans Health Services and Research Administration Manual M-4, chapter 6, and any amendments thereto, and to add additional fees when found to be necessary, provided: such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(5) To designate the Assistant Chief Medical Director for Dentistry, and authority is hereby delegated such designee, to perform the functions prescribed in paragraph (a)(4) of this section.

(6) To supervise programs for grants to the Republic of the Philippines and medical care for Commonwealth Army veterans and Philippine Scouts in Veterans Memorial Medical Center, Manila, pursuant to the provisions of 38 U.S.C. ch. 17, subch. IV.

(7) To designate the Deputy Under Secretary for Health of the Veterans Health Administration and authority is hereby delegated such designee to designate a Department of Veterans Affairs full-time physician or nonmedical Director to serve as an ex officio member on advisory bodies to State Comprehensive Health Planning agencies and to individual Regional Medical Programs in those areas in which there is located one or more Department of Veterans Affairs hospitals or other health facilities, who shall serve on such advisory group as the representative of the Department of Veterans Affairs health facilities located in that area.

(8) To authorize Directors of Department of Veterans Affairs property and facilities under the charge and control of the Department of Veterans Affairs to appoint police officers with the power to enforce Federal laws and Department of Veterans Affairs regulations, to investigate violations of those laws and to arrest for crimes committed on Department of Veterans Affairs property to the full extent provided by Department policies and procedures.

(Authority: 38 U.S.C. 501 and 512.)

(9) To develop and establish minimum safety and quality standards for adaptive equipment provided under chapter 39 of title 38, United States Code, or to appoint a designee to perform these functions.
(b) Veterans Benefits Administration -- (1) General. The Under Secretary for Benefits is
delegated authority to act on all matters assigned to the Veterans Benefits Administration
except as provided in § 1.771 of this chapter and to authorize supervisory or adjudicative
personnel within his/her jurisdiction to perform such functions as may be assigned.
(2) Philippines. The Director, Department of Veterans Affairs Regional Office, Manila,
Philippines, is delegated authority to exercise such authorities as are delegated to
directors of regional offices in the United States, which are appropriate to the
administration in the Republic of the Philippines of the laws administered by the
Department of Veterans Affairs.
(c) Office of Management. (1) The Assistant Secretary for Management (Chief Financial
Officer) is delegated authority to act on all matters assigned to his/her office, and to
authorize supervisory personnel within his/her jurisdiction to perform such functions as
may be assigned. Appropriate written notification will be furnished other Federal
agencies concerning such authorizations.
(2) The Assistant Secretary for Management (Chief Financial Officer) is delegated
authority under 31 U.S.C. 1553(c)(1), to approve, in a fixed appropriation account to
which the period of availability for obligation has expired, obligational increases related
to contract changes when such transaction will cause cumulative obligational increase for
contract changes during a fiscal year to exceed $ 4 million but not more than $ 25 million;
for this responsibility the Assistant Secretary for Management (Chief Financial Officer)
shall act as a member of the Office of the Secretary and shall report to and consult with
the Secretary on these matters.
(d) Assistant Secretary for Management (Chief Financial Officer); administration heads
and staff office directors. The Assistant Secretary for Management (Chief Financial
Officer) is delegated authority to take appropriate action (other than provided for in
paragraphs (e)(3) and (e)(4) of this section) in connection with the collection of civil
claims by VA for money or property, as authorized in § 1.900, et seq. The Assistant
Secretary for Management (Chief Financial Officer) may redelegate such authority as
he/she deems appropriate to administration heads and staff office directors.
(e) General Counsel. (1) [Reserved]
(2) Under the provisions of 38 U.S.C. 515(b), the General Counsel, Deputy General
Counsel, Assistant General Counsel and Regional Counsel, or those authorized to act for
them, are authorized to consider, ascertain, adjust, determine, and settle tort claims
cognizable thereunder and to execute an appropriate voucher and other necessary
instruments in connection with the final disposition of such claims.
(3) Under the provisions of "The Federal Medical Care Recovery Act," 42 U.S.C. 2651,
et seq. (as implemented by part 43, title 28, Code of Federal Regulations), authority is
delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel
(Professional Staff Group I), Deputy Assistant General Counsel of said staff group, and
Regional Counsels or those authorized to act for them, to collect in full, compromise,
settle, or waive any claim and execute the release thereof; however, claims in excess of $100,000 may be compromised, settled, or waived only with the prior approval of the
Department of Justice.
et seq., authority is delegated to the General Counsel, Deputy General Counsel, Assistant
General Counsel, Deputy Assistant General Counsel and Regional Counsel, or those authorized to act for them, to:

(i) Make appropriate determinations with respect to the litigative probabilities of a claim (§ 1.932 of this chapter), the legal merits of a claim (§ 1.942(e) of this chapter), and any other legal considerations of a claim.

(ii) Collect in full a claim involving damage to or loss of government property under the jurisdiction of the Department of Veterans Affairs resulting from negligence or other legal wrong of a person (other than an employee of the Government while acting within the scope of his or her employment) and to compromise, suspend, or terminate any such claim not exceeding $100,000.

(iii) Collect a claim in full from an individual or legal entity who is liable for the cost of hospital, medical, surgical, or dental care and treatment of a person, and to compromise, suspend, or terminate any such claim not exceeding $100,000.


(iv) The delegations of authority set forth in paragraphs (e)(4)(ii) and (iii) of this section do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Such cases will be considered by the General Counsel, who will make the determination in all instances as to whether the case warrants referral to the Department of Justice. The delegations of authority are applicable to those claims where the Department of Justice determines that action based upon the alleged fraud, false claim, or misrepresentation is not warranted.

(5) Pursuant to the provisions of the Military Personnel and Civilian Employees' Claim Act of 1964, 31 U.S.C. 3721, as amended, the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), Deputy Assistant General Counsel of said staff group, and Regional Counsel or those authorized to act for them, are authorized to settle and pay a claim for not more than $40,000 made by a civilian officer or employee of the Department of Veterans Affairs for damage to, or loss of, personal property incident to his or her service. (Pub. L. 97-226)

(6) Under the provisions of 38 U.S.C. 7316(e), authority is delegated to the General Counsel, Deputy General Counsel, and the Assistant General Counsel (Professional Staff Group I) to hold harmless or provide liability insurance for any person to whom the immunity provisions of section 7316 apply, for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment in the exercise of his or her duties in or for the Veterans Health Administration, if such person is assigned to a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

(7) The General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations, and certify copies of public or private documents on all matters within the jurisdiction of the General Counsel. Pursuant to the provisions of § 2.2(e), the General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to countersign VA Form 4505.
(8) The General Counsel, or the Deputy General Counsel acting as or for the General Counsel, is authorized to designate, in accordance with established standards, those legal opinions of the General Counsel which will be considered precedent opinions involving veterans' benefits under laws administered by the Department of Veterans Affairs. (Authority: 38 U.S.C. 501, 512)

(9) Under the provisions of 38 U.S.C. 1729(c)(1), authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), Deputy Assistant General Counsel of said staff group, and Regional Counsel, or those authorized to act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of $100,000 may only be compromised, settled, or waived with the prior approval of the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), or Deputy Assistant General Counsel of said staff group, or those authorized to act for them. (Authority: 38 U.S.C. 501, 512, 1729(c)(1)).

(10) The General Counsel and the Deputy General Counsel are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, 38 U.S.C. 5701 and 5705. (Authority: 38 U.S.C. 512)

(11) All authority delegated in this paragraph to Regional Counsels will be exercised by them under the supervision of and in accordance with instructions issued by the General Counsel.

(f) National Cemetery Administration. Under Secretary for Memorial Affairs is delegated authority:

(1) To act on all matters assigned to the National Cemetery Administration by statute (38 U.S.C. chapter 24) and by regulation except where specifically requiring the personal attention or action of the Secretary and to authorize supervisory personnel within the jurisdiction of the Under Secretary for Memorial Affairs, to perform such functions as may be assigned.

(2) To designate, as deemed necessary, Superintendents of National Cemeteries as special investigators under 38 U.S.C. 901, however, such law enforcement authority is limited to enforcement of rules and regulations governing conduct on property under the charge and control of the Department of Veterans Affairs, as those rules and regulations apply to the cemetery over which the individual Superintendent exercises control and jurisdiction. Such designation will not authorize the carrying of firearms by any Superintendent.

(3) To accept donations of a minor nature, such as, individual trees for planting in burial areas and privately purchased grave markers.

(4) To name features in national cemeteries, such as, roads, walks, and special structures.

(5) To establish policies and specifications for inscriptions on Government headstones, markers, and private monuments. (Authority: 38 U.S.C. 501, 512, 2404)

(g) Inspector General. (1) The Secretary delegates to the Inspector General, the authority, as head of the Department of Veterans Affairs, to make written requests under the Privacy Act of 1974, 5 U.S.C. 552a(b)(7), for the transfer of records or copies of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity of the Office of Inspector General. This delegation is made pursuant to 38 U.S.C. 512. The Inspector General may redelegate the foregoing authority within
the Office of Inspector General, but the delegation may only be to an official of sufficient rank to ensure that the request for the records has been the subject of a high level evaluation of the need for the information.

(2) The Inspector General delegates the authority under the Inspector General Act of 1978, and redelegates the authority under paragraph (a) of this section, to request Privacy Act-protected records from Federal agencies pursuant to subsection (b)(7) of the Privacy Act to each of the following Office of Inspector General officials: (i) Deputy Inspector General, (ii) Assistant Inspector General for Investigations, (iii) Deputy Assistant Inspector General for Investigations, (iv) Chief of Operations, and (v) Special Agents in Charge of Field Offices of Investigations. These officials may not redelegate this authority.

(Authority: 5 U.S.C 552a)

(h) Delegations to Office Resolution Management Officials (ORM). (1) The Deputy Assistant Secretary for Resolution Management is delegated authority to supervise and control the operation of the administrative EEO Discrimination Complaint Processing System within the Department.

(2) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and all Regional EEO Officers/Field Managers are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints based upon race, color, national origin, sex, religion, age, disability, or reprisal filed by employees, former employees, or applicants for employment.

(3) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to make agency decisions on all breach of settlement claims raised by employees, former employees, and applicants for employment.

(4) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to consider and resolve all claims raised by employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Deputy Assistant Secretary for Resolution Management, the Chief Operating Officer, and the Chief, Policy and Compliance are delegated authority to monitor compliance by Department organizational components with orders and decisions of the OEDCA and the EEOC.

(i) Delegations to officials of the Office of Employment Discrimination Complaint Adjudication (OEDCA). (1) The Director and Associate Director, OEDCA, are delegated authority to make procedural decisions to dismiss, in whole or in part, any EEO discrimination complaint filed by any employee, former employee, or applicant for employment that may be pending before OEDCA, where administrative complaint processing efficiency may be best served by doing so.

(2) The Director and Associate Director, OEDCA, are delegated authority to dismiss, in whole or in part any EEO discrimination complaint based upon race, color, religion, sex, national origin, age, disability, or reprisal filed by any ORM employee, former employee, or applicant for employment.
(3) The Director and Associate Director, OEDCA, are delegated authority to make the agency decision on all breach of settlement claims raised by ORM employees, former employees, and applicants for employment.

(4) The Director and Associate Director, OEDCA, are delegated authority to consider and resolve all claims raised by ORM employees, former employees, and applicants for employment that allege dissatisfaction with the processing of a previously filed EEO discrimination complaint.

(5) The Director and Associate Director, OEDCA, are delegated authority to make procedural agency decisions to either accept or dismiss, in whole or in part, EEO discrimination complaints filed by employees, former employees, or applicants for employment where the ORM must recuse itself from a case due to an actual, apparent, or potential conflict of interest.

(j) Delegation to the Chairman, Board of Contract Appeals. In cases where OEDCA has recused itself from a case due to an actual, apparent, or potential conflict of interest, the Chairman, Board of Contract Appeals, is delegated authority to make procedural agency decisions to dismiss, in whole or in part, EEO discrimination complaints filed by agency employees, former employees, and applicants for employment; to make substantive final agency decisions where complainants do not request an EEOC hearing; and to take agency action following a decision by an EEOC Administrative Judge.

(k) Processing complaints involving certain officials. A complaint alleging that the Secretary or the Deputy Secretary personally made a decision directly related to matters in dispute, or are otherwise personally involved in such matters, will be referred for procedural acceptability review, investigation, and substantive decisionmaking to another Federal agency (e.g., The Department of Justice) pursuant to a cost reimbursement agreement. Referral will not be made when the action complained of relates merely to ministerial involvement in such matters (e.g., ministerial approval of selection recommendations submitted to the Secretary by the Under Secretary for Health, the Under Secretary for Benefits, the Under Secretary for Memorial Affairs, assistant secretaries, or staff office heads).

(l) Assistant to the Secretary, Office of Regulation Policy and Management. The Assistant to the Secretary for Regulation Policy and Management (ASRPM) is delegated authority:

(1) To act on all matters assigned to the Office of Regulation Policy and Management, except such matters as require the personal attention or action of the Secretary or the Secretary's Regulatory Policy Council.

(2) To manage and coordinate the Department's rulemaking activities, including the revision and reorganization of regulations.

(3) To serve as the Regulatory Policy Officer for the Department's rulemaking activities in accordance with Executive Order 12866.

§ 2.7 Delegation of authority to provide relief on account of administrative error.
(a) Section 503(a) of title 38 U.S.C., provides that if the Secretary determines that benefits administered by the Department of Veterans Affairs have not been provided by reason of administrative error on the part of the Federal Government or any of its employees, the Secretary is authorized to provide such relief on account of such error as the Secretary determines equitable, including the payment of moneys to any person whom he determines equitably entitled thereto.
(b) Section 503(b) of title 38 U.S.C., provides that if the Secretary determines that any veteran, surviving spouse, child of a veteran, or other person, has suffered loss, as a consequence of reliance upon a determination by the Department of Veterans Affairs of eligibility or entitlement to benefits, without knowledge that it was erroneously made, the Secretary is authorized to provide such relief as the Secretary determines equitable, including the payment of moneys to any person equitably entitled thereto. The Secretary is also required to submit an annual report to the Congress, containing a brief summary of each recommendation for relief and its disposition. Preparation of the report shall be the responsibility of the General Counsel.
(c) The authority to grant the equitable relief, referred to in paragraphs (a) and (b) of this section, has not been delegated and is reserved to the Secretary. Recommendation for the correction of administrative error and for appropriate equitable relief therefrom will be submitted to the Secretary, through the General Counsel. Such recommendation may be initiated by the head of the administration having responsibility for the benefit, or of any concerned staff office, or by the Chairman, Board of Veterans Appeals. When a recommendation for relief under paragraph (a) or (b) of this section is initiated by the head of a staff office, or the Chairman, Board of Veterans Appeals, the views of the head of the administration having responsibility for the benefit will be obtained and transmitted with the recommendation of the initiating office.

§ 2.8 Delegation of authority to authorize allowances for Department of Veterans Affairs employees who are notaries public.
(a) Employees occupying or acting in the positions designated in paragraph (b) of this section are authorized to designate those employees who are required to serve as notaries public in connection with the performance of official business and to pay an allowance for the costs therefor not to exceed the expense required to be incurred by them in order to obtain their commission.

(Authority: 5 U.S.C. 5945)
§ 2.98 Delegation of authority to Directors of VA field facilities to determine whether or not a school closing is based on Executive order of the President or due to an emergency situation and to the Director, Vocational Rehabilitation and Education Service, to review these decisions. This delegation of authority is identical to §§ 21.130, 21.4203, and 21.4205 of this chapter.
[44 FR 25648, May 2, 1979]

§ 2.100 Delegation of authority to the Under Secretary for Benefits or his or her designee to enter into Memoranda of Agreement with authorized representatives of Department of Defense or Department of Labor or both to implement programs authorized by §§ 21.4800 through 21.4856. This delegation is described in § 21.4854 of this chapter.
[60 FR 5852, Jan. 31, 1995]

§ 2.101 Delegation of authority to the Under Secretary for Benefits, and to supervisory or adjudicative personnel within the jurisdiction of the Veterans Benefits Administration designated by him or her, to make findings and decisions of the Department of Veterans Affairs under the Service Members Occupational Conversion and Training Act, and the applicable regulations, precedents and instructions, relating to programs authorized by §§ 21.4800 through 21.4854. This delegation is described in § 21.4856 of this chapter.
[60 FR 5852, Jan. 31, 1995]
PART 3 -- ADJUDICATION

SUBPART A -- PENSION, COMPENSATION, AND DEPENDENCY AND INDEMNITY COMPENSATION
SUBPART B -- BURIAL BENEFITS
Subpart D -- Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

[PUBLISHER'S NOTE: Nomenclature changes affecting part 3 appear at 67 FR 46868, July 17, 2002.]
SUBPART A -- PENSION, COMPENSATION, AND DEPENDENCY
AND INDEMNITY COMPENSATION

GENERAL
RELATIONSHIP
ADMINISTRATIVE
CLAIMS
EVIDENCE REQUIREMENTS
DEPENDENCY, INCOME AND ESTATE
REGULATIONS APPLICABLE TO THE IMPROVED PENSION PROGRAM
WHICH BECAME EFFECTIVE JANUARY 1, 1979
Ratings and Evaluations; Basic Entitlement Considerations
RATINGS AND EVALUATIONS; SERVICE CONNECTION
RATINGS FOR SPECIAL PURPOSES
RATING CONSIDERATIONS RELATIVE TO SPECIFIC DISEASES
EFFECTIVE DATES
APPORTIONMENTS
REDUCTIONS AND DISCONTINUANCES
HOSPITALIZATION ADJUSTMENTS
ADJUSTMENTS AND RESUMPTIONS
CONCURRENT BENEFITS AND ELECTIONS
RETIREMENT
SPECIAL BENEFITS
INCOMPETENTS, GUARDIANSHIP AND INSTITUTIONAL AWARDS
FORFEITURE
PROTECTION
ACCRUED
GENERAL

§ 3.1 Definitions.
§ 3.2 Periods of war.
§ 3.3 Pension.
§ 3.4 Compensation.
§ 3.5 Dependency and indemnity compensation.
§ 3.6 Duty periods.
§ 3.7 Individuals and groups considered to have performed active military, naval, or air service.
§ 3.10 Dependency and indemnity compensation rate for a surviving spouse.
§ 3.11 Homicide.
§ 3.12 Character of discharge.
§ 3.12a Minimum active-duty service requirement.
§ 3.13 Discharge to change status.
§ 3.14 Validity of enlistments.
§ 3.15 Computation of service.
§ 3.16 Service pension.
§ 3.17 Disability and death pension; Mexican border period and later war periods.
§§ 3.18 -- 3.19 [Reserved]
§ 3.20 Surviving spouse's benefit for month of veteran's death.
§ 3.21 Monetary rates.
§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.
§ 3.23 Improved pension rates -- Veterans and surviving spouses.
§ 3.24 Improved pension rates -- Surviving children.
§ 3.25 Parent's dependency and indemnity compensation (DIC) -- Method of payment computation.
§ 3.26 Section 306 and old-law pension annual income limitations.
§ 3.27 Automatic adjustment of benefit rates.
§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.
§ 3.29 Rounding.
§ 3.30 Frequency of payment of improved pension and parents' dependency and indemnity compensation (DIC).
§ 3.31 Commencement of the period of payment.
§ 3.32 Exchange rates for foreign currencies.
§ 3.40 Philippine and Insular Forces.
§ 3.41 Philippine service.
§ 3.42 Compensation at the full-dollar rate for certain Filipino veterans residing in the United States.
§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

§ 3.1 Definitions.
(a) Armed Forces means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including their Reserve components.

(b) Reserve component means the Army, Naval, Marine Corps, Air Force, and Coast Guard Reserves and the National and Air National Guard of the United States.

(c) Reserves means members of a Reserve component of one of the Armed Forces.

(d) Veteran means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

1. For compensation and dependency and indemnity compensation the term veteran includes a person who died in active service and whose death was not due to willful misconduct.

2. For death pension the term veteran includes a person who died in active service under conditions which preclude payment of service-connected death benefits, provided such person had completed at least 2 years honorable military, naval or air service, as certified by the Secretary concerned. (See §§ 3.3(b)(3)(i) and 3.3(b)(4)(i))


(e) Veteran of any war means any veteran who served in the active military, naval or air service during a period of war as set forth in § 3.2.

(f) Period of war means the periods described in § 3.2.

(g) Secretary concerned means:

1. The Secretary of the Army, with respect to matters concerning the Army;

2. The Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

3. The Secretary of the Air Force, with respect to matters concerning the Air Force;

4. The Secretary of Transportation, with respect to matters concerning the Coast Guard;

5. The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

6. The Secretary of Commerce, with respect to matters concerning the Coast and Geodetic Survey, the Environmental Science Services Administration, and the National Oceanic and Atmospheric Administration.

(h) Discharge or release includes retirement from the active military, naval, or air service.

(i) State means each of the several States, Territories and possessions of the United States, the District of Columbia, and Commonwealth of Puerto Rico.

(j) Marriage means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits accrued.

4. Authority: 38 U.S.C. 103(c)

(k) Service-connected means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(l) Nonservice-connected means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(m) In line of duty means an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs. A service department finding that injury, disease
or death occurred in line of duty will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the requirements of laws administered by the Department of Veterans Affairs. Requirements as to line of duty are not met if at the time the injury was suffered or disease contracted the veteran was:
(1) Avoiding duty by desertion, or was absent without leave which materially interfered with the performance of military duty.
(2) Confined under a sentence of court-martial involving an unremitted dishonorable discharge.
(3) Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court.
(Authority: 38 U.S.C. 105)
NOTE: See § 3.1(y)(2)(iii) for applicability of in line of duty in determining former prisoner of war status.
(n) Willful misconduct means an act involving conscious wrongdoing or known prohibited action. A service department finding that injury, disease or death was not due to misconduct will be binding on the Department of Veterans Affairs unless it is patently inconsistent with the facts and the requirements of laws administered by the Department of Veterans Affairs.
(1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.
(2) Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.
(3) Willful misconduct will not be determinative unless it is the proximate cause of injury, disease or death. (See §§ 3.301, 3.302.)
(o) Political subdivision of the United States includes the jurisdiction defined as a State in paragraph (i) of this section, and the counties, cities or municipalities of each.
(p) Claim -- Application means a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit.
(q) Notice means written notice sent to a claimant or payee at his or her latest address of record.
(r) Date of receipt means the date on which a claim, information or evidence was received in the Department of Veterans Affairs, except as to specific provisions for claims or evidence received in the State Department (§ 3.108), or in the Social Security Administration (§§ 3.153, 3.201), or Department of Defense as to initial claims filed at or prior to separation. However, the Under Secretary for Benefits may establish, by notice published in the Federal Register, exceptions to this rule, using factors such as postmark or the date the claimant signed the correspondence, when he or she determines that a natural or man-made interference with the normal channels through which the Veterans Benefits Administration ordinarily receives correspondence has resulted in one or more Veterans Benefits Administration offices experiencing extended delays in receipt of claims, information, or evidence from claimants served by the affected office or offices to an extent that, if not addressed, would adversely affect such claimants through no fault of their own.
(Authority: 38 U.S.C. 501(a), 512(a), 5110)
(s) On the borders thereof means, with regard to service during the Mexican border period, the States of Arizona, California, New Mexico, and Texas, and the nations of Guatemala and British Honduras.

(Authority: 38 U.S.C. 101(30))

(t) In the waters adjacent thereto means, with regard to service during the Mexican border period, the waters (including the islands therein) which are within 750 nautical miles (863 statute miles) of the coast of the mainland of Mexico.

(Authority: 38 U.S.C. 101(30))

(u) Section 306 pension means those disability and death pension programs in effect on December 31, 1978, which arose out of Pub. L. 86-211; 73 Stat. 432.

(v) Old-Law pension means the disability and death pension programs that were in effect on June 30, 1960. Also known as protected pension, i.e. protected under section 9(b) of the Veteran's Pension Act of 1959 (Pub. L. 86-211; 73 Stat. 432).

(w) Improved pension means the disability and death pension programs becoming effective January 1, 1979, under authority of Pub. L. 95-588; 92 Stat. 2497.

(x) Service pension is the name given to Spanish-American War pension. It is referred to as a service pension because entitlement is based solely on service without regard to nonservice-connected disability, income and net worth.

(Authority: 38 U.S.C. 1512, 1536)

(y) Former prisoner of war. The term former prisoner of war means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in the line of duty by an enemy or foreign government, the agents of either, or a hostile force.

(1) Decisions based on service department findings. The Department of Veterans Affairs shall accept the findings of the appropriate service department that a person was a prisoner of war during a period of war unless a reasonable basis exists for questioning it. Such findings shall be accepted only when detention or internment is by an enemy government or its agents.

(2) Other decisions. In all other situations, including those in which the Department of Veterans Affairs cannot accept the service department findings, the following factors shall be used to determine prisoner of war status:

(i) Circumstances of detention or internment. To be considered a former prisoner of war, a serviceperson must have been forcibly detained or interned under circumstances comparable to those under which persons generally have been forcibly detained or interned by enemy governments during periods of war. Such circumstances include, but are not limited to, physical hardships or abuse, psychological hardships or abuse, malnutrition, and unsanitary conditions. Each individual member of a particular group of detainees or internees shall, in the absence of evidence to the contrary, be considered to have experienced the same circumstances as those experienced by the group.

(ii) Reason for detention or internment. The reason for which a serviceperson was detained or interned is immaterial in determining POW status, except that a serviceperson who is detained or interned by a foreign government for an alleged violation of its laws is not entitled to be considered a former POW on the basis of that period of detention or internment, unless the charges are a sham intended to legitimizie the period of detention or internment.

(3) Central Office approval. The Director of the Compensation and Pension Service, VA Central Office, shall approve all VA regional office determinations establishing or
(4) In line of duty. The Department of Veterans Affairs shall consider that a
serviceperson was forcibly detained or interned in line of duty unless the evidence of
record discloses that forcible detainment or internment was the proximate result of the
serviceperson's own willful misconduct.

(5) Hostile force. The term hostile force means any entity other than an enemy or foreign
government or the agents of either whose actions are taken to further or enhance
anti-American military, political or economic objectives or views, or to attempt to
embarrass the United States.

(Authority: 38 U.S.C. 101(32))

(z) Nursing home means
(1) Any extended care facility which is licensed by a State to provide skilled or
intermediate-level nursing care,

(2) A nursing home care unit in a State veterans' home which is approved for payment
under 38 U.S.C. 1742, or

(3) A Department of Veterans Affairs Nursing Home Care Unit.

(aa) Fraud:
(1) As used in 38 U.S.C. 103 and implementing regulations, fraud means an intentional
misrepresentation of fact, or the intentional failure to disclose pertinent facts, for the
purpose of obtaining, or assisting an individual to obtain an annulment or divorce, with
knowledge that the misrepresentation or failure to disclose may result in the erroneous
granting of an annulment or divorce; and

(Authority: 38 U.S.C. 501)

(2) As used in 38 U.S.C. 110 and 1159 and implementing regulations, fraud means an
intentional misrepresentation of fact, or the intentional failure to disclose pertinent facts,
for the purpose of obtaining or retaining, or assisting an individual to obtain or retain,
eligibility for Department of Veterans Affairs benefits, with knowledge that the
misrepresentation or failure to disclose may result in the erroneous award or retention of
such benefits.

[26 FR 1563, Feb. 24, 1961; 54 FR 31828, 34981 (1989); 55 FR 8141 (1990); 56 FR
19579, 65846, 65849, 65851, 65853 (1991); 57 FR 8268, 10425, 59296 (1992); 60 FR

(38 U.S.C. 501)

[EFFECTIVE DATE NOTE: 61 FR 56626, 56627, Nov. 4, 1996, which amended
paragraph (n), removed the note following paragraph (n)(3), and removed the last two
sentences in paragraph (y)(4), became effective Nov. 4, 1996.]

CROSS-REFERENCES: Pension. See § 3.3. Compensation. See § 3.4. Dependency and
indemnity compensation. See § 3.5. Preservation of disability ratings. See § 3.951.
Service-connection. See § 3.957.

§ 3.2 Periods of war.

This section sets forth the beginning and ending dates of each war period beginning with
the Indian wars. Note that the term period of war in reference to pension entitlement
under 38 U.S.C. 1521, 1541 and 1542 means all of the war periods listed in this section except the Indian wars and the Spanish-American War. See § 3.3(a)(3) and (b)(4)(i).

(a) Indian wars. January 1, 1817, through December 31, 1898, inclusive. Service must have been rendered with the United States military forces against Indian tribes or nations.
(b) Spanish-American War. April 21, 1898, through July 4, 1902, inclusive. If the veteran served with the United States military forces engaged in hostilities in the Moro Province, the ending date is July 15, 1903. The Philippine Insurrection and the Boxer Rebellion are included.
(c) World War I. April 6, 1917, through November 11, 1918, inclusive. If the veteran served with the United States military forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.
(d) World War II. December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.
(f) Vietnam era. The period beginning on February 28, 1961, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.
(g) Future dates. The period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by Presidential proclamation or concurrent resolution of the Congress.

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

(h) Mexican border period. May 9, 1916, through April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(Authority: 38 U.S.C. 101(30))

(i) Persian Gulf War. August 2, 1990, through date to be prescribed by Presidential proclamation or law.


(38 U.S.C. 101(33))

[EFFECTIVE DATE NOTE: 62 FR 35421, 35422, July 1, 1997, revised paragraph (f), effective Jan. 1, 1997.]

§ 3.3 Pension.

Discussion and Analysis in the Veterans Benefits Manual

(a) Pension for veterans -- (1) Service pension; Spanish-American War. A benefit payable monthly by the Department of Veterans Affairs because of service in the Spanish-American War. Basic entitlement exists if a veteran:

(i) Had 70 (or 90) days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability adjudged service connected without benefit of presumptive provisions of law, or at the time of discharge

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had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(Authority: 38 U.S.C. 1512)

(2) Section 306 pension. A benefit payable monthly by the Department of Veterans Affairs because of nonservice-connected disability or age. Basic entitlement exists if a veteran:

(i) Served 90 days or more in either the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, or served an aggregate of 90 days or more in separate periods of service during the same or during different war periods, including service during the Spanish-American War (Pub. L. 87-101, 75 Stat. 218; Pub. L. 90-77, 81 Stat. 178; Pub. L. 92-198, 85 Stat. 663); or

(ii) Served continuously for a period of 90 consecutive days or more and such period ended during the Mexican border period or World War I, or began or ended during World War II, the Korean conflict or the Vietnam era (Pub. L. 87-101, 75 Stat. 218; Pub. L. 88-664, 78 Stat. 1094; Pub. L. 90-77, 81 Stat. 178; Pub. L. 91-588, 84 Stat. 1580; Pub. L. 92-198, 85 Stat. 663; Pub. L. 94-169, 89 Stat. 1013; Pub. L. 95-204, 91 Stat. 1455); or

(iii) Was discharged or released from such wartime service, before having served 90 days, for a disability adjudged service connected without the benefit of presumptive provisions of law, or at the time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability; and

(iv) Is permanently and totally disabled (a) from nonservice-connected disability not due to the veteran's own willful misconduct or vicious habits, or (b) by reason of having attained the age of 65 years or by reason of having become unemployable after age 65; and

(v)(a) Is in receipt of section 306 pension or (b) has an application for pension pending on December 31, 1978, or (c) meets the age or disability requirements for such pension on December 31, 1978, and files a claim within 1 year of that date and also within 1 year after meeting the age or disability requirements.

(vi) Meets the income and net worth requirements of 38 U.S.C. 1521 and 1522 as in effect on December 31, 1978, and all other provisions of title 38, United States Code, in effect on December 31, 1978, applicable to section 306 pension.

NOTE: The pension provisions of title 38 U.S.C., as in effect on December 31, 1978, are available in any VA regional office.

(3) Improved pension; Pub. L. 95-588 (92 Stat. 2497). A benefit payable by the Department of Veterans Affairs to veterans of a period or periods of war because of nonservice-connected disability or age. The qualifying periods of war for this benefit are the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era and the Persian Gulf War. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 1521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if a veteran:

(i) Served in the active military, naval or air service for 90 days or more during a period of war (38 U.S.C. 1521(j)); or

(ii) Served in the active military, naval or air service during a period of war and was discharged or released from such service for a disability adjudged service-connected

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without presumptive provisions of law, or at time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability (38 U.S.C. 1521(j)); or
(iii) Served in the active military, naval or air service for a period of 90 consecutive days or more and such period began or ended during a period of war (38 U.S.C. 1521(j)); or
(iv) Served in the active military, naval or air service for an aggregate of 90 days or more in two or more separate periods of service during more than one period of war (38 U.S.C. 1521(j)); and
(v) Meets the net worth requirements under § 3.274 and does not have an annual income in excess of the applicable maximum annual pension rate specified in § 3.23; and
(vi)(A) Is age 65 or older; or
(B) Is permanently and totally disabled from nonservice-connected disability not due to the veteran's own willfull misconduct. For purposes of this paragraph, a veteran is considered permanently and totally disabled if the veteran is any of the following:
(1) A patient in a nursing home for long-term care because of disability; or
(2) Disabled, as determined by the Commissioner of Social Security for purposes of any benefits administered by the Commissioner; or
(3) Unemployable as a result of disability reasonably certain to continue throughout the life of the person; or
(4) Suffering from:
   (i) Any disability which is sufficient to render it impossible for the average person to follow a substantially gainful occupation, but only if it is reasonably certain that such disability will continue throughout the life of the person; or
   (ii) Any disease or disorder determined by VA to be of such a nature or extent as to justify a determination that persons suffering from that disease or disorder are permanently and totally disabled.
(Authority: 38 U.S.C. 1502(a), 1513, 1521, 1522)
(b) Pension for survivors -- (1) Indian war death pension. A monthly benefit payable by the Department of Veterans Affairs to the surviving spouse or child of a deceased veteran of an Indian war. Basic entitlement exists if a veteran had qualifying service as specified in 38 U.S.C. 1511. Indian war death pension rates are set forth in 38 U.S.C. 1534 and 1535.
(2) Spanish-American War death pension. A monthly benefit payable by the Department of Veterans Affairs to the surviving spouse or child of a deceased veteran of the Spanish-American War, if the veteran:
   (i) Had 90 days or more active service during the Spanish-American War; or
   (ii) Was discharged or released from such service for a disability service-connected without benefit of presumptive provisions of law, or at time of discharge had such a service-connected disability, as shown by official service records, which in medical judgment would have justified a discharge for disability.
(Authority: 38 U.S.C. 1536, 1537)
(3) Section 306 death pension. A monthly benefit payable by the Department of Veterans Affairs to a surviving spouse or child because of a veteran's nonservice-connected death. Basic entitlement exists if:
   (i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(2)(i), (ii), or (iii) of this section; or
(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for service-connected disability based on wartime service; and

(iii) The surviving spouse or child (A) was in receipt of section 306 pension on December 31, 1978, or (B) had a claim for pension pending on that date, or (C) filed a claim for pension after that date but within 1 year after the veteran's death, if the veteran died before January 1, 1979; and

(iv) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 1541, 1542 or 1543 as in effect on December 31, 1978, and all other provisions of title 38, United States Code in effect on December 31, 1978, applicable to section 306 pension.

NOTE: The pension provisions of title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.)

(4) Improved death pension, Public Law 95-588. A benefit payable by the Department of Veterans Affairs to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 1521(b), in which case payments may be made less frequently than monthly.

Basic entitlement exists if:

(i) The veteran (as defined in § 3.1(d) and (d)(2)) had qualifying service as specified in paragraph (a)(3)(i), (ii), (iii), or (iv) of this section (38 U.S.C. 1541(a)); or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. (The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 1541(a)); and

(iii) The surviving spouse or child meets the net worth requirements of § 3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in §§ 3.23 and 3.24.

(Authority: 38 U.S.C. 1541 and 1542)


§ 3.4 Compensation.

(a) Compensation. This term means a monthly payment made by the Department of Veterans Affairs to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957, or under the circumstances outlined in paragraph (c)(2) of this section. If the veteran was discharged or released from service, the discharge or release must have been under conditions other than dishonorable.
(Authority: 38 U.S.C. 101(2), (13))

(b) Disability compensation. (1) Basic entitlement for a veteran exists if the veteran is disabled as the result of a personal injury or disease (including aggravation of a condition existing prior to service) while in active service if the injury or the disease was incurred or aggravated in line of duty.
(Authority: 38 U.S.C. 1110, 1131)
(2) An additional amount of compensation may be payable for a spouse, child, and/or dependent parent where a veteran is entitled to compensation based on disability evaluated as 30 per centum or more disabling.
(Authority: 38 U.S.C. 1115)

(c) Death compensation. Basic entitlement exists for a surviving spouse, child or children, and dependent parent or parents if:
(1) The veteran died before January 1, 1957; or
(2) The veteran died on or after May 1, 1957, and before January 1, 1972, if at the time of death a policy of United States Government Life Insurance or National Service Life Insurance was in effect under waiver of premiums under 38 U.S.C. 1924 unless the waiver was granted under the first proviso of section 622(a) of the National Service Life Insurance Act of 1940, and the veteran died before return to military jurisdiction or within 120 days thereafter. (See § 3.5(d) as to Public Health Service.)

(38 U.S.C. 1121, 1141)

§ 3.5 Dependency and indemnity compensation.

(a) Dependency and indemnity compensation. This term means a monthly payment made by the Department of Veterans Affairs to a surviving spouse, child, or parent:
(1) Because of a service-connected death occurring after December 31, 1956, or
(2) Pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.
(Authority: 38 U.S.C. 101 (14))

(b) Entitlement. Basic entitlement for a surviving spouse, child or children, and parent or parents of a veteran exists, if:
(1) Death occurred on or after January 1, 1957, except in the situation specified in § 3.4(c)(2); or
(2) Death occurred prior to January 1, 1957, and the claimant was receiving or eligible to receive death compensation on December 31, 1956 (or, as to a parent, would have been eligible except for income), under laws in effect on that date or who subsequently becomes eligible by reason of a death which occurred prior to January 1, 1957; or
(3) Death occurred on or after May 1, 1957, and before January 1, 1972, and the claimant had been ineligible to receive dependency and indemnity compensation because of the exception in subparagraph (1) of this paragraph. In such case dependency and indemnity compensation is payable upon election. (38 U.S.C. 410, 416, 417, Public Law 92-197, 85 Stat. 660)

(c) Exclusiveness of remedy. No person eligible for dependency and indemnity compensation by reason of a death occurring on or after January 1, 1957, shall be eligible
by reason of such death for death pension or compensation under any other law administered by the Department of Veterans Affairs, except that, effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

(d) Group life insurance. No dependency and indemnity compensation or death compensation shall be paid to any surviving spouse, child or parent based on the death of a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration occurring on or after May 1, 1957, if any amounts are payable under the Federal Employees' Group Life Insurance Act of 1954 (Pub. L. 598, 83d Cong., as amended) based on the same death.

(Authority: Sec. 501(c)(2), Pub. L. 881, 84th Cong. (70 Stat. 857), as amended by Sec. 13(u), Pub. L. 85-857; (72 Stat. 1266); Sec. 5, Pub. L. 91-621 (84 Stat. 1863))

(e) [Removed]


§ 3.6 Duty periods.

(a) Active military, naval, and air service. This includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during such training.

(Authority: 38 U.S.C. 101(24))

(b) Active duty. This means:

(1) Full-time duty in the Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service:

(i) On or after July 29, 1945, or

(ii) Before that date under circumstances affording entitlement to full military benefits, or

(iii) At any time, for the purposes of dependency and indemnity compensation.

(3) Full-time duty as a commissioned officer of the Coast and Geodetic Survey or of its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration:

(i) On or after July 29, 1945, or

(ii) Before that date:

(a) While on transfer to one of the Armed Forces, or

(b) While, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or
(c) In the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or
(iii) At any time, for the purposes of dependency and indemnity compensation.
(4) Service at any time as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy;
(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy for enlisted active-duty members who are reassigned to a preparatory school without a release from active duty, and for other individuals who have a commitment to active duty in the Armed Forces that would be binding upon disenrollment from the preparatory school;
(6) Authorized travel to or from such duty or service; and
(7) A person discharged or released from a period of active duty, shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for him or her to proceed to his or her home by the most direct route, and, in all instances, until midnight of the date of such discharge or release.

(Authority: 38 U.S.C. 106(c))
(c) Active duty for training. (1) Full-time duty in the Armed Forces performed by Reserves for training purposes;
(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service:
(i) On or after July 29, 1945, or
(ii) Before that date under circumstances affording entitlement to full military benefits, or
(iii) At any time, for the purposes of dependency and indemnity compensation:
(3) Full-time duty performed by members of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law or full-time duty by such members while participating in the reenactment of the Battle of First Manassas in July 1961;
(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 U.S.C.
(i) The requirements of this paragraph are effective --
(A) On or after October 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, and
(B) October 1, 1983, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982.
(ii) Effective on or after October 1, 1988, such duty must be prerequisite to the member being commissioned and must be for a period of at least four continuous weeks.

(Authority: 38 U.S.C. 101(22)(D) as amended by Pub. L. 100-456)
(5) Attendance at the preparatory schools of the United States Air Force Academy, the United States Military Academy, or the United States Naval Academy by an individual who enters the preparatory school directly from the Reserves, National Guard or civilian life, unless the individual has a commitment to service on active duty which would be binding upon disenrollment from the preparatory school.
(6) Authorized travel to or from such duty.

(Authority: 38 U.S.C. 101(22))
The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(d) Inactive duty training. This means: (1) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under 37 U.S.C. 206 or any other provision of law; (2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and (3) Training (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers’ Training Corps prescribed under chapter 103 of title 10 U.S.C.

(4) Duty (other than full-time duty) performed by a member of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law. The term inactive duty training does not include:

(i) Work or study performed in connection with correspondence courses,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

(Authority: 38 U.S.C. 101(23))

(e) Travel status -- training duty (disability or death from injury or covered disease). Any individual:

(1) Who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(2) Who is disabled or dies from an injury or covered disease incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training shall be deemed to have been on active duty for training or inactive duty training, as the case may be. The Department of Veterans Affairs will determine whether such individual was so authorized or required to perform such duty, and whether the individual was disabled or died from an injury or covered disease so incurred. In making such determinations, there shall be taken into consideration the hour on which the individual began to proceed or return; the hour on which the individual was scheduled to arrive for, or on which the individual ceased to perform, such duty; the method of travel performed; the itinerary; the manner in which the travel was performed; and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this paragraph, the burden of proof shall be on the claimant.

(3) For purposes of this section, the term covered disease means any of the following:

(i) An acute myocardial infarction.

(ii) A cardiac arrest.

(iii) A cerebrovascular accident.

(Authority: 38 U.S.C. 106(d))

§ 3.7 Individuals and groups considered to have performed active military, naval, or air service.

The following individuals and groups are considered to have performed active military, naval, or air service:

(a) Aerial transportation of mail (Pub. L. 140, 73d Congress). Persons who were injured or died while serving under conditions set forth in Pub. L. 140, 73d Congress.

(b) Aliens. Effective July 28, 1959, a veteran discharged for alienage during a period of hostilities unless evidence affirmatively shows he or she was discharged at his or her own request. A veteran who was discharged for alienage after a period of hostilities and whose service was honest and faithful is not barred from benefits if he or she is otherwise entitled. A discharge changed prior to January 7, 1957, to honorable by a board established under authority of section 301, Pub. L. 346, 78th Congress, as amended, or section 207, Pub. L. 601, 79th Congress, as amended (now 10 U.S.C. 1552 and 1553), will be considered as evidence that the discharge was not at the alien’s request. (See § 3.12.)

(Authority: 38 U.S.C. 5303(c))

(c) Army field clerks. Included as enlisted men.

(d) Army Nurse Corps, Navy Nurse Corps, and female dietetic and physical therapy personnel. (1) Army and Navy nurses (female) on active service under order of the service department.

(2) Dietetic and physical therapy (female) personnel, excluding students and apprentices, appointed with relative rank on or after December 22, 1942, or commissioned on or after June 22, 1944.

(e) Aviation camps. Students who were enlisted men during World War I.

(f) Cadets and midshipmen. See § 3.6(b)(4).

(g) Coast and Geodetic Survey, and its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration. See § 3.6(b)(3).

(h) Coast Guard. Active service in Coast Guard on or after January 29, 1915, while under jurisdiction of the Treasury Department, Navy Department, or the Department of Transportation. (See § 3.6 (c) and (d) as to temporary members of the Coast Guard Reserves.)

(i) Contract surgeons. For compensation and dependency and indemnity compensation, if the disability or death was the result of disease or injury contracted in line of duty during a war period while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transit or in hospital.

(j) Field clerks, Quartermaster Corps. Included as enlisted men.

(k) Lighthouse service personnel. Transferred to the service and jurisdiction of War or Navy Departments by Executive order under the Act of August 29, 1916. Effective July 1, 1939, service was consolidated with the Coast Guard.

(l) Male nurses. Persons who were enlisted men of Medical Corps.
(m) National Guard. Members of the National Guard of the United States and Air National Guard of the United States are included as Reserves. See § 3.6 (c) and (d) as to training duty performed by members of a State National Guard and paragraph (o) of this section as to disability suffered after being called into Federal service and before enrollment.

(n) Persons heretofore having a pensionable or compensable status.

(Authority: 38 U.S.C. 1152, 1504)

(o) Persons ordered to service. (1) Any person who has:

(i) Applied for enlistment or enrollment in the active military, naval, or air service and who is provisionally accepted and directed, or ordered, to report to a place for final acceptance into the service, or

(ii) Been selected or drafted for such service, and has reported according to a call from the person's local draft board and before final rejection, or

(iii) Been called into Federal service as a member of the National Guard, but has not been enrolled for Federal service, and

(iv) Suffered injury or disease in line of duty while going to, or coming from, or at such place for final acceptance or entry upon active duty, is considered to have been on active duty and therefore to have incurred such disability in active service.

(2) The injury or disease must be due to some factor relating to compliance with proper orders. Draftees and selectees are included when reporting for preinduction examination or for final induction on active duty. Such persons are not included for injury or disease suffered during the period of inactive duty, or period of waiting, after a final physical examination and prior to beginning the trip to report for induction. Members of the National Guard are included when reporting to a designated rendezvous.

(p) Philippine Scouts and others. See § 3.40.

(q) Public Health Service. See § 3.6 (a) and (b).

(r) Reserves. See § 3.6 (a), (b), and (c).

(s) Revenue Cutter Service. While serving under direction of Secretary of the Navy in cooperation with the Navy.

(t) Training camps. Members of training camps authorized by section 54 of the National Defense Act, except members of Student Army Training Corps Camps at the Presidio of San Francisco, Plattsburg, New York, Fort Sheridan, Illinois, Howard University, Washington, D.C., Camp Perry, Ohio, and Camp Hancock, Georgia, from July 18, 1918, to September 16, 1918.

(u) Women's Army Corps (WAC). Service on or after July 1, 1943.

(v) Women's Reserve of Navy, Marine Corps, and Coast Guard. Same benefits as members of the Officers Reserve Corps or enlisted men of the United States Navy, Marine Corps or Coast Guard.

(w) Russian Railway Service Corps. Service during World War I as certified by the Secretary of the Army.

(x) Active military service certified as such under section 401 of Pub. L. 95-202. Such service if certified by the Secretary of Defense as active military service and if a discharge under honorable conditions is issued by the Secretary. The effective dates for an award based upon such service shall be as provided by § 3.400(z) and 38 U.S.C. 5110,
except that in no event shall such an award be made effective earlier than November 23, 1977. Service in the following groups has been certified as active military service:

1. Women's Air Forces Service Pilots (WASP).
2. Signal Corps Female Telephone Operators Unit of World War I.
3. Engineer Field Clerks (WWI).
4. Women's Army Auxiliary Corps (WAAC).
5. Quartermaster Corps Female Clerical Employees serving with the AEF (American Expeditionary Forces) in World War I.
6. Civilian Employees of Pacific Naval Air Bases Who Actively Participated in Defense of Wake Island During World War II.
7. Reconstruction Aides and Dietitians in World War I.
8. Male Civilian Ferry Pilots.
9. Wake Island Defenders from Guam.
10. Civilian Personnel Assigned to the Secret Intelligence Element of the OSS.
12. Quartermaster Corps Keswick Crew on Corregidor (WWII).
16. Civilian Navy IFF Technicians Who Served in the Combat Areas of the Pacific during World War II (December 7, 1941 to August 15, 1945). As used in the official name of this group, the acronym IFF stands for Identification Friend or Foe.
21. Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942.
22. U.S. Civilian Flight Crew and Aviation Ground Support Employees of United Air Lines (UAL), Who Served Overseas as a Result of UAL's Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.
23. U.S. Civilian Flight Crew and Aviation Ground Support Employees of Transcontinental and Western Air (TWA), Inc., Who Served Overseas as a Result of
TWA's Contract with the Air Transport Command During the Period December 14, 1941, through August 14, 1945. The ‘‘Flight Crew’’ includes pursers.

(24) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Consolidated Vultree Aircraft Corporation (Consairway Division) Who Served Overseas as a Result of a Contract With the Air Transport Command During the Period December 14, 1941, through August 14, 1945.


(26) Honorably Discharged Members of the American Volunteer Guard, Eritrea Service Command During the Period June 21, 1942 to March 31, 1943.

(27) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, Who Served Overseas as a Result of Northwest Airline's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945.

(28) U.S. Civilian Female Employees of the U.S. Army Nurse Corps While Serving in the Defense of Bataan and Corregidor During the Period January 2, 1942 to February 3, 1945.


(30) U.S. Civilian Flight Crew and Aviation Ground Support Employees of Braniff Airways, Who Served Overseas in the North Atlantic or Under the Jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), as a Result of a Contract With the ATC During the Period February 26, 1942, Through August 14, 1945.

(31) The approximately 50 Chamorro and Carolinian former native policemen who received military training in the Donnal area of central Saipan and were placed under the command of Lt. Casino of the 6th Provisional Military Police Battalion to accompany United States Marines on active, combat-patrol activity from August 19, 1945, to September 2, 1945.

(32) Three scouts/guides, Miguel Tenorio, Penedicto Taisacan, and Cristino Dela Cruz, who assisted the United States Marines in the offensive operations against the Japanese on the Northern Mariana Islands from June 19, 1944, through September 2, 1945.

(33) The Operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps from December 7, 1941, through August 15, 1945.

(Authority: Sec. 401, Pub. L. 95-202, 91 Stat. 1450)

(y) Alaska Territorial Guard: Members of the Alaska Territorial Guard during World War II who were honorably discharged from such service as determined by the Secretary of Defense.


§ 3.10 Dependency and indemnity compensation rate for a surviving spouse.

(a) General determination of rate. When VA grants a surviving spouse entitlement to DIC, VA will determine the rate of the benefit it will award. The rate of the benefit will be the total of the basic monthly rate specified in paragraph (b) or (d) of this section and any applicable increases specified in paragraph (c) or (e) of this section.

(b) Basic monthly rate. Except as provided in paragraph (d) of this section, the basic monthly rate of DIC for a surviving spouse will be the amount set forth in 38 U.S.C. 1311(a)(1).

(c) Section 1311(a)(2) increase. The basic monthly rate under paragraph (b) of this section shall be increased by the amount specified in 38 U.S.C. 1311(a)(2) if the veteran, at the time of death, was receiving, or was entitled to receive, compensation for service-connected disability that was rated by VA as totally disabling for a continuous period of at least eight years immediately preceding death. Determinations of entitlement to this increase shall be made in accordance with paragraph (f) of this section.

(d) Alternative basic monthly rate for death occurring prior to January 1, 1993. The basic monthly rate of DIC for a surviving spouse when the death of the veteran occurred prior to January 1, 1993, will be the amount specified in 38 U.S.C. 1311(a)(3) corresponding to the veteran's pay grade in service, but only if such rate is greater than the total of the basic monthly rate and the section 1311(a)(2) increase (if applicable) the surviving spouse is entitled to receive under paragraphs (b) and (c) of this section. The Secretary of the concerned service department will certify the veteran's pay grade and the certification will be binding on VA. DIC paid pursuant to this paragraph may not be increased by the section 1311(a)(2) increase under paragraph (c) of this section.

(e) Additional increases. One or more of the following increases may be paid in addition to the basic monthly rate and the section 1311(a)(2) increase.

(1) Increase for children. If the surviving spouse has one or more children under the age of 18 of the deceased veteran (including a child not in the surviving spouse's actual or constructive custody, or a child who is in active military service), the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(b) for each child.

(2) Increase for regular aid and attendance. If the surviving spouse is determined to be in need of regular aid and attendance under the criteria in Sec. 3.352 or is a patient in a nursing home, the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(c).

(3) Increase for housebound status. If the surviving spouse does not qualify for the regular aid and attendance allowance but is housebound under the criteria in Sec. 3.351(f), the monthly DIC rate will be increased by the amount set forth in 38 U.S.C. 1311(d).

(4) For a two-year period beginning on the date entitlement to dependency and indemnity compensation commenced, the dependency and indemnity compensation paid monthly to a surviving spouse with one or more children below the age of 18 shall be increased by the amount set forth in 38 U.S.C. 1311(e), regardless of the number of such children. The dependency and indemnity compensation payable under this paragraph is in addition to any other dependency and indemnity compensation payable. The increase in dependency and indemnity compensation of a surviving spouse...
spouse under this paragraph shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18.

(Authority: 38 U.S.C. 1311(e))

(f) Criteria governing section 1311(a)(2) increase. In determining whether a surviving spouse qualifies for the section 1311(a)(2) increase under paragraph (c) of this section, the following standards shall apply.

1. Marriage requirement. The surviving spouse must have been married to the veteran for the entire eight-year period referenced in paragraph (c) of this section in order to qualify for the section 1311(a)(2) increase.

2. Determination of total disability. As used in paragraph (c) of this section, the phrase "rated by VA as totally disabling" includes total disability ratings based on unemployability (Sec. 4.16 of this chapter).

3. Definition of "entitled to receive". As used in paragraph (c) of this section, the phrase "entitled to receive" means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(i) The veteran would have received total disability compensation for the period specified in paragraph (c) of this section but for clear and unmistakable error committed by VA in a decision on a claim filed during the veteran's lifetime; or

(ii) Additional evidence submitted to VA before or after the veteran's death, consisting solely of service department records that existed at the time of a prior VA decision but were not previously considered by VA, provides a basis for reopening a claim finally decided during the veteran's lifetime and for awarding a total service-connected disability rating retroactively in accordance with Sec. Sec. 3.156(c) and 3.400(q)(2) of this part for the period specified in paragraph (c) of this section; or

(iii) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (c) of this section, but was not receiving compensation because:

(A) VA was paying the compensation to the veteran's dependents;

(B) VA was withholding the compensation under the authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;

(C) The veteran had not waived retired or retirement pay in order to receive compensation;

(D) VA was withholding payments under the provisions of 10 U.S.C. 1174(h)(2); and

(E) VA was withholding payments because the veteran's whereabouts were unknown, but the veteran was otherwise entitled to continued payments based on a total service-connected disability rating; or

(F) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. 5309.

[70 FR 72211, December 2, 2005; 71 FR 44915, August 8, 2006]

(Authority: 38 U.S.C. 501(a), 1311, 1314, and 1321).

§ 3.11 Homicide.

Any person who has intentionally and wrongfully caused the death of another person is not entitled to pension, compensation, or dependency and indemnity compensation or

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increased pension, compensation, or dependency and indemnity compensation by reason of such death. For the purpose of this section the term dependency and indemnity compensation includes benefits at dependency and indemnity compensation rates paid under 38 U.S.C. 1318.

[44 FR 22718, Apr. 17, 1979, as amended at 54 FR 31829, Aug. 2, 1989]


§ 3.12 Character of discharge.

(a) If the former service member did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable. (38 U.S.C. 101(2)). A discharge under honorable conditions is binding on the Department of Veterans Affairs as to character of discharge.

(b) A discharge or release from service under one of the conditions specified in this section is a bar to the payment of benefits unless it is found that the person was insane at the time of committing the offense causing such discharge or release or unless otherwise specifically provided (38 U.S.C. 5303(b)).

(c) Benefits are not payable where the former service member was discharged or released under one of the following conditions:

1. As a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful order of competent military authorities.
2. By reason of the sentence of a general court-martial.
3. Resignation by an officer for the good of the service.
4. As a deserter.
5. As an alien during a period of hostilities, where it is affirmatively shown that the former service member requested his or her release. See § 3.7(b).
6. By reason of a discharge under other than honorable conditions issued as a result of an absence without official leave (AWOL) for a continuous period of at least 180 days. This bar to benefit entitlement does not apply if there are compelling circumstances to warrant the prolonged unauthorized absence. This bar applies to any person awarded an honorable or general discharge prior to October 8, 1977, under one of the programs listed in paragraph (h) of this section, and to any person who prior to October 8, 1977, had not otherwise established basic eligibility to receive Department of Veterans Affairs benefits. The term established basic eligibility to receive Department of Veterans Affairs benefits means either a Department of Veterans Affairs determination that an other than honorable discharge was issued under conditions other than dishonorable, or an upgraded honorable or general discharge issued prior to October 8, 1977, under criteria other than those prescribed by one of the programs listed in paragraph (h) of this section. However, if a person was discharged or released by reason of the sentence of a general court-martial, only a finding of insanity (paragraph (b) of this section) or a decision of a board of correction of records established under 10 U.S.C. 1552 can estalish basic eligibility to receive Department of Veterans Affairs benefits. The following factors will be considered in determining whether there are compelling circumstances to warrant the prolonged unauthorized absence.
(i) Length and character of service exclusive of the period of prolonged AWOL. Service exclusive of the period of prolonged AWOL should generally be of such quality and length that it can be characterized as honest, faithful and meritorious and of benefit to the Nation.

(ii) Reasons for going AWOL. Reasons which are entitled to be given consideration when offered by the claimant include family emergencies or obligations, or similar types of obligations or duties owed to third parties. The reasons for going AWOL should be evaluated in terms of the person's age, cultural background, educational level and judgmental maturity. Consideration should be given to how the situation appeared to the person himself or herself, and not how the adjudicator might have reacted. Hardship or suffering incurred during overseas service, or as a result of combat wounds of other service-incurred or aggravated disability, is to be carefully and sympathetically considered in evaluating the person's state of mind at the time the prolonged AWOL period began.

(iii) A valid legal defense exists for the absence which would have precluded a conviction for AWOL. Compelling circumstances could occur as a matter of law if the absence could not validly be charged as, or lead to a conviction of, an offense under the Uniform Code of Military Justice. For purposes of this paragraph the defense must go directly to the substantive issue of absence rather than to procedures, technicalities or formalities.

(d) A discharge or release because of one of the offenses specified in this paragraph is considered to have been issued under dishonorable conditions.

1. Acceptance of an undesirable discharge to escape trial by general court-martial.
2. Mutiny or spying.
3. An offense involving moral turpitude. This includes, generally, conviction of a felony.
4. Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.
5. Homosexual acts involving aggravating circumstances or other factors affecting the performance of duty. Examples of homosexual acts involving aggravating circumstances or other factors affecting the performance of duty include child molestation, homosexual prostitution, homosexual acts or conduct accompanied by assault or coercion, and homosexual acts or conduct taking place between service members of disparate rank, grade, or status when a service member has taken advantage of his or her superior rank, grade, or status.

(e) An honorable discharge or discharge under honorable conditions issued through a board for correction of records established under authority of 10 U.S.C. 1552 is final and conclusive on the Department of Veterans Affairs. The action of the board sets aside any prior bar to benefits imposed under paragraph (c) or (d) of this section.

(f) An honorable or general discharge issued prior to October 8, 1977, under authority other than that listed in paragraphs (h) (1), (2) and (3) of this section by a discharge review board established under 10 U.S.C. 1553 set aside any bar to benefits imposed under paragraph (c) or (d) of this section except the bar contained in paragraph (c)(2) of this section.
(g) An honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553, sets aside a bar to benefits imposed under paragraph (d), but not paragraph (c), of this section provided that:
(1) The discharge is upgraded as a result of an individual case review;
(2) The discharge is upgraded under uniform published standards and procedures that generally apply to all persons administratively discharged or released from active military, naval or air service under conditions other than honorable; and
(3) Such standards are consistent with historical standards for determining honorable service and do not contain any provision for automatically granting or denying an upgraded discharge.
(h) Unless a discharge review board established under 10 U.S.C. 1553 determines on an individual case basis that the discharge would be upgraded under uniform standards meeting the requirements set forth in paragraph (g) of this section, an honorable or general discharge awarded under one of the following programs does not remove any bar to benefits imposed under this section:
(1) The President's directive of January 19, 1977, implementing Presidential Proclamation 4313 of September 16, 1974; or
(2) The Department of Defense's special discharge review program effective April 5, 1977; or
(3) Any discharge review program implemented after April 5, 1977, that does not apply to all persons administratively discharged or released from active military service under other than honorable conditions.
(Authority: 38 U.S.C. 5303 (e))
(i) No overpayments shall be created as a result of payments made after October 8, 1977, based on an upgraded honorable or general discharge issued under one of the programs listed in paragraph (h) of this section which would not be awarded under the standards set forth in paragraph (g) of this section. Accounts in payment status on or after October 8, 1977, shall be terminated the end of the month in which it is determined that the original other than honorable discharge was not issued under conditions other than dishonorable following notice from the appropriate discharge review board that the discharge would not have been upgraded under the standards set forth in paragraph (g) of this section, or April 7, 1978, whichever is the earliest. Accounts in suspense (either before or after October 8, 1977) shall be terminated on the date of last payment or April 7, 1978, whichever is the earliest.
(j) No overpayment shall be created as a result of payments made after October 8, 1977, in cases in which the bar contained in paragraph (c)(6) of this section is for application. Accounts in payment status on or after October 8, 1977, shall be terminated at the end of the month in which it is determined that compelling circumstances do not exist, or April 7, 1978, whichever is the earliest. Accounts in suspense (either before or after October 8, 1977) shall be terminated on the date of last payment, or April 7, 1978, whichever is the earliest.
(k) Uncharacterized separations. Where enlisted personnel are administratively separated from service on the basis of proceedings initiated on or after October 1, 1982, the separation may be classified as one of the three categories of administrative separation that do not require characterization of service by the military department concerned. In such cases conditions of discharge will be determined by the VA as follows:
(1) Entry level separation. Uncharacterized administrative separations of this type shall be considered under conditions other than dishonorable.

(2) Void enlistment or induction. Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation, with reference to the provisions of § 3.14 of this part, to determine whether separation was under conditions other than dishonorable.

(3) Dropped from the rolls. Uncharacterized administrative separations of this type shall be reviewed based on facts and circumstances surrounding separation to determine whether separation was under conditions other than dishonorable.


(38 U.S.C. 501)

[EFFECTIVE DATE NOTE: 62 FR 14822, 14823, March 28, 1997, revised paragraphs (g) and (h), effective March 28, 1997.]


§ 3.12a Minimum active-duty service requirement.

(a) Definitions. (1) The term minimum period of active duty means, for the purposes of this section, the shorter of the following periods:
   (i) Twenty-four months of continuous active duty. Non-duty periods that are excludable in determining the Department of Veterans Affairs benefit entitlement (e.g., see § 3.15) are not considered as a break in service for continuity purposes but are to be subtracted from total time served.
   (ii) The full period for which a person was called or ordered to active duty.

(2) The term benefit includes a right or privilege but does not include a refund of a participant's contributions under 38 U.S.C. Ch. 32.

(b) Effect on Department of Veterans Affairs benefits. Except as provided in paragraph (d) of this section, a person listed in paragraph (c) of this section who does not complete a minimum period of active duty is not eligible for any benefit under title 38, United States Code or under any law administered by the Department of Veterans Affairs based on that period of active service.

(c) Persons included. Except as provided in paragraph (d) of this section, the provisions of paragraph (b) of this section apply to the following persons:
   (1) A person who originally enlists (enlisted person only) in a regular component of the Armed Forces after September 7, 1980 (a person who signed a delayed-entry contract with one of the service branches prior to September 8, 1980, and under that contract was assigned to a reserve component until entering on active duty after September 7, 1980, shall be considered to have enlisted on the date the person entered on active duty); and
   (2) Any other person (officer as well as enlisted) who enters on active duty after October 16, 1981 and who has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171 (early out).

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(d) Exclusions. The provisions of paragraph (b) of this section are not applicable to the following cases:

(1) To a person who is discharged or released under 10 U.S.C. 1171 or 1173 (early out or hardship discharge).

(2) To a person who is discharged or released from active duty for a disability adjudged service connected without presumptive provisions of law, or who at time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(3) To a person with a compensable service-connected disability.

(4) To the provision of a benefit for or in connection with a service-connected disability, condition, or death.

(5) To benefits under chapter 19 of title 38, United States Code.

(e) Dependent or survivor benefits—

(1) General. If a person is, by reason of this section, barred from receiving any benefits under title 38, United States Code (or under any other law administered by the Department of Veterans Affairs based on a period of active duty, the person's dependents or survivors are also barred from receiving benefits based on the same period of active duty.

(2) Exceptions. Paragraph (e)(1) of this section does not apply to benefits under chapters 19 and 37 of title 38, United States Code. (38 U.S.C. 5303A)

§ 3.13 Discharge to change status.

(a) A discharge to accept appointment as a commissioned or warrant officer, or to change from a Reserve or Regular commission to accept a commission in the other component, or to reenlist is a conditional discharge if it was issued during one of the following periods:

(1) World War I; prior to November 11, 1918. As to reenlistments, this subparagraph applies only to Army and National Guard. No involuntary extension or other restrictions existed on Navy enlistments.

(2) World War II, the Korean conflict or the Vietnam era; prior to the date the person was eligible for discharge under the point or length of service system, or under any other criteria in effect.

(3) Peacetime service; prior to the date the person was eligible for an unconditional discharge.

(b) Except as provided in paragraph (c) of this section, the entire period of service under the circumstances stated in paragraph (a) of this section constitutes one period of service and entitlement will be determined by the character of the final termination of such period of active service except that, for death pension purposes, § 3.3(b)(3) and (4) is controlling as to basic entitlement when the conditions prescribed therein are met.

(c) Despite the fact that no unconditional discharge may have been issued, a person shall be considered to have been unconditionally discharged or released from active military, naval or air service when the following conditions are met:

(1) The person served in the active military, naval or air service for the period of time the person was obligated to serve at the time of entry into service;
(2) The person was not discharged or released from such service at the time of completing that period of obligation due to an intervening enlistment or reenlistment; and
(3) The person would have been eligible for a discharge or release under conditions other than dishonorable at that time except for the intervening enlistment or reenlistment.


§ 3.14 Validity of enlistments.
Discussion and Analysis in the Veterans Benefits Manual
Service is valid unless the enlistment is voided by the service department.

(a) Enlistment not prohibited by statute. Where an enlistment is voided by the service department for reasons other than those stated in paragraph (b) of this section, service is valid from the date of entry upon active duty to the date of voidance by the service department. Benefits may not be paid, however, unless the discharge is held to have been under conditions other than dishonorable. Generally discharge for concealment of a physical or mental defect except incompetency or insanity which would have prevented enlistment will be held to be under dishonorable conditions.

(b) Statutory prohibition. Where an enlistment is voided by the service department because the person did not have legal capacity to contract for a reason other than minority (as in the case of an insane person) or because the enlistment was prohibited by statute (a deserter or person convicted of a felony), benefits may not be paid based on that service even though a disability was incurred during such service. An undesirable discharge by reason of the fraudulent enlistment voids the enlistment from the beginning.

(c) Misrepresentation of age. Active service which was terminated because of concealment of minority or misrepresentation of age is honorable if the veteran was released from service under conditions other than dishonorable. Service is valid from the date of entry upon active duty to the date of discharge.

(d) Honorable discharges. Determinations as to honorable service will be made by the service departments and the finding shall be binding on the Department of Veterans Affairs, but, in the case of an alien, the effect of the discharge will be governed by § 3.7(b).


§ 3.15 Computation of service.
For nonservice-connected or service-connected benefits, active service is countable exclusive of time spent on an industrial, agricultural, or indefinite furlough, time lost on absence without leave (without pay), under arrest (without acquittal), in desertion, while undergoing sentence of court-martial or a period following release from active duty under the circumstances outlined in § 3.41. In claims based on Spanish-American War service, leave authorized under General Order No. 130, War Department, is included.
[40 FR 16064, Apr. 9, 1975]


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§ 3.16 Service pension.
In computing the 70 or 90 days required under § 3.3(a) active service which began before or extended beyond the war period will be included if such service was continuous. Broken periods of service during a war period may be added together to meet the requirement for length of service.
[41 FR 18299, May 3, 1976, as amended at 44 FR 45932, Aug. 6, 1979]


§ 3.17 Disability and death pension; Mexican border period and later war periods.
In computing the 90 days' service required for pension entitlement (see § 3.3), there will be included active service which began before and extended into the Mexican border period or ended during World War I, or began or ended during World War II, the Korean conflict, the Vietnam era or the Persian Gulf War, if such service was continuous. Service during different war periods may be combined with service during any other war period to meet the 90 days' service requirement.
[37 FR 6676, Apr. 1, 1972, as amended at 44 FR 45932, Aug. 6, 1979; 56 FR 57986, Nov. 15, 1991]

(38 U.S.C. 1521)

§§ 3.18 -- 3.19 [Reserved]

§ 3.20 Surviving spouse's benefit for month of veteran's death.
(a) Where the veteran died on or after December 1, 1962, and before October 1, 1982, the rate of death pension or dependency and indemnity compensation otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death.
(Authority: 38 U.S.C. 5310)
(b) Where the veteran dies on or after October 1, 1982, the surviving spouse may be paid death pension or dependency and indemnity compensation for the month in which the veteran died at a rate equal to the amount of compensation or pension which would have been payable to the veteran for that month had death not occurred, but only if such rate is equal to or greater than the monthly rate of death pension or dependency and indemnity compensation to which the surviving spouse is entitled. Otherwise, no payment of death pension or dependency and indemnity compensation may be made for the month in which the veteran died.
(c)(1) Where a veteran receiving compensation or pension dies after December 31, 1996, the surviving spouse, if not entitled to death compensation, dependency and indemnity compensation, or death pension for the month of death, shall be entitled to a benefit for that month in an amount equal to the amount of compensation or pension the veteran would have received for that month but for his or her death.
(2) A payment issued to a deceased veteran as compensation or pension for the month in which death occurred shall be treated as payable to that veteran's surviving spouse, if the surviving spouse is not entitled to death compensation, dependency and indemnity compensation or death pension for that month and, if negotiated or deposited, shall be considered to be the benefit to which the surviving spouse is entitled under paragraph (c)(1) of this section. However, if such payment is in an amount less than the amount of the benefit under paragraph (c)(1) of this section, the unpaid difference shall be treated in the same manner as an accrued benefit under § 3.1000 of this part.

(Authority: 38 U.S.C. 5310(b))

[48 FR 34471, July 29, 1983; 62 FR 35421, 35422, July 1, 1997; 64 FR 30391, 30392, June 8, 1999]

(38 U.S.C. 5111(c))

[EFFECTIVE DATE NOTE: 64 FR 30391, 30392, June 8, 1999, amended paragraph (b), effective June 8, 1999.]

§ 3.21 Monetary rates.
The rates of compensation, dependency and indemnity compensation for surviving spouses and children, and section 306 and old-law disability and death pension, are published in tabular form in appendix B of the Veterans Benefits Administration Manual M21-1 and are to be given the same force and effect as if published in the regulations (title 38, Code of Federal Regulations). The maximum annual rates of improved pension payable under Pub. L. 95-588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents' dependency and indemnity compensation are set forth in § 3.25.

[44 FR 45932, Aug. 6, 1979]

CROSS REFERENCES: Section 306 pension. See § 3.1(u). Old-law pension. See § 3.1(v). Improved pension. See § 3.1(w).

§ 3.22 DIC benefits for survivors of certain veterans rated totally disabled at time of death.

(a) Even though a veteran died of non-service-connected causes, VA will pay death benefits to the surviving spouse or children in the same manner as if the veteran's death were service-connected, if:

(1) The veteran's death was not the result of his or her own willful misconduct, and

(2) At the time of death, the veteran was receiving, or was entitled to receive, compensation for service-connected disability that was:

(i) Rated by VA as totally disabling for a continuous period of at least 10 years immediately preceding death;

(ii) Rated by VA as totally disabling continuously since the veteran's release from active duty and for at least 5 years immediately preceding death; or

(iii) Rated by VA as totally disabling for a continuous period of not less than one year immediately preceding death, if the veteran was a former prisoner of war who died after September 30, 1999.
(Authority: 38 U.S.C. 1318(b))

(b) For purposes of this section, "entitled to receive" means that the veteran filed a claim for disability compensation during his or her lifetime and one of the following circumstances is satisfied:

(1) The veteran would have received total disability compensation at the time of death for a service-connected disability rated totally disabling for the period specified in paragraph (a)(2) of this section but for clear and unmistakable error committed by VA in a decision on a claim filed during the veteran's lifetime; or

(2) Additional evidence submitted to VA before or after the veteran's death, consisting solely of service department records that existed at the time of a prior VA decision but were not previously considered by VA, provides a basis for reopening a claim finally decided during the veteran's lifetime and for awarding a total service-connected disability rating retroactively in accordance with §§3.156(c) and 3.400(q)(2) of this part for the relevant period specified in paragraph (a)(2) of this section; or

(3) At the time of death, the veteran had a service-connected disability that was continuously rated totally disabling by VA for the period specified in paragraph (a)(2), but was not receiving compensation because:

(i) VA was paying the compensation to the veteran's dependents;

(ii) VA was withholding the compensation under authority of 38 U.S.C. 5314 to offset an indebtedness of the veteran;

(iii) The veteran had not waived retired or retirement pay in order to receive compensation;

(iv) VA was withholding payments under the provisions of 10 U.S.C. 1174(h)(2);

(v) VA was withholding payments because the veteran's whereabouts were unknown, but the veteran was otherwise entitled to continued payments based on a total service-connected disability rating; or

(vi) VA was withholding payments under 38 U.S.C. 5308 but determines that benefits were payable under 38 U.S.C. 5309.

(c) For purposes of this section, "rated by VA as totally disabling" includes total disability ratings based on unemployability (§ 4.16 of this chapter).

(d) To be entitled to benefits under this section, a surviving spouse must have been married to the veteran --

(1) For at least 1 year immediately preceding the date of the veteran's death; or

(2) For any period of time if a child was born of the marriage, or was born to them before the marriage.

(Authority: 38 U.S.C. 1318)

(e) Effect of judgment or settlement. If a surviving spouse or child eligible for benefits under paragraph (a) of this section receives any money or property pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran, benefits payable under paragraph (a) of this section shall not be paid for any month following the month in which such money or property is received until the amount of benefits that would otherwise have been payable under paragraph (a) of this section equals the total of the amount of money received and the fair market value of the property received. The provisions of this paragraph do not apply, however, to any portion of such benefits.
payable for any period preceding the end of the month in which such money or property of value is received.

(Authority: 38 U.S.C. 501)

(f) Social security and worker's compensation. Benefits received under social security or worker's compensation are not subject to recoupment under paragraph (e) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(g) Beneficiary's duty to report. Any person entitled to benefits under paragraph (a) of this section shall promptly report to the Department of Veterans Affairs the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorney's fees, may not be deducted from the amount to be reported.

(h) Relationship to survivor benefit plan. For the purpose of 10 U.S.C. 1448(d) and 1450(c) eligibility for benefits under paragraph (a) of this section shall be deemed eligibility for dependency and indemnity compensation under 38 U.S.C. 1311(a).


(38 U.S.C. 1318)


CROSS REFERENCES: Marriage dates. See § 3.54. Homicide. See § 3.11.

§ 3.23 Improved pension rates — Veterans and surviving spouses.

(a) Maximum annual rates of improved pension. The maximum annual rates of improved pension for the following categories of beneficiaries shall be the amounts specified in 38 U.S.C. 1521 and 1542, as increased from time to time under 38 U.S.C. 5312. Each time there is an increase under 38 U.S.C. 5312, the actual rates will be published in the "Notices" section of the FEDERAL REGISTER. (1) Veterans who are permanently and totally disabled.

(Authority: 38 U.S.C. 1521(b)( or (c))

(2) Veterans in need of aid and attendance.

(Authority: 38 U.S.C. 1521(d))

(3) Veterans who are housebound.

(Authority: 38 U.S.C. 1521(e))

(4) Two veterans married to one another; combined rates.

(Authority: 38 U.S.C. 1521(f))

(5) Surviving spouse alone or with a child or children of the deceased veteran in custody of the surviving spouse.

(Authority: 38 U.S.C. 1541(b) or (c))

(6) Surviving spouses in need of aid and attendance.

(Authority: 38 U.S.C. 1541(d))

(7) Surviving spouses who are housebound.
(Authority: 38 U.S.C. 1541(e))

(b) Reduction for income. The maximum rates of improved pension in paragraph (a) of this section shall be reduced by the amount of the countable annual income of the veteran or surviving spouse.

(Authority: 38 U.S.C. 1521, 1541)

(c) Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by the amount specified in 38 U.S.C. 1521(g), as increased from time to time under 38 U.S.C. 5312. Each time there is an increase under 38 U.S.C. 5312, the actual rate will be published in the "Notices" section of the FEDERAL REGISTER.

(Authority: 38 U.S.C. 1521(g))

(d) Definitions of terms used in this section --

(1) Dependent. A veteran's spouse or child. A veteran's spouse who resides apart from the veteran and is estranged from the veteran may not be considered the veteran's dependent unless the spouse receives reasonable support contributions from the veteran. (Note that under § 3.60 a veteran and spouse who reside apart are considered to be living together unless they are estranged.) A child of a veteran not in custody of the veteran and to whose support the veteran is not reasonably contributing, may not be considered the veteran's dependent.

(Authority: 38 U.S.C. 1521(b))

(2) In need of aid and attendance. As defined in § 3.351(b).

(3) Housebound. As defined in § 3.351(d)(2), (f). This term also includes a veteran who has a disability or disabilities evaluated as 60 percent or more disabling in addition to a permanent and totally disabling condition. See § 3.351(d)(1).

(4) Veteran's annual income. This term includes the veteran's annual income, the annual income of the veteran's dependent spouse, and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 1522(b)) in the veteran's custody or to whose support the veteran is reasonably contributing (to the extent such child's income is reasonably available to or for the veteran, unless in the judgment of the Department of Veterans Affairs to do so would work a hardship on the veteran.) There is a rebuttable presumption that all of such a child's income is reasonably available to or for the veteran.

(Authority: 38 U.S.C. 1521(c), (h))

(5) Surviving spouse's annual income. This term includes the surviving spouse's annual income and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 1543(a)(2)) in the custody of the surviving spouse to the extent that such child's income is reasonably available to or for the surviving spouse, unless in the judgment of the Department of Veterans Affairs to do so would work a hardship on the surviving spouse. There is a rebuttable presumption that all of such a child's income is available to or for the surviving spouse.

(Authority: 38 U.S.C. 1541(c), (g))

(6) Reasonable availability and hardship. For the purposes of paragraphs (d)(4) and (d)(5) of this section, a child's income shall be considered "reasonably available" when it can be readily applied to meet the veteran's or surviving spouse's expenses necessary for reasonable family maintenance, and "hardship" shall be held to exist when annual expenses necessary for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement. Expenses necessary for reasonable family
maintenance include expenses for basic necessities (such as food, clothing, shelter, etc.) and other expenses, determined on a case-by-case basis, which are necessary to support a reasonable quality of life.

(38 U.S.C. 501)
[EFFECTIVE DATE NOTE: 61 FR 20726, 20727, May 8, 1996, which revised the authority cite following paragraph (d)(5), became effective May 8, 1996.]
CROSS REFERENCES: Improved pension. See § 3.1(w). Child. See § 3.57(d). Definition of living with. See § 3.60. Exclusions from income. See § 3.272.

§ 3.24 Improved pension rates -- Surviving children.
(a) General. The provisions of this section apply to children of a deceased veteran not in the custody of a surviving spouse who has basic eligibility to receive improved pension. Children in custody of a surviving spouse who has basic eligibility to receive improved pension do not have separate entitlement. Basic eligibility to receive improved pension means that the surviving spouse is in receipt of improved pension or could become entitled to receive improved pension except for the amount of the surviving spouse's countable annual income or the size of the surviving spouse's estate (See § 3.274(c)). Under § 3.23(d)(5) the countable annual income of a surviving spouse includes the countable annual income of each child of the veteran in custody of the surviving spouse to the extent the child's income is reasonably available to or for the surviving spouse, unless in the judgment of the Department of Veterans Affairs to do so would work a hardship on the surviving spouse.
(b) Child with no personal custodian or in the custody of an institution. In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (See § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate specified in 38 U.S.C. 1542, as increased from time to time under 38 U.S.C. 5312, reduced by the amount of the child's countable annual income. Each time there is an increase under 38 U.S.C. 5312, the actual rate will be published in the "Notices" section of the FEDERAL REGISTER.
(c) Child in the custody of person legally responsible for support -- (1) Single child. Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5), and the sum of the annual income of such child and the annual income of such person or, the maximum annual pension rate under paragraph (b) of this section, whichever is less.
(2) More than one child. Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than the maximum annual pension rate under paragraph (b) of this section) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than the maximum annual pension rate under paragraph (b)
of this section, or the maximum annual pension rate under paragraph (b) of this section times the number of eligible children, whichever is less).


(38 U.S.C. 1542)

[EFFECTIVE DATE NOTE: 61 FR 20726, 20727, May 8, 1996, which added "the annual income of such child and" following "and the sum of" in paragraph (c)(1), became effective May 8, 1996.]

CROSS REFERENCES: Child. See § 3.57(d). Exclusions from income. See § 3.272.

§ 3.25 Parent's dependency and indemnity compensation (DIC) -- Method of payment computation.

Monthly payments of parents' DIC shall be computed in accordance with the following formulas:

(a) One parent. Except as provided in paragraph (b) of this section, if there is only one parent, the monthly rate specified in 38 U.S.C 1315(b)(1), as increased from time to time under 38 U.S.C. 5312, reduced by $ .08 for each dollar of such parent's countable annual income in excess of $ 800. No payments of DIC may be made under this paragraph, however, if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 1315(b)(3), as increased from time to time under 38 U.S.C. 5312, and no payment of DIC to a parent under this paragraph may be less than $5 a month.

(b) One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (a) or paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) Two parents not living together. The rate computation method in this paragraph applies to:

(1) Two parents who are not living together, or
(2) An unremarried parent when both parents are living and the other parent has remarried.

The monthly rate of DIC paid to such parent shall be the rate specified in 38 U.S.C. 1315(c)(1), as increased from time to time under 38 U.S.C. 5312, reduced by an amount no greater than $ .08 for each dollar of such parent's countable annual income in excess of $ 800, except that no payments of DIC may be made under this paragraph if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 1315(c)(3), as increased from time to time under 38 U.S.C. 5312, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 5312, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the Federal Register as provided in paragraph (f) of this section.

(d) Two parents living together or remarried parents living with spouse. The rate computation method in this paragraph applies to each parent living with another parent and to each remarried parent when both parents are alive. The monthly rate of DIC paid

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to such parents shall be the rate specified in 38 U.S.C. 1315(d)(1), as increased from time
to time under 38 U.S.C. 5312, reduced to an amount no greater than $ .08 for each dollar
of such parent's and spouse's combined countable annual income in excess of $ 1,000
except that no payments of DIC to a parent under this paragraph may be less than $ 5
monthly. Each time there is a rate increase under 38 U.S.C. 5312, the amount of the
reduction under this paragraph shall be recomputed to provide, as nearly as possible, for
an equitable distribution of the rate increase. The results of this computation method shall
be published in schedular format in the "Notices" section of the FEDERAL REGISTER
as provided in paragraph (f) of this section.
(e) Aid and attendance. The monthly rate of DIC payable to a parent under this section
shall be increased by the amount specified in 38 U.S.C. 1315(g), as increased from time
to time under 38 U.S.C. 5312, if such parent is:
(1) A patient in a nursing home, or
(2) Helpless or blind, or so nearly helpless or blind as to need or require the regular aid
and attendance of another person.
(f) Rate publication. Each time there is an increase under 38 U.S.C. 5312, the actual rates
will be published in the "Notices" section of the FEDERAL REGISTER.

§ 3.26 Section 306 and old-law pension annual income limitations.
(a) The annual income limitations for section 306 pension shall be the amounts specified
in section 306(a)(2)(A) of Pub. L. 95-588, as increased from time to time under section
(b) If a beneficiary under section 306 pension is in need of aid and attendance, the annual
income limitation under paragraph (a) of this section shall be increased in accordance
with 38 U.S.C. 1521(d), as in effect on December 31, 1978.
(c) The annual income limitations for old-law pension shall be the amounts specified in
section 306(b)(3) of Pub. L. 95-588, as increased from time to time under section
306(b)(4) of Pub. L. 95-588.
(d) Each time there is an increase under section 306 (a)(3) or (b)(4) of Pub. L. 95-588, the
actual income limitations will be published in the "Notices" section of the FEDERAL
REGISTER.
[52 FR 34908, Sept. 14, 1987]

§ 3.27 Automatic adjustment of benefit rates.
(a) Improved pension. Whenever there is a cost-of-living increase in benefit amounts
payable under section 215(i) of title II of the Social Security Act, VA shall, effective on
the dates such increases become effective, increase by the same percentage each
maximum annual rate of pension.
(Authority: 38 U.S.C. 5312(a))
(b) Parents' dependency and indemnity compensation -- maximum annual income limitation and maximum monthly rates. Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the annual income limitations and the maximum monthly rates of dependency indemnity compensation for parents.
(Authority: 38 U.S.C. 5312(b)(1))
(c) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans. Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance rates under 38 U.S.C. chapter 18.
(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)
(d) Medal of Honor pension. Beginning in the year 2004, VA shall, effective December 1 of each year, increase the monthly Medal of Honor pension by the same percentage as the percentage by which benefit amounts payable under section 215(i) of Title II of the Social Security Act are increased effective December 1 of such year.
(Authority: 38 U.S.C. 1562(e))
(e) Publishing requirements. Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, the monthly allowance rates under 38 U.S.C. chapter 18 and the Medal of Honor pension made under this section shall be published in the Federal Register.
(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312(c)(1)


§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.
Whenever the maximum annual rates of improved pension are increased by reason of the provisions of 38 U.S.C. 5312, the following will be increased by the same percentage effective the same date:
(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and
(b) The dollar amount of a veteran's spouse's income that is excludable in determining the income of a veteran for section 306 pension purposes. (See § 3.262(b)(2))
These increases shall be published in the FEDERAL REGISTER at the same time that increases under § 3.27 are published.
[52 FR 34908, Sept. 14, 1987]

(Sec. 306, Pub. L. 95-588).
§ 3.29 Rounding.

(a) Annual rates. Where the computation of an increase in improved pension rates under §§ 3.23 and 3.24 would otherwise result in a figure which includes a fraction of a dollar, the benefit rate will be adjusted to the next higher dollar amount. This method of computation will also apply to increases in old-law and section 306 pension annual income limitations under § 3.26, including the income of a spouse which is excluded from a veteran's countable income, and parents' dependency and indemnity compensation benefit rates and annual income limitations under § 3.25.

(Authority: 38 U.S.C. 5312(c)(2))

(b) Monthly or other periodic pension rates. After determining the monthly or other periodic rate of improved pension under §§ 3.273 and 3.30 or the rate payable under section 306(a) of Pub. L. 95-588 (92 Stat. 2508), the resulting rate, if not a multiple of one dollar, will be rounded down to the nearest whole dollar amount. The provisions of this paragraph apply with respect to amounts of pension payable for periods beginning on or after June 1, 1983, under the provisions of 38 U.S.C. 1521, 1541 or 1542, or under section 306(a) of Pub. L. 95-588.

(Authority: 38 U.S.C. 5123)

(c) Monthly rates under 38 U.S.C. chapter 18. When increasing the monthly monetary allowance rates under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans, VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)
[48 FR 34471, July 29, 1983; 65 FR 35280, 35282, June 2, 2000; 67 FR 49585, 49586, July 31, 2002]

[EFFECTIVE DATE NOTE: 67 FR 49585, 49586, July 31, 2002, revised paragraph (c), effective July 31, 2002.]

§ 3.30 Frequency of payment of improved pension and parents' dependency and indemnity compensation (DIC).

Payment shall be made as shown in paragraphs (a), (b), (c), (d), (e), and (f) of this section; however, beneficiaries receiving payment less frequently than monthly may elect to receive payment monthly in cases in which other Federal benefits would otherwise be denied.

(Authority: 38 U.S.C. 501)

(a) Improved pension--Monthly. Payment shall be made monthly if the annual rate payable is $ 228 or more.

(b) Improved pension--Quarterly. Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $ 144 but less the $ 228.

(c) Improved pension--Semiannually. Payment shall be made every 6 months on or about June 1, and December 1, if the annual rate payable is at least $ 72 but less than $ 144.

(d) Improved pension--Annually. Payment shall be made annually on or about June 1, if the annual rate payable is less than $ 72.
(Authority: 38 U.S.C. 1508)
(e) Parents' DIC--Semiannually.
Benefits shall be paid every 6 months on or about June 1, and December 1, if the amount of the annual benefit is less than 4 percent of the maximum annual rate payable under 38 U.S.C. 1315.
(f) Payment of less than one dollar. Payments of less than $1 shall not be made.

(38 U.S.C. 501(a))
CROSS REFERENCE: Pension. See § 3.3(a)(3), (b)(4).

§ 3.31 Commencement of the period of payment.
Regardless of VA regulations concerning effective dates of awards, and except as provided in paragraph (c) of this section, payment of monetary benefits based on original, reopened, or increased awards of compensation, pension, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran may not be made for any period prior to the first day of the calendar month following the month in which the award became effective. However, beneficiaries will be deemed to be in receipt of monetary benefits during the period between the effective date of the award and the date payment commences for the purpose of all laws administered by the Department of Veterans Affairs except that nothing in this section will be construed as preventing the receipt of retired or retirement pay prior to the effective date of waiver of such pay in accordance with 38 U.S.C. 5305.
(a) Increased award defined. For the purposes of this section the term increased award means an award which is increased because of an added dependent, increase in disability or disability rating, or reduction in income. The term also includes elections of improved pension under section 306 of Pub. L. 95-588 and awards pursuant to paragraphs 29 and 30 of the Schedule for Rating Disabilities except as provided in paragraph (c) of this section.
(b) General rule of applicability. The provisions of this section apply to all original, reopened, or increased awards unless such awards provide only for continuity of entitlement with no increase in rate of payment.
(c) Specific exclusions. The provisions of this section do not apply to the following types of awards.
(1) Surviving spouse's rate for the month of a veteran's death (for exception see § 3.20(b))
(2) In cases where military retired or retirement pay is greater than the amount of compensation payable, compensation will be paid as of the effective date of waiver of such pay. However, in cases where the amount of compensation payable is greater than military retired or retirement pay, payment of the available difference for any period prior to the effective date of total waiver of such pay is subject to the general provisions of this section.
(3) Adjustments of awards -- such as in the case of original or increased apportionments or the termination of any withholding, reduction, or suspension by reason of:
   (i) Recoupment,
   (ii) An offset to collect indebtedness,
(iii) Institutionalization (hospitalization),
(iv) Incompetency,
(v) Incarceration,
(vi) An estate that exceeds the limitation for certain hospitalized incompetent veterans, or
(vii) Discontinuance of apportionments.
(4) Increases resulting solely from the enactment of legislation -- such as
(i) Cost-of-living increases in compensation or dependency and indemnity compensation,
(ii) Increases in Improved Pension, parents' dependency and indemnity compensation, or
a monetary allowance under 38 U.S.C. chapter 18 pursuant to § 3.27, or
(iii) Changes in the criteria for statutory award designations.
(5) Temporary total ratings pursuant to paragraph 29 of the Schedule for Rating
Disabilities when the entire period of hospitalization or treatment, including any period of
post-hospitalization convalescence, commences and terminates within the same calendar
month. In such cases the period of payment shall commence on the first day of the month
in which the hospitalization or treatment began.

§ 3.32 Exchange rates for foreign currencies.
When determining the rates of pension or parents' DIC or the amounts of burial, plot or
headstone allowances or accrued benefits to which a claimant or beneficiary may be
entitled, income received or expenses paid in a foreign currency shall be converted into
U.S. dollar equivalents employing quarterly exchange rates established by the
Department of the Treasury.
(a) Pension and parents' DIC. (1) Because exchange rates for foreign currencies cannot be
determined in advance, rates of pension and parents' DIC shall be projected using the
most recent quarterly exchange rate and shall be adjusted retroactively based upon actual
exchange rates when an annual eligibility verification report is filed.
(2) Retroactive adjustments due to fluctuations in exchange rates shall be calculated using
the average of the four most recent quarterly exchange rates. If the claimant reports
income and expenses for a prior reporting period, the retroactive adjustment shall be
calculated using the average of the four quarterly rates which were the most recent
available on the closing date of the twelve-month period for which income and expenses
are reported.
(b) Burial, plot or headstone allowances and accrued benefits. Payment amounts for
burial, plot or headstone allowances and claims for accrued benefits as reimbursement
from the person who bore the expenses of a deceased beneficiary's last illness or burial
shall be determined using the quarterly exchange rate for the quarter in which the
expenses forming the basis of the claim were paid. If the claim is filed by an unpaid
creditor, however, the quarterly rate for the quarter in which the veteran died shall apply.
When entitlement originates during a quarter for which the Department of the Treasury
has not yet published a quarterly rate, amounts due shall be calculated using the most
recent quarterly exchange rate.
§ 3.40 Philippine and Insular Forces.
(a) Regular Philippine Scouts. Service in the Philippine Scouts (except that described in paragraph (b) of this section), the Insular Force of the Navy, Samoan Native Guard, and Samoan Native Band of the Navy is included for pension, compensation, dependency and indemnity compensation, and burial allowance. Benefits are payable in dollars at the full-dollar rate.
(b) Other Philippine Scouts. Service of persons enlisted under section 14, Pub. L. 190, 79th Congress (Act of October 6, 1945), is included for compensation and dependency and indemnity compensation. Except as provided in §§3.42 and 3.43, benefits based on service described in this paragraph are payable at a rate of $0.50 for each dollar authorized under the law. All enlistments and reenlistments of Philippine Scouts in the Regular Army between October 6, 1945, and June 30, 1947, inclusive, were made under the provisions of Pub. L. 190 as it constituted the sole authority for such enlistments during that period. This paragraph does not apply to officers who were commissioned in connection with the administration of Pub. L. 190.
(Authority: 38 U.S.C. 107)
(c) Commonwealth Army of the Philippines. (1) Service is included, for compensation, dependency and indemnity compensation, and burial allowance, from and after the dates and hours, respectively, when they were called into service of the Armed Forces of the United States by orders issued from time to time by the General Officer, U.S. Army, pursuant to the Military Order of the President of the United States dated July 26, 1941. Service as a guerrilla under the circumstances outlined in paragraph (d) of this section is also included. Service on or after July 1, 1946, is not included. Except as provided in §§3.42 and 3.43, benefits based on service described in this paragraph are payable at a rate of $ 0.50 for each dollar authorized under the law.
(Authority: 38 U.S.C. 107)
(2) Unless the record shows examination at time of entrance into the Armed Forces of the United States, such persons are not entitled to the presumption of soundness. This also applies upon reentering the Armed Forces after a period of inactive service.
(d) Guerrilla service. (1) Persons who served as guerrillas under a commissioned officer of the United States Army, Navy or Marine Corps, or under a commissioned officer of the Commonwealth Army recognized by and cooperating with the United States Forces are included. (See paragraph (c) of this section.) Service as a guerrilla by a member of the Philippine Scouts or the Armed Forces of the United States is considered as service in his or her regular status. (See paragraph (a) of this section.)
(2) The following certifications by the service departments will be accepted as establishing guerrilla service:
(i) Recognized guerrilla service;
(ii) Unrecognized guerrilla service under a recognized commissioned officer only if the person was a former member of the United States Armed Forces (including the Philippine Scouts), or the Commonwealth Army. This excludes civilians.
A certification of Anti-Japanese Activity will not be accepted as establishing guerrilla service.

e) Combined service. Where a veteran who had Commonwealth Army or guerrilla service and also had other service, wartime or peacetime, in the Armed Forces of the United States, has disabilities which are compensable separately on a dollar and a $ 0.50 for each dollar authorized basis, and the disabilities are combined under the authority contained in 38 U.S.C. 1157, the evaluation for which dollars are payable will be first considered and the difference between this evaluation and the combined evaluation will be the basis for computing the amount payable at the rate of $ 0.50 for each dollar authorized.


§ 3.41 Philippine service.

(a) For a Regular Philippine Scout or a member of one of the regular components of the Philippine Commonwealth Army while serving with Armed Forces of United States, the period of active service will be from the date certified by the Armed Forces as the date of enlistment or date of report for active duty whichever is later to date of release from active duty, discharge, death, or in the case of a member of the Philippine Commonwealth Army June 30, 1946, whichever was earlier. Release from active duty includes:

(1) Leaving one's organization in anticipation of or due to the capitulation.
(2) Escape from prisoner-of-war status.
(3) Parole by the Japanese.
(4) Beginning of missing-in-action status, except where factually shown at that time he was with his or her unit or death is presumed to have occurred while carried in such status: Provided, however, That where there is credible evidence that he was alive after commencement of his or her missing-in-action status, the presumption of death will not apply for Department of Veterans Affairs purposes.
(5) Capitulation on May 6, 1942, except that periods of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer or periods of service in units which continued organized resistance against Japanese prior to formal capitulation will be considered return to active duty for period of such service.

(b) Active service of a Regular Philippine Scout or a member of the Philippine Commonwealth Army serving with the Armed Forces of the United States will include a prisoner-of-war status immediately following a period of active duty, or a period of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer. In those cases where following release from active duty as set forth in paragraph (a) of this section, the veteran is factually found by the Department of
Veterans Affairs to have been injured or killed by the Japanese because of anti-Japanese activities or his or her former service in the Armed Forces of the United States, such injury or death may be held to have been incurred in active service for Department of Veterans Affairs purposes. Determination shall be based on all available evidence, including service department reports, and consideration shall be given to the character and length of the veteran's former active service in the Armed Forces of the United States.

(c) A prisoner-of-war status based upon arrest during general zonification will not be sufficient of itself to bring a case within the definition of return to military control.

(d) The active service of members of the irregular forces guerrilla will be the period certified by the service department.


[EFFECTIVE DATE NOTE: 66 FR 66763, 66767, Dec. 27, 2001, redesignated this section, effective Dec. 27, 2001.]

[CROSS REFERENCE: This section was formerly § 3.9.]

§ 3.42 Compensation at the full-dollar rate for certain Filipino veterans residing in the United States.

(a) Definitions. For purposes of this section:
(1) United States (U.S.) means the states, territories and possessions of the United States; the District of Columbia, and the Commonwealth of Puerto Rico.
(2) Residing in the U.S. means that an individual's principal, actual dwelling place is in the U.S. and that the individual meets the residency requirements of paragraph (c)(4) of this section.
(3) Citizen of the U.S. means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.
(4) Lawfully admitted for permanent residence means that an individual has been lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code, and still has this status.

(b) Eligibility requirements. Compensation and dependency and indemnity compensation is payable at the full-dollar rate, based on service described in § 3.40(b), (c), or (d), to a veteran or a veteran's survivor who is residing in the U.S. and is either:
(1) A citizen of the U.S., or
(2) An alien lawfully admitted for permanent residence in the U.S.

(c) Evidence of eligibility. (1) A valid original or copy of one of the following documents is required to prove that the veteran or the veteran's survivor is a natural born citizen of the U.S.:
   (i) A valid U.S. passport;
   (ii) A birth certificate showing that he or she was born in the U.S.; or
(2) Only verification by the U.S. Citizenship and Immigration Services to VA that a veteran or a veteran's survivor is a naturalized citizen of the U.S., or a valid U.S. passport, will be sufficient proof of such status.

(3) Only verification by the U.S. Citizenship and Immigration Services to VA that a veteran or a veteran's survivor is an alien lawfully admitted for permanent residence in the U.S. will be sufficient proof of such status.

(4) VA will not pay benefits at the full-dollar rate under this section unless the evidence establishes that the veteran or survivor is lawfully residing in the U.S.

(i) Such evidence should identify the veteran's or survivor's name and relevant dates, and may include:
(A) A valid driver's license issued by the state of residence;
(B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;
(C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;
(D) Hospital or medical records showing medical treatment or hospitalization, and showing the name of the medical facility or treating physician;
(E) Property tax bills and receipts; and
(F) School records.

(ii) A Post Office box mailing address in the veteran's name does not constitute evidence showing that the veteran was lawfully residing in the United States on the date of death.

(d) Continued eligibility. (1) In order to continue receiving benefits at the full-dollar rate under this section, a veteran or a veteran's survivor must be physically present in the U.S. for at least 183 days of each calendar year in which he or she receives payments at the full-dollar rate, and may not be absent from the U.S. for more than 60 consecutive days at a time unless good cause is shown. However, if a veteran or a veteran's survivor becomes eligible for full-dollar rate benefits for the first time on or after July 1 of any calendar year, the 183-day rule will not apply during that calendar year. VA will not consider a veteran or a veteran's survivor to have been absent from the U.S. if he or she left and returned to the U.S. on the same date.

(2) A veteran or a veteran's survivor receiving benefits at the full-dollar rate under this section must notify VA within 30 days of leaving the U.S., or within 30 days of losing either his or her U.S. citizenship or lawful permanent resident alien status. When a veteran or a veteran's survivor no longer meets the eligibility requirements of paragraph (b) of this section, VA will reduce his or her payment to the rate of $0.50 for each dollar authorized under the law, effective on the date determined under §3.505. If such veteran or survivor regains his or her U.S. citizenship or lawful permanent resident alien status, VA will restore full-dollar rate benefits, effective the date the veteran or survivor meets the eligibility requirements in paragraph (b) of this section.

(3) When requested to do so by VA, a veteran or survivor receiving benefits at the full-dollar rate under this section must verify that he or she continues to meet the residency and citizenship or permanent resident alien status requirements of paragraph (b) of this section. VA will advise the veteran or survivor at the time of the request that the verification must be furnished within 60 days and that failure to do so will result in the reduction of benefits. If the veteran or survivor fails to furnish the evidence within
60 days, VA will reduce his or her payment to the rate of $0.50 for each dollar authorized, as provided in §3.652.

(4) A veteran or survivor receiving benefits at the full-dollar rate under this section must promptly notify VA of any change in his or her address. If mail from VA to the veteran or survivor is returned to VA by the U.S. Postal Service, VA will make reasonable efforts to determine the correct mailing address. If VA is unable to determine the correct mailing address through reasonable efforts, VA will reduce benefit payments to the rate of $0.50 for each dollar authorized under law, effective on the date determined under §3.505.

(e) Effective date for restored eligibility. In the case of a veteran or survivor receiving benefits at the full-dollar rate, if VA reduces his or her payment to the rate of $0.50 for each dollar authorized under the law, VA will resume payments at the full-dollar rate, if otherwise in order, effective the first day of the month following the date on which he or she again meets the requirements. However, such increased payments will be retroactive no more than one year prior to the date on which VA receives evidence that he or she again meets the requirements.

[66 FR 66763, 66767, Dec. 27, 2001; 71 FR 8215, Feb. 16, 2006]

(38 U.S.C. 107, 501(a))

[EFFECTIVE DATE NOTE: 66 FR 66763, 66767, Dec. 27, 2001, added this section, effective Dec. 27, 2001.]

§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

(a) Definitions. For purposes of this section:

(1) United States (U.S.) means the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) Residing in the U.S. means an individual's principal, actual dwelling place was in the U.S. When death occurs outside the U.S., VA will consider the deceased individual to have been residing in the U.S. on the date of death if the individual maintained his or her principal actual dwelling place in the U.S. until his or her most recent departure from the U.S., and he or she had been physically absent from the U.S. less than 61 consecutive days when he or she died.

(3) Citizen of the U.S. means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) Lawfully admitted for permanent residence means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code, and on the date of death, still had this status.

(b) Eligibility requirements. VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate, based on service described in §3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, or based on service described in §3.40(b) when an individual who performed such service dies after December 15, 2003, and was on the date of death:

(1) Residing in the U.S.; and
(2) Either --
(i) A citizen of the U.S., or
(ii) An alien lawfully admitted for permanent residence in the U.S.; and
(3) Either --
(i) Receiving compensation under chapter 11 of title 38, United States Code; or
(ii) Would have satisfied the disability, income and net worth requirements of § 3.3(a)(3) of this part and would have been eligible for pension if the veteran's service had been deemed to be active military, naval, or air service.

(c) Evidence of eligibility. (1) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:
(i) A valid U.S. passport;
(ii) A birth certificate showing that he or she was born in the U.S.; or
(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA, or a valid U.S. passport, will be sufficient proof for purposes of eligibility for full-dollar rate benefits.
(3) In a claim based on the deceased veteran having been an alien lawfully admitted for permanent residence in the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.
(4) VA will not pay benefits at the full-dollar rate under this section unless the evidence establishes that the veteran was lawfully residing in the U.S. on the date of death.
(i) Such evidence should identify the veteran's name and relevant dates, and may include:
(A) A valid driver's license issued by the state of residence;
(B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;
(C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;
(D) Hospital or medical records showing medical treatment or hospitalization of the veteran or survivor, and showing the name of the medical facility or treating physician;
(E) Property tax bills and receipts; and
(F) School records.
   (ii) A Post Office box mailing address in the veteran's name does not constitute evidence showing that the veteran was lawfully residing in the United States on the date of death.
[66 FR 66763, 66768, Dec. 27, 2001; 71 FR 8215, Feb. 16, 2006]

(38 U.S.C. 107, 501(a))
[EFFECTIVE DATE NOTE: 66 FR 66763, 66768, Dec. 27, 2001, added this section, effective Dec. 27, 2001.]
§ 3.50 Spouse and surviving spouse. 
§ 3.52 Marriages deemed valid. 
§ 3.53 Continuous cohabitation. 
§ 3.54 Marriage dates. 
§ 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships. 
§ 3.56 [Reserved] 
§ 3.57 Child. 
§ 3.58 Child adopted out of family. 
§ 3.59 Parent. 
§ 3.60 Definition of living with. 

§ 3.50 Spouse and surviving spouse. 

(a) Spouse. "Spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j). 

(b) Surviving spouse. Except as provided in § 3.52, "surviving spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran's death and: 

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and 

(2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person. 


(38 U.S.C. 101(31)) 

[EFFECTIVE DATE NOTE: 62 FR 5528, 5529, Feb. 6, 1997, revised this section, effective Feb. 6, 1997.] 

§ 3.52 Marriages deemed valid. 

Where an attempted marriage of a claimant to the veteran was invalid by reason of a legal impediment, the marriage will nevertheless be deemed valid if: 

(a) The marriage occurred 1 year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was born to them before such marriage (see § 3.54(d)), and 

(b) The claimant entered into the marriage without knowledge of the impediment, and 

(c) The claimant cohabited with the veteran continuously from the date of marriage to the date of his or her death as outlined in § 3.53, and 

(d) No claim has been filed by a legal surviving spouse who has been found entitled to gratuitous death benefits other than accrued monthly benefits covering a period prior to the veteran's death.
§ 3.53 Continuous cohabitation.
(a) General. The requirement that there must be continuous cohabitation from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows that any separation was due to the misconduct of, or procured by, the veteran without the fault of the surviving spouse. Temporary separations which ordinarily occur, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.
(b) Findings of fact. The statement of the surviving spouse as to the reason for the separation will be accepted in the absence of contradictory information. If the evidence establishes that the separation was by mutual consent and that the parties lived apart for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, the continuity of the cohabitation will not be considered as having been broken. State laws will not control in determining questions of desertion; however, due weight will be given to findings of fact in court decisions made during the life of the veteran on issues subsequently involved in the application of this section.


(38 U.S.C. 103(a))
CROSS REFERENCES: Definition, marriage. See § 3.205(c).

§ 3.54 Marriage dates.
A surviving spouse may qualify for pension, compensation, or dependency and indemnity compensation if the marriage to the veteran occurred before or during his or her service or, if married to him or her after his or her separation from service, before the applicable date stated in his section.
(a) Pension. Death pension may be paid to a surviving spouse who was married to the veteran:
(1) One year or more prior to the veteran's death, or
(2) For any period of time if a child was born of the marriage, or was born to them before the marriage, or
(3) Prior to the applicable delimiting dates, as follows:
   (i) Civil War -- June 27, 1905.
   (ii) Indian wars -- March 4, 1917.
   (iii) Spanish-American War -- January 1, 1938.
   (iv) Mexican border period and World War I -- December 14, 1944.
   (vi) Korean conflict -- February 1, 1965.
   (Authority: 38 U.S.C. 532(d), 534(c), 536(c), 541(e), 541(f)) [<--]
(b) Compensation. Death compensation may be paid to a surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Department of Veterans Affairs in effect on December 31, 1957, or who was married to the veteran:
(1) Before the expiration of 15 years after termination of the period of service in which the injury or disease which caused the veteran's death was incurred or aggravated, or
(2) One year or more, or
(3) For any period of time if a child was born of the marriage, or was born to them before the marriage.
(Authority: 38 U.S.C. 1102)
Dependency and indemnity compensation. (c) Dependency and indemnity compensation. Dependency and indemnity compensation payable under 38 U.S.C. 1310(a) may be paid to the surviving spouse of a veteran who died on or after January 1, 1957, who was married to the veteran:
(1) Before the expiration of 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated, or
(2) For 1 year or more, or
(3) For any period of time if a child was born of the marriage, or was born to them before the marriage.
(Authority: 38 U.S.C. 1304)
(d) Child born. The term child born of the marriage means a birth on or after the date of the marriage on which the surviving spouse's entitlement is predicated. The term born to them before the marriage means a birth prior to the date of such marriage. Either term includes a fetus advanced to the point of gestation required to constitute a birth under the law of the jurisdiction in which the fetus was delivered.
(e) More than one marriage to veteran. For periods commencing on or after January 1, 1958, where a surviving spouse has been married legally to a veteran more than once, the date of the original marriage will be used in determining whether the statutory requirement as to date of marriage has been met.

(38 U.S.C. 103(b))
[EFFECTIVE DATE NOTE: 65 FR 3388, 3392, Jan. 21, 2000, amended this section, effective Jan. 21, 2000.]

§ 3.55 Reinstatement of benefits eligibility based upon terminated marital relationships.
xxxii Discussion and Analysis in the Veterans Benefits Manual
(a) Surviving spouse. (1) Remarriage of a surviving spouse shall not bar the furnishing of benefits to such surviving spouse if the marriage:
(i) Was void, or

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(ii) Has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Department of Veterans Affairs that the annulment was obtained through fraud by either party or by collusion.

(2) On or after January 1, 1971, remarriage of a surviving spouse terminated prior to November 1, 1990, or terminated by legal proceedings commenced prior to November 1, 1990, by an individual who, but for the remarriage, would be considered the surviving spouse, shall not bar the furnishing of benefits to such surviving spouse provided that the marriage:

(i) Has been terminated by death, or

(ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by the surviving spouse or by collusion.

(3) On or after October 1, 1998, remarriage of a surviving spouse terminated by death, divorce, or annulment, will not bar the furnishing of dependency and indemnity compensation, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion.

(Authority: 38 U.S.C. 1311(e))

(4) On or after December 1, 1999, remarriage of a surviving spouse terminated by death, divorce, or annulment, will not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37, unless the Secretary determines that the divorce or annulment was secured through fraud or collusion.

(Authority: 38 U.S.C. 103(d))

(5) On or after January 1, 1971, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person shall not bar the furnishing of benefits to him or her after he or she terminates the relationship, if the relationship terminated prior to November 1, 1990.

(6) On or after October 1, 1998, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person will not bar the furnishing of dependency and indemnity compensation to the surviving spouse if he or she ceases living with such other person and holding himself or herself out openly to the public as such other person's spouse.

(Authority: 38 U.S.C. 1311(e))

(7) On or after December 1, 1999, the fact that a surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of such other person will not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37 to the surviving spouse if he or she ceases living with such other person and holding himself or herself out openly to the public as such other person's spouse.

(Authority: 38 U.S.C. 103(d)).

(8) On or after January 1, 1971, the fact that benefits to a surviving spouse may previously have been barred because his or her conduct or a relationship into which he or she had entered had raised an inference or presumption that he or she had remarried or had been determined to be open and notorious adulterous cohabitation, or similar conduct,
shall not bar the furnishing of benefits to such surviving spouse after he or she terminates the conduct or relationship, if the relationship terminated prior to November 1, 1990.

(9) Benefits under 38 U.S.C. 1781 for a surviving spouse who remarries after age 55. (i) On or after February 4, 2003, the remarriage of a surviving spouse after age 55 shall not bar the furnishing of benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781, subject to the limitation in paragraph (a)(9)(ii) of this section.

(ii) A surviving spouse who remarried after the age of 55, but before December 6, 2002, may be eligible for benefits relating to medical care for survivors and dependents under 38 U.S.C. 1781 pursuant to paragraph (a)(9)(i) only if the application for such benefits was received by VA before December 16, 2004.


(10) Benefits for a surviving spouse who remarries after age 57. (i) On or after January 1, 2004, the remarriage of a surviving spouse after the age of 57 shall not bar the furnishing of benefits relating to dependency and indemnity compensation under 38 U.S.C. 1311, medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37, subject to the limitation in paragraph (a)(10)(ii) of this section.

(ii) A surviving spouse who remarried after the age of 57, but before December 16, 2003, may be eligible for dependency and indemnity compensation under 38 U.S.C. 1311, medical care for survivors and dependents under 38 U.S.C. 1781, educational assistance under 38 U.S.C. chapter 35, or housing loans under 38 U.S.C. chapter 37 pursuant to paragraph (a)(10)(i) only if the application for such benefits was received by VA before December 16, 2004.


(b) Child. (1) Marriage of a child shall not bar the furnishing of benefits to or on account of such child, if the marriage:

(i) Was void, or

(ii) Has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Department of Veterans Affairs that the annulment was obtained through fraud by either party or by collusion.

(2) On or after January 1, 1975, marriage of a child terminated prior to November 1, 1990, shall not bar the furnishing of benefits to or for such child provided that the marriage:

(i) Has been terminated by death, or

(ii) Has been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by either party or by collusion.

[58 FR 32444, June 10, 1993; 60 FR 52862, 52863, Oct. 11, 1995; 64 FR 30244, 30245, June 7, 1999; 65 FR 43699, July 14, 2000; 71 FR 29082, May 19, 2006]


[EFFECTIVE DATE NOTE: 64 FR 30244, 30245, June 7, 1999, amended paragraph (a), effective Oct. 1, 1998; 65 FR 43699, July 14, 2000, amended paragraph (a), effective Dec 1, 1999.]


§ 3.56 [Reserved]
§ 3.57 Child.

(a) General. (1) Except as provided in paragraphs (a)(2) and (3) of this section, the term child of the veteran means an unmarried person who is a legitimate child, a child legally adopted before the age of 18 years, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child; and
   (i) Who is under the age of 18 years; or
   (ii) Who, before reaching the age of 18 years, became permanently incapable of self-support; or
   (iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution. For the purposes of this section and § 3.667, the term "educational institution" means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria. The term includes schools, colleges, academies, seminaries, technical institutes, and universities, but does not include home-school programs.
   (2) For the purposes of determining entitlement of benefits based on a child's school attendance, the term child of the veteran also includes the following unmarried persons:
      (i) A person who was adopted by the veteran between the ages of 18 and 23 years.
      (ii) A person who became a stepchild of the veteran between the ages of 18 and 23 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death.
   (3) Subject to the provisions of paragraphs (c) and (e) of this section, the term also includes a person who became permanently incapable of self-support before reaching the age of 18 years, who was a member of the veteran's household at the time he or she became 18 years of age, and who was adopted by the veteran, regardless of the age of such person at the time of adoption.
   (38 U.S.C. 101(4)(A), 104(a))

(b) Stepchild. The term means a legitimate or an illegitimate child of the veteran's spouse. A child of a surviving spouse whose marriage to the veteran is deemed valid under the provisions of § 3.52, and who otherwise meets the requirements of this section is included.

(c) Adopted child. Except as provided in paragraph (e) of this section, the term means a child adopted pursuant to a final decree of adoption, a child adopted pursuant to an unrescinded interlocutory decree of adoption while remaining in the custody of the adopting parent (or parents) during the interlocutory period, and a child who has been placed for adoption under an agreement entered into by the adopting parent (or parents) with any agency authorized under law to so act, unless and until such agreement is terminated, while the child remains in the custody of the adopting parent (or parents) during the period of placement for adoption under such agreement. The term includes, as of the date of death of a veteran, such a child who:
   (1) Was living in the veteran's household at the time of the veteran's death, and
   (2) Was adopted by the veteran's spouse under a decree issued within 2 years after August 25, 1959, or the veteran's death whichever is later, and
Was not receiving from an individual other than the veteran or the veteran's spouse, or from a welfare organization which furnishes services or assistance for children, recurring contributions of sufficient size to constitute the major portion of the child's support.

(Authority: 38 U.S.C. 101(4))

(d) Definition of child custody. The provisions of this paragraph are for the purpose of determining entitlement to improved pension under §§ 3.23 and 3.24.

(1) Custody of a child shall be considered to rest with a veteran, surviving spouse of a veteran or person legally responsible for the child's support if that person has the legal right to exercise parental control and responsibility for the welfare and care of the child. A child of the veteran residing with the veteran, surviving spouse of the veteran who is the child's natural or adoptive parent, or person legally responsible for the child's support shall be presumed to be in the custody of that individual. Where the veteran, surviving spouse, or person legally responsible for the child's support has not been divested of legal custody, but the child is not residing with that individual, the child shall be considered in the custody of the individual for purposes of Department of Veterans Affairs benefits.

(2) The term person legally responsible for the child's support means a person who is under a legally imposed obligation (e.g., by statute or court order) to provide for the child's support, as well as a natural or adoptive parent who has not been divested of legal custody. If the child's natural or adoptive parent has remarried, the stepparent may also be considered a person legally responsible for the child's support. A child shall be considered in the joint custody of his or her stepparent and natural or adoptive parent so long as the natural or adoptive parent and the stepparent are not estranged and residing apart, and the natural or adoptive parent has not been divested of legal custody. When a child is in such joint custody the combined income of the natural or adoptive parent and the stepparent shall be included as income of the person legally responsible for support under § 3.24(c).

(3) A person having custody of a child prior to the time the child attains age 18 shall be considered to retain custody of the child for periods on and after the child's 18th birthday, unless the person is divested of legal custody. This applies without regard to when a child reaches the age of majority under applicable State law. This also applies without regard to whether the child was entitled to pension prior to age 18, or whether increased pension was payable to a veteran or surviving spouse on behalf of the child prior to the child's 18th birthday. If the child's custodian dies after the child has attained age 18, the child shall be considered to be in custody of a successor custodian provided the successor custodian has the right to exercise parental control and responsibility for the welfare and care of the child.

(Authority: 38 U.S.C. 501, 1521(c), 1541(c))

(e) Child adopted under foreign law -- (1) General. The provisions of this paragraph are applicable to a person adopted under the laws of any jurisdiction other than a State. The term State is defined in 38 U.S.C. 101(20) and also includes the Commonwealth of the Northern Mariana Islands. The term veteran includes, for the purposes of this paragraph, a Commonwealth Army veteran or new Philippine Scout as defined in 38 U.S.C. 3566.

(2) Adopted child of living veteran. A person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of the veteran unless all of the following conditions are met.

(i) The person was less than 18 years of age at the time of adoption.
(ii) The person is receiving one-half or more of the person's support from the veteran.
(iii) The person is not in the custody of the person's natural parent unless the natural parent is the veteran's spouse.
(iv) The person is residing with the veteran (or in the case of divorce following adoption, with the divorced spouse who is also a natural or adoptive parent) except for periods during which the person is residing apart from the veteran for purposes of full-time attendance at an educational institution or during which the person or the veteran is confined in a hospital, nursing home, other health-care facility, or other institution.
(3) Adopted child of deceased veteran. A person shall not be considered to have been a legally adopted child of a veteran as of the date of the veteran's death and thereafter unless one of the following conditions is met.
(i) The veteran was entitled to and was receiving for the person a dependent's allowance or similar monetary benefit payable under title 38, United States Code at any time within the 1-year period immediately preceding the veteran's death; or
(ii) The person met the requirements of paragraph (e)(2) of this section for a period of at least 1 year prior to the veteran's death.
(4) Verification. In the case of an adopted child of a living veteran, the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section are for prospective application. That is, in addition to meeting all of the requirements of paragraph (e)(2) of this section at the time of initial adjudication, benefits are not payable thereafter for or to a child adopted under the laws of any jurisdiction other than a State unless the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section continue to be met. Consequently, whenever Department of Veterans Affairs benefits are payable to or for a child adopted under the laws of any jurisdiction other than a State, and the veteran who adopted the child is living, the beneficiary shall submit, upon Department of Veterans Affairs request, a report, or other evidence, to determine if the requirements of paragraph (e)(2)(ii), (iii), and (iv) of this section were met for any period for which payment was made for or to the child and whether such requirements will continue to be met for future entitlement periods. Failure to submit the requested report or evidence within a reasonable time from date of request may result in termination of benefits payable for or to the child.

(38 U.S.C. 101(4), 501)
[EFFECTIVE DATE NOTE: 65 FR 12116, Mar. 8, 2000, revised paragraph (a)(1)(iii), effective Mar. 8, 2000.]

§ 3.58 Child adopted out of family.
A child of a veteran adopted out of the family of the veteran either prior or subsequent to the veteran's death is nevertheless a child within the meaning of that term as defined by § 3.57 and is eligible for benefits payable under all laws administered by the Department of Veterans Affairs.
CROSS REFERENCE: Veteran's benefits not apportionable. See § 3.458.

§ 3.59 Parent.
xxxiv Discussion and Analysis in the Veterans Benefits Manual
(a) The term parent means a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a veteran at any time before his or her entry into active service.
(b) Foster relationship must have begun prior to the veteran's 21st birthday. Not more than one father and one mother, as defined, will be recognized in any case. If two persons stood in the relationship of father or mother for 1 year or more, the person who last stood in such relationship before the veteran's last entry into active service will be recognized as the parent.
[26 FR 1568, Feb. 24, 1961, as amended at 44 FR 45935, Aug. 6, 1979]
(38 U.S.C. 101(5))

§ 3.60 Definition of living with.
For the purposes of determining entitlement to pension under 38 U.S.C. 1521, a person shall be considered as living with his or her spouse even though they reside apart unless they are estranged.
[44 FR 45935, Aug. 6, 1979]
(38 U.S.C. 1521(h)(2))

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§ 3.100 Delegations of authority.
§ 3.102 Reasonable doubt.
§ 3.103 Procedural due process and appellate rights.
§ 3.104 Finality of decisions.
§ 3.105 Revision of decisions.
§ 3.106 Renouncement.
§ 3.107 Awards where not all dependents apply.
§ 3.108 State Department as agent of Department of Veterans Affairs.
§ 3.109 Time limit.
§ 3.110 Computation of time limit.
§ 3.111 [Reserved]
§ 3.112 Fractions of one cent.
§ 3.114 Change of law or Department of Veterans Affairs issue.
§ 3.115 Access to financial records.

§ 3.100 Delegations of authority.

(a) Authority is delegated to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the jurisdiction of the Veterans Benefits Administration designated by the Under Secretary to make findings and decisions under the applicable laws, regulations, precedents, and instructions, as to entitlement of claimants to benefits under all laws administered by the Department of Veterans Affairs governing the payment of monetary benefits to veterans and their dependents, within the jurisdiction of Compensation and Pension Service.

(b) Authority is delegated to the Director, Compensation and Pension Service, and to personnel of that service designated by him to determine whether a claimant or payee has forfeited the right to gratuitous benefits or to remit a prior forfeiture pursuant to the provisions of 38 U.S.C. 6103 or 6104. See § 3.905.

(c) [Redesignated as paragraph (b). 60 FR 18355, Apr. 11, 1995.]

(38 U.S.C. 512(a))
[EFFECTIVE DATE NOTE: 61 FR 20726, 20727, May 8, 1996, substituted "Under Secretary for Benefits" for "Chief Benefits Director" and "Under Secretary" for "Director" in paragraph (a), effective May 8, 1996.]

§ 3.102 Reasonable doubt.

Discussion and Analysis in the Veterans Benefits Manual

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant
one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships.


(38 U.S.C. 501)

[EFFECTIVE DATE NOTE: 66 FR 45620, 45630, Aug. 29, 2001, amended this section, effective Nov. 9, 2000.]

§ 3.103 Procedural due process and appellate rights.

(a) Statement of policy. Every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Proceedings before VA are ex parte in nature, and it is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. The provisions of this section apply to all claims for benefits and relief, and decisions thereon, within the purview of this part 3.

(b) The right to notice -- (1) General. Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice shall clearly set forth the decision made, any applicable effective date, the reason(s) for the decision, the right to a hearing on any issue involved in the claim, the right of representation and the right, as well as the necessary procedures and time limits, to initiate an appeal of the decision.

(2) Advance notice and opportunity for hearing. Except as otherwise provided in paragraph (b)(3) of this section, no award of compensation, pension or dependency and indemnity compensation shall be terminated, reduced or otherwise adversely affected unless the beneficiary has been notified of such adverse action and has been provided a period of 60 days in which to submit evidence for the purpose of showing that the adverse action should not be taken.

(3) Exceptions. In lieu of advance notice and opportunity for a hearing, VA will send a written notice to the beneficiary or his or her fiduciary at the same time it takes an adverse action under the following circumstances:

(i) An adverse action based solely on factual and unambiguous information or statements as to income, net worth, or dependency or marital status that the beneficiary or his or her fiduciary provided to VA in writing or orally (under the procedures set forth in § 3.217(b)), with knowledge or notice that such information would be used to calculate benefit amounts.
(ii) An adverse action based upon the beneficiary's or fiduciary's failure to return a required eligibility verification report.

(iii) Evidence reasonably indicates that a beneficiary is deceased. However, in the event that VA has received a death certificate, a terminal hospital report verifying the death of a beneficiary or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required.

(iv) An adverse action based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see § 3.106 on renouncement).

(v) An adverse action based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension (see § 3.654 regarding active service pay).

(vi) An adverse action based upon a garnishment order issued under 42 U.S.C. 659(a).

(Authority: 38 U.S.C. 501(a))

(4) Restoration of benefits. VA will restore retroactively benefits that were reduced, terminated, or otherwise adversely affected based on oral information or statements if within 30 days of the date on which VA issues the notification of adverse action the beneficiary or his or her fiduciary asserts that the adverse action was based upon information or statements that were inaccurate or upon information that was not provided by the beneficiary or his or her fiduciary. This will not preclude VA from taking subsequent action that adversely affects benefits.

(c) The right to a hearing. (1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in § 20.1304 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. VA will provide the place of hearing in the VA office having original jurisdiction over the claim or at the VA office nearest the claimant's home having adjudicative functions, or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Hearings in connection with proposed adverse actions and appeals shall be held before one or more VA employees having original determinative authority who did not participate in the proposed action or the decision being appealed. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

(2) The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers material and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses are expected to be present. The Veterans Benefits Administration will not normally schedule a hearing for the sole purpose of receiving argument from a representative. It is the responsibility of the VA employee or employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing
record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by a physician designated by VA and the physician's observations will be read into the record. (Authority: 38 U.S.C. 501)

(d) Submission of evidence. Any evidence whether documentary, testimonial, or in other form, offered by the claimant in support of a claim and any issue a claimant may raise and any contention or argument a claimant may offer with respect thereto are to be included in the records.

(e) The right to representation. Subject to the provisions of §§ 14.626 through 14.637 of this title, claimants are entitled to representation of their choice at every stage in the prosecution of a claim.

(f) Notification of decisions. The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting relief. All notifications will advise the claimant of the reason for the decision; the date the decision will be effective; the right to a hearing subject to paragraph (c) of this section; the right to initiate an appeal by filing a Notice of Disagreement which will entitle the individual to a Statement of the Case for assistance in perfecting an appeal; and the periods in which an appeal must be initiated and perfected (See part 20 of this chapter, on appeals). Further, any notice that VA has denied a benefit sought will include a summary of the evidence considered. (Authority: 38 U.S.C. 5104)


(38 U.S.C. 501, 1115, 1506, 5104.)

[EFFECTIVE DATE NOTE: 66 FR 56613, Nov. 9, 2001, amended this section, effective Dec. 10, 2001.]

§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105 and § 3.2600 of this part.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.
§ 3.105 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his or her knowledge (§ 3.500(b)); there is a change in law or a Department of Veterans Affairs issue, or a change in interpretation of law or a Department of Veterans Affairs issue (§ 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

(a) Error. Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(b) Difference of opinion. Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. However, a decision may be revised under § 3.2600 without being recommended to Central Office.

(c) Character of discharge. A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of paragraph (d) of this section.

(d) Severance of service connection. Subject to the limitations contained in §§ 3.114 and 3.957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or Department of Veterans Affairs issue, the provisions of § 3.114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating proposing severance will be prepared setting forth all material facts and reasons. The claimant will be notified at his or her latest address of...
record of the contemplated action and furnished detailed reasons therefor and will be
given 60 days for the presentation of additional evidence to show that service connection
should be maintained. Unless otherwise provided in paragraph (i) of this section, if
additional evidence is not received within that period, final rating action will be taken and
the award will be reduced or discontinued, if in order, effective the last day of the month
in which a 60-day period from the date of notice to the beneficiary of the final rating
action expires.
(Authority: 38 U.S.C. 5112(b)(6))
(e) Reduction in evaluation -- compensation. Where the reduction in evaluation of a
service-connected disability or employability status is considered warranted and the
lower evaluation would result in a reduction or discontinuance of compensation payments
currently being made, a rating proposing the reduction or discontinuance will be prepared
setting forth all material facts and reasons. The beneficiary will be notified at his or her
latest address of record of the contemplated action and furnished detailed reasons therefor,
and will be given 60 days for the presentation of additional evidence to show that
compensation payments should be continued at their present level. Unless otherwise
provided in paragraph (i) of this section, if additional evidence is not received within that
period, final rating action will be taken and the award will be reduced or discontinued
effective the last day of the month in which a 60-day period from the date of notice to the
beneficiary of the final rating action expires.
(Authority: 38 U.S.C. 5112(b)(6))
(f) Reduction in evaluation -- pension. Where a change in disability or employability
warrants a reduction or discontinuance of pension payments currently being made, a
rating proposing the reduction or discontinuance will be prepared setting forth all
material facts and reasons. The beneficiary will be notified at his or her latest address of
record of the contemplated action and furnished detailed reasons therefor, and will be
given 60 days for the presentation of additional evidence to show that pension benefits
should be continued at their present level. Unless otherwise provided in paragraph (i) of
this section, if additional evidence is not received within that period, final rating action
will be taken and the award will be reduced or discontinued effective the last day of the
month in which the final rating action is approved.
(Authority: 38 U.S.C. 5112(b)(5))
(g) Reduction in evaluation -- monetary allowance under 38 U.S.C. chapter 18 for certain
individuals who are children of Vietnam veterans. Where a reduction or discontinuance
of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered
warranted, VA will notify the beneficiary at his or her latest address of record of the
proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days
to present additional evidence to show that the monetary allowance should be continued
at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does
not receive additional evidence within that period, it will take final rating action and
reduce the award effective the last day of the month following 60 days from the date of
notice to the beneficiary of the proposed reduction.
(Authority: 38 U.S.C. 1822, 5112(b)(6))
(h) Other reductions/discontinuances. Except as otherwise specified at § 3.103(b)(3) of
this part, where a reduction or discontinuance of benefits is warranted by reason of
information received concerning income, net worth, dependency, or marital or other
status, a proposal for the reduction or discontinuance will be prepared setting forth all material facts and reasons. The beneficiary will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence to show that the benefits should be continued at their present level. Unless otherwise provided in paragraph (i) of this section, if additional evidence is not received within that period, final adverse action will be taken and the award will be reduced or discontinued effective as specified under the provisions of §§ 3.500 through 3.503 of this part.

(Authority: 38 U.S.C. 5112)

(i) Predetermination hearings. (1) In the advance written notice concerning proposed actions under paragraphs (d) through (h) of this section, the beneficiary will be informed that he or she will have an opportunity for a predetermination hearing, provided that a request for such a hearing is received by VA within 30 days from the date of the notice. If a timely request is received, VA will notify the beneficiary in writing of the time and place of the hearing at least 10 days in advance of the scheduled hearing date. The 10 day advance notice may be waived by agreement between VA and the beneficiary or representative. The hearing will be conducted by VA personnel who did not participate in the proposed adverse action and who will bear the decision-making responsibility. If a predetermination hearing is timely requested, benefit payments shall be continued at the previously established level pending a final determination concerning the proposed action.

(2) Following the predetermination procedures specified in this paragraph and paragraph (d), (e), (f), (g) or (h) of this section, whichever is applicable, final action will be taken. If a predetermination hearing was not requested or if the beneficiary failed without good cause to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant or beneficiary, death of an immediate family member, etc. If a predetermination hearing was conducted, the final action will be based on evidence and testimony adduced at the hearing as well as the other evidence of record including any additional evidence obtained following the hearing pursuant to necessary development. Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the beneficiary and his or her representative, setting forth the reasons therefor and the evidence upon which it is based. Where a reduction or discontinuance of benefits is found warranted following consideration of any additional evidence submitted, the effective date of such reduction or discontinuance shall be as follows:

(i) Where reduction or discontinuance was proposed under the provisions of paragraph (d) or (e) of this section, the effective date of final action shall be the last day of the month in which a 60-day period from the date of notice to the beneficiary of the final action expires.

(ii) Where reduction or discontinuance was proposed under the provisions of paragraphs (f) and (g) of this section, the effective date of final action shall be the last day of the month in which such action is approved.

(iii) Where reduction or discontinuance was proposed under the provisions of paragraph (h) of this section, the effective date of final action shall be as specified under the provisions of §§ 3.500 through 3.503 of this part.
§ 3.106 Renouncement.

Discussion and Analysis in the Veterans Benefits Manual

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Department of Veterans Affairs may renounce his or her right to that benefit but may not renounce less than all of the component items which together comprise the total amount of the benefit to which the person is entitled nor any fixed monetary amounts less than the full amount of entitlement. The renouncement will be in writing over the person's signature. Upon receipt of such renouncement in the Department of Veterans Affairs, payment of such benefits and the right thereto will be terminated, and such person will be denied any and all rights thereto from such filing.

(Authority: 38 U.S.C. 5306(a))

(b) The renouncement will not preclude the person from filing a new application for pension, compensation, or dependency and indemnity compensation at any future date. Such new application will be treated as an original application, and no payments will be made thereon for any period before the date such new application is received in the Department of Veterans Affairs.

(Authority: 38 U.S.C. 5306(b))

(c) Notwithstanding the provisions of paragraph (b) of this section, if a new application for pension or parents' dependency and indemnity compensation is filed within one year after the date that the Department of Veterans Affairs receives a renouncement of that benefit, such application shall not be treated as an original application and benefits will be payable as if the renouncement had not occurred.

(Authority: 38 U.S.C. 5306(c))

(d) The renouncement of dependency and indemnity compensation by one beneficiary will not serve to increase the rate payable to any other beneficiary in the same class.

(e) The renouncement of dependency and indemnity compensation by a surviving spouse will not serve to vest title to this benefit in children under the age of 18 years or to increase the rate payable to a child or children over the age of 18 years.


[EFFECTIVE DATE NOTE: 62 FR 5528, 5529, Feb. 6, 1997, substituted "surviving spouse" for "widow" in paragraph (e), effective Feb. 6, 1997.]
§ 3.107 Awards where not all dependents apply.
Except as provided in § 3.251(a)(4), in any case where claim has not been filed by or on behalf of all dependents who may be entitled, the awards (original or amended) for those dependents who have filed claim will be made for all periods at the rates and in the same manner as though there were no other dependents. However, if the file reflects the existence of other dependents who have not filed claim and there is potential entitlement to benefits for a period prior to the date of filing claim, the award to a person who has filed claim will be made at the rate which would be payable if all dependents were receiving benefits. If at the expiration of the period allowed, claims have not been filed for such dependents, the full rate will be authorized for the first payee.


§ 3.108 State Department as agent of Department of Veterans Affairs.
Diplomatic and consular officers of the Department of State are authorized to act as agents of the Department of Veterans Affairs and therefore a formal or informal claim or evidence submitted in support of a claim filed in a foreign country will be considered as filed in the Department of Veterans Affairs as of the date of receipt by the State Department representative.
[26 FR 1569, Feb. 24, 1961]
[CROSS REFERENCE: Evidence from foreign countries. See § 3.202.]

§ 3.109 Time limit.
xxxix Discussion and Analysis in the Veterans Benefits Manual
(a) Notice of time limit for filing evidence. (1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If the evidence is not received within 1 year from the date of such notification, pension, compensation, or dependency and indemnity compensation may not be paid by reason of that application (38 U.S.C. 5103(a)). Information concerning the whereabouts of a person who has filed claim is not considered evidence.
(2) The provisions of this paragraph are applicable to original applications, formal or informal, and to applications for increased benefits by reason of increased disability, age, or the existence of a dependent and to applications for reopening or resumption of payments. If substantiating evidence is required with respect to the veracity of a witness or the authenticity of documentary evidence timely filed, there will be allowed for the submission of such evidence 1 year from the date of the request therefor. However, any evidence to enlarge the proofs and evidence originally submitted is not so included.
(b) Extension of time limit. Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. Where an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrent with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and

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could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.


(38 U.S.C. 501)

§ 3.110 Computation of time limit.
(a) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.
(b) The first day of the specified period referred to in paragraph (a) of this section shall be the date of mailing of notification to the claimant or beneficiary of the action required and the time limit therefor. The date of the letter of notification shall be considered the date of mailing for purposes of computing time limits. As to appeals, see §§ 20.302 and 20.305 of this chapter.

[55 FR 13529, Apr. 11, 1990, as amended at 58 FR 32443, June 10, 1993]

(38 U.S.C. 501)

§ 3.111 [Reserved]

§ 3.112 Fractions of one cent.
In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded.
[26 FR 1570, Feb. 24, 1961]


§ 3.114 Change of law or Department of Veterans Affairs issue.
xlDiscussion and Analysis in the Veterans Benefits Manual
(a) Effective date of award. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or a monetary allowance under 38 U.S.C. chapter 18 for an individual who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of
entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.
(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.
(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.
(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request.
(Authority: 38 U.S.C. 1822, 5110(g))

(b) Discontinuance of benefits. Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired.
(Authority: 38 U.S.C. 5112(b)(6))


[EFFECTIVE DATE NOTE: 67 FR 49585, 49586, July 31, 2002, amended paragraph (a), effective July 31, 2002.]

§ 3.115 Access to financial records.
(a) The Secretary of Veterans Affairs may request from a financial institution the names and addresses of its customers. Each such request, however, shall include a certification that the information is necessary for the proper administration of benefits programs under the laws administered by the Secretary, and cannot be obtained by a reasonable search of records and information of the Department of Veterans Affairs.
(b) Information received pursuant to a request referred to in paragraph (a) of this section shall not be used for any purpose other than the administration of benefits programs under the laws administered by the Secretary if the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 through 3422).
[58 FR 32445, June 10, 1993]

(38 U.S.C. 5319)
CLAIMS

§ 3.150 Forms to be furnished.
§ 3.151 Claims for disability benefits.
§ 3.152 Claims for death benefits.
§ 3.153 Claims filed with Social Security.
§ 3.154 Injury due to hospital treatment, etc.
§ 3.155 Informal claims.
§ 3.156 New and material evidence.
§ 3.157 Report of examination or hospitalization as claim for increase or to reopen.
§ 3.158 Abandoned claims.
§ 3.159 Department of Veterans Affairs assistance in developing claims.
§ 3.160 Status of claims.

§ 3.150 Forms to be furnished.
(a) Upon request made in person or in writing by any person applying for benefits under the laws administered by the Department of Veterans Affairs, the appropriate application form will be furnished.
(Authority: 38 U.S.C. 5102)
(b) Upon receipt of notice of death of a veteran, the appropriate application form will be forwarded for execution by or on behalf of any dependent who has apparent entitlement to pension, compensation, or dependency and indemnity compensation. If it is not indicated that any person would be entitled to such benefits, but there is payable an accrued benefit not paid during the veteran's lifetime, the appropriate application form will be forwarded to the preferred dependent. Notice of the time limit will be included in letters forwarding applications for benefits.
(c) When disability or death is due to Department of Veterans Affairs hospital treatment, training, medical or surgical treatment, or examination, a specific application for benefits will not be initiated.
[EFFECTIVE DATE NOTE: 67 FR 40867, June 14, 2002, revised the cross reference at the end of the section, effective June 14, 2002.]
Cross Reference: Extension of time limit. See § 3.109(b).

§ 3.151 Claims for disability benefits.
(a) General. A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. (38 U.S.C. 5101(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.
(b) Retroactive disability pension claims. Where disability pension entitlement is established based on a claim received by VA on or after October 1, 1984, the pension award may not be effective prior to the date of receipt of the pension claim unless the veteran specifically claims entitlement to retroactive benefits. The claim for retroactivity may be filed separately or included in the claim for disability pension, but it must be received by VA within one year from the date on which the veteran became permanently and totally disabled. Additional requirements for entitlement to a retroactive pension award are contained in § 3.400(b) of this part. 
[50 FR 25981, June 24, 1985]

(38 U.S.C 5110(b)(3))
CROSS REFERENCE: Informal claims. See § 3.155(b).

§ 3.152 Claims for death benefits.

(a) A specific claim in the form prescribed by the Secretary (or jointly with the Commissioner of Social Security, as prescribed by § 3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by VA. (See § 3.400(c) concerning effective dates of awards.)
(Authority: 38 U.S.C. 55101(a))

(b)(1) A claim by a surviving spouse or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a surviving spouse or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits.
(Authority: 38 U.S.C. 5101(b)(1))

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits.
(Authority: 38 U.S.C. 5101(b)(2))

(c)(1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a surviving spouse's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required. (38 U.S.C. 5110(e).) (See paragraph (c)(4) of this section.) Where the award to the surviving spouse is terminated by reason of her or his death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

(2) A claim filed by a surviving spouse who does not have entitlement will be accepted as a claim for a child or children in her or his custody named in the claim.

(3) Where a claim of a surviving spouse is disallowed for any reason whatsoever and where evidence requested in order to determine entitlement from a child or children named in the surviving spouse's claim is submitted within 1 year from the date of request, requested either before or after disallowance of the surviving spouse's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or children for any period prior to the date of receipt of a new claim.

(4) Where payments of pension, compensation or dependency and indemnity compensation to a surviving spouse have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason
of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the surviving spouse's claim will be made on the basis of the surviving spouse's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim.

[50 FR 25981, June 24, 1985; 71 FR 44915, August 8, 2006]

(38 U.S.C. 501)
CROSS REFERENCES: State Department as agent of Department of Veterans Affairs. See § 3.108. Change in status of dependents. See § 3.651.

§ 3.153 Claims filed with Social Security.

An application on a form jointly prescribed by the Secretary and the Commissioner of Social Security filed with the Social Security Administration on or after January 1, 1957, will be considered a claim for death benefits, and to have been received in the Department of Veterans Affairs as of the date of receipt in Social Security Administration. The receipt of such an application (or copy thereof) by the Department of Veterans Affairs will not preclude a request for any necessary evidence.

[26 FR 1570, Feb. 24, 1961; 71 FR 44915, August 8, 2006]

(38 U.S.C. 5105)

§ 3.154 Injury due to hospital treatment, etc.

VA may accept as a claim for benefits under 38 U.S.C. 1151 and Sec. 3.361 any communication in writing indicating an intent to file a claim for disability compensation or dependency and indemnity compensation under the laws governing entitlement to veterans' benefits for disability or death due to VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program, whether such communication is contained in a formal claim for pension, compensation, or dependency and indemnity compensation or in any other document.

[27 FR 11887, Dec. 1, 1962; 69 FR 46426]

(38 U.S.C. 1151)
CROSS REFERENCES: Effective dates. See Sec. 3.400(i). Disability or death due to hospitalization, etc. See Sec. Sec. 3.358, 3.361 and 3.800.

§ 3.155 Informal claims.

(a) Any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

[50 FR 25981, June 24, 1985; 71 FR 44915, August 8, 2006]

(38 U.S.C. 501)
CROSS REFERENCES: State Department as agent of Department of Veterans Affairs. See § 3.108. Change in status of dependents. See § 3.651.
§ 3.155 New and material evidence.

(a) A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decisionmakers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

(b) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(c) Where the new and material evidence consists of a supplemental report from the service department, received before or after the decision has become final, the former decision will be reconsidered by the adjudicating agency of original jurisdiction. This comprehends official service department records which presumably have been misplaced and have now been located and forwarded to the Department of Veterans Affairs. Also included are corrections by the service department of former errors of commission or omission in the preparation of the prior report or reports and identified as such. The retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly except as it may be affected by the filing date of the original claim.


§ 3.156 New and material evidence.

(a) A claimant may reopen a finally adjudicated claim by submitting new and material evidence. New evidence means existing evidence not previously submitted to agency decisionmakers. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

(Authority: 38 U.S.C. 501, 5103A(f), 5108)

(b) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 20.1304(b)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(Authority: 38 U.S.C. 501)

(c) Where the new and material evidence consists of a supplemental report from the service department, received before or after the decision has become final, the former decision will be reconsidered by the adjudicating agency of original jurisdiction. This comprehends official service department records which presumably have been misplaced and have now been located and forwarded to the Department of Veterans Affairs. Also included are corrections by the service department of former errors of commission or omission in the preparation of the prior report or reports and identified as such. The retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly except as it may be affected by the filing date of the original claim.

§ 3.157 Report of examination or hospitalization as claim for increase or to reopen.

(a) General. Effective date of pension or compensation benefits, if otherwise in order, will be the date of receipt of a claim or the date when entitlement arose, whichever is the later. A report of examination or hospitalization which meets the requirements of this section will be accepted as an informal claim for benefits under an existing law or for benefits under a liberalizing law or Department of Veterans Affairs issue, if the report relates to a disability which may establish entitlement. Acceptance of a report of examination or treatment as a claim for increase or to reopen is subject to the requirements of § 3.114 with respect to action on Department of Veterans Affairs initiative or at the request of the claimant and the payment of retroactive benefits from the date of the report or for a period of one year prior to the date of receipt of the report.

(Authority: 38 U.S.C. 5110(a))

(b) Claim. Once a formal claim for pension or compensation has been allowed or a formal claim for compensation disallowed for the reason that the service-connected disability is not compensable in degree, receipt of one of the following will be accepted as an informal claim for increased benefits or an informal claim to reopen. In addition, receipt of one of the following will be accepted as an informal claim in the case of a retired member of a uniformed service whose formal claim for pension or compensation has been disallowed because of receipt of retirement pay. The evidence listed will also be accepted as an informal claim for pension previously denied for the reason the disability was not permanently and totally disabling.

(1) Report of examination or hospitalization by Department of Veterans Affairs or uniformed services. The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital will be accepted as the date of receipt of a claim. The date of a uniformed service examination which is the basis for granting severance pay to a former member of the Armed Forces on the temporary disability retired list will be accepted as the date of receipt of claim. The date of admission to a non-VA hospital where a veteran was maintained at VA expense will be accepted as the date of receipt of a claim, if VA maintenance was previously authorized; but if VA maintenance was authorized subsequent to admission, the date VA received notice of admission will be accepted. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established or when a claim specifying the benefit sought is received within one year from the date of such examination, treatment or hospital admission.

(Authority: 38 U.S.C. 501)

(2) Evidence from a private physician or layman. The date of receipt of such evidence will be accepted when the evidence furnished by or in behalf of the claimant is within the competence of the physician or lay person and shows the reasonable probability of entitlement to benefits.
§ 3.158 Abandoned claims.

(a) General. Except as provided in § 3.652 of this part, where evidence requested in connection with an original claim, a claim for increase or to reopen or for the purpose of determining continued entitlement is not furnished within 1 year after the date of request, the claim will be considered abandoned. After the expiration of 1 year, further action will not be taken unless a new claim is received. Should the right to benefits be finally established, pension, compensation, dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. chapter 18 based on such evidence shall commence not earlier than the date of filing the new claim.

(b) Department of Veterans Affairs examinations. Where the veteran fails without adequate reason to respond to an order to report for Department of Veterans Affairs examination within 1 year from the date of request and payments have been discontinued, the claim for such benefits will be considered abandoned.

(c) Disappearance. Where payments of pension, compensation, dependency and indemnity compensation, or monetary allowance under the provisions of 38 U.S.C. chapter 18 have not been made or have been discontinued because a payee's present whereabouts is unknown, payments will be resumed effective the day following the date of last payment if entitlement is otherwise established, upon receipt of a valid current address.


§ 3.159 Department of Veterans Affairs assistance in developing claims.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) Substantially complete application means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

(4) For purposes of paragraph (c)(4)(i) of this section, event means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) Information means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) VA's duty to notify claimants of necessary information or evidence.

(1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim. VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. VA will also request that the claimant provide any evidence in the claimant's possession that pertains to the claim. If VA does not receive the necessary information and evidence requested from the claimant within one year of the date of the notice, VA cannot pay or provide any benefits based on that application. If the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. (Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. (Authority: 38 U.S.C. 5102(b), 5103A(3))
(c) VA's duty to assist claimants in obtaining evidence. Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim. VA will not pay any fees charged by a custodian to provide records requested.

(1) Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A(b))

(2) Obtaining records in the custody of a Federal department or agency. VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.
(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.
(Authority: 38 U.S.C. 5103A(b))
(3) Obtaining records in compensation claims. In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.
(Authority: 38 U.S.C. 5103A(c))
(4) Providing medical examinations or obtaining medical opinions. (i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:
(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;
(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in § 3.309, § 3.313, § 3.316, and § 3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and
(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.
(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.
(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured.
(Authority: 38 U.S.C. 5103A(d))
(d) Circumstances where VA will refrain from or discontinue providing assistance. VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:
(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;
(2) Claims that are inherently incredible or clearly lack merit; and
(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.
(Authority: 38 U.S.C. 5103A(a)(2))
(e) Duty to notify claimant of inability to obtain records. (1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:
(i) The identity of the records VA was unable to obtain;
(ii) An explanation of the efforts VA made to obtain the records;
(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and
(iv) A notice that the claimant is ultimately responsible for providing the evidence.
(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA.
(Authority: 38 U.S.C. 5103A(b)(2))
(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any.
(Authority: 38 U.S.C. 5102(b), 5103(a))

[EFFECTIVE DATE NOTE: 66 FR 45620, 45630, Aug. 29, 2001, revised this section, effective Nov. 9, 2000.]

§ 3.160 Status of claims.

Discussion and Analysis in the Veterans Benefits Manual
The following definitions are applicable to claims for pension, compensation, and dependency and indemnity compensation.
(a) Informal claim. See § 3.155.
(b) Original claim. An initial formal application on a form prescribed by the Secretary. (See §§ 3.151, 3.152).
(c) Pending claim. An application, formal or informal, which has not been finally adjudicated.
(d) Finally adjudicated claim. An application, formal or informal, which has been allowed or disallowed by the agency of original jurisdiction, the action having become final by the expiration of 1 year after the date of notice of an award or disallowance, or by denial on appellate review, whichever is the earlier. (See §§ 20.1103 and 20.1104 of this chapter.)
(e) Reopened claim. Any application for a benefit received after final disallowance of an earlier claim, or any application based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the
certification of an appeal and transfer of applicable records to the Board of Veterans Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 20.1304(b)(1) of this chapter.

(Authority: 38 U.S.C. 501)

(f) Claim for increase. Any application for an increase in rate of a benefit being paid under a current award, or for resumption of payments previously discontinued.


38 U.S.C. 501(a)
EVIDENCE REQUIREMENTS

§ 3.200 Testimony certified or under oath.
§ 3.201 Exchange of evidence; Social Security and Department of Veterans Affairs.
§ 3.202 Evidence from foreign countries.
§ 3.203 Service records as evidence of service and character of discharge.
§ 3.204 Evidence of dependents and age.
§ 3.205 Marriage.
§ 3.206 Divorce.
§ 3.207 Void or annulled marriage.
§ 3.208 Claims based on attained age.
§ 3.209 Birth.
§ 3.210 Child's relationship.
§ 3.211 Death.
§ 3.212 Unexplained absence for 7 years.
§ 3.213 Change of status affecting entitlement.
§ 3.214 Court decisions; unremarried surviving spouses.
§ 3.215 Termination of marital relationship or conduct.
§ 3.216 Mandatory disclosure of social security numbers.
§ 3.217 Submission of statements or information affecting entitlement to benefits.

§ 3.200 Testimony certified or under oath.
(a) All oral testimony presented by claimants and witnesses on their behalf before any rating or authorization body will be under oath or affirmation. (See § 3.103(c).)
(b) All written testimony submitted by the claimant or in his or her behalf for the purpose of establishing a claim for service connection will be certified or under oath or affirmation. This includes records, examination reports, and transcripts material to the issue received by the Department of Veterans Affairs at the instance of the claimant or in his or her behalf or requested by the Department of Veterans Affairs from State, county, municipal, recognized private institutions, and contract hospitals.

[40 FR 36329, Aug. 20, 1975]


§ 3.201 Exchange of evidence; Social Security and Department of Veterans Affairs.
(a) A claimant for dependency and indemnity compensation may elect to furnish to the Department of Veterans Affairs in support of that claim copies of evidence which was previously furnished to the Social Security Administration or to have the Department of Veterans Affairs obtain such evidence from the Social Security Administration. For the purpose of determining the earliest effective date for payment of dependency and indemnity compensation, such evidence will be deemed to have been received by the Department of Veterans Affairs on the date it was received by the Social Security Administration.
(b) A copy or certification of evidence filed in the Department of Veterans Affairs in support of a claim for dependency and indemnity compensation will be furnished the Social Security Administration upon request from the agency.

(38 U.S.C. 501(a) and 5105)
CROSS REFERENCE: Claims filed with Social Security. See § 3.153.

§ 3.202 Evidence from foreign countries.
(a) Except as provided in paragraph (b) of this section, where an affidavit or other document is required to be executed under oath before an official in a foreign country, the signature of that official must be authenticated by a United States Consular Officer in that jurisdiction or by the State Department. Where the United States has no consular representative in a foreign country, such authentication may be made as follows:
(1) By a consular agent of a friendly government whereupon the signature and seal of the official of the friendly government may be authenticated by the State Department; or
(2) By the nearest American consul who will attach a certificate showing the result of the investigation concerning its authenticity.
(b) Authentication will not be required:
(1) On documents approved by the Deputy Minister of Veterans Affairs, Department of Veterans Affairs, Ottawa, Canada: or
(2) When it is indicated that the attesting officer is authorized to administer oaths for general purposes and the document bears his or her signature and seal; or
(3) When the document is executed before a Department of Veterans Affairs employee authorized to administer oaths; or
(4) When a copy of a public or church record from any foreign country purports to establish birth, adoption, marriage, annulment, divorce, or death, provided it bears the signature and seal of the custodian of such record and there is no conflicting evidence in the file which would serve to create doubt as to the correctness of the record; or
(5) When a copy of the public or church record from one of the countries comprising the United Kingdom, namely: England, Scotland, Wales, or Northern Ireland, purports to establish birth, marriage, or death, provided it bears the signature or seal or stamp of the custodian of such record and there is no evidence which would serve to create doubt as to the correctness of the records; or
(6) When affidavits prepared in the Republic of the Philippines are certified by a Department of Veterans Affairs representative located in the Philippines having authority to administer oaths.
(c) Photocopies of original documents meeting the requirements of this section will be accepted if they satisfy the requirements of § 3.204.

(38 U.S.C. 501)

§ 3.203 Service records as evidence of service and character of discharge.
(a) Evidence submitted by a claimant. For the purpose of establishing entitlement to pension, compensation, dependency and indemnity compensation or burial benefits the
Department of Veterans Affairs may accept evidence of service submitted by a claimant (or sent directly to the Department of Veterans Affairs by the service department), such as a DD Form 214, Certificate of Release or Discharge from Active Duty, or original Certificate of Discharge, without verification from the appropriate service department if the evidence meets the following conditions:

(1) The evidence is a document issued by the service department. A copy of an original document is acceptable if the copy was issued by the service department or if the copy was issued by a public custodian of records who certifies that it is a true and exact copy of the document in the custodian's custody or, if the copy was submitted by an accredited agent, attorney or service organization representative who has successfully completed VA-prescribed training on military records, and who certifies that it is a true and exact copy of either an original document or of a copy issued by the service department or a public custodian of records; and

(2) The document contains needed information as to length, time and character of service; and

(3) In the opinion of the Department of Veterans Affairs the document is genuine and the information contained in it is accurate.

(b) Additional requirements for pension claimants. In addition to meeting the requirements of paragraph (a) of this section, a document submitted to establish a creditable period of wartime service for pension entitlement may be accepted without verification if the document (or other evidence of record) shows:

(1) Service of 4 months or more; or

(2) Discharge for disability incurred in line of duty; or

(3) Ninety days creditable service based on records from the service department such as hospitalization for 90 days for a line of duty disability.

(c) Verification from the service department. When the claimant does not submit evidence of service or the evidence submitted does not meet the requirements of paragraph (a) of this section (and paragraph (b) of this section in pension claims), the Department of Veterans Affairs shall request verification of service from the service department. However, payment of nonservice-connected burial benefits may be authorized, if otherwise in order, based upon evidence of service which VA relied upon to authorize payment of compensation or pension during the veteran's lifetime, provided that there is no evidence which would serve to create doubt as to the correctness of that service evidence. If it appears that a length of service requirement may not be met (e.g., the 90 days wartime service requirement to receive pension under 38 U.S.C. 1521(j)), the Department of Veterans Affairs shall request a complete statement of service to determine if there are any periods of active service that are required to be excluded under § 3.15.


[EFFECTIVE DATE NOTE: 66 FR 19857, 19858, Apr. 18, 2001, amended paragraph (a)(1), effective Apr. 18, 2001.]

§ 3.204 Evidence of dependents and age.

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(a)(1) Except as provided in paragraph (a)(2) of this section, VA will accept, for the purpose of determining entitlement to benefits under laws administered by VA, the statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, or death of a dependent, provided that the statement contains: the date (month and year) and place of the event; the full name and relationship of the other person to the claimant; and, where the claimant's dependent child does not reside with the claimant, the name and address of the person who has custody of the child. In addition, a claimant must provide the social security number of any dependent on whose behalf he or she is seeking benefits (see § 3.216).

(2) VA shall require the types of evidence indicated in §§ 3.205 through 3.211 where: the claimant does not reside within a state; the claimant's statement on its face raises a question of its validity; the claimant's statement conflicts with other evidence of record; or, there is a reasonable indication, in the claimant's statement or otherwise, of fraud or misrepresentation of the relationship in question.

(Authority: 38 U.S.C. 5124)

(b) Marriage or birth. The classes of evidence to be furnished for the purpose of establishing marriage, dissolution of marriage, age, relationship, or death, if required under the provisions of paragraph (a)(2), are indicated in §§ 3.205 through 3.211 in the order of preference. Failure to furnish the higher class, however, does not preclude the acceptance of a lower class if the evidence furnished is sufficient to prove the point involved.

(c) Acceptability of photocopies. Photocopies of documents necessary to establish birth, death, marriage or relationship under the provisions of §§ 3.205 through 3.215 of this part are acceptable as evidence if the Department of Veterans Affairs is satisfied that the copies are genuine and free from alteration. Otherwise, VA may request a copy of the document certified over the signature and official seal of the person having custody of such record.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0624.)


(38 U.S.C. 501)

[EFFECTIVE DATE NOTE: 66 FR 56613, 56614, Nov. 9, 2001, amended this section, effective Dec. 10, 2001.]

§ 3.205 Marriage.

(a) Proof of marriage. Marriage is established by one of the following types of evidence:

(1) Copy or abstract of the public record of marriage, or a copy of the church record of marriage, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages if shown on the official record.

(2) Official report from service department as to marriage which occurred while the veteran was in service.
(3) The affidavit of the clergyman or magistrate who officiated.
(4) The original certificate of marriage, if the Department of Veterans Affairs is satisfied that it is genuine and free from alteration.
(5) The affidavits or certified statements of two or more eyewitnesses to the ceremony.
(6) In jurisdictions where marriages other than by ceremony are recognized the affidavits or certified statements of one or both of the parties to the marriage, if living, setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the periods of cohabitation, places of residences, whether the parties held themselves out as married, and whether they were generally accepted as such in the communities in which they lived.
(7) Any other secondary evidence which reasonably supports a belief by the Adjudicating activity that a valid marriage actually occurred.
(b) Valid marriage. In the absence of conflicting information, proof of marriage which meets the requirements of paragraph (a) of this section together with the claimant's certified statement concerning the date, place and circumstances of dissolution of any prior marriage may be accepted as establishing a valid marriage, provided that such facts, if they were to be corroborated by record evidence, would warrant acceptance of the marriage as valid. Where necessary to a determination because of conflicting information or protest by a party having an interest therein, proof of termination of a prior marriage will be shown by proof of death, or a certified copy or a certified abstract of final decree of divorce or annulment specifically reciting the effects of the decree.
(c) Marriages deemed valid. Where a surviving spouse has submitted proof of marriage in accordance with paragraph (a) of this section and also meets the requirements of § 3.52, the claimant's signed statement that he or she had no knowledge of an impediment to the marriage to the veteran will be accepted, in the absence of information to the contrary, as proof of that fact.

(38 U.S.C. 501)
[EFFECTIVE DATE NOTE: 62 FR 5528, 5529, Feb. 6, 1997, substituted "married" for "husband and wife" in paragraph (a)(6), effective Feb. 6, 1997.]
CROSS REFERENCES: Marriages deemed valid. See § 3.52. Definitions; marriage. See § 3.1(j). Evidence of dependents and age. See § 3.204.

§ 3.206 Divorce.
The validity of a divorce decree regular on its face, will be questioned by the Department of Veterans Affairs only when such validity is put in issue by a party thereto or a person whose interest in a claim for Department of Veterans Affairs benefits would be affected thereby. In cases where recognition of the decree is thus brought into question:
(a) Where the issue is whether the veteran is single or married (dissolution of a subsisting marriage), there must be a bona fide domicile in addition to the standards of the granting jurisdiction respecting validity of divorce;
(b) Where the issue is the validity of marriage to a veteran following a divorce, the matter of recognition of the divorce by the Department of Veterans Affairs (including any question of bona fide domicile) will be determined according to the laws of the jurisdictions specified in § 3.1(j).
(c) Where a foreign divorce has been granted the residents of a State whose laws consider such decrees to be valid, it will thereafter be considered as valid under the laws of the jurisdictions specified in § 3.1(j) in the absence of a determination to the contrary by a court of last resort in those jurisdictions.


CROSS REFERENCE: Evidence of dependents and age. See § 3.204.

§ 3.207 Void or annulled marriage.

Proof that a marriage was void or has been annulled should consist of:
(a) Void. A certified statement from the claimant setting forth the circumstances which rendered the marriage void, together with such other evidence as may be required for a determination.
(b) Annulled. A copy or abstract of the decree of annulment. A decree regular on its face will be accepted unless there is reason to question the basic authority of the court to render annulment decrees or there is evidence indicating that the annulment may have been obtained through fraud by either party or by collusion.


CROSS REFERENCES: Effective dates, void or annulled marriage. See § 3.400(u) and (v). Evidence of dependents and age. See § 3.204.

§ 3.208 Claims based on attained age.

In claims for pension where the age of the veteran or surviving spouse is material, the statements of age will be accepted where they are in agreement with other statements in the record as to age. However, where there is a variance in such records, the youngest age will be accepted subject to the submission of evidence as outlined in § 3.209.

[40 FR 53581, Nov. 19, 1975, as amended at 52 FR 19349, May 22, 1987]

CROSS REFERENCE: Evidence of dependents and age. See § 3.204.

§ 3.209 Birth.

Age or relationship is established by one of the following types of evidence. If the evidence submitted for proof of age or relationship indicates a difference in the name of the person as shown by other records, the discrepancy is to be reconciled by an affidavit
or certified statement identifying the person having the changed name as the person whose name appears in the evidence of age or relationship.

(a) A copy or abstract of the public record of birth. Such a record established more than 4 years after the birth will be accepted as proof of age or relationship if, it is not inconsistent with material of record with the Department of Veterans Affairs, or if it shows on its face that it is based upon evidence which would be acceptable under this section.

(b) A copy of the church record of baptism. Such a record of baptism performed more than 4 years after birth will not be accepted as proof of age or relationship unless it is consistent with material of record with the Department of Veterans Affairs, which will include at least one reference to age or relationship made at a time when such reference was not essential to establishing entitlement to the benefit claimed.

(c) Official report from the service department as to birth which occurred while the veteran was in service.

(d) Affidavit or a certified statement of the physician or midwife in attendance at birth.

(e) Copy of Bible or other family record certified to by a notary public or other officer with authority to administer oaths, who should state in what year the Bible or other book in which the record appears was printed, whether the record bears any erasures or other marks of alteration, and whether from the appearance of the writing he or she believes the entries to have been made at the time purported.

(f) Affidavits or certified statements of two or more persons, preferably disinterested, who will state their ages, showing the name, date, and place of birth of the person whose age or relationship is being established, and that to their own knowledge such person is the child of such parents (naming the parents) and stating the source of their knowledge.

(g) Other evidence which is adequate to establish the facts in issue, including census records, original baptismal records, hospital records, insurance policies, school, employment, immigration, or naturalization records.


(38 U.S.C. 501)
CROSS REFERENCE: Evidence of dependents and age. See § 3.204.

§ 3.210 Child's relationship.

(a) Legitimate child. Where it is necessary to determine the legitimacy of a child, evidence will be required to establish the legality of the marriage of the mother of the child to the veteran or to show that the child is otherwise legitimate by State laws together with evidence of birth as outlined in § 3.209. Where the legitimacy of a child is not a factor, evidence to establish legitimacy will not be required: Provided, That, evidence is on file which meets the requirements of paragraph (b) of this section sufficient to warrant recognition of the relationship of the child without regard to legitimacy.

(b) Illegitimate child. As to the mother of an illegitimate child, proof of birth is all that is required. As to the father, the sufficiency of evidence will be determined in accordance with the facts in the individual case. Proof of such relationship will consist of:

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(1) An acknowledgment in writing signed by him; or
(2) Evidence that he has been identified as the child's father by a judicial decree ordering him to contribute to the child's support or for other purposes; or
(3) Any other secondary evidence which reasonably supports a finding of relationship, as determined by an official authorized to approve such findings, such as:
   (i) A copy of the public record of birth or church record of baptism, showing that the veteran was the informant and was named as parent of the child; or
   (ii) Statements of persons who know that the veteran accepted the child as his; or
   (iii) Information obtained from service department or public records, such as school or welfare agencies, which shows that with his knowledge the veteran was named as the father of the child.

(c) Adopted child. Except as provided in paragraph (c)(1) of this section evidence of relationship will include a copy of the decree of adoption or a copy of the adoptive placement agreement and such other evidence as may be necessary.

(1) In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, the following may be accepted to establish the fact of adoption:
   (i) As to a child adopted into the veteran's family, a copy of the child's revised birth certificate.
   (ii) As to a child adopted out of the veteran's family, a statement over the signature of the judge or the clerk of the court setting forth the child's former name and the date of adoption, or a certified statement by the veteran, the veteran's surviving spouse, apportionee, or their fiduciaries setting forth the child's former name, date of birth, and the date and fact of adoption together with evidence indicating that the child's original public record of birth has been removed from such records. Where application is made for an apportionment under § 3.458(d) on behalf of a child adopted out of the veteran's family, the evidence must be sufficient to establish the veteran as the natural parent of the child.

(2) As to a child adopted by the veteran's surviving spouse after the veteran's death, the statement of the adoptive parent or custodian of the child will be accepted in absence of information to the contrary, to show that the child was a member of the veteran's household at the date of the veteran's death and that recurring contributions were not being received for the child's maintenance sufficient to provide for the major portion of the child's support, from any person other than the veteran or surviving spouse or from any public or private welfare organization which furnished services or assistance to children. (Pub. L. 86-195)

(d) Stepchild. Evidence of relationship of a stepchild will consist of proof of birth as outlined in § 3.209, evidence of the marriage of the veteran to the natural parent of the child, and evidence that the child is a member of the veteran's household or was a member of the veteran's household at the date of the veteran's death.


CROSS REFERENCE: Evidence of dependents and age. See § 3.204.
§ 3.211 Death.

Death should be established by one of the following types of evidence:

(a)(1) A copy of the public record of the State or community where death occurred.

(2) A copy of a coroner's report of death or a verdict of a coroner's jury of the State or community where death occurred, provided such report or verdict properly identified the deceased.

(b) Where death occurs in a hospital or institution under the control of the United States Government:

(1) A death certificate signed by a medical officer; or

(2) A clinical summary or other report showing fact and date of death signed by a medical officer.

(c) An official report of death of a member of a uniformed service from the Secretary of the department concerned where death occurs while deceased was on the retired list, in an inactive duty status, or in the active service.

(d) Where death occurs abroad:

(1) A United States consular report of death bearing the signature and seal of the United States consul; or

(2) A copy of the public record of death authenticated (see § 3.202(b)(4) for exception) by the United States consul or other agency of the State Department; or

(3) An official report of death from the head of the department concerned where the deceased person was, at the time of death, a civilian employee of such department.

(e) If the foregoing evidence cannot be furnished, the reason must be stated. The fact of death may then be established by the affidavits of persons who have personal knowledge of the fact of death, have viewed the body of the deceased, know it to be the body of the person whose death is being established, setting forth all the facts and circumstances concerning the death, place, date, time, and cause thereof.

(f) If proof of death, as defined in paragraphs (a) through (e) of this section cannot be furnished, a finding of fact of death, where death is otherwise shown by competent evidence, may be made by an official authorized to approve such findings. Where it is indicated that the veteran died under circumstances which precluded recovery or identification of the body, the fact of death should be established by the best evidence, which from the nature of the case must be supposed to exist.

(g) In the absence of evidence to the contrary, a finding of fact of death made by another Federal agency will be accepted for the purposes of paragraph (f) of this section.


CROSS REFERENCE: Evidence of dependents and age. See § 3.204.

§ 3.212 Unexplained absence for 7 years.

(a) If satisfactory evidence is produced establishing the fact of the continued and unexplained absence of any individual from his or her home and family for a period of 7 years or more and that a diligent search disclosed no evidence of his or her existence after the date of disappearance, and if evidence as provided in § 3.211 cannot be furnished, the death of such individual as of the expiration of such period may be considered as sufficiently proved.
(b) No State law providing for presumption of death will be applicable to claims for benefits under laws administered by the Department of Veterans Affairs and the finding of death will be final and conclusive except where suit is filed for insurance under 38 U.S.C. 1984. (Authority: 38 U.S.C. 108)

(c) In the absence of evidence to the contrary, a finding of death made by another Federal agency will be accepted if the finding meets the requirements of paragraph (a) of this section.


§ 3.213 Change of status affecting entitlement.
(a) General. For the purpose of establishing entitlement to a higher rate of pension, compensation, or dependency and indemnity compensation based on the existence of a dependent, VA will require evidence which satisfies the requirements of § 3.204. For the purpose of reducing or discontinuing such benefits, a statement by a claimant or payee setting forth the month and year of change of status which would result in a reduction or discontinuance of benefits to that person will be accepted, in the absence of contradictory information. This includes:

(1) Veteran. A statement by the veteran setting forth the month and year of death of a spouse, child, or dependent parent.

(2) Surviving spouse. A statement by the surviving spouse or remarried surviving spouse setting forth the month and year of remarriage and any change of name. (An award for a child or children who are otherwise entitled may be made to commence the day following the date of discontinuance of any payments to the surviving spouse.)

(3) Child. A statement by the veteran or surviving spouse (where an additional allowance is being paid to the veteran or surviving spouse for a child), or fiduciary, setting forth the month and year of the child's death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish the child's marriage or the discontinuance of school attendance. Where appropriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child.

(4) Parent. A statement by a parent setting forth the month and year:
(i) Of marriage or remarriage;
(ii) When two parents or a parent and spouse ceased living together;
(iii) When two parents or a parent and spouse resumed living together following a period of separation;
(iv) Of divorce or death of a spouse.

(b) Date not reported. If the month and year of the event is not reported, the award will be reduced or discontinued, whichever is appropriate, effective date of last payment. The payee will be requested to furnish within 60 days from the date of request a statement setting forth the date of the event. Where payments are continued at a reduced rate, the award will be discontinued effective date of last payment if the required statement is not
received within the 60-day period. Payments on a discontinued award may be resumed, if otherwise in order, from the date of discontinuance if the necessary information is received within 1 year from the date of request; otherwise from the date of receipt of a new claim.

c) Contradictory information. Where there is reason to believe that the event reported may have occurred at an earlier date, formal proof will be required.


(38 U.S.C. 501)

[EFFECTIVE DATE NOTE: 61 FR 56626, Nov. 4, 1996, which amended the introductory text of paragraph (a), became effective Nov. 4, 1996.]

CROSS REFERENCES: Abandoned claims. See § 3.158. Change in status of dependents. See § 3.651. Material change in income, net worth or change in status. See § 3.660. Evidence of dependents and age. See § 3.204.

§ 3.214 Court decisions; unremarried surviving spouses.

Effective July 15, 1958, a decision rendered by a Federal court in an action to which the United States was a party holding that a surviving spouse of a veteran has not remarried will be followed in determining eligibility for pension, compensation or dependency and indemnity compensation.


CROSS REFERENCES: Abandoned claims. See § 3.158. Change in status of dependents. See § 3.651. Dependency, income and estate. See § 3.660. Evidence of dependents and age. See § 3.204.

§ 3.215 Termination of marital relationship or conduct.

On or after January 1, 1971, benefits may be resumed to an unmarried surviving spouse upon filing of an application and submission of satisfactory evidence that the surviving spouse has ceased living with another person and holding himself or herself out openly to the public as that person's spouse or that the surviving spouse has terminated a relationship or conduct which had created an inference or presumption of remarriage or related to open or notorious adulterous cohabitation or similar conduct, if the relationship terminated prior to November 1, 1990. Such evidence may consist of, but is not limited to, the surviving spouse's certified statement of the fact.


§ 3.216 Mandatory disclosure of social security numbers.

Any person who applies for or receives any compensation or pension benefit as defined in §§ 3.3, 3.4, or 3.5 of this part, a monetary allowance under 38 U.S.C. chapter 18, shall, as a condition for receipt or continued receipt of benefits, furnish the Department of
Veterans Affairs upon request with his or her social security number and the social security number of any dependent or beneficiary on whose behalf, or based upon whom, benefits are sought or received. However, no one shall be required to furnish a social security number for any person to whom none has been assigned. Benefits will be terminated if a beneficiary fails to furnish the Department of Veterans Affairs with his or her social security number or the social security number of any dependent or beneficiary on whose behalf, or based upon whom, benefits are sought or received, within 60 days from the date the beneficiary is requested to furnish the social security number. (Authority: (38 U.S.C. 1822, 5101(c))
(Approved by the Office of Management and Budget under control number 2900-0522) [57 FR 8268, Mar. 9, 1992, as amended at 57 FR 27935, June 23, 1992; 65 FR 35280, 35282, June 2, 2000; 67 FR 49585, 49586, July 31, 2002]

[EFFECTIVE DATE NOTE: 67 FR 49585, 49586, July 31, 2002, amended this section, effective July 31, 2002.]

§ 3.217 Submission of statements or information affecting entitlement to benefits.

(a) For purposes of this part, unless specifically provided otherwise, the submission of information or a statement that affects entitlement to benefits by e-mail, facsimile, or other written electronic means, will satisfy a requirement or authorization that the statement or information be submitted in writing.

Note to paragraph (a): Section 3.217(a) merely concerns the submission of information or a statement in writing. Other requirements specified in this part, such as a requirement to use a specific form, to provide specific information, to provide a signature, or to provide a certified statement, must still be met.

(b) For purposes of this part, unless specifically provided otherwise, VA may take action affecting entitlement to benefits based on oral or written information or statements provided to VA by a beneficiary or his or her fiduciary. However, VA may not take action based on oral information or statements unless the VA employee receiving the information meets the following conditions:

(1) During the conversation in which the information or statement is provided, the VA employee:
   (i) Identifies himself or herself as a VA employee who is authorized to receive the information or statement (these are VA employees authorized to take actions under §§ 2.3 or 3.100 of this chapter);
   (ii) Verifies the identity of the provider as either the beneficiary or his or her fiduciary by obtaining specific information about the beneficiary that can be verified from the beneficiary's VA records, such as Social Security number, date of birth, branch of military service, dates of military service, or other information; and
   (iii) Informs the provider that the information or statement will be used for the purpose of calculating benefit amounts; and

(2) During or following the conversation in which the information or statement is provided, the VA employee documents in the beneficiary's VA records the specific information or statement provided, the date such information or statement was provided, the identity of the provider, the steps taken to verify the identity of the provider as being
either the beneficiary or his or her fiduciary, and that he or she informed the provider that
the information would be used for the purpose of calculating benefit amounts.
[66 FR 56613, 56614, Nov. 9, 2001]

(38 U.S.C. 501, 1115, 1506, 5104.)
[EFFECTIVE DATE NOTE: 66 FR 56613, 56614, Nov. 9, 2001, added this section,
effective Dec. 10, 2001.]
§ 3.250 Dependency of parents; compensation.
§ 3.251 Income of parents; dependency and indemnity compensation.
§ 3.252 Annual income; pension; Mexican border period and later war periods.
§§ 3.253 -- 3.255 [Reserved]
§ 3.256 Eligibility reporting requirements.
§ 3.257 Children; no surviving spouse entitled.
§§ 3.258 -- 3.259 [Reserved]
§ 3.260 Computation of income.
§ 3.261 Character of income; exclusions and estates.
§ 3.262 Evaluation of income.
§ 3.263 Corpus of estate; net worth.
§ 3.270 Applicability of various dependency, income and estate regulations.

§ 3.250 Dependency of parents; compensation.
(a) Income -- (1) Conclusive dependency. Dependency of a parent (other than one who is residing in a foreign country) will be held to exist where the monthly income does not exceed:
   (i) $ 400 for a mother or father not living together;
   (ii) $ 660 for a mother and father, or remarried parent and spouse, living together;
   (iii) $ 185 for each additional "member of the family" as defined in paragraph (b)(2).
   (Authority: 38 U.S.C. 102(a))
(2) Excess income. Where the income exceeds the monthly amounts stated in paragraph (a)(1) of this section dependency will be determined on the facts in the individual case under the principles outlined in paragraph (b) of this section. In such cases, dependency will not be held to exist if it is reasonable that some part of the corpus of the claimant's estate be consumed for his or her maintenance.
(3) Foreign residents. There is no conclusive presumption of dependency. Dependency will be determined on the facts in the individual case under the principles outlined in this section.
(b) Basic rule. Dependency will be held to exist if the father or mother of the veteran does not have an income sufficient to provide reasonable maintenance for such father or mother and members of his or her family under legal age and for dependent adult members of the family if the dependency of such adult member results from mental or physical incapacity.
(1) "Reasonable Maintenance" includes not only housing, food, clothing, and medical care sufficient to sustain life, but such items beyond the bare necessities as well as other requirements reasonably necessary to provide those conveniences and comforts of living suitable to and consistent with the parents' reasonable mode of life.
(2) "Member of the family" means a person (other than spouse) including a relative in the ascending as well as descending class, whom the father or mother is under moral or legal obligation to support. In determining whether other members of the family under legal age are factors in necessary expenses of the mother or father, consideration will be given to any income from business or property (including trusts) actually available, directly or
indirectly, to the mother or father for the support of the minor but not to the corpus of the estate or the income of the minor which is not so available.

(c) Inception of dependency. The fact that the veteran has made habitual contributions to the father or mother, or both, is not conclusive evidence that dependency existed but will be considered in connection with all other evidence. In death claims, it is not material whether dependency arose prior or subsequent to the veteran's death. (See § 3.1000(d)(3) as to accrued.)

(Authority: 38 U.S.C. 102(a))

(d) Remarriage. Dependency will not be denied solely because of remarriage (38 U.S.C. 102(b)(1)). Compensation may be continued if the parent submits evidence to show that dependency exists, considering the combined income and expenses of the parent and spouse.


§ 3.251 Income of parents; dependency and indemnity compensation.

(a) Annual income limitations and rates. (1) Dependency and indemnity compensation is not payable to a parent or parents whose annual income exceeds the limitations set forth in 38 U.S.C. 1315(b), (c), or (d).

(2) Where there is only one parent, and the parent has remarried and is living with his or her spouse, dependency and indemnity compensation will be paid under either the formula in 38 U.S.C. 1315(b)(1) or the formula in 38 U.S.C. 1315(d), whichever will provide the greater monthly rate of dependency and indemnity compensation. The total combined annual income of the parent and spouse will be counted.

(Authority: 38 U.S.C. 1315)

(3) Where the claim is based on service in the Commonwealth Army of the Philippines, or as a guerilla or as a Philippine Scout under section 14, Pub. L. 190, 79th Congress, the income limitation will be at a rate of $ 0.50 for each dollar. See § 3.100(b).

(Authority: 38 U.S.C. 107)

(4) If the remarriage of a parent has been terminated, or the parent is separated from his or her spouse, the rate of dependency and indemnity compensation for the parent will be that which would be payable if there were one parent alone or two parents not living together, whichever is applicable.

(5) Where there are two parents living and only one parent has filed claim, the rate of dependency and indemnity compensation will be that which would be payable if both parents had filed claim.

(b) Basic rule. Payments of any kind or from any source will be counted as income unless specifically excluded. Income will be counted for the calendar year in which it is received and total income for the full calendar year will be considered except as provided in § 3.260.
§ 3.252 Annual income; pension; Mexican border period and later war periods.

(a) Annual income limitations; old-law pension. Where the right to old-law pension is payable under section 306(b) of Pub. L. 95-588 (92 Stat. 2497), pension is not payable if the pensioner's annual income exceeds the income limitations prescribed by § 3.26(c).

(b) Annual income and net worth limitations; Pub. L. 86-211. Pension is not payable to a veteran, surviving spouse or child whose annual income exceeds the limitations set forth in 38 U.S.C. 1521, 1541 or 1542; or to a veteran, surviving spouse or child if it is reasonable that some part of the claimant's estate be consumed for his or her maintenance. Where a veteran and spouse are living together, the separate income of the spouse will be considered as the veteran's income as provided in § 3.262(b).

(c) Basic rule. Payments of any kind or from any source will be counted as income unless specifically excluded. Income will be counted for the calendar year in which it is received and total income for the full calendar year will be considered except as provided in § 3.260.

(d) Veteran with a spouse. For the purpose of determining eligibility under paragraph (b) of this section the pension rates provided by 38 U.S.C. 1521(c) may be authorized for a married veteran if he or she is living with or, if estranged, is reasonably contributing to the support of his or her spouse. The determination of "reasonable" contribution will be based on all the circumstances in the case, considering the income and estate of the veteran and the separate income and estate of the spouse. Apportionment of the veteran's pension under § 3.451 meets the requirement of reasonable contribution.

(e) Surviving spouse with a child -- (1) Child. The term "child" means a child as defined in § 3.57. Where a veteran's child is born after the veteran dies, the surviving spouse will not be considered a surviving spouse with a child prior to the child's date of birth.

(2) Veteran's child not in surviving spouse's custody. Where the veteran was survived by a surviving spouse and by a child, the income increments for a surviving spouse and child apply even though the child is not the child of the surviving spouse and not in his or her custody.

(3) Income of child. The separate income received by a child or children, regardless of custody, will not be considered in computing the surviving spouse's income. Where the separate income of the child is turned over to the surviving spouse, only so much of the money as is left after deducting any expenses for maintenance of the child will be considered the surviving spouse's income.

(4) Alternative rate. Whenever the monthly pension rate payable to the surviving spouse under the formula in 38 U.S.C. 1541(c) is less than the rate payable for one child under section 1542 if the surviving spouse were not entitled, the surviving spouse will be paid the child's rate.

(f) Income over maximum; reduced aid and attendance allowance. Beginning January 1, 1977, veterans in need of regular aid and attendance who are not receiving pension because their income exceeds the applicable statutory limitation may be eligible for a reduced aid and attendance allowance. The amount payable is the regular aid and

attendance allowance authorized by 38 U.S.C. 1521(d)(1) reduced by 16.6 percent for each $100, or portion thereof, by which the veteran's annual income exceeds the applicable maximum income limitation. The reduced aid and attendance allowance is payable when:

(1) A veteran in need of regular aid and attendance is denied pension under 38 U.S.C. 1521 solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521 (b)(3) and (c)(3); or

(2) Pension payable under 38 U.S.C. 1521 to a veteran in need of regular aid and attendance is discontinued solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521 (b)(3) or (c)(3); and

(3) The veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 1521 (b)(3) or (c)(3) by an amount not greater than the amount specified in 38 U.S.C. 1521 (d)(2).


[EFFECTIVE DATE NOTE: 61 FR 20726, 20727, May 8, 1996, substituted "§ 3.26(c)" for "§ 3.26(b)" in paragraph (a), effective May 8, 1996; 62 FR 5528, 5529, Feb. 6, 1997, substituted "surviving spouse" for "widow or widower" in paragraph (b), and revised paragraph (e), effective Feb. 6, 1997.]

CROSS REFERENCES: Basic pension determinations. See § 3.314. Determination of permanent need for regular aid and attendance and "permanently bedridden". See § 3.352.

§§ 3.253 -- 3.255 [Reserved]

§ 3.256 Eligibility reporting requirements.

(a) Obligation to report changes in factors affecting entitlement. Any individual who has applied for or receives pension or parents' dependency and indemnity compensation must promptly notify the Secretary of any change affecting entitlement in any of the following:

(1) Income;

(2) Net worth or corpus of estate;

(3) Marital status;

(4) Nursing home patient status;

(5) School enrollment status of a child 18 years of age or older; or

(6) Any other factor that affects entitlement to benefits under the provisions of this Part.

(b) Eligibility verification reports. (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth (if applicable), dependency status, and any other information necessary to determine or verify entitlement to pension or parents' dependency and indemnity compensation.

(2) VA will not require old law or section 306 pensioners to submit eligibility verification reports unless the Secretary determines that doing so is necessary to preserve program integrity.
The Secretary shall require an eligibility verification report from individuals receiving parents' dependency and indemnity compensation under the following circumstances:

(i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number.

(ii) If there is reason to believe that the beneficiary or, if the spouse's income could affect entitlement, his or her spouse may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

An individual who applies for or receives pension or parents' dependency and indemnity compensation as defined in §§ 3.3 or 3.5 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0101 and 2900-0624.

§ 3.257 Children; no surviving spouse entitled.

Where pension is not payable to a surviving spouse because his or her annual income exceeds the statutory limitation or because of his or her net worth, payments will be made to or for the child or children as if there were no surviving spouse.

§§ 3.258 -- 3.259 [Reserved]

§ 3.260 Computation of income.

For entitlement to pension or dependency and indemnity compensation, income will be counted for the calendar year in which it is received.

(a) Installments. Income will be determined by the total amount received or anticipated during the calendar year.

(b) Deferred determinations. Where there is doubt as to the amount of the anticipated income, pension or dependency and indemnity compensation will be allowed at the lowest appropriate rate or will be withheld, as may be in order, until the end of the calendar year when the total income received during the year may be determined.
(c) Proportionate income limitations; excess income. A proportionate income limitation will be established under the conditions set forth in paragraph (d) of this section except where application of a proportionate income limitation would result in payment of a lower rate than would be payable on the basis of income for the full calendar year.

(d) Proportionate income limitations; computation. Income limitations will be computed proportionately for the purpose of determining initial entitlement, or for resuming payments on an award which was discontinued for a reason other than excess income or a change in marital or dependency status. A proportionate income limitation will be established for the period from the date of entitlement to the end of that calendar year. The total amount of income received by the claimant during that period will govern the payment of benefits. Income received prior to the date of entitlement will be disregarded.

(e) Proportionate income limitations; spouse. In determining whether proportionate computation is applicable to a claim under Pub. L. 86-211 (73 Stat. 432), the total income for the calendar year of entitlement of both veteran and that of the spouse available for use of the veteran will be considered. If a proportionate income limitation is then applicable, it will be applied to both the veteran's and the spouse's income. The spouse's income will not be included, however, where his or her total income for the calendar year does not exceed $1,200.

(f) Rate changes. In years after that for which entitlement to pension or dependency and indemnity compensation has been established or reestablished as provided in paragraph (d) of this section, total income for the calendar year will govern the payment of benefits. Where there is a change in the conditions of entitlement because of a change in marital or dependency status, entitlement for each period will be determined separately. For the period when the claimant was married or had a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is married or has a dependent. For the period when the claimant was unmarried or without a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is not married or has no dependent. Since these determinations will be based on total income for the calendar year, it is not material whether such income was received before or after the change of status.

(g) Fractions of dollars. In computing a claimant's annual income a fraction of a dollar will be disregarded for the purpose of determining entitlement to monthly payments of pension and dependency and indemnity compensation.


(38 U.S.C. 1315(g)(2); 1503(b))

§ 3.261 Character of income; exclusions and estates.

The following factors will be considered in determining whether a claimant meets the requirements of §§ 3.250, 3.251 and 3.252 with reference to dependency, income limitations and corpus of estate:

[PUBLISHER'S NOTE: As printed in the GPO edition of the CFR, some of the following tables in this section are too wide to fit on an 80-character screen. Therefore, such tables have been reformatted for the screen.]
<table>
<thead>
<tr>
<th>Income</th>
<th>Dependency compensation (parents)</th>
<th>Income</th>
<th>Dependency compensation (parents)</th>
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<tr>
<td>(1) Total income from employment, business, investments, or rents.</td>
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<td>(1) Total income from employment, business, investments, or rents.</td>
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<tr>
<td>(2) Income of spouse.</td>
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<td>(2) Income of spouse.</td>
<td>......do</td>
</tr>
<tr>
<td>(3) Earnings of members of family under legal age.</td>
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<td>(3) Earnings of members of family under legal age.</td>
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</tr>
<tr>
<td>(4) Earned income of child-claimant.</td>
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<td>(4) Earned income of child-claimant.</td>
<td>--------</td>
</tr>
<tr>
<td>(5) Gifts, including contributions from adult members of family:</td>
<td></td>
<td>(5) Gifts, including contributions from adult members of family:</td>
<td></td>
</tr>
<tr>
<td>Property.</td>
<td>......do</td>
<td>Property.</td>
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<tr>
<td>Money.</td>
<td>......do</td>
<td>Money.</td>
<td>......do</td>
</tr>
<tr>
<td>(6) Value of maintenance by relative, friend, or organization.</td>
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<td>(6) Value of maintenance by relative, friend, or organization.</td>
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<tr>
<td>(7) Rental value of property owned by and resided in by claimant.</td>
<td>......do</td>
<td>(7) Rental value of property owned by and resided in by claimant.</td>
<td>......do</td>
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<tr>
<td>(8) Charitable donations.</td>
<td>......do</td>
<td>(8) Charitable donations.</td>
<td>......do</td>
</tr>
<tr>
<td>(9) Family allowance authorized by service personnel.</td>
<td>Included</td>
<td>(9) Family allowance authorized by service personnel.</td>
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</tr>
<tr>
<td>(10) Reasonable value of allowances to person in service in addition to base pay.</td>
<td>......do</td>
<td>(10) Reasonable value of allowances to person in service in addition to base pay.</td>
<td>......do</td>
</tr>
<tr>
<td>(12) Six-months' death gratuity.</td>
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<td>Excluded</td>
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<tr>
<td>(13) Bonus or similar cash gratuity paid by any State based on service in Armed Forces of United States.</td>
<td>Excluded</td>
<td>(13) Bonus or similar cash gratuity paid by any State based on service in Armed Forces of United States.</td>
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</tr>
<tr>
<td>(14) Retired Serviceman's Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):</td>
<td></td>
<td>(14) Retired Serviceman's Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):</td>
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<td>Retired Serviceman's Family Protection Plan (Subch. I):</td>
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<td>Retired Serviceman's Family Protection Plan (Subch. I):</td>
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<tr>
<td>Annuities.</td>
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<td>Annuities.</td>
<td>......do</td>
</tr>
<tr>
<td>Annuity under § 653, Pub. L. 100-456.</td>
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<td>Annuity under § 653, Pub. L. 100-456.</td>
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</tr>
<tr>
<td>(15) Retirement pay received direct from service department.</td>
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<td>(15) Retirement pay received direct from service department.</td>
<td>Included</td>
</tr>
<tr>
<td>(16) Retirement benefits; general.</td>
<td>......do</td>
<td>(16) Retirement benefits; general.</td>
<td>......do</td>
</tr>
<tr>
<td>(17) Social security benefits:</td>
<td></td>
<td>(17) Social security benefits:</td>
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</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Benefit Type</th>
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<tr>
<td>Old age and survivors', and disability insurance.</td>
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<tr>
<td>Charitable programs.</td>
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<tr>
<td>Lump-sum death payments.</td>
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<tr>
<td>Supplemental security income.</td>
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<td>(18) Railroad Retirement benefits.</td>
<td>......do</td>
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</tr>
<tr>
<td>(19) Retirement pay waived under Federal statute.</td>
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<tr>
<td>(20) Department of Veterans Affairs payments:</td>
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<tr>
<td>Pension.</td>
<td>Excluded</td>
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</tr>
<tr>
<td>Compensation and dependency and indemnity compensation.</td>
<td>......do</td>
<td>......do</td>
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<tr>
<td>World War I adjusted compensation.</td>
<td>......do</td>
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<tr>
<td>U.S. Government life insurance or national service life insurance for disability or death, maturity of endowment policies, and dividends, including special and termination dividends.</td>
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<td>Servicemembers' group life insurance.</td>
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<tr>
<td>Veterans' group life insurance.</td>
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<tr>
<td>Servicemembers' indemnity.</td>
<td>......do</td>
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<tr>
<td>Subsistence allowance (38 U.S.C. ch. 31).</td>
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<tr>
<td>Veterans educational assistance in excess of amounts expended for training (38 U.S.C. ch. 34).</td>
<td>......do</td>
<td>......do</td>
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<td>Educational assistance (38 U.S.C. ch. 35).</td>
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<td>Statutory burial allowance.</td>
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<td>Accrued, except accrued as reimbursement.</td>
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<td>(21) Compensation (civilian) for injury or death.</td>
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<tr>
<td>(22) Contributions by a public or private employer to a:</td>
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<tr>
<td>Public or private health or hospitalization plan for an active or retired employee.</td>
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<td>Retired employee as reimbursement for premiums for supplementary medical insurance benefits under the Social Security Program (Pub. L. 91-588; 84 Stat. 1580).</td>
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<td>(23) Overtime pay; Government employees.</td>
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<tr>
<td>(24) Commercial life insurance; disability, accident, or health insurance, less payments received.</td>
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<tr>
<td>of medical or hospital expenses resulting from the accident or disease for which payments are made.</td>
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<td>(as received).</td>
</tr>
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<td>(25) Commercial annuities or endowments.</td>
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<td>(special provision).</td>
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<tr>
<td>(26) Dividends from commercial insurance.</td>
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</table>
(27) Insurance under Merchant Marine Act of 1936, as amended.

(28) Reimbursement for casualty loss (Pub. L. 100-687).

Other fire Insurance.

(29) Bequests, devises and inheritances:

- Property. Included
- Money. Included
- Joint bank accounts. Included

(30) Profit from sale of property.

(31) Jury duty or obligatory civic duties.


(33) The following programs administered by the ACTION Agency:

- Foster Grandparent Program and Older Americans Community Service Programs

Pension; old-age (veterans, surviving spouses and children) section 306

Income

(1) Total income from employment, business, investments or rents.

(2) Income of spouse.

(3) Earnings of members of family under legal age.

(4) Earned income of child-claimant.

(5) Gifts, including contributions from adult members of family:

- Property.
- Money.

(6) Value of maintenance by relative, friend, or organization.

(7) Rental value of property owned by and resided in by claimant.

(8) Charitable donations.

(9) Family allowance authorized by service personnel.

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(10) Reasonable value of allowances to person ......do Included in service in addition to base pay. except as earned income of child-claimant.

(11) Mustering-out pay. Excluded ......do

(12) Six-months' death gratuity. ......do Excluded

(13) Bonus or similar cash gratuity paid by Excluded Excluded any State based on service in Armed Forces of United States.

(14) Retired Serviceman's Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):
Retired Serviceman's Family Protection Plan (Subch. I):
Annuities. ......do ......do
Refund (10 U.S.C. 1446). Included Included
Annuity under § 653, Pub. L. 100-456. Excluded Excluded

(15) Retirement pay received direct from Included Included service department.
......do ......do

(16) Retirement benefits; general. ......do ......do

(17) Social security benefits:
Old age and survivors', and disability Included Included insurance.
Charitable programs. ......do Excluded
Lump-sum death payments. ......do ......do
Supplemental security income. ......do ......do

(18) Railroad Retirement benefits. Disability Included
pension-- Excluded
Death Excluded
pension-- Included

(19) Retirement pay waived under Federal Excluded ......do statute.

(20) Department of Veterans Affairs payments:
Pension. Excluded Excluded
Compensation and dependency and indemnity ......do ......do compensation.
World War I adjusted compensation. ......do Included
U.S. Government life insurance or national Excluded Excluded service life insurance for disability or death, maturity of endowment policies, and dividends, including special and termination dividends.
Servicemembers' group life insurance. ......do ......do
Veterans' group life insurance. ......do ......do
Servicemembers' indemnity. ......do ......do
Subsistence allowance (38 U.S.C. ch. 31). Included Included
Veterans educational assistance in excess of amounts expended for training (38 U.S.C. ch. 34).
- Excluded

Educational assistance (38 U.S.C. ch. 35).
- Excluded

Special allowance under 38 U.S.C. 1312(a).
- Included

Statutory burial allowance.
- Included, except accrued as reimbursement

(21) Compensation (civilian) for injury or death.
- Included

(22) Contributions by a public or private employer to a:

<table>
<thead>
<tr>
<th>Description</th>
<th>Included</th>
<th>Excluded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public or private health or hospitalization plan for an active or retired employee.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retired employee as reimbursement for premiums for supplementary medical insurance benefits under the Social Security Program (Pub. L. 91-588; 84 Stat. 1580).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(23) Overtime pay; Government employees.
- Disability pension
  - Included
  - Excluded
- Death pension
  - Included

(24) Commercial life insurance; disability, accident, or health insurance, less payments of medical or hospital expenses resulting from the accident or disease for which payments are made.
- Included

(25) Commercial annuities or endowments.
- Included

(26) Dividends from commercial insurance.
- Excluded

(27) Insurance under Merchant Marine Act of 1936, as amended.
- Included

(28) Reimbursement for casualty loss (Pub. L. 100-687).
- Included

Other fire Insurance.
- Excluded

(29) Bequests, devises and inheritances:

<table>
<thead>
<tr>
<th>Description</th>
<th>Included</th>
<th>Excluded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Money.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joint bank accounts.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(30) Profit from sale of property.
- Excluded

(31) Jury duty or obligatory civic duties.
- Excluded

(33) The following programs administered by the ACTION Agency: Foster Grandparent Program and Older Americans Community Service Programs payments (Pub. L. 93-29; 87 Stat. 55). Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP), and Older American Community Service Programs, Retired Senior Volunteer Program (RSVP), Senior Companion Program Pub. L. 93-113; 87 Stat. 394).

(34) The Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) administered by the Small Business Administration (Pub. L. 93-113; 87 Stat. 394).

(35) Agent Orange settlement payments (Pub. L. 101-201).


(37) Income received by American Indian beneficiaries from Trust or Restricted lands (Pub. L. 103-66).

(38) Income received under Section 6 of the Radiation Exposure Compensation Act (Pub. L. 101-426).

(39) Cash, stock, land or other interests received from a Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)

(40) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam Veterans (38 U.S.C. 1823(c)).


(42) Income received under the Medicare prescription drug discount card and transitional assistance program (42 U.S.C. 1395w-141(g)(6)).

### Income

<table>
<thead>
<tr>
<th>Income</th>
<th>See</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Total income from employment, business, investments, or rents.</td>
<td>§ 3.262(a).</td>
</tr>
<tr>
<td>(2) Income of spouse.</td>
<td>§ 3.262(b).</td>
</tr>
</tbody>
</table>
(3) Earnings of members of family under legal age. § 3.250(b)(2).
   § 3.252(e)(3).

(4) Earned income of child-claimant.

(5) Gifts, including contributions from adult members of family:
   Property. § 3.262(k).
   Money.

(6) Value of maintenance by relative, friend, or organization. § 3.262(c).

(7) Rental value of property owned by and resided in by claimant.

(8) Charitable donations. § 3.262(d).

(9) Family allowance authorized by service personnel.

(10) Reasonable value of allowances to person in service in addition to base pay.

(11) Mustering-out pay.

(12) Six-months' death gratuity.

(13) Bonus or similar cash gratuity paid by any State based on service in Armed Forces of United States.

(14) Retired Serviceman's Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):
   Retired Serviceman's Family Protection Plan (Subch. I):
   Annuity under § 653, Pub. L. 100-456. § 3.262(r).

(15) Retirement pay received direct from service department. § 3.262(e).

(16) Retirement benefits; general. § 3.262(e).

(17) Social security benefits:
   Old age and survivors', and disability insurance. § 3.262(f).
   Charitable programs.
   Lump-sum death payments.
   Supplemental security income.

(18) Railroad Retirement benefits. § 3.262(g).

(19) Retirement pay waived under Federal statute. § 3.262(h).

(20) Department of Veterans Affairs payments:
   Pension.
Compensation and dependency and indemnity compensation.
World War I adjusted compensation.
U.S. Government life insurance or national service life insurance for disability or death, maturity of endowment policies, and dividends, including special and termination dividends.
Servicemembers' group life insurance.
Veterans' group life insurance.
Servicemembers' indemnity.
Subsistence allowance (38 U.S.C. ch. 31).
Veterans educational assistance in excess of amounts expended for training (38 U.S.C. ch. 34).
Educational assistance (38 U.S.C. ch. 35).
Special allowance under 38 U.S.C. 1312(a).
Statutory burial allowance.
Accrued.

(21) Compensation (civilian) for injury or death. § 3.262(i).

(22) Contributions by a public or private employer to a:
Public or private health or hospitalization plan for an active or retired employee.
Retired employee as reimbursement for premiums for supplementary medical insurance benefits under the Social Security Program (Pub. L. 91-588; 84 Stat. 1580).

(23) Overtime pay; Government employees.

(24) Commercial life insurance; disability, accident, or health insurance, less payments of medical or hospital expenses resulting from the accident or disease for which payments are made. § 3.262(j)

(25) Commercial annuities or endowments. § 3.262(j).

(26) Dividends from commercial insurance.

(27) Insurance under Merchant Marine Act of 1936, as amended.

(28) Reimbursement for casualty loss (Pub. L. 100-687). § 3.262(t).
Other fire Insurance. § 3.262(t).

(29) Bequests, devises and inheritances:
Property. § 3.262(k).
Money.
Joint bank accounts. § 3.262(k)(1).

(30) Profit from sale of property. § 3.262(k).

(31) Jury duty or obligatory civic duties.

(32) Relocation payments (Pub. L. 90-448; Pub. § 3.262(c).
(33) The following programs administered by the ACTION Agency:
Foster Grandparent Program and Older Americans Community Service Programs payments (Pub. L. 93-29; 87 Stat. 55).
Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP), and Older American Community Service Programs, Retired Senior Volunteer Program (RSVP), Senior Companion Program (Pub. L. 93-113; 87 Stat. 394).

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(39) Cash, stock, land or other interests received from a Native Corporation under the Alaska Native Claims Settlement Act (43) U.S.C.1601 et seq.

fn1 The compensation received through a crime victim compensation program will be excluded from income computations unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(b) Deduction of amounts paid by claimant.

<table>
<thead>
<tr>
<th>Deduction</th>
<th>Dependency indemnity compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Unusual medical expenses.</td>
<td>Not authorized Authorized</td>
</tr>
<tr>
<td>(2) Veteran: just debts, expenses of last illness and burial.</td>
<td>Not authorized Authorized, except debts</td>
</tr>
<tr>
<td>(3) Veteran's spouse or child: expenses of last illness and burial.</td>
<td>Not authorized Authorized</td>
</tr>
<tr>
<td>(4) Parent's spouse: just debts; expenses</td>
<td>Not authorized Authorized</td>
</tr>
</tbody>
</table>

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of last illness and burial.


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(1) Unusual medical expenses. Not authorized Authorized §§ 3.262(b)(1) and (1).

(2) Veteran: just debts, Not authorized Authorized §§ 3.262(m) and expenses of last illness and (o).

(3) Veteran's spouse or child: Not authorized Authorized § 3.262(n). expenses of last illness and burial.

(4) Parent's spouse: just debts; expenses of last illness and burial.


(c) Corpus of estate.

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Pension; old-law veterans, (veterans, surviving spouses, and spouses, and children) children See

(1) Unusual medical expenses. Not authorized Authorized §§ 3.262(b)(1) and (1).

(2) Veteran: just debts, Not authorized Authorized §§ 3.262(m) and expenses of last illness and burial.

(3) Veteran's spouse or child: Not authorized Authorized § 3.262(n). expenses of last illness and burial.

(4) Parent's spouse: just debts; expenses of last illness and burial.


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Considered Not considered Not considered Considered § 3.263. conditionally.

§ 3.262 Evaluation of income.

Discussion and Analysis in the Veterans Benefits Manual

(a) Total income. All income from sources such as wages, salaries, earnings, bonuses from employers, income from a business or profession or from investments or rents as well as the fair value of personal services, goods or room and board received in lieu thereof will be included.

(1) Salary is not determined by "takehome" pay, but includes deductions made under a retirement act or plan and amounts withheld by virtue of income tax laws.

(2) The gross income from a business or profession may be reduced by the necessary operating expenses, such as cost of goods sold, or expenditures for rent, taxes, and upkeep. Depreciation is not a deductible expense. The cost of repairs or replacement may be deducted. The value of an increase in stock inventory of a business is not considered income.

(3) A loss sustained in operating a business, profession, or farm or from investments may not be deducted from income derived from any other source.

(b) Income of spouse. Income of the spouse will be determined under the rules applicable to income of the claimant.

(1) Parents. Where the mother and father, or remarried parent and spouse are living together, the total combined income will be considered in determining dependency, or in determining the rate of dependency and indemnity compensation payable to the parent. This rule is equally applicable where both parents have remarried and each is living with his or her spouse. If the remarriage of a parent has been terminated, or the parent is separated from his or her spouse, income of the spouse will be excluded.

(2) Veterans. The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95-588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, the amount of the spouse income exclusion specified in section 306(a)(2)(B) of Pub. L. 95-588 as increased from time to time under section 306(a)(3) of Pub. L. 95-588 or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. Each time there is an increase in the spouse income exclusion pursuant to section 306(a)(3) of Pub. L. 95-588, the actual amount of the exclusion will be published in the "Notices" section of the Federal Register. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements.

(c) Maintenance. The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the claimant is maintained in a rest home or other community institution or facility, public or private, because of impaired health or advanced age, money paid to the home or to the claimant to cover the cost of maintenance will not be considered income, regardless of whether it is furnished by a relative, friend or charitable organization. The expense of maintenance is...
not deductible if it is paid from the claimant's income, except as provided in paragraph (f)
of this section in claims for dependency and indemnity compensation.

(d) Charitable donations. Charitable donations from public or private relief or welfare
organizations will not be considered income except in claims for pension under laws in
effect on June 30, 1960. In the latter cases, additional charitable allowances received by a
claimant for members of his or her family may not be divided per capita in determining
the amount of the claimant's income.

(e) Retirement benefits; general. Retirement benefits, including an annuity or endowment,
paid under a Federal, State, municipal, or private business or industrial plan are
considered income as limited by this paragraph. Where the payments received consist of
part principal and part interest, interest will not be counted separately.

(1) Protected pension. Except as provided in this paragraph (e)(1), effective January 1,
1965, in determining income for pension purposes under laws in effect on June 30, 1960,
10 percent of the retirement payments received by a veteran, surviving spouse, or child
will be excluded. The remaining 90 percent will be considered income as received.
Where the retirement benefit is based on the claimant's own employment, payments will
not be considered income until the amount of the claimant's personal contribution (as
distinguished from amounts contributed by the employer) has been received. Thereafter
the 10 percent exclusion will apply.

(2) Pension; Pub. L. 86-211. Except as provided in this subparagraph, effective January 1,
1965, in determining income for pension purposes, under Pub. L. 86-211 (73 Stat. 432),
10 percent of the retirement payments received by a veteran, the veteran's spouse,
surviving spouse, or child will be excluded. The remaining 90 percent will be considered
income as received. Where a person was receiving or entitled to receive pension and
retirement benefits based on his or her own employment on December 31, 1964, the
retirement payments will not be considered income until the amount of the claimant
personal contribution (as distinguished from amounts contributed by the employer) has
been received. Thereafter the 10 percent exclusion will apply.

(3) Compensation. In determining dependency of a parent for compensation purposes, all
payments will be considered income as received.

(4) Dependency and indemnity compensation. Except as provided in this subparagraph,
effective January 1, 1967, in determining income for dependency and indemnity
compensation purposes, 10 percent of the retirement payments received by a deceased
veteran's parent or by the parent's spouse will be excluded. The remaining 90 percent will
be considered income as received. Where a parent was receiving or entitled to receive
dependency and indemnity compensation and retirement benefits based on his or her own
employment on December 31, 1966, the retirement payments will not be considered
income until the amount of the claimant's personal contribution (as distinguished from
amounts contributed by the employer) has been received. Thereafter the 10 percent
exclusion will apply.

(Authority: 38 U.S.C. 1315(g), 1503(a)(6))

(f) Social security benefits. Old age and survivor's insurance and disability insurance
under title II of the Social Security Act will be considered income as a retirement benefit
under the rules contained in paragraph (e) of this section. Benefits received under
noncontributory programs, such as old age assistance, aid to dependent children, and
supplemental security income are subject to the rules contained in paragraph (d) of this
section applicable to charitable donations. The lumpsum death payment under title II of
the Social Security Act will be considered as income except in claims for dependency and
indemnity compensation and for pension under Pub. L. 86-211 (73 Stat. 432).
(g) Railroad retirement benefits -- (1) Parents, surviving spouses and children. Retirement
benefits received from the Railroad Retirement Board will be considered as income under
the rules contained in paragraph (e) of this section. (See paragraph (h) of this section as to
waivers.)
(2) Veterans. Effective July 1, 1959, retirement benefits received from the Railroad
Retirement Board were excluded from consideration as income in determining eligibility
for disability pension. (45 U.S.C. 228s-1) This exclusion continues to be applicable to
claims under laws in effect on June 30, 1960. For purposes of section 306 pension, such
retirement benefits will be considered as income under the rules contained in paragraph
(e) of this section.
(h) Retirement benefits waived. Except as provided in this paragraph, retirement benefits
(pension or retirement payments) which have been waived will be included as income.
For the purpose of determining dependency of a parent, or eligibility of a parent for
dependency and indemnity compensation or eligibility of a veteran, surviving spouse, or
child for pension under laws in effect on June 30, 1960, retirement benefits from the
following sources which have been waived pursuant to Federal statute will not be
considered as income:
(1) Civil Service Retirement and Disability Fund;
(2) Railroad Retirement Board (see paragraph (g)(2) of this section);
(3) District of Columbia, firemen, policemen, or public school teachers;
(4) Former lighthouse service.
(i) Compensation (civilian) for injury or death. (1) Compensation paid by the Bureau of
Employees' Compensation, Department of Labor (of the United States), or by Social
Security Administration, or by Railroad Retirement Board, or pursuant to any workmen's
compensation or employer's liability statute, or damages collected because of personal
injury or death, less medical, legal, or other expenses incident to the injury or death, or
the collection or recovery of such moneys will be considered income as received, except
as provided in paragraph (i)(2) of this section. The criteria of paragraph (i)(1) of this
section are for application as to all medical expenditures after such award or settlement.
(Authority: Pub. L. 92-198, 85 Stat. 663)
(2) For pension, effective October 7, 1966, and for dependency and indemnity
compensation effective January 1, 1967, if payments based on permanent and total
disability or death are received from the Bureau of Employees' Compensation, Social
Security Administration or Railroad Retirement Board, or pursuant to any workmen's
compensation or employer's liability statute, there will be excluded 10 percent of the
payments received after deduction of medical, legal, and other expenses as authorized by
paragraph (i)(1) of this section. The 10 percent exclusion does not apply to damages
collected incident to a tort suit under other than an employer's liability law of the United
States or a political subdivision of the United States, or to determinations of dependency
for compensation purposes.
(j) Commercial insurance -- (1) Annuity or endowment insurance. For pension, effective
January 1, 1965, or for dependency and indemnity compensation, effective January 1,
1967, the provisions of paragraph (e) of this section apply. In such cases, 10 percent of
the payments received will be excluded. In dependency and indemnity compensation
claims, where the parent is receiving or entitled to receive dependency and indemnity
compensation on December 31, 1966, and is also receiving or entitled to receive annuity
payments on that date, or endowment insurance matures on or before that date, no part of
the payments received will be considered income until the full amount of the
consideration has been received, after which 10 percent of the amount received will be
excluded. For compensation, the full amount of each payment is considered income as
received.

(2) Life insurance; general. In determining dependency, or eligibility for dependency and
indemnity compensation, or for section 306 pension the full amount of payments is
considered income as received. For section 306 pension, effective October 7, 1966, and
for dependency and indemnity compensation, effective January 1, 1967, 10 percent of the
payments received will be excluded.

(3) Life insurance; old-law pension. For pension under laws in effect on June 30, 1960,
10 percent of the payments received will be excluded. Where it is considered that life
insurance was received in a lump sum in the calendar year in which the veteran died and
payments are actually received in succeeding years, no part of the payments received in
succeeding years will be considered income until an amount equal to the lump-sum face
value of the policy has been received, after which 10 percent of the payments received
will be excluded. The 10 percent exclusion is authorized effective October 7, 1966.

(4) Disability, accident or health insurance. For pension, effective October 7, 1966, and
for dependency and indemnity compensation, effective January 1, 1967, there will be
excluded 10 percent of the payments received for disability after deduction of medical,
legal, or other expenses incident to the disability. For compensation, after deduction of
such expenses, the full amount of payments is considered income as received.

(k) Property -- (1) Ownership. The terms of the recorded deed or other evidence of title
will constitute evidence of ownership of real or personal property. This includes property
acquired through purchase, bequest or inheritance except that, effective January 1, 1971,
amounts in joint accounts in banks and similar institutions acquired by reason of the
death of another joint owner shall not be considered income of a survivor for section 306
pension purposes. With the foregoing exception, if property is owned jointly each person
will be considered as owning a proportionate share. The claimant's share of property held
in partnership will be determined on the facts found. In the absence of evidence to the
contrary, the claimant's statement as to the terms of ownership will be accepted.

(2) Income-producing property. Income received from real or personal property owned
by the claimant will be counted. The claimant's share will be determined in proportion to
his right according to the rules of ownership.

(3) Sale of property. Except as provided in paragraphs (k)(4) and (5) of this section, net
profit from the sale of real or personal property will be counted. In determining net profit
from the sale of property owned prior to the date of entitlement, the value at the date of
entitlement will be considered in relation to the selling price. Where payments are
received in installments, payments will not be considered income until the claimant has
received amounts equal to the value of the property at the date of entitlement. Principal
and interest will not be counted separately.
(4) Homes. Net profit from the sale of the claimant's residence which is received during the calendar year of sale will not be considered as income under the following conditions:
(i) To the extent that it is applied within the calendar year of the sale, or the succeeding calendar year, to the purchase price of another residence as his principal dwelling;
(ii) Such application of the net profit is reported within 1 year following the date so applied, and
(iii) The net profit is so applied after January 10, 1962, to a purchase made after said date. This exclusion will not apply where the net profit is applied to the price of a home purchased earlier than the calendar year preceding the calendar year of sale of the old residence.
(5) Sale of property; section 306 pension and dependency and indemnity compensation. For pension under section 306 pension and for dependency and indemnity compensation, profit from the sale of real or personal property other than in the course of a business will not be considered income. This applies to property acquired either before or after the date of entitlement. Any amounts received in excess of the sales price will be counted as income. Where payments are received in installments, principal and interest will not be counted separately. For pension, this provision is effective January 1, 1965; for dependency and indemnity compensation, January 1, 1967.
(Authority: 38 U.S.C. 1503(a)(10); 38 U.S.C. 1315(g))
(6) Payments on mortgages on real property; section 306 pension. Effective January 1, 1971, for the purposes of section 306 pension, an amount equaling any prepayments made by a veteran or surviving spouse on a mortgage or similar type security instrument in existence at the death of veteran or spouse on real property which prior to the death was the principal residence of the veteran and spouse will be excluded from consideration as income if such payment was made after the death and prior to the close of the year succeeding the year of death.
(Authority: 38 U.S.C. 1503(a)(14))
(I) Unusual medical expenses. Within the provisions of paragraphs (I)(1) through (4) of this section there will be excluded from the amount of the claimant's annual income any unreimbursed amounts which have been paid within the calendar year for unusual medical expenses regardless of the year the indebtedness was incurred. The term unusual means excessive. It does not describe the nature of a medical condition but rather the amount expended for medical treatment in relationship to the claimant's resources available for sustaining a reasonable mode of life. Unreimbursed expenditures which exceed 5 percent of the claimant's reported annual income will be considered unusual. Health, accident, sickness and hospitalization insurance premiums will be included as medical expenses in determining whether the claimant's unreimbursed medical expenses meet the criterion for unusual. A claimant's statement as to amounts expended for medical expenses ordinarily will be accepted unless the circumstances create doubt as to its credibility. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate or after the end of the calendar year upon receipt of an income questionnaire.
(1) Veterans. For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the veteran for unusual medical expenses of self, spouse,
and other relatives of the veteran in the ascending as well as descending class who are members or constructive members of the veteran's household and whom the veteran has a moral or legal obligation to support.

(2) Surviving spouses. For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the surviving spouse for the unusual medical expenses of self, the veteran's children, and other relatives of the surviving spouse in the ascending as well as descending class who are members or constructive members of the surviving spouse's household and whom the surviving spouse has a moral or legal obligation to support.

(3) Children. For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by a child for the unusual medical expenses of self, parent, and brothers and sisters of the child.

(4) Parents. For dependency and indemnity compensation purposes there will be excluded unreimbursed amounts paid by the parent for the unusual medical expenses of self, spouse, and other relatives of the parent in the ascending as well as descending class who are members or constructive members of the parent's household and whom the parent has a moral or legal obligation to support. If the combined annual income of the parent and the parent's spouse is the basis for dependency and indemnity compensation, the exclusion is applicable to the combined annual income and extends to the unusual unreimbursed medical expenses of the spouse's relatives in the ascending as well as descending class who are members or constructive members of the household and whom the parent's spouse has a moral or legal obligation to support.


(m) Veteran's final expenses; pension. In claims for pension under section 306, there will be excluded, as provided in paragraph (p) of this section:

(1) From the income of a surviving spouse, amounts equal to amounts paid for the expenses of the veteran's last illness;

(2) From the income of a surviving spouse, or of a child of a deceased veteran where there is no surviving spouse, amounts equal to amounts paid by the surviving spouse or child for the veteran's just debts, for the expenses of the veteran's last illness, and burial to the extent such expenses are not reimbursed by the Department of Veterans Affairs. The term "just debts" does not include any debt that is secured by real or personal property.

(Authority: Sec. 306, Pub. L. 95-588; 92 Stat. 2508)

(n) Final expenses of veteran's spouse or child; pension. In claims for pension under section 306, there will be excluded, as provided in paragraph (p) of this section:

(1) From the income of a veteran, amounts equal to amounts paid by the veteran for the last illness and burial of the veteran's deceased spouse or child; and

(2) From the income of a spouse or surviving spouse, amounts equal to amounts paid by her as spouse or surviving spouse of the deceased veteran for the last illness and burial of a child of such veteran.

(Authority: Sec. 306, Pub. L. 95-588; 92 Stat. 2508)

(o) Final expenses of veteran or parent's spouse; dependency and indemnity compensation. In claims for dependency and indemnity compensation there will be excluded from the income of a parent, as provided in paragraph (p) of this section, amounts equal to amounts paid by the parent for:
(1) The expenses of the veteran's last illness and burial to the extent that such expenses are not reimbursed under 38 U.S.C. ch. 23.
(2) The parent's deceased spouse's just debts, the expenses of the spouse's last illness to the extent such expenses are not reimbursed under 38 U.S.C. ch. 51 and the expenses of the spouse's burial to the extent that such expenses are not reimbursed under 38 U.S.C. ch. 23 or 51. The term "just debts" does not include any debt that is secured by real or personal property.
(Authority: 38 U.S.C. 1315(f))

(p) Final expenses; year of exclusion. For the purpose of paragraphs (m), (n) and (o) of this section, in the absence of contradictory information, the claimant's statement will be accepted as to the nature, amount and date of payment, and identity of the creditor. Except as provided in this paragraph, payments will be deducted from annual income for the year in which such payments are made. Payments made by a veteran, the spouse or surviving spouse of a veteran, child or, in dependency and indemnity compensation claims, by a parent during the calendar year following the year in which the veteran, spouse or child died may be deducted from the claimant's income for the year of last illness or burial if this deduction is advantageous to the claimant.

(q) Volunteer programs -- (1) Payments under Foster Grandparent Program and Older Americans Community Service Programs. Effective May 3, 1973, compensation received under the Foster Grandparent Program and the Older Americans Community Service Programs will be excluded from income in claims for compensation, pension and dependency and indemnity compensation.
(Authority: Pub. L. 93-29; 87 Stat. 55)

(2) Payments under domestic volunteer service act programs. Effective October 1, 1973, compensation or reimbursement received under a Domestic Volunteer Service Act Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP) and Older American Community Service Program, Retired Senior Volunteer Program (RSVP), Senior Companion Program, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE), will be excluded from income in claims for compensation, pension and dependency and indemnity compensation.
(Authority: Pub. L. 93-113; 87 Stat. 394)

(r) Survivor benefit annuity. For the purposes of old law pension and section 306 pension, there shall be excluded from computation of income annuity paid by the Department of Defense under the authority of section 653, Public Law 100-456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988)
(Authority: Sec. 653, Pub. L. 100-456; 102 Stat. 1991)

(s) Agent Orange settlement payments. In claims for pension and parents' dependency and indemnity income, there shall be excluded from computation of income payments received by any person in the case of In re Agent Orange Product Liability Litigation in the United States District Court for the Eastern District of New York (MDL No. 381). (January 1, 1989)
(Authority: Pub. L. 101-201, 103 Stat. 1795)

(t) Reimbursement for casualty loss. The following sources of reimbursements for casualty loss will not be considered as income in determining entitlement to benefits
under the programs specified. Amounts to be excluded from computation in parents' dependency and indemnity compensation claims are limited to amounts of reimbursement which do not exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss.

(1) Reimbursement for casualty loss of any kind in determining entitlement to parents' dependency and indemnity compensation benefits. For purposes of paragraph (t) of this section, the term "casualty loss" means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(2) Proceeds from fire insurance in determining dependency of a parent for compensation purposes or in determining entitlement to old-law and section 306 pension benefits.

(Authority: 38 U.S.C. 1315(f))

(u) Restitution to individuals of Japanese ancestry. Effective August 10, 1988, for the purposes of old law pension, section 306 pension, parents' death compensation, and parents' dependency and indemnity compensation, there shall be excluded from income computation any payment made as restitution under Public Law 100-383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals.

(v) Income received by American Indian beneficiaries from trust or restricted lands. There shall be excluded from income computation payments of up to $2,000 per calendar year to an individual Indian from trust lands or restricted lands as defined in 25 CFR 151.2. (January 1, 1994)

(Authority: Sec. 13736, Pub. L. 103-66; 107 Stat. 663)

(w) Radiation Exposure Compensation Act. For the purposes of parents' dependency and indemnity compensation, there shall be excluded from income computation payments under Section 6 of the Radiation Exposure Compensation Act of 1990.

(Authority: 42 U.S.C. 2210 note)

(x) Alaska Native Claims Settlement Act. There shall be excluded from income computation any cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. (November 2, 1994)

(Authority: Sec. 506, Pub. L. 103-446)

(y) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans. There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

(z) Victims of Crime Act. For purposes of old law pension, section 306 pension, and parents' dependency and indemnity compensation, amounts received as compensation under the Victims of Crime Act of 1984 will not be considered income unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))
§ 3.263 Corpus of estate; net worth.
(a) General. The following rules are for application in determining the corpus of estate of a parent where dependency is a factor under § 3.250, and the net worth of a veteran, surviving spouse, or child where pension is subject to Pub. L. 86-211 (73 Stat. 432) under § 3.252(b). Only the estate of the parent, in claims based on dependency, or the estate of the veteran, surviving spouse, or child-claimant in claims for pension, will be considered. In the absence of contradictory information, the claimant's statement as to ownership and estimate of value will be accepted.

(b) Definition. Corpus of estate and net worth mean the market value, less mortgages or other encumbrances, of all real and personal property owned by the claimant except the claimant's dwelling (single-family unit) including a reasonable lot area, and personal effects suitable to and consistent with the claimant's reasonable mode of life.

(c) Ownership. See § 3.262(k).

(d) Evaluation. In determining whether some part of the claimant's estate should be consumed for his or her maintenance, consideration will be given to the amount of the claimant's income, together with the following factors: whether the property can be readily converted into cash at no substantial sacrifice; ability to dispose of property as limited by community property laws; life expectancy; number of dependents who meet the requirements of § 3.250(b)(2); potential rate of depletion, including unusual medical expenses under the principles outlined in § 3.262(l) for the claimant and his or her dependents.

(e) Agent Orange settlement payments. There shall be excluded from the corpus of estate or net worth of a claimant any payment made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). (January 1, 1989)

(f) Restitution to individuals of Japanese ancestry. Effective August 10, 1988, for the purposes of section 306 pension and parents' death compensation, there shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100-383 to individuals of Japanese ancestry who were interned.

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evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals.


(g) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans. There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

(h) Victims of Crime Act. There shall be excluded from the corpus of estate or net worth of a claimant any amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.

(Authority: 42 U.S.C. 10602(c))

(i) Medicare Prescription Drug Discount Card and Transitional Assistance Program. There shall be excluded from the corpus of estate or net worth of a claimant payments received under the Medicare transitional assistance program and any savings associated with the Medicare prescription drug discount card.

(Authority: 42 U.S.C. 1395w-141(g)(6))

§ 3.270 Applicability of various dependency, income and estate regulations.

(a) Sections 3.250 to 3.270. These sections are applicable to dependency, income and estate determinations needed to determine entitlement or continued entitlement for the following programs:

(1) Parents' death compensation.

(2) Old-law pension.

(3) Section 306 pension.

(4) Parents' dependency and indemnity compensation.

NOTE: Citations to title 38 U.S.C. in § 3.250 to 3.270 referring to section 306 or old-law pension generally refer to provisions of law in effect on December 31, 1978.

(b) Sections 3.271 to 3.300. These sections apply to income and estate determinations of entitlement to the improved disability and death pension program which became effective January 1, 1979.
§ 3.271 Computation of income.
§ 3.272 Exclusions from income.
§ 3.273 Rate computation.
§ 3.274 Relationship of net worth to pension entitlement.
§ 3.275 Criteria for evaluating net worth.
§ 3.276 Certain transfers or waivers disregarded.
§ 3.277 Eligibility reporting requirements.

§ 3.271 Computation of income.

(a) General. Payments of any kind from any source shall be counted as income during the 12-month annualization period in which received unless specifically excluded under § 3.272.

(1) Recurring income. Recurring income means income which is received or anticipated in equal amounts and at regular intervals (e.g., weekly, monthly, quarterly, etc.), and which will continue throughout an entire 12-month annualization period. The amount of recurring income for pension purposes will be the amount received or anticipated during a 12-month annualization period. Recurring income which terminates prior to being counted for at least one full 12-month annualization period will be treated as nonrecurring income for computation purposes.

(2) Irregular income. Irregular income means income which is received or anticipated during a 12-month annualization period, but which is received in unequal amounts or at irregular intervals. The amount of irregular income for pension purposes will be the amount received or anticipated during a 12-month annualization period following initial receipt of such income.

(3) Nonrecurring income. Nonrecurring income means income received or anticipated on a one-time basis during a 12-month annualization period (e.g., an inheritance). Pension computations of income will include nonrecurring income for a full 12-month annualization period following receipt of the income.

(b) Salary. Salary means the gross amount of a person's earnings or wages before any deductions are made for such things as taxes, insurance, retirement plans, social security, etc.

(c) Business, farm or professional income. (1) This includes gross income from a business, farm or profession as reduced by the necessary operating expenses such as cost of goods sold, or expenditures for rent, taxes, and upkeep, or costs of repairs or replacements. The value of an increase in stock inventory of a business is not considered income.

(2) Depreciation is not a deductible expense.

(3) A loss sustained in operating a business, profession, farm, or from investments, may not be deducted from income derived from any other source.

(d) Income from property. Income from real or personal property is countable as income of the property's owner. The terms of a recorded deed or other evidence of title shall
constitute evidence of ownership. This includes property acquired through purchase, gift, devise, or descent. If property is owned jointly, income of the various owners shall be determined in proportion to shares of ownership of the property. The owner's shares of income held in partnership shall be determined on the basis of the facts found.

(e) Installments.--Income shall be determined by the total amount received or anticipated during a 12-month annualization period.

(Authority: 38 U.S.C. 501)

(f) Deferred determinations. (1) When an individual is unable to predict with certainty the amount of countable annual income, the annual rate of improved pension shall be reduced by the greatest amount of anticipated countable income until the end of the 12-month annualization period, when total income received during that period will be determined and adjustments in pension payable made accordingly.

(Authority: 38 U.S.C. 501)

(2) When a claimed dependent is shown to have income which exceeds the additional amount of benefits payable based on the claimed dependency, but evidence requirements of § 3.204, § 3.205, § 3.209, or § 3.210 have not been met, the maximum annual rate of improved pension shall be determined without consideration of the claimed dependency. This amount shall be reduced by an amount which includes the income of the unestablished dependent. Adjustments in computation of the maximum annual rate of improved pension shall occur following receipt of evidence necessary to establish the dependency.

(Authority: 38 U.S.C. 501(a))

(g) Compensation (civilian) for injury or death. Compensation paid by the United States Department of Labor, Office of Workers’ Compensation Programs, Social Security Administration, or the Railroad Retirement Board, or pursuant to any worker’s compensation or employer's liability statute, or damages collected because of personal injury or death, will be considered income as received. However, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the amount of the award or settlement, may be deducted. The criteria in § 3.272(g) apply as to all medical expenditures after the award or settlement.

(Authority: 38 U.S.C. 501)

(h) Fractions of dollars. Fractions of dollars will be disregarded in computing annual income.


§ 3.272 Exclusions from income.

The following shall be excluded from countable income for the purpose of determining entitlement to improved pension. Unless otherwise provided, expenses deductible under this section are deductible only during the 12-month annualization period in which they were paid.

(Authority: 38 U.S.C. 501)

(a) Welfare. Donations from public or private relief, welfare, or charitable organizations.

(Authority: 38 U.S.C. 1503(a)(1))
(b) Maintenance. The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the individual is maintained in a rest home or other community institution or facility, public or private, because of impaired health or advanced age, money paid to the home or the individual to cover the cost of maintenance will not be considered income, regardless of whether it is furnished by a relative, friend, or charitable organization. The expense of maintenance is not deductible if it is paid from the individual's income.

(Authority: 38 U.S.C. 501, 1503(a)(1))

(c) Department of Veterans Affairs pension benefits. Payments under chapter 15 of title 38, United States Code, including accrued pension benefits payable under 38 U.S.C. 5121.

(Authority: 38 U.S.C. 1503(a)(2))

(d) Reimbursement for casualty loss. Reimbursement of any kind for any casualty loss. The amount to be excluded is not to exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss. For purposes of this paragraph, the term "casualty loss" means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(Authority: 38 U.S.C. 1503(a)(5))

(e) Profit from sale of property. Profit realized from the disposition of real or personal property other than in the course of business, except amounts received in excess of the sales price, for example, interest on deferred sales is included as income. In installment sales, any payments received until the sales price is recovered are not included as income, but any amounts received which exceed the sales price are included, regardless of whether they represent principal or interest.

(Authority: 38 U.S.C. 1503(a)(6))

(f) Joint accounts. Amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner.

(Authority: 38 U.S.C. 1503(a)(7))

(g) Medical expenses. Within the provisions of the following paragraphs, there will be excluded from the amount of an individual's annual income any unreimbursed amounts which have been paid within the 12-month annualization period for medical expenses regardless of when the indebtedness was incurred. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate, or after the end of the 12-month annualization period upon receipt of an eligibility verification report.

(Authority: 38 U.S.C. 501)

(1) Veteran's income. Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a veteran or spouse for medical expenses of the veteran, spouse, children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the veteran's or spouse's household; and
(iii) They were or will be in excess of 5 percent of the applicable maximum annual pension rate or rates for the veteran (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid.

(2) Surviving spouse's income. Unreimbursed medical expenses will be excluded when all of the following requirements are met:
(i) They were or will be paid by a surviving spouse for medical expenses of the spouse, veteran's children, parents and other relatives for whom there is a moral or legal obligation of support;
(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the spouse's household; and
(iii) They were or will be in excess of 5 percent of the applicable maximum annual pension rate or rates for the spouse (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the 12-month annualization period in which the medical expenses were paid.

(Authority: 38 U.S.C. 501)

(3) Children's income. Unreimbursed amounts paid by a child for medical expenses of self, parent, brothers and sisters, to the extent that such amounts exceed 5 percent of the maximum annual pension rate or rates payable to the child during the 12-month annualization period in which the medical expenses were paid.

(Authority: 38 U.S.C. 501)

(h) Expenses of last illnesses, burials, and just debts. Expenses specified in paragraphs (h)(1) and (h)(2) of this section which are paid during the calendar year following that in which death occurred may be deducted from annual income for the 12-month annualization period in which they were paid or from annual income for any 12-month annualization period which begins during the calendar year of death, whichever is to the claimant's advantage. Otherwise, such expenses are deductible only for the 12-month annualization period in which they were paid.

(Authority: 38 U.S.C. 501)

(1) Veteran's final expenses. (i) Amounts paid by a spouse before a veteran's death for expenses of the veteran's last illness will be deducted from the income of the surviving spouse.

(Authority: 38 U.S.C. 1503(a)(3))

(ii) Amounts paid by a surviving spouse or child of a veteran for the veteran's just debts, expenses of last illness and burial (to the extent such burial expenses are not reimbursed under chapter 23 of title 38 U.S.C.) will be deducted from the income of the surviving spouse or child. The term "just debts" does not include any debt that is secured by real or personal property.

(Authority: 38 U.S.C. 1503(a)(3))

(2) Spouse or child's final expenses. (i) Amounts paid by a veteran for the expenses of the last illness and burial of the veteran's deceased spouse or child will be deducted from the veteran's income.
(ii) Amounts paid by a veteran's spouse or surviving spouse for expenses of the last illness and burial of the veteran's child will be deducted from the spouse's or surviving spouse's income.
(Authority: 38 U.S.C. 1503(a)(4))

(i) Educational expenses. Amounts equal to expenses paid by a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, to include amounts paid for tuition, fees, books, and materials, and in the case of a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of such course. Unusual transportation expenses are those exceeding the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation, if reasonably available).
(Authority: 38 U.S.C. 1503(a)(9))

(j) Child's income. In the case of a child, any current work income received during the year, to the extent that the total amount of such income does not exceed an amount equal to the sum of the following:

(1) The lowest amount of gross income for which a Federal income tax return must be filed, as specified in section 6012(a) of the Internal Revenue Code of 1954, by an individual who is not married (as determined under section 143 of such Code), and is not a surviving spouse (as defined in section 2(a) of such Code), and is not a head of household (as defined in section 2(b) of such Code); and

(2) If the child is pursuing a course of postsecondary education or vocational rehabilitation or training, the amount paid by the child for those educational expenses including the amount paid for tuition, fees, books, and materials.
(Authority: 38 U.S.C. 1503(a)(10))

(k) Domestic Volunteer Service Act Programs. Payments received under a Domestic Volunteer Service Act (DVSA) Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), Senior Companion Program) shall be excluded as provided in paragraphs (k)(1) and (2) of this section:

(1) All DVSA payments received before December 13, 1979, shall be excluded from determining entitlement to improved pension.
(Authority: 42 U.S.C. 5044(g) (1973))

(2) DVSA payments received after December 12, 1979, shall be excluded from determining entitlement to improved pension unless the Director of the ACTION Agency has determined that the value of all DVSA payments, adjusted to reflect the number of hours served by the volunteer, equals or exceeds the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage of the State where the volunteer served, whichever is the greater.
(Authority: 42 U.S.C. 5044(g) (1979))

(l) Distributions of funds under 38 U.S.C. 1718. Distributions from the Department of Veterans Affairs Special Therapeutic and Rehabilitation Activities Fund as a result of participation in a therapeutic or rehabilitation activity under 38 U.S.C. 1718 and payments from participation in a program of rehabilitative services provided as part of the care furnished by a State home and which is approved by VA as conforming to standards for activities under 38 U.S.C. 1718 shall be considered donations from a public
or private relief or welfare organization and shall not be countable as income for pension purposes.
(Authority: 38 U.S.C. 1718(f))

(m) Hardship exclusion of child's available income. When hardship is established under the provisions of § 3.23(d)(6) of this part, there shall be excluded from the available income of any child or children an amount equal to the amount by which annual expenses necessary for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement computed without consideration of this exclusion. The amount of this exclusion shall not exceed the available income of any child or children, and annual expenses necessary for reasonable family maintenance shall not include any expenses which were considered in determining the available income of the child or children or the countable annual income of the veteran or surviving spouse.
(Authority: 38 U.S.C. 1521(h), 1541(g))

(n) Survivor benefit annuity. Annuity paid by the Department of Defense under the authority of section 653, Public Law 100-456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988)
(Authority: Sec. 653, Pub. L. 100-456; 102 Stat. 1991)

(o) Agent Orange settlement payments. Payments received by any person in settlement of the case of In re Agent Orange product liability litigation in the United States District Court for the Eastern District of New York (M.D.L. No. 381). (January 1, 1989)
(Authority: Pub. L. 101-201, 103 Stat. 1795)

(p) Restitution to individuals of Japanese ancestry. Any payment made as restitution under Public Law 100-383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)
(Authority: Sec. 105, Pub. L. 100-383; 102 Stat. 905)

(q) Cash surrender value of life insurance. That portion of proceeds from the cash surrender of a life insurance policy which represents a return of insurance premiums.
(Authority: 38 U.S.C. 501(a))

(r) Income received by American Indian beneficiaries from trust or restricted lands. Income of up to $2,000 per calendar year to an individual Indian from trust lands or restricted lands as defined in 25 CFR 151.2. (January 1, 1994)
(Authority: Sec. 13736, Pub. L. 103-66; 107 Stat. 633)

(Authority: 42 U.S.C. 2210 note)

(t) Alaska Native Claims Settlement Act. Any receipt by an individual of cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and an interest in a settlement trust. (November 2, 1994)
(Authority: Sec. 506, Pub. L. 103-446)
§ 3.273 Rate computation.
The commencement date of change in benefit payments based on rate computations under the provisions of this section will be determined under the provisions of § 3.31 or § 3.660.

(a) Initial award. For the purpose of determining initial entitlement, or for resuming payments on an award which was previously discontinued, the monthly rate of pension payable to a beneficiary shall be computed by reducing the beneficiary's applicable maximum pension rate by the beneficiary's countable income on the effective date of entitlement and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph. Recomputation of rates due to changes in the maximum annual pension rate or rate of income following the initial date of entitlement are subject to the provisions of paragraph (b) of this section.

(b) Running awards--(1) Change in maximum annual pension rate. Whenever there is change in a beneficiary's applicable maximum annual pension rate, the monthly rate of pension payable shall be computed by reducing the new applicable maximum annual pension rate by the beneficiary's countable income on the effective date of the change in the applicable maximum annual pension rate, and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.
(2) Change in amount of income. Whenever there is a change in a beneficiary's amount of countable income the monthly rate of pension payable shall be computed by reducing the beneficiary's applicable maximum annual pension rate by the beneficiary's new amount of countable income on the effective date of the change in the amount of income, and dividing the remainder by 12. Effective June 1, 1983, the provisions of § 3.29(b) apply to this paragraph.

(c) Nonrecurring income. The amount of any nonrecurring countable income (e.g. an inheritance) received by a beneficiary shall be added to the beneficiary's annual rate of income for a 12-month annualization period commencing on the effective date on which the nonrecurring income is countable.

(Authority: 38 U.S.C. 501)

(d) Recurring and irregular income. The amount of recurring and irregular income anticipated or received by a beneficiary shall be added to determine the beneficiary's annual rate of income for a 12-month annualization period commencing at the beginning of the 12-month annualization, subject to the provisions of § 3.660(a)(2) of this chapter.


§ 3.274 Relationship of net worth to pension entitlement.

lxiii Discussion and Analysis in the Veterans Benefits Manual

(a) Veteran. Pension shall be denied or discontinued when the corpus of the estate of the veteran, and of the veteran's spouse, are such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance.

(Authority: 38 U.S.C. 1522(a))

(b) Increased pension payable to a veteran for a child. Increased pension payable to a veteran on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances including consideration of the veteran's and spouse's income and the income of the veteran's child or children, it is reasonable that some part of the corpus of such child's estate be consumed for the child's maintenance.

(Authority: 38 U.S.C. 1522(b))

(c) Surviving spouse. Pension payable to a surviving spouse shall be denied or discontinued when the corpus of the estate of the surviving spouse is such that under all the circumstances, including consideration of the surviving spouse's income and the income of any child for whom the surviving spouse is receiving pension, it is reasonable that some part of the corpus of the surviving spouse's estate be consumed for the surviving spouse's maintenance.

(Authority: 38 U.S.C. 1543(a)(1))

(d) Increased pension payable to a surviving spouse for a child. Increased pension payable to a surviving spouse on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the surviving spouse and child and the income of any other child for whom the surviving spouse is receiving increased pension, it is reasonable
that some part of the corpus of the child's estate be consumed for the maintenance of the child.
(Authority: 38 U.S.C. 1543(a)(2))

(e) Child. Pension payable to a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the child, the income of any person with whom the child is residing who is legally responsible for such child's support, and the corpus of estate of such person, it is reasonable that some part of the corpus of such estates be consumed for the child's maintenance.


(38 U.S.C. 1543(b))

§ 3.275 Criteria for evaluating net worth.

lxiv Discussion and Analysis in the Veterans Benefits Manual

(a) General. The following rules are for application in determining the corpus of estate or net worth of a veteran, surviving spouse or child under § 1A3.274.

(b) Definition. The terms corpus of estate and net worth mean the market value, less mortgages or other encumbrances, of all real and personal property owned by the claimant, except the claimant's dwelling (single family unit), including a reasonable lot area, and personal effects suitable to and consistent with the claimant's reasonable mode of life.

(c) Ownership. See § 3.271(d).

(d) Evaluation. In determining whether some part of the claimant's estate (or combined estates under § 3.274 (a) and (e)) should be consumed for the claimant's maintenance, consideration will be given to the amount of the claimant's income together with the following: Whether the property can be readily converted into cash at no substantial sacrifice; life expectancy; number of dependents who meet the definition of member of the family (the definition contained in § 3.250(b)(2) is applicable to the improved pension program); potential rate of depletion, including unusual medical expenses under the principles outlined in § 3.272(g) for the claimant and the claimant's dependents.

(e) Educational expenses. There shall be excluded from the corpus of estate or net worth of a child reasonable amounts for actual or prospective educational or vocational expenses. The amount so excluded shall not be such as to provide for education or training beyond age 23.

(Authority: 38 U.S.C. 501)

(f) Agent Orange settlement payments. There shall be excluded from the corpus of the estate or net worth of a claimant any payment made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). (January 1, 1989)

(Authority: Pub. L. 101-201, 103 Stat. 1795)

(g) Restitution to individuals of Japanese ancestry. There shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100-383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals. (August 10, 1988)
(Authority: Sec. 105, Pub. L. 100-383; 102 Stat. 905)
(h) Radiation Exposure Compensation Act. There shall be excluded from the corpus of estate or net worth of a claimant any payment made under Section 6 of the Radiation Exposure Compensation Act of 1990.
(Authority: 42 U.S.C. 2210 note)
(i) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans. There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.
(Authority: 38 U.S.C. 1833(c))
(j) Victims of Crime Act. There shall be excluded from the corpus of estate or net worth of a claimant any amounts received as compensation under the Victims of Crime Act of 1984 unless the total amount of assistance received from all federally funded programs is sufficient to fully compensate the claimant for losses suffered as a result of the crime.
(Authority: 42 U.S.C. 10602(c))
(k) Medicare Prescription Drug Discount Card and Transitional Assistance Program. There shall be excluded from the corpus of estate or net worth of a claimant payments received under the Medicare transitional assistance program and any savings associated with the Medicare prescription drug discount card.
(Authority: 42 U.S.C. 1395w-141(g)(6))


§ 3.276 Certain transfers or waivers disregarded.
(a) Waiver of receipt of income. Potential income, not excludable under § 3.272 and whose receipt has been waived by an individual, shall be included as countable income of that individual for Department of Veterans Affairs pension purposes.
(b) Transfer of assets. For pension purposes, a gift of property made by an individual to a relative residing in the same household shall not be recognized as reducing the corpus of the grantor's estate. A sale of property to such a relative shall not be recognized as reducing the corpus of the seller's estate if the purchase price, or other consideration for the sale, is so low as to be tantamount to a gift. A gift of property to someone other than a relative residing in the grantor's household will not be recognized as reducing the corpus of the grantor's estate unless it is clear that the grantor has relinquished all rights of ownership, including the right of control of the property.

(38 U.S.C. 501)

§ 3.277 Eligibility reporting requirements.
lxv Discussion and Analysis in the Veterans Benefits Manual

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(a) Evidence of entitlement. As a condition of granting or continuing pension, the Department of Veterans Affairs may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as is necessary to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child from whom the person is receiving or is to receive increased pension (such child is hereinafter in this section referred to as a dependent child), and, in the case of a child applying for or in receipt of pension in his or her own behalf (hereinafter in this section referred to as a surviving child), of any person with whom such child is residing who is legally responsible for such child's support.

(b) Obligation to report changes in factors affecting entitlement. Any individual who has applied for or receives pension must promptly notify the Secretary of any change affecting entitlement in any of the following:

1. Income;
2. Net worth or corpus of estate;
3. Marital status;
4. Nursing home patient status;
5. School enrollment status of a child 18 years of age or older; or
6. Any other factor that affects entitlement to benefits under the provisions of this Part.

(c) Eligibility verification reports. (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth, dependency status, and any other information necessary to determine or verify entitlement to pension.

2. The Secretary shall require an eligibility verification report under the following circumstances:
   (i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number;
   (ii) If there is reason to believe that the beneficiary or his or her spouse may have received income other than Social Security during the current or previous calendar year; or
   (iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

3. An individual who applies for or receives pension as defined in § 3.3 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(d) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails to do so within 60 days of the date of the VA request, the Secretary shall suspend the award or disallow the claim.

(38 U.S.C. 1506)

[EFFECTIVE DATE NOTE: 66 FR 56613, 56614, Nov. 9, 2001, amended this section, effective Dec. 10, 2001.]
Ratings and Evaluations; Basic Entitlement Considerations

§ 3.300 Claims based on the effects of tobacco products.
§ 3.301 Line of duty and misconduct.
§ 3.302 Service connection for mental unsoundness in suicide.

§ 3.300 Claims based on the effects of tobacco products.

(a) For claims received by VA after June 9, 1998, a disability or death will not be considered service-connected on the basis that it resulted from injury or disease attributable to the veteran's use of tobacco products during service. For the purpose of this section, the term "tobacco products" means cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

(b) The provisions of paragraph (a) of this section do not prohibit service connection if:
   (1) The disability or death resulted from a disease or injury that is otherwise shown to have been incurred or aggravated during service. For purposes of this section, "otherwise shown" means that the disability or death can be service-connected on some basis other than the veteran's use of tobacco products during service, or that the disability became manifest or death occurred during service; or
   (2) The disability or death resulted from a disease or injury that appeared to the required degree of disability within any applicable presumptive period under §§ 3.307, 3.309, 3.313, or 3.316; or
   (3) Secondary service connection is established for ischemic heart disease or other cardiovascular disease under § 3.310(b).

(c) For claims for secondary service connection received by VA after June 9, 1998, a disability that is proximately due to or the result of an injury or disease previously service-connected on the basis that it is attributable to the veteran's use of tobacco products during service will not be service-connected under § 3.310(a).

[66 FR 18195, 18198, Apr. 6, 2001]

(38 U.S.C. 501(a), 1103, 1103 note).

[EFFECTIVE DATE NOTE: 66 FR 18195, 18198, Apr. 6, 2001, added this section, effective Jun. 10, 1998.]

§ 3.301 Line of duty and misconduct.

(a) Line of duty. Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, the result of his or her abuse of alcohol or drugs.

(Authority: 38 U.S.C. 105)

(b) Willful misconduct. Disability pension is not payable for any condition due to the veteran's own willful misconduct.

(Authority: 38 U.S.C. 1521)

(c) Specific applications; willful misconduct. For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in §§ 3.1 (m) and...
(n) of this part apply except as modified within paragraphs (c)(1) through (c)(3) of this section. The provisions of paragraphs (c)(2) and (c)(3) of this section are subject to the provisions of § 3.302 of this part where applicable.

(Authority: 38 U.S.C. 501)

(1) Venereal disease. The residuals of venereal disease are not to be considered the result of willful misconduct. Consideration of service connection for residuals of venereal disease as having been incurred in service requires that the initial infection must have occurred during active service. Increase in service of manifestations of venereal disease will usually be held due to natural progress unless the facts of record indicate the increase in manifestations was precipitated by trauma or by the conditions of the veteran's service, in which event service connection may be established by aggravation. Medical principles pertaining to the incubation period and its relation to the course of the disease; i.e., initial or acute manifestation, or period and course of secondary and late residuals manifested, will be considered when time of incurrence of venereal disease prior to or after entry into service is at issue. In the issue of service connection, whether the veteran complied with service regulations and directives for reporting the disease and undergoing treatment is immaterial after November 14, 1972, and the service department characterization of acquisition of the disease as willful misconduct or as not in line of duty will not govern.

(2) The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin. (See §§ 21.1043, 21.5041, and 21.7051 of this title regarding the disabling effects of chronic alcoholism for the purpose of extending delimiting periods under education or rehabilitation programs.)

(Authority: 38 U.S.C. 501)

(3) Drug usage. The isolated and infrequent use of drugs by itself will not be considered willful misconduct; however, the progressive and frequent use of drugs to the point of addiction will be considered willful misconduct. Where drugs are used to enjoy or experience their effects and the effects result proximately and immediately in disability or death, such disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of drugs and infections coinciding with the injection of drugs will not be considered of willful misconduct origin. (See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.) Where drugs are used for therapeutic purposes or where use of drugs or addiction thereto, results from a service-connected disability, it will not be considered of misconduct origin.

(d) Line of duty; abuse of alcohol or drugs. An injury or disease incurred during active military, naval, or air service shall not be deemed to have been incurred in line of duty if such injury or disease was a result of the abuse of alcohol or drugs by the person on whose service benefits are claimed. For the purpose of this paragraph, alcohol abuse means the use of alcoholic beverages over time, or such excessive use at any one time,
sufficient to cause disability to or death of the user; drug abuse means the use of illegal drugs (including prescription drugs that are illegally or illicitly obtained), the intentional use of prescription or non-prescription drugs for a purpose other than the medically intended use, or the use of substances other than alcohol to enjoy their intoxicating effects.

(Authority: 38 U.S.C. 105(a))


(38 U.S.C. 105, 1110, 1121, 1131, 1301, and 1521(a))

CROSS REFERENCES: In line of duty. See § 3.1(m). Willful misconduct. See § 3.1(n).


§ 3.302 Service connection for mental unsoundness in suicide.

lxviii Discussion and Analysis in the Veterans Benefits Manual

(a) General. (1) In order for suicide to constitute willful misconduct, the act of self-destruction must be intentional.

(2) A person of unsound mind is incapable of forming an intent (mens rea, or guilty mind, which is an essential element of crime or willful misconduct).

(3) It is a constant requirement for favorable action that the precipitating mental unsoundness be service connected.

(b) Evidence of mental condition. (1) Whether a person, at the time of suicide, was so unsound mentally that he or she did not realize the consequence of such an act, or was unable to resist such impulse is a question to be determined in each individual case, based on all available lay and medical evidence pertaining to his or her mental condition at the time of suicide.

(2) The act of suicide or a bona fide attempt is considered to be evidence of mental unsoundness. Therefore, where no reasonable adequate motive for suicide is shown by the evidence, the act will be considered to have resulted from mental unsoundness.

(3) A reasonable adequate motive for suicide may be established by affirmative evidence showing circumstances which could lead a rational person to self-destruction.

(c) Evaluation of evidence. (1) Affirmative evidence is necessary to justify reversal of service department findings of mental unsoundness where Department of Veterans Affairs criteria do not otherwise warrant contrary findings.

(2) In all instances any reasonable doubt should be resolved favorably to support a finding of service connection (see § 3.102).


CROSS REFERENCE: Cause of death. See § 3.312.
RATINGS AND EVALUATIONS; SERVICE CONNECTION

§ 3.303 Principles relating to service connection.
§ 3.304 Direct service connection; wartime and peacetime.
§ 3.305 Direct service connection; peacetime service before January 1, 1947.
§ 3.306 Aggravation of preservice disability.
§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.
§ 3.308 Presumptive service connection; peacetime service before January 1, 1947.
§ 3.309 Disease subject to presumptive service connection.
§ 3.310 Proximate results, secondary conditions.
§ 3.311 Claims based on exposure to ionizing radiation.
§ 3.312 Cause of death.
§ 3.313 Claims based on service in Vietnam.
§ 3.314 Basic pension determinations.
§ 3.315 Basic eligibility determinations; dependents, loans, education.
§ 3.316 Claims based on chronic effects of exposure to mustard gas.
§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.
§§ 3.318 -- 3.320 [Reserved]
§ 3.321 General rating considerations.
§ 3.322 Rating of disabilities aggravated by service.
§ 3.323 Combined ratings.
§ 3.324 Multiple noncompensable service-connected disabilities.
§ 3.325 [Reserved]
§ 3.326 Examinations.
§ 3.327 Reexaminations.
§ 3.328 Independent medical opinions.
§ 3.329 [Reserved]
§ 3.330 Resumption of rating when veteran subsequently reports for Department of Veterans Affairs examination.
§§ 3.331 -- 3.339 [Reserved]
§ 3.340 Total and permanent total ratings and unemployability.
§ 3.341 Total disability ratings for compensation purposes.
§ 3.342 Permanent and total disability ratings for pension purposes.
§ 3.343 Continuance of total disability ratings.
§ 3.344 Stabilization of disability evaluations.

§ 3.303 Principles relating to service connection.

Discussion and Analysis in the Veterans Benefits Manual

(a) General. Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for
which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Department of Veterans Affairs to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) Chronicity and continuity. With chronic disease shown as such in service (or within the presumptive period under § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "Chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

(c) Preservice disabilities noted in service. There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorrhoidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed prior to service with the same manifestations during service, which were the basis of the service diagnosis, will be accepted as showing preservice origin. Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within the meaning of applicable legislation.
(d) Postservice initial diagnosis of disease. Service connection may be granted for any
disease diagnosed after discharge, when all the evidence, including that pertinent to
service, establishes that the disease was incurred in service. Presumptive periods are not
intended to limit service connection to diseases so diagnosed when the evidence warrants
direct service connection. The presumptive provisions of the statute and Department of
Veterans Affairs regulations implementing them are intended as liberalizations applicable
when the evidence would not warrant service connection without their aid.
[26 FR 1579, Feb. 24, 1961]


§ 3.304 Direct service connection; wartime and peacetime.

Discussion and Analysis in the Veterans Benefits Manual

(a) General. The basic considerations relating to service connection are stated in § 3.303.
The criteria in this section apply only to disabilities which may have resulted from
service in a period of war or service rendered on or after January 1, 1947.

(b) Presumption of soundness. The veteran will be considered to have been in sound
condition when examined, accepted and enrolled for service, except as to defects,
infirmities, or disorders noted at entrance into service, or where clear and unmistakable
(obvious or manifest) evidence demonstrates that an injury or disease existed prior
thereto and was not aggravated by such service. Only such conditions as are recorded in
examination reports are to be considered as noted.

(Authority: 38 U.S.C. 1111)

(1) History of preservice existence of conditions recorded at the time of examination does
not constitute a notation of such conditions but will be considered together with all other
material evidence in determinations as to inception. Determinations should not be based
on medical judgment alone as distinguished from accepted medical principles, or on
history alone without regard to clinical factors pertinent to the basic character, origin and
development of such injury or disease. They should be based on thorough analysis of the
evidentiary showing and careful correlation of all material facts, with due regard to
accepted medical principles pertaining to the history, manifestations, clinical course, and
character of the particular injury or disease or residuals thereof.

(2) History conforming to accepted medical principles should be given due consideration,
in conjunction with basic clinical data, and be accorded probative value consistent with
accepted medical and evidentiary principles in relation to value consistent with accepted
medical evidence relating to incurrence, symptoms and course of the injury or disease,
including official and other records made prior to, during or subsequent to service,
together with all other lay and medical evidence concerning the inception, development
and manifestations of the particular condition will be taken into full account.

(3) Signed statements of veterans relating to the origin, or incurrence of any disease or
injury made in service if against his or her own interest is of no force and effect if other
data do not establish the fact. Other evidence will be considered as though such statement
were not of record.

(Authority: 10 U.S.C. 1219)

(c) Development. The development of evidence in connection with claims for service
connection will be accomplished when deemed necessary but it should not be undertaken
when evidence present is sufficient for this determination. In initially rating disability of
record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished pending receipt of copy of the examination at enlistment and all other service records.

(d) Combat. Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation.

(Authority: 38 U.S.C. 1154(b))

(e) Prisoners of war. Where disability compensation is claimed by a former prisoner of war, omission of history or findings from clinical records made upon repatriation is not determinative of service connection, particularly if evidence of comrades in support of the incurrence of the disability during confinement is available. Special attention will be given to any disability first reported after discharge, especially if poorly defined and not obviously of intercurrent origin. The circumstances attendant upon the individual veteran's confinement and the duration thereof will be associated with pertinent medical principles in determining whether disability manifested subsequent to service is etiologically related to the prisoner of war experience.

(f) Post-traumatic stress disorder. Service connection for post-traumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. Although service connection may be established based on other in-service stressors, the following provisions apply for specified in-service stressors as set forth below:

(1) If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(2) If the evidence establishes that the veteran was a prisoner-of-war under the provisions of § 3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(3) If a post-traumatic stress disorder claim is based on in-service personal assault, evidence from sources other than the veteran's service records may corroborate the veteran's account of the stressor incident. Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to:
to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes. VA will not deny a post-traumatic stress disorder claim that is based on in-service personal assault without first advising the claimant that evidence from sources other than the veteran's service records or evidence of behavior changes may constitute credible supporting evidence of the stressor and allowing him or her the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence. VA may submit any evidence that it receives to an appropriate medical or mental health professional for an opinion as to whether it indicates that a personal assault occurred.

(Authority: 38 U.S.C. 1154(b))


§ 3.305 Direct service connection; peacetime service before January 1, 1947.

(a) General. The basic considerations relating to service connection are stated in § 3.303. The criteria in this section apply only to disabilities which may have resulted from service other than in a period of war before January 1, 1947.

(b) Presumption of soundness. A peacetime veteran who has had active, continuous service of 6 months or more will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities or disorders noted at the time thereof, or where evidence or medical judgment, as distinguished from medical fact and principles, establishes that an injury or disease preexisted service. Any evidence acceptable as competent to indicate the time of existence or inception of the condition may be considered. Determinations based on medical judgment will take cognizance of the time of inception or manifestation of disease or injury following entrance into service, as shown by proper service authorities in service records, entries or reports. Such records will be accorded reasonable weight in consideration of other evidence and sound medical reasoning. Opinions may be solicited from Department of Veterans Affairs medical authorities when considered necessary.

(c) Campaigns and expeditions. In considering claims of veterans who engaged in combat during campaigns or expeditions satisfactory lay or other evidence of incurrence or aggravation in such combat of an injury or disease, if consistent with the circumstances, conditions or hardships of such service will be accepted as sufficient proof of service connection, even when there is no official record of incurrence or aggravation. Service connection for such injury or disease may be rebutted by clear and convincing evidence to the contrary.


§ 3.306 Aggravation of preservice disability.
(a) General. A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(Authority: 38 U.S.C. 1153)

(b) Wartime service; peacetime service after December 31, 1946. Clear and unmistakable evidence (obvious or manifest) is required to rebut the presumption of aggravation where the preservice disability underwent an increase in severity during service. This includes medical facts and principles which may be considered to determine whether the increase is due to the natural progress of the condition. Aggravation may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record pertaining to the manifestations of the disability prior to, during and subsequent to service.

(1) The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before enlistment, including postoperative scars, absent or poorly functioning parts or organs, will not be considered service connected unless the disease or injury is otherwise aggravated by service.

(2) Due regard will be given the places, types, and circumstances of service and particular consideration will be accorded combat duty and other hardships of service. The development of symptomatic manifestations of a preexisting disease or injury during or proximately following action with the enemy or following a status as a prisoner of war will establish aggravation of a disability.

(Authority: 38 U.S.C. 1154)

(c) Peacetime service prior to December 7, 1941. The specific finding requirement that an increase in disability is due to the natural progress of the condition will be met when the available evidence of a nature generally acceptable as competent shows that the increase in severity of a disease or injury or acceleration in progress was that normally to be expected by reason of the inherent character of the condition, aside from any extraneous or contributing cause or influence peculiar to military service. Consideration will be given to the circumstances, conditions, and hardships of service.


§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) General. A chronic, tropical, prisoner of war related disease, or a disease associated with exposure to certain herbicide agents listed in § 3.309 will be considered to have been incurred in or aggravated by service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in § 3.309(a) will be considered chronic.

(1) Service. The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period, or which began before and
extended beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in § 1A3.309(c) and (e).

(2) Separation from service. For the purpose of paragraph (a)(3) and (4) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947, the date of separation will be the date of discharge or release from the period of service on which the claim is based.

(3) Chronic disease. The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years; multiple sclerosis, within 7 years) from the date of separation from service as specified in paragraph (a)(2) of this section.

(4) Tropical disease. The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected.

(Authority: 38 U.S.C. 1112)

(5) Diseases specific as to former prisoners of war. The diseases listed in § 3.309(c) shall have become manifest to a degree of 10 percent or more at any time after discharge or release from active service.

(Authority: 38 U.S.C. 1112)

(6) Diseases associated with exposure to certain herbicide agents. (i) For the purposes of this section, the term "herbicide agent" means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, specifically: 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; and picloram.

(Authority: 38 U.S.C. 1116(a)(4))

(ii) The diseases listed at § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne, porphyria cutanea tarda, and acute and subacute peripheral neuropathy shall have become manifest to a degree of 10 percent or more within a year after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

(iii) A veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service. The last date on which such a veteran shall be presumed to have been exposed to an herbicide agent shall be the last date on which he or she served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975. "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(Authority: 38 U.S.C. 501(a) and 1116(a)(3))
(b) Evidentiary basis. The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in § 3.303(b) will be considered. The diseases listed in § 3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except: (1) Where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or (2) where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease.

(Authority: 38 U.S.C. 1112)

(c) Prohibition of certain presumptions. No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance. Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10-percent degree.

(d) Rebuttal of service incurrence or aggravation. (1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in § 3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary" will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient,
under § 3.306 of this part, to show that the increase in disability was due to the natural progress of the preexisting condition.


(38 U.S.C. 1113 and 1153)


§ 3.308 Presumptive service connection; peace-time service before January 1, 1947.

(a) Chronic disease. There is no provision for presumptive service connection for chronic disease as distinguished from tropical diseases referred to in paragraph (b) of this section based on peacetime service before January 1, 1947.

(b) Tropical disease. In claims based on peacetime service before January 1, 1947, a veteran of 6 months or more service who contracts a tropical disease listed in § 3.309(b) or a resultant disorder or disease originating because of therapy administered in connection with a tropical disease or as a preventative, will be considered to have incurred such disability in service when it is shown to exist to the degree of 10 percent or more within 1 year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period commenced during active service unless shown by clear and unmistakable evidence not to have been of service origin. The requirement of 6 months or more service means active, continuous service, during one or more enlistment periods.

[39 FR 34530, Sept. 26, 1974]

(38 U.S.C. 1133)

§ 3.309 Disease subject to presumptive service connection.

(a) Chronic diseases. The following diseases shall be granted service connection although not otherwise established as incurred in or aggravated by service if manifested to a compensable degree within the applicable time limits under § 3.307 following service in a period of war or following peacetime service on or after January 1, 1947, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

- Anemia, primary.
- Arteriosclerosis.
- Arthritis.
- Atrophy, progressive muscular.
- Brain hemorrhage.
- Brain thrombosis.
- Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.
Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)
Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.
Endocarditis. (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Lupus erythematosus, systemic.
Myasthenia gravis.
Myelitis.
Myocarditis.
Nephritis.
Other organic diseases of the nervous system.
Osteitis deformans (Paget's disease).
Osteomalacia.
Palsy, bulbar.
Paralysis agitans.
Psychoses.
Purpura idiopathic, hemorrhagic.
Raynaud's disease.
Sarcoidosis.
Scleroderma.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangiitis obliterans (Buerger's disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord or peripheral nerves.
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.
(b) Tropical diseases. The following diseases shall be granted service connection as a result of tropical service, although not otherwise established as incurred in service if
manifested to a compensable degree within the applicable time limits under § 3.307 or § 3.308 following service in a period of war or following peacetime service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

Amebiasis.
Blackwater fever.
Cholera.
Dracontiasis.
Dysentery.
Filariasis.
Leishmaniasis, including kala-azar.
Loiasis.
Malaria.
Onchocerciasis.
Oroya fever.
Pinta.
Plague.
Schistosomiasis.
Yaws.
Yellow fever.

Resultant disorders or diseases originating because of therapy administered in connection with such diseases or as a preventative thereof.

(c) Diseases specific as to former prisoners of war. (1) If a veteran is a former prisoner of war, the following diseases shall be service connected if manifest to a degree of disability of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of Sec. 3.307 are also satisfied.

   Psychosis.
   Any of the anxiety states.
   Dysthymic disorder (or depressive neurosis).
   Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.
   Post-traumatic osteoarthritis.
   Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, arrhythmia).
   Stroke and its complications.

(2) If the veteran:
(i) Is a former prisoner of war and;
(ii) Was interned or detained for not less than 30 days, the following diseases shall be service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of Sec. 3.307 are also satisfied.

   Avitaminosis.
   Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthiasis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Irritable bowel syndrome.
Peptic ulcer disease.
Peripheral neuropathy except where directly related to infectious causes.
Cirrhosis of the liver.

Authority: 38 U.S.C. 1112(b)
(d) Diseases specific to radiation-exposed veterans. (1) The diseases listed in paragraph (d)(2) of this section shall be service-connected if they become manifest in a radiation-exposed veteran as defined in paragraph (d)(3) of this section, provided the rebuttable presumption provisions of § 3.307 of this part are also satisfied.
(2) The diseases referred to in paragraph (d)(1) of this section are the following:
(i) Leukemia (other than chronic lymphocytic leukemia).
(ii) Cancer of the thyroid.
(iii) Cancer of the breast.
(iv) Cancer of the pharynx.
(v) Cancer of the esophagus.
(vi) Cancer of the stomach.
(vii) Cancer of the small intestine.
(viii) Cancer of the pancreas.
(ix) Multiple myeloma.
(x) Lymphomas (except Hodgkin's disease).
(xi) Cancer of the bile ducts.
(xii) Cancer of the gall bladder.
(xiii) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).
(xiv) Cancer of the salivary gland.
(xv) Cancer of the urinary tract.
(xvi) Bronchiolo-alveolar carcinoma.
(xvii) Cancer of the bone.
(xviii) Cancer of the brain.
(xix) Cancer of the colon.
(xx) Cancer of the lung.
(xxi) Cancer of the ovary.

NOTE: For the purposes of this section, the term "urinary tract" means the kidneys, renal pelves, ureters, urinary bladder, and urethra.
(Authority: 38 U.S.C. 1112(c)(2))
(3) For purposes of this section:
(i) The term radiation-exposed veteran means either a veteran who while serving on active duty, or an individual who while a member of a reserve component of the Armed Forces during a period of active duty for training or inactive duty training, participated in a radiation-risk activity.
(ii) The term radiation-risk activity means:
(A) Onsite participation in a test involving the atmospheric detonation of a nuclear device.
(B) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.
(C) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II which resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946.
(D)(1) Service in which the service member was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:
   (i) Was monitored for each of the 250 days of such service through the use of dosimetry badges for exposure at the plant of the external parts of veteran's body to radiation; or
   (ii) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges; or
(2) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.
(3) For purposes of paragraph (d)(3)(ii)(D)(1) of this section, the term "day" refers to all or any portion of a calendar day.
(E) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).
(iii) The term atmospheric detonation includes underwater nuclear detonations.
(iv) The term onsite participation means:
   (A) During the official operational period of an atmospheric nuclear test, presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.
   (B) During the six month period following the official operational period of an atmospheric nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.
   (C) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951, through July 1, 1952, August 7, 1956, through August 7, 1957, or November 1, 1958, through April 30, 1959.
   (D) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.
   (v) For tests conducted by the United States, the term operational period means:
       (A) For Operation TRINITY the period July 16, 1945 through August 6, 1945.
       (B) For Operation CROSSROADS the period July 1, 1946 through August 31, 1946.
       (C) For Operation SANDSTONE the period April 15, 1948 through May 20, 1948.
       (D) For Operation RANGER the period January 27, 1951 through February 6, 1951.
       (E) For Operation GREENHOUSE the period April 8, 1951 through June 20, 1951.
(F) For Operation BUSTER-JANGLE the period October 22, 1951 through December 20, 1951.
(G) For Operation TUMBLER-SNAPPER the period April 1, 1952 through June 20, 1952.
(H) For Operation IVY the period November 1, 1952 through December 31, 1952.
(I) For Operation UPSHOT-KNOTHOLE the period March 17, 1953 through June 20, 1953.
(J) For Operation CASTLE the period March 1, 1954 through May 31, 1954.
(K) For Operation TEAPOT the period February 18, 1955 through June 10, 1955.
(L) For Operation WIGWAM the period May 14, 1955 through May 15, 1955.
(M) For Operation REDWING the period May 5, 1956 through August 6, 1956.
(N) For Operation PLUMBBOB the period May 28, 1957 through October 22, 1957.
(O) For Operation HARDTACK I the period April 28, 1958 through October 31, 1958.
(P) For Operation ARGUS the period August 27, 1958 through September 10, 1958.
(Q) For Operation HARDTACK II the period September 19, 1958 through October 31, 1958.
(R) For Operation DOMINIC I the period April 25, 1962 through December 31, 1962.
(S) For Operation DOMINIC II/PLOWSHARE the period July 6, 1962 through August 15, 1962.
(vi) The term "occupation of Hiroshima or Nagasaki, Japan, by United States forces" means official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.
(vii) Former prisoners of war who had an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the occupation of Hiroshima or Nagasaki, Japan, by United States forces shall include those who, at any time during the period August 6, 1945, through July 1, 1946:
(A) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki, or
(B) Can affirmatively show they worked within the areas set forth in paragraph (d)(4)(vii)(A) of this section although not interned within those areas, or
(C) Served immediately following internment in a capacity which satisfies the definition in paragraph (d)(4)(vi) of this section, or
(D) Were repatriated through the port of Nagasaki.
(Authority: 38 U.S.C. 1110, 1112, 1131)
(e) Disease associated with exposure to certain herbicide agents. If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service-connected if the requirements of § 3.307(a)(6) are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of § 3.307(d) are also satisfied.
Chloracne or other acneform disease consistent with chloracne
Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)
Hodgkin's disease
Chronic lymphocytic leukemia
Multiple myeloma
Non-Hodgkin's lymphoma
Acute and subacute peripheral neuropathy
Porphyria cutanea tarda
Prostate cancer
Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

NOTE 1: The term "soft-tissue sarcoma" includes the following:
Adult fibrosarcoma
Dermatofibrosarcoma protuberans
Malignant fibrous histiocytoma
Liposarcoma
Leiomyosarcoma
Epithelioid leiomyosarcoma (malignant leiomyoblastoma)
Rhabdomyosarcoma
Ectomesenchymoma
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma)
Proliferating (systemic) angioendotheliomatosis
Malignant glomus tumor
Malignant hemangiopericytoma
Synovial sarcoma (malignant synovioma)
Malignant giant cell tumor of tendon sheath
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas
Malignant mesenchymoma
Malignant granular cell tumor
Alveolar soft part sarcoma
Epithelioid sarcoma
Clear cell sarcoma of tendons and aponeuroses
Extraskeletal Ewing's sarcoma
Congenital and infantile fibrosarcoma
Malignant ganglioneuroma

NOTE 2: For purposes of this section, the term acute and subacute peripheral neuropathy means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.
§ 3.310 Proximate results, secondary conditions.

(a) General. Except as provided in § 3.300(c), disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When service connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.

(b) Cardiovascular disease. Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the proximate result of the service-connected amputation or amputations.

§ 3.311 Claims based on exposure to ionizing radiation.

(a) Determinations of exposure and dose -- (1) Dose assessment. In all claims in which it is established that a radiogenic disease first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in § 3.307 or § 3.309, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. When dose estimates provided pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range reported will be presumed.

(2) Request for dose information. Where necessary pursuant to paragraph (a)(1) of this section, dose information will be requested as follows:

(i) Atmospheric nuclear weapons test participation claims. In claims based upon participation in atmospheric nuclear testing, dose data will in all cases be requested from the appropriate office of the Department of Defense.

(ii) Hiroshima and Nagasaki occupation claims. In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the Department of Defense.

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(iii) Other exposure claims. In all other claims involving radiation exposure, a request will be made for any available records concerning the veteran's exposure to radiation. These records normally include but may not be limited to the veteran's Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained, service medical records, and other records which may contain information pertaining to the veteran's radiation dose in service. All such records will be forwarded to the Under Secretary for Health, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies.

(3) Referral to independent expert. When necessary to reconcile a material difference between an estimate of dose, from a credible source, submitted by or on behalf of a claimant, and dose data derived from official military records, the estimates and supporting documentation shall be referred to an independent expert, selected by the Director of the National Institutes of Health, who shall prepare a separate radiation dose estimate for consideration in adjudication of the claim. For purposes of this paragraph:

(i) The difference between the claimant's estimate and dose data derived from official military records shall ordinarily be considered material if one estimate is at least double the other estimate.

(ii) A dose estimate shall be considered from a "credible source" if prepared by a person or persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology and if based on analysis of the facts and circumstances of the particular claim.

(4) Exposure. In cases described in paragraph (a)(2)(i) and (ii) of this section:

(i) If military records do not establish presence at or absence from a site at which exposure to radiation is claimed to have occurred, the veteran's presence at the site will be conceded.

(ii) Neither the veteran nor the veteran's survivors may be required to produce evidence substantiating exposure if the information in the veteran's service records or other records maintained by the Department of Defense is consistent with the claim that the veteran was present where and when the claimed exposure occurred.

(b) Initial review of claims. (1) When it is determined:

(i) A veteran was exposed to ionizing radiation as a result of participation in the atmospheric testing of nuclear weapons, the occupation of Hiroshima or Nagasaki, Japan, from September 1945 until July 1946, or other activities as claimed;

(ii) The veteran subsequently developed a radiogenic disease; and

(iii) Such disease first became manifest within the period specified in paragraph (b)(5) of this section; before its adjudication the claim will be referred to the Under Secretary for Benefits for further consideration in accordance with paragraph (c) of this section. If any of the foregoing 3 requirements has not been met, it shall not be determined that a disease has resulted from exposure to ionizing radiation under such circumstances.

(2) For purposes of this section the term "radiogenic disease" means a disease that may be induced by ionizing radiation and shall include the following:

(i) All forms of leukemia except chronic lymphatic (lymphocytic) leukemia;

(ii) Thyroid cancer;

(iii) Breast cancer;

(iv) Lung cancer;

(v) Bone cancer;
(vi) Liver cancer;
(vii) Skin cancer;
(viii) Esophageal cancer;
(ix) Stomach cancer;
(x) Colon cancer;
(xi) Pancreatic cancer;
(xii) Kidney cancer;
(xiii) Urinary bladder cancer;
(xiv) Salivary gland cancer;
(xv) Multiple myeloma;
(xvi) Posterior subcapsular cataracts;
(xvii) Non-malignant thyroid nodular disease;
(xviii) Ovarian cancer;
(xix) Parathyroid adenoma;
(xx) Tumors of the brain and central nervous system;
(xxi) Cancer of the rectum;
(xxii) Lymphomas other than Hodgkin's disease;
(xxiii) Prostate cancer; and
(xxiv) Any other cancer.

(Authority: 38 U.S.C. 501)

(3) Public Law 98-542 requires VA to determine whether sound medical and scientific evidence supports establishing a rule identifying polycythemia vera as a radiogenic disease. VA has determined that sound medical and scientific evidence does not support including polycythemia vera on the list of known radiogenic diseases in this regulation. Even so, VA will consider a claim based on the assertion that polycythemia vera is a radiogenic disease under the provisions of paragraph (b)(4) of this section. (Authority: Pub. L. 98-542, section 5(b)(2)(A)(i), (iii)).

(4) If a claim is based on a disease other than one of those listed in paragraph (b)(2) of this section, VA shall nevertheless consider the claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

(5) For the purposes of paragraph (b)(1) of this section:
(i) Bone cancer must become manifest within 30 years after exposure;
(ii) Leukemia may become manifest at any time after exposure;
(iii) Posterior subcapsular cataracts must become manifest 6 months or more after exposure; and
(iv) Other diseases specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.


(c) Review by Under Secretary for Benefits. (1) When a claim is forwarded for review pursuant to paragraph (b)(1) of this section, the Under Secretary for Benefits shall consider the claim with reference to the factors specified in paragraph (e) of this section and may request an advisory medical opinion from the Under Secretary for Health.
(i) If after such consideration the Under Secretary for Benefits is convinced sound scientific and medical evidence supports the conclusion it is at least as likely as not the veteran's disease resulted from exposure to radiation in service, the Under Secretary for
Benefits shall so inform the regional office of jurisdiction in writing. The Under Secretary for Benefits shall set forth the rationale for this conclusion, including an evaluation of the claim under the applicable factors specified in paragraph (e) of this section.

(ii) If the Under Secretary for Benefits determines there is no reasonable possibility that the veteran's disease resulted from radiation exposure in service, the Under Secretary for Benefits shall so inform the regional office of jurisdiction in writing, setting forth the rationale for this conclusion.

(2) If the Under Secretary for Benefits, after considering any opinion of the Under Secretary for Health, is unable to conclude whether it is at least as likely as not, or that there is no reasonable possibility, the veteran's disease resulted from radiation exposure in service, the Under Secretary for Benefits shall refer the matter to an outside consultant in accordance with paragraph (d) of this section.

(3) For purposes of paragraph (c)(1) of this section, "sound scientific evidence" means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review, and "sound medical evidence" means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis of management of a medical condition.

(d) Referral to outside consultants. (1) Referrals pursuant to paragraph (c) of this section shall be to consultants selected by the Under Secretary for Health from outside VA, upon the recommendation of the Director of the National Cancer Institute. The consultant will be asked to evaluate the claim and provide an opinion as to the likelihood the disease is a result of exposure as claimed.

(2) The request for opinion shall be in writing and shall include a description of:
   (i) The disease, including the specific cell type and stage, if known, and when the disease first became manifest;
   (ii) The circumstances, including date, of the veteran's exposure;
   (iii) The veteran's age, gender, and pertinent family history;
   (iv) The veteran's history of exposure to known carcinogens, occupationally or otherwise;
   (v) Evidence of any other effects radiation exposure may have had on the veteran; and
   (vi) Any other information relevant to determination of causation of the veteran's disease. The Under Secretary for Benefits shall forward, with the request, copies of pertinent medical records and, where available, dose assessments from official sources, from credible sources as defined in paragraph (a)(3)(ii) of this section, and from an independent expert pursuant to paragraph (a)(3) of this section.

(3) The consultant shall evaluate the claim under the factors specified in paragraph (e) of this section and respond in writing, stating whether it is either likely, unlikely, or approximately as likely as not the veteran's disease resulted from exposure to ionizing radiation in service. The response shall set forth the rationale for the consultant's conclusion, including the consultant's evaluation under the applicable factors specified in paragraph (e) of this section. The Under Secretary for Benefits shall review the consultant's response and transmit it with any comments to the regional office of jurisdiction for use in adjudication of the claim.

(e) Factors for consideration. Factors to be considered in determining whether a veteran's disease resulted from exposure to ionizing radiation in service include:
(1) The probable dose, in terms of dose type, rate and duration as a factor in inducing the disease, taking into account any known limitations in the dosimetry devices employed in its measurement or the methodologies employed in its estimation;
(2) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;
(3) The veteran's gender and pertinent family history;
(4) The veteran's age at time of exposure;
(5) The time-lapse between exposure and onset of the disease; and
(6) The extent to which exposure to radiation, or other carcinogens, outside of service may have contributed to development of the disease.

(f) Adjudication of claim. The determination of service connection will be made under the generally applicable provisions of this part, giving due consideration to all evidence of record, including any opinion provided by the Under Secretary for Health or an outside consultant, and to the evaluations published pursuant to § 1.17 of this title. With regard to any issue material to consideration of a claim, the provisions of § 3.102 of this title apply.

(g) Willful misconduct and supervening cause. In no case will service connection be established if the disease is due to the veteran's own willful misconduct, or if there is affirmative evidence to establish that a supervening, nonservice-related condition or event is more likely the cause of the disease.


(Pub. L. 98-542)


§ 3.312 Cause of death.

(a) General. The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the principal or a contributory cause of death. The issue involved will be determined by exercise of sound judgment, without recourse to speculation, after a careful analysis has been made of all the facts and circumstances surrounding the death of the veteran, including, particularly, autopsy reports.

(b) Principal cause of death. The service-connected disability will be considered as the principal (primary) cause of death when such disability, singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto.

(c) Contributory cause of death. (1) Contributory cause of death is inherently one not related to the principal cause. In determining whether the service-connected disability contributed to death, it must be shown that it contributed substantially or materially; that it combined to cause death; that it aided or lent assistance to the production of death. It is not sufficient to show that it casually shared in producing death, but rather it must be shown that there was a causal connection.
(2) Generally, minor service-connected disabilities, particularly those of a static nature or not materially affecting a vital organ, would not be held to have contributed to death primarily due to unrelated disability. In the same category there would be included service-connected disease or injuries of any evaluation (even though evaluated as 100 percent disabling) but of a quiescent or static nature involving muscular or skeletal functions and not materially affecting other vital body functions.

(3) Service-connected diseases or injuries involving active processes affecting vital organs should receive careful consideration as a contributory cause of death, the primary cause being unrelated, from the viewpoint of whether there were resulting debilitating effects and general impairment of health to an extent that would render the person materially less capable of resisting the effects of other disease or injury primarily causing death. Where the service-connected condition affects vital organs as distinguished from muscular or skeletal functions and is evaluated as 100 percent disabling, debilitation may be assumed.

(4) There are primary causes of death which by their very nature are so overwhelming that eventual death can be anticipated irrespective of coexisting conditions, but, even in such cases, there is for consideration whether there may be a reasonable basis for holding that a service-connected condition was of such severity as to have a material influence in accelerating death. In this situation, however, it would not generally be reasonable to hold that a service-connected condition accelerated death unless such condition affected a vital organ and was of itself of a progressive or debilitating nature.


CROSS REFERENCES: Reasonable doubt. See § 3.102. Service connection for mental unsoundness in suicide. See § 3.302.

§ 3.313 Claims based on service in Vietnam.
_discussion and Analysis in the Veterans Benefits Manual_

(a) Service in Vietnam. Service in Vietnam includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) Service connection based on service in Vietnam. Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

[55 FR 43124, Oct. 26, 1990]

(38 U.S.C. 501)

§ 3.314 Basic pension determinations.

(a) Prior to the Mexican border period. While pensions are granted based on certain service prior to the Mexican border period, the only rating factors in claims therefor are:

(1) Claims based on service of less than 90 days in the Spanish-American War require a rating determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical
judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Department of Veterans Affairs regulations.

(Authority: 38 U.S.C. 1512)

(2) Veterans entitled to pension on the basis of service in the Spanish-American War may be entitled to an increased rate of pension if rated as being in need of regular aid and attendance. Veterans who have elected pension under Pub. L. 86-211 (73 Stat. 432) who are not rated as being in need of regular aid and attendance may be entitled to increased pension based on 100 percent permanent disability together with independent disability of 60 percent or more or by reason of being permanently housebound as provided in § 3.351 (d).

(Authority: 38 U.S.C. 1502(b), (c), 512)

(b) Mexican border period and later war periods. Non-service-connected disability and death pension may be paid based on service in the Mexican border period, World War I, World War II, the Korean conflict and the Vietnam era. Rating determinations in such claims will be required in the following situations:

(1) Claims based on service of less than 90 days may require a determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Department of Veterans Affairs regulations (38 U.S.C. 1521(g)(2)) unless, in the case of death pension, the veteran was, at the time of death, receiving (or entitled to receive) compensation or retirement pay based upon a wartime service-connected disability.

(Authority: 38 U.S.C. 1541(a) and 1542(a))

(2) Determinations of permanent total disability for pension purposes will be based on non-service-connected disability or combined non-service-connected and service-connected disabilities not the result of willful misconduct. However, for pension under Pub. L. 86-211 (73 Stat. 432), permanent and total disability will be presumed where the veteran has attained age 65 or effective January 1, 1977, where the veteran became unemployable after age 65.

(Authority: 38 U.S.C. 1502(a), 1523(a))

(3) Veterans entitled to nonservice-connected disability pension may be entitled to an increased rate of pension if rated as being in need of regular aid and attendance. Veterans entitled to protected pension or pension under Pub. L. 86-211 (73 Stat. 432) who are not rated as being in need of regular aid and attendance may be entitled to increased pension based on a 100 percent permanent disability together with independent disability of 60 percent or more or by reason of being permanently housebound as provided in § 3.351 (d) or (e).

§ 3.315 Basic eligibility determinations; dependents, loans, education.

(a) Child over 18 years. A child of a veteran may be considered a "child" after age 18 for purposes of benefits under title 38, United States Code (except ch. 19 and sec. 8502(b) of ch. 85), if found by a rating determination to have become, prior to age 18, permanently incapable of self-support.

(Authority: 38 U.S.C. 101(4)(B))

(b) Loans. If a veteran of World War II the Korean conflict or the Vietnam era had less than 90 days of service, or if a veteran who served after July 25, 1947, and prior to June 27, 1950, or after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975, has less than 181 days of service on active duty as defined in §§ 36.4301 and 36.4501, eligibility of the veteran for a loan under 38 U.S.C. ch. 37 requires a determination that the veteran was discharged or released because of a service-connected disability or that the official service department records show that he or she had at the time of separation from service a service-connected disability which in medical judgment would have warranted a discharge for disability. These determinations are subject to the presumption of incurrence under § 3.304(b). Determinations based on World War II, Korean conflict and Vietnam era service are also subject to the presumption of aggravation under § 3.306(b) while determination based on service on or after February 1, 1955, and before August 5, 1964, or after May 7, 1975, are subject to the presumption of aggravation under § 3.306(a) and (c). The provisions of this paragraph are also applicable, regardless of length of service, in determining eligibility to the maximum period of entitlement based on discharge or release for a service-connected disability. (See also the minimum service requirements of § 3.12a.)

(Authority: 38 U.S.C. 3702, 3707)

(c) Veterans' educational assistance. (1) A determination is required as to whether a veteran was discharged or released from active duty service because of a service-connected disability (or whether the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted discharge for disability) whenever any of the following circumstances exist:

(i) The veteran applies for benefits under 38 U.S.C. chapter 32, the minimum active duty service requirements of 38 U.S.C. 5303A apply to him or her, and the veteran would be eligible for such benefits only if --

(A) He or she was discharged or released from active duty for a disability incurred or aggravated in line of duty, or

(B) He or she has a disability that VA has determined to be compensable under 38 U.S.C. chapter 11; or

(ii) The veteran applies for benefits under 38 U.S.C. chapter 30 and --

(A) The evidence of record does not clearly show either that the veteran was discharged or released from active duty for disability or that the veteran's discharge or release from active duty was unrelated to disability, and

(B) The veteran is eligible for basic educational assistance except for the minimum length of active duty service requirements of § 21.7042(a) or § 21.7044(a) of this chapter.
(2) A determination is required as to whether a veteran was discharged or released from service in the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA determines is not service connected when the veteran applies for benefits under 38 U.S.C. chapter 30 and--
(i) Either the veteran would be eligible for basic educational assistance under that chapter only if he or she was discharged from the Selected Reserve for a service-connected disability, or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected, or
(ii) The veteran is entitled to basic educational assistance and would be entitled to receive it at the rates stated in § 21.7136(a) or § 21.7137(a) of this chapter only if he or she was discharged from the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected.
(3) A determination is required as to whether a reservist has been unable to pursue a program of education due to a disability which has been incurred in or aggravated by service in the Selected Reserve when --
(i) The reservist is otherwise entitled to educational assistance under 10 U.S.C. Chapter 1606, and
(ii) He or she applies for an extension of his or her eligibility period.
(4) The determinations required by paragraphs (c)(1) through (c)(3) of this section are subject to the presumptions of incurrence under § 3.304(b) and aggravation under § 3.306 (a) and (c) of this part, based on service rendered after May 7, 1975.


§ 3.316 Claims based on chronic effects of exposure to mustard gas.

(a) Except as provided in paragraph (b) of this section, exposure to the specified vesicant agents during active military service under the circumstances described below together with the subsequent development of any of the indicated conditions is sufficient to establish service connection for that condition:
(1) Full-body exposure to nitrogen or sulfur mustard during active military service together with the subsequent development of chronic conjunctivitis, keratitis, corneal opacities, scar formation, or the following cancers: Nasopharyngeal; laryngeal; lung (except mesothelioma); or squamous cell carcinoma of the skin.
(2) Full-body exposure to nitrogen or sulfur mustard or Lewisite during active military service together with the subsequent development of a chronic form of laryngitis, bronchitis, emphysema, asthma or chronic obstructive pulmonary disease.
(3) Full-body exposure to nitrogen mustard during active military service together with the subsequent development of acute nonlymphocytic leukemia.
(b) Service connection will not be established under this section if the claimed condition is due to the veteran's own willful misconduct (See § 3.301(c)) or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the claimed condition (See § 3.303).

[57 FR 33877, July 31, 1992; 59 FR 42499, Aug. 18, 1994.]

(38 U.S.C. 501(a))

§ 3.317 Compensation for certain disabilities due to undiagnosed illnesses.

(a)(1) Except as provided in paragraph (c) of this section, VA will pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of a qualifying chronic disability, provided that such disability:

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent or more not later than December 31, 2006; and

(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

(2)(i) For purposes of this section, a qualifying chronic disability means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) The following medically unexplained chronic multisymptom illnesses that are defined by a cluster of signs or symptoms:

(1) Chronic fatigue syndrome;

(2) Fibromyalgia;

(3) Irritable bowel syndrome; or

(4) Any other illness that the Secretary determines meets the criteria in paragraph (a)(2)(ii) of this section for a medically unexplained chronic multisymptom illness; or

(C) Any diagnosed illness that the Secretary determines in regulations prescribed under 38 U.S.C. 1117(d) warrants a presumption of service-connection.

(ii) For purposes of this section, the term medically unexplained chronic multisymptom illness means a diagnosed illness without conclusive pathophysiology or etiology, that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained.

(3) For purposes of this section, "objective indications of chronic disability" include both "signs," in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.

(4) For purposes of this section, disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period will be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which the pertinent evidence establishes that the signs or symptoms of the disability first became manifest.
(5) A chronic disability resulting from an undiagnosed illness referred to in this section shall be rated using evaluation criteria from part 4 of this chapter for a disease or injury in which the functions affected, anatomical localization, or symptomatology are similar.

(6) A disability referred to in this section shall be considered service connected for purposes of all laws of the United States.

(b) For the purposes of paragraph (a)(1) of this section, signs or symptoms which may be manifestations of undiagnosed illness or medically unexplained chronic multisymptom illness include, but are not limited to:

1. Fatigue
2. Signs or symptoms involving skin
3. Headache
4. Muscle pain
5. Joint pain
6. Neurologic signs and symptoms
7. Neuropsychological signs or symptoms
8. Signs or symptoms involving the respiratory system (upper or lower)
9. Sleep disturbances
10. Gastrointestinal signs or symptoms
11. Cardiovascular signs or symptoms
12. Abnormal weight loss

(c) Compensation shall not be paid under this section:

1. If there is affirmative evidence that an undiagnosed illness was not incurred during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War; or
2. If there is affirmative evidence that an undiagnosed illness was caused by a supervening condition or event that occurred between the veteran's most recent departure from active duty in the Southwest Asia theater of operations during the Persian Gulf War and the onset of the illness; or
3. If there is affirmative evidence that the illness is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(d) For purposes of this section:

1. The term "Persian Gulf veteran" means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.
2. The Southwest Asia theater of operations includes Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

Authority: 38 U.S.C. 1117.)


[EFFECTIVE DATE NOTE: 68 FR 34539, 34541, June 10, 2003, amended this section, effective June 10, 2003.]

§§ 3.318 -- 3.320 [Reserved]
§ 3.321 General rating considerations.

(a) Use of rating schedule. The 1945 Schedule for Rating Disabilities will be used for evaluating the degree of disabilities in claims for disability compensation, disability and death pension, and in eligibility determinations. The provisions contained in the rating schedule will represent as far as can practicably be determined, the average impairment in earning capacity in civil occupations resulting from disability.

(Authority: 38 U.S.C. 1155)

(b) Exceptional cases -- (1) Compensation. Ratings shall be based as far as practicable, upon the average impairments of earning capacity with the additional proviso that the Secretary shall from time to time readjust this schedule of ratings in accordance with experience. To accord justice, therefore, to the exceptional case where the schedular evaluations are found to be inadequate, the Under Secretary for Benefits or the Director, Compensation and Pension Service, upon field station submission, is authorized to approve on the basis of the criteria set forth in this paragraph an extra-schedular evaluation commensurate with the average earning capacity impairment due exclusively to the service-connected disability or disabilities. The governing norm in these exceptional cases is: A finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards.

(2) Pension. Where the evidence of record establishes that an applicant for pension who is basically eligible fails to meet the disability requirements based on the percentage standards of the rating schedule but is found to be unemployable by reason of his or her disability(ies), age, occupational background and other related factors, the following are authorized to approve on an extra-schedular basis a permanent and total disability rating for pension purposes: the Veterans Service Center Manager; or where regular schedular standards are met as of the date of the rating decision, the rating board.

(3) Effective dates. The effective date of these extra-schedular evaluations granting or increasing benefits will be in accordance with § 3.400(b)(1) and (2) as to original and reopened claims and in accordance with § 3.400(o) in claims for increased benefits.

(c) Advisory opinion. Cases in which application of the schedule is not understood or the propriety of an extra-schedular rating is questionable may be submitted to Central Office for advisory opinion.


38 U.S.C. 501(a)
CROSS REFERENCES: Effective dates; disability benefits. See § 3.400(b). Effective dates; increases. § 3.400(o).

§ 3.322 Rating of disabilities aggravated by service.

(a) Aggravation of preservice disability. In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree of disability existing at the time of entrance into active service, whether the particular condition was noted at the time of entrance into active service, or whether it is determined upon the
evidence of record to have existed at that time. It is necessary to deduct from the present
evaluation the degree, if ascertainable, of the disability existing at the time of entrance
into active service, in terms of the rating schedule except that if the disability is total (100
percent) no deduction will be made. If the degree of disability at the time of entrance into
service is not ascertainable in terms of the schedule, no deduction will be made.
(b) Aggravation of service-connected disability. Where a disease or injury incurred in
peacetime service is aggravated during service in a period of war, or conversely, where a
disease or injury incurred in service during a period of war is aggravated during
peacetime service, the entire disability flowing from the disease or injury will be service
connected based on the war service.
[26 FR 1583, Feb. 24, 1961]

CROSS REFERENCES: Principles relating to service connection. See § 3.303.
Aggravation of preservice disability. See § 3.306.

§ 3.323 Combined ratings.
(a) Compensation -- (1) Same type of service. When there are two or more
service-connected compensable disabilities a combined evaluation will be made
following the tables and rules prescribed in the 1945 Schedule for Rating Disabilities.
(2) Wartime and peacetime service. Evaluation of wartime and peacetime
service-connected compensable disabilities will be combined to provide for the payment
of wartime rates of compensation. (38 U.S.C. 1157) Effective July 1, 1973, it is
immaterial whether the disabilities are wartime or peacetime service-connected since all
disabilities are compensable under 38 U.S.C. 1114 and 1115 on and after that date.
(b) Pension -- (1) Nonservice-connected disabilities. Evaluation of two or more
nonservice-connected disabilities not the result of the veteran's own willful misconduct
will be combined as provided in paragraph (a)(1) of this section.
(2) Service-connected and nonservice-connected disabilities. Evaluations for
service-connected disabilities may be combined with evaluations for disabilities not
shown to be service connected and not the result of the veteran's own willful misconduct.
May 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20438, May 7, 1996, which removed "or vicious
habits" from paragraph (b)(1) and (b)(2), became effective May 7, 1996.]

§ 3.324 Multiple noncompensable service-connected disabilities.
When a veteran is suffering from two or more separate permanent service-connected
disabilities of such character as clearly to interfere with normal employability, even
though none of the disabilities may be of compensable degree under the 1945 Schedule
for Rating Disabilities the rating agency is authorized to apply a 10-percent rating, but
not in combination with any other rating.
[40 FR 56435, Dec. 3, 1975]

§ 3.325 [Reserved]

§ 3.326 Examinations.

For purposes of this section, the term examination includes periods of hospital observation when required by VA.

(a) Where there is a claim for disability compensation or pension but medical evidence accompanying the claim is not adequate for rating purposes, a Department of Veterans Affairs examination will be authorized. This paragraph applies to original and reopened claims as well as claims for increase submitted by a veteran, surviving spouse, parent, or child. Individuals for whom an examination has been scheduled are required to report for the examination.

(b) Provided that it is otherwise adequate for rating purposes, any hospital report, or any examination report, from any government or private institution may be accepted for rating a claim without further examination. However, monetary benefits to a former prisoner of war will not be denied unless the claimant has been offered a complete physical examination conducted at a Department of Veterans Affairs hospital or outpatient clinic.

(c) Provided that it is otherwise adequate for rating purposes, a statement from a private physician may be accepted for rating a claim without further examination.

(Authority: 38 U.S.C. 5107(a))


(38 U.S.C. 501(a))

[EFFECTIVE DATE NOTE: 66 FR 45620, 45632, Aug. 29, 2001, amended the first sentence of paragraph (a), effective Nov. 9, 2000.]

§ 3.327 Reexaminations.

(a) General. Reexaminations, including periods of hospital observation, will be requested whenever VA determines there is a need to verify either the continued existence or the current severity of a disability. Generally, reexaminations will be required if it is likely that a disability has improved, or if evidence indicates there has been a material change in a disability or that the current rating may be incorrect. Individuals for whom reexaminations have been authorized and scheduled are required to report for such reexaminations. Paragraphs (b) and (c) of this section provide general guidelines for requesting reexaminations, but shall not be construed as limiting VA's authority to request reexaminations, or periods of hospital observation, at any time in order to ensure that a disability is accurately rated.

(Authority: 38 U.S.C. 501)

(b) Compensation cases -- (1) Scheduling reexaminations. Assignment of a prestabilization rating requires reexamination within the second 6 months period following separation from service. Following initial Department of Veterans Affairs examination, or any scheduled future or other examination, reexamination, if in order,
will be scheduled within not less than 2 years nor more than 5 years within the judgment of the rating board, unless another time period is elsewhere specified.

(2) No periodic future examinations will be requested. In service-connected cases, no periodic reexamination will be scheduled: (i) When the disability is established as static; (ii) When the findings and symptoms are shown by examinations scheduled in paragraph (b)(2)(i) of this section or other examinations and hospital reports to have persisted without material improvement for a period of 5 years or more; (iii) Where the disability from disease is permanent in character and of such nature that there is no likelihood of improvement; (iv) In cases of veterans over 55 years of age, except under unusual circumstances; (v) When the rating is a prescribed scheduled minimum rating; or (vi) Where a combined disability evaluation would not be affected if the future examination should result in reduced evaluation for one or more conditions.

(c) Pension cases. In nonservice-connected cases in which the permanent total disability has been confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will not generally be requested. In other cases further examination will not be requested routinely and will be accomplished only if considered necessary based upon the particular facts of the individual case. In the cases of veterans over 55 years of age, reexamination will be requested only under unusual circumstances.


CROSS REFERENCE: Failure to report for VA examination. See § 3.665.

§ 3.328 Independent medical opinions.

Discussed and Analysis in the Veterans Benefits Manual

(a) General. When warranted by the medical complexity or controversy involved in a pending claim, an advisory medical opinion may be obtained from one or more medical experts who are not employees of VA. Opinions shall be obtained from recognized medical schools, universities, clinics or medical institutions with which arrangements for such opinions have been made, and an appropriate official of the institution shall select the individual expert(s) to render an opinion.

(b) Requests. A request for an independent medical opinion in conjunction with a claim pending at the regional office level may be initiated by the office having jurisdiction over the claim, by the claimant, or by his or her duly appointed representative. The request must be submitted in writing and must set forth in detail the reasons why the opinion is necessary. All such requests shall be submitted through the Veterans Service Center Manager of the office having jurisdiction over the claim, and those requests which in the judgment of the Veterans Service Center Manager merit consideration shall be referred to the Compensation and Pension Service for approval.

(c) Approval. Approval shall be granted only upon a determination by the Compensation and Pension Service that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion. When approval has been granted, the Compensation and Pension Service shall obtain the opinion. A
determination that an independent medical opinion is not warranted may be contested only as part of an appeal on the merits of the decision rendered on the primary issue by the agency of original jurisdiction.

(d) Notification. The Compensation and Pension Service shall notify the claimant when the request for an independent medical opinion has been approved with regard to his or her claim and shall furnish the claimant with a copy of the opinion when it is received. If, in the judgment of the Secretary, disclosure of the independent medical opinion would be harmful to the physical or mental health of the claimant, disclosure shall be subject to the special procedures set forth in § 1.577 of this chapter.

[55 FR 18602, May 3, 1990]

(38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

§ 3.329 [Reserved]

§ 3.330 Resumption of rating when veteran subsequently reports for Department of Veterans Affairs examination.

Such ratings will be governed by the provisions of § 3.158, "Abandoned Claims," and § 3.655, "Failure to report for Department of Veterans Affairs examination." The period following the termination or reduction for which benefits are precluded by the cited regulations will be stated in the rating. If the evidence is insufficient to evaluate disability during any period following the termination or reduction for which payments are not otherwise precluded, the rating will contain a notation reading "Evidence insufficient to evaluate from -------- to --------".

[29 FR 3623, Mar. 21, 1964]

CROSS REFERENCE: Failure to report for Department of Veterans Affairs examination. See § 3.665.

§§ 3.331 -- 3.339 [Reserved]

§ 3.340 Total and permanent total ratings and unemployability.

(a) Total disability ratings—(1) General. Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule.

(2) Schedule for rating disabilities. Total ratings are authorized for any disability or combination of disabilities for which the Schedule for Rating Disabilities prescribes a 100 percent evaluation or, with less disability, where the requirements of paragraph 16, page 5 of the rating schedule are present or where, in pension cases, the requirements of paragraph 17, page 5 of the schedule are met.

(3) Ratings of total disability on history. In the case of disabilities which have undergone some recent improvement, a rating of total disability may be made, provided:

(i) That the disability must in the past have been of sufficient severity to warrant a total disability rating;
(ii) That it must have required extended, continuous, or intermittent hospitalization, or have produced total industrial incapacity for at least 1 year, or be subject to recurring, severe, frequent, or prolonged exacerbations; and

(iii) That it must be the opinion of the rating agency that despite the recent improvement of the physical condition, the veteran will be unable to effect an adjustment into a substantially gainful occupation. Due consideration will be given to the frequency and duration of totally incapacitating exacerbations since incurrence of the original disease or injury, and to periods of hospitalization for treatment in determining whether the average person could have reestablished himself or herself in a substantially gainful occupation.

(b) Permanent total disability. Permanence of total disability will be taken to exist when such impairment is reasonably certain to continue throughout the life of the disabled person. The permanent loss or loss of use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or bedridden constitutes permanent total disability. Diseases and injuries of long standing which are actually totally incapacitating will be regarded as permanently and totally disabling when the probability of permanent improvement under treatment is remote. Permanent total disability ratings may not be granted as a result of any incapacity from acute infectious disease, accident, or injury, unless there is present one of the recognized combinations or permanent loss of use of extremities or sight, or the person is in the strict sense permanently helpless or bedridden, or when it is reasonably certain that a subsidence of the acute or temporary symptoms will be followed by irreducible totality of disability by way of residuals. The age of the disabled person may be considered in determining permanence.

(c) Insurance ratings. A rating of permanent and total disability for insurance purposes will have no effect on ratings for compensation or pension.


§ 3.341 Total disability ratings for compensation purposes.

(a) General. Subject to the limitation in paragraph (b) of this section, total-disability compensation ratings may be assigned under the provisions of § 3.340. However, if the total rating is based on a disability or combination of disabilities for which the Schedule for Rating Disabilities provides an evaluation of less than 100 percent, it must be determined that the service-connected disabilities are sufficient to produce unemployability without regard to advancing age.

(Authority: 38 U.S.C. 1155)

(b) Incarcerated veterans. A total rating for compensation purposes based on individual unemployability which would first become effective while a veteran is incarcerated in a Federal, State or local penal institution for conviction of a felony, shall not be assigned during such period of incarceration. However, where a rating for individual unemployability exists prior to incarceration for a felony, and routine review is required, the case will be reconsidered to determine if continued eligibility for such rating exists.

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

(c) Program for vocational rehabilitation. Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning after January 31, 1985, the Vocational Rehabilitation and Employment Service will be notified so that an
evaluation may be offered to determine whether the achievement of a vocational goal by the veteran is reasonably feasible.  
(Authority: 38 U.S.C. 1163)  

[EFFECTIVE DATE NOTE: 68 FR 34539, 34542, June 10, 2003, amended paragraphs (b) and (c), effective June 10, 2003.]

§ 3.342 Permanent and total disability ratings for pension purposes.  
(a) General. Permanent total disability ratings for pension purposes are authorized for disabling conditions not the result of the veteran's own willful misconduct whether or not they are service connected.  
(Authority: 38 U.S.C. 1502(a))  
(b) Criteria. In addition to the criteria for determining total disability and permanency of total disability contained in § 3.340, the following special considerations apply in pension cases:  
1. Permanent total disability pension ratings will be authorized for congenital, developmental, hereditary or familial conditions, provided the other requirements for entitlement are met.  
2. The permanence of total disability will be established as of the earliest date consistent with the evidence in the case. Active pulmonary tuberculosis not otherwise established as permanently and totally disabling will be presumed so after 6 months' hospitalization without improvement. The same principle may be applied with other types of disabilities requiring hospitalization for indefinite periods. The need for hospitalization for periods shorter or longer than 6 months may be a proper basis for determining permanence. Where, in application of this principle, it is necessary to employ a waiting period to determine permanence of totality of disability and a report received at the end of such period shows the veteran's condition is unimproved, permanence may be established as of the date of entrance into the hospital. Similarly, when active pulmonary tuberculosis is improved after 6 months' hospitalization but still diagnosed as active after 12 months' hospitalization permanence will also be established as of the date of entrance into the hospital. In other cases the rating will be effective the date the evidence establishes permanence.  
3. Special consideration must be given the question of permanence in the case of veterans under 40 years of age. For such veterans, permanence of total disability requires a finding that the end result of treatment and adjustment to residual handicaps (rehabilitation) will be permanent disability of the required degree precluding more than marginal employment. Severe diseases and injuries, including multiple fractures or the amputation of a single extremity, should not be taken to establish permanent and total disability until it is shown that the veteran after treatment and convalescence, has been unable to secure or follow employment because of the disability and through no fault of the veteran.  
4. The following shall not be considered as evidence of employability:  
   (i) Employment as a member-employer or similar employment obtained only in competition with disabled persons.
(ii) Participation in, or the receipt of a distribution of funds as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 1718.

(Authority: 38 U.S.C. 1718(f))

(5) The authority granted the Secretary under 38 U.S.C. 1502(a)(2) to classify as permanent and total those diseases and disorders, the nature and extent of which, in the Secretary judgment, will justify such determination, will be exercised under § 3.321(b).

(c) Temporary program of vocational rehabilitation training for certain pension recipients.

(1) When a veteran under age 45 is awarded disability pension during the period beginning on February 1, 1985, and ending on December 31, 1995, the Vocational Rehabilitation and Employment Division will be notified so that an evaluation may be made, as provided in § 21.6050, to determine that veteran's potential for rehabilitation.

(2) If a veteran secures employment within the scope of a vocational goal identified in his or her individualized written vocational rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, not later than one year after eligibility to counseling under § 21.6040(b)(1) of this chapter expires, the veteran's permanent and total evaluation for pension purposes shall not be terminated by reason of the veteran's capacity to engage in such employment until the veteran has maintained that employment for a period of not less than 12 consecutive months.

(38 U.S.C. 1524(c))

§ 3.343 Continuance of total disability ratings.

Discussion and Analysis in the Veterans Benefits Manual

(a) General. Total disability ratings, when warranted by the severity of the condition and not granted purely because of hospital, surgical, or home treatment, or individual unemployability will not be reduced, in the absence of clear error, without examination showing material improvement in physical or mental condition. Examination reports showing material improvement must be evaluated in conjunction with all the facts of record, and consideration must be given particularly to whether the veteran attained improvement under the ordinary conditions of life, i.e., while working or actively seeking work or whether the symptoms have been brought under control by prolonged rest, or generally, by following a regimen which precludes work, and, if the latter, reduction from total disability ratings will not be considered pending reexamination after a period of employment (3 to 6 months).

(b) Tuberculosis; compensation. In service-connected cases, evaluations for active or inactive tuberculosis will be governed by the Schedule for Rating Disabilities (part 4 of this chapter). Where in the opinion of the rating board the veteran at the expiration of the period during which a total rating is provided will not be able to maintain inactivity of the disease process under the ordinary conditions of life, the case will be submitted under § 3.321.

(c) Individual unemployability. (1) In reducing a rating of 100 percent service-connected disability based on individual unemployability, the provisions of § 3.105(e) are for
application but caution must be exercised in such a determination that actual
employability is established by clear and convincing evidence. When in such a case the
veteran is undergoing vocational rehabilitation, education or training, the rating will not
be reduced by reason thereof unless there is received evidence of marked improvement or
recovery in physical or mental conditions or of employment progress, income earned, and
prospects of economic rehabilitation, which demonstrates affirmatively the veteran's
capacity to pursue the vocation or occupation for which the training is intended to qualify
him or her, or unless the physical or mental demands of the course are obviously
incompatible with total disability. Neither participation in, nor the receipt of
remuneration as a result of participation in, a therapeutic or rehabilitation activity under
38 U.S.C. 1718 shall be considered evidence of employability.

(Authority: 38 U.S.C. 1718(f))

(2) If a veteran with a total disability rating for compensation purposes based on
individual unemployability begins to engage in a substantially gainful occupation during
the period beginning after January 1, 1985, the veteran's rating may not be reduced solely
on the basis of having secured and followed such substantially gainful occupation unless
the veteran maintains the occupation for a period of 12 consecutive months. For purposes
of this subparagraph, temporary interruptions in employment which are of short duration
shall not be considered breaks in otherwise continuous employment.

[33 FR 16273, Nov. 6, 1968, as amended at 39 FR 14944, Apr. 29, 1974; 50 FR 52775,

(38 U.S.C. 1163(a)).

CROSS REFERENCE: Protection, total disability. See § 3.951.

§ 3.344 Stabilization of disability evaluations.

Discussion and Analysis in the Veterans Benefits Manual

(a) Examination reports indicating improvement. Rating agencies will handle cases
affected by change of medical findings or diagnosis, so as to produce the greatest degree
of stability of disability evaluations consistent with the laws and Department of Veterans
Affairs regulations governing disability compensation and pension. It is essential that the
entire record of examinations and the medical-industrial history be reviewed to ascertain
whether the recent examination is full and complete, including all special examinations
indicated as a result of general examination and the entire case history. This applies to
treatment of intercurrent diseases and exacerbations, including hospital reports, bedside
examinations, examinations by designated physicians, and examinations in the absence of,
or without taking full advantage of, laboratory facilities and the cooperation of specialists
in related lines. Examinations less full and complete than those on which payments were
authorized or continued will not be used as a basis of reduction. Ratings on account of
diseases subject to temporary or episodic improvement, e.g., manic depressive or other
psychotic reaction, epilepsy, psychoneurotic reaction, arteriosclerotic heart disease,
bronchial asthma, gastric or duodenal ulcer, many skin diseases, etc., will not be reduced
on any one examination, except in those instances where all the evidence of record
clearly warrants the conclusion that sustained improvement has been demonstrated.
Ratings on account of diseases which become comparatively symptom free (findings
absent) after prolonged rest, e.g. residuals of phlebitis, arteriosclerotic heart disease, etc.,
will not be reduced on examinations reflecting the results of bed rest. Moreover, though material improvement in the physical or mental condition is clearly reflected the rating agency will consider whether the evidence makes it reasonably certain that the improvement will be maintained under the ordinary conditions of life. When syphilis of the central nervous system or alcoholic deterioration is diagnosed following a long prior history of psychosis, psychoneurosis, epilepsy, or the like, it is rarely possible to exclude persistence, in masked form, of the preceding innocently acquired manifestations. Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in prior diagnosis or possibly a disease entity independent of the service-connected disability. When the new diagnosis reflects mental deficiency or personality disorder only, the possibility of only temporary remission of a super-imposed psychiatric disease will be borne in mind.

(b) Doubtful cases. If doubt remains, after according due consideration to all the evidence developed by the several items discussed in paragraph (a) of this section, the rating agency will continue the rating in effect, citing the former diagnosis with the new diagnosis in parentheses, and following the appropriate code there will be added the reference "Rating continued pending reexamination ------- months from this date, § 3.344." The rating agency will determine on the basis of the facts in each individual case whether 18, 24 or 30 months will be allowed to elapse before the reexamination will be made.

(c) Disabilities which are likely to improve. The provisions of paragraphs (a) and (b) of this section apply to ratings which have continued for long periods at the same level (5 years or more). They do not apply to disabilities which have not become stabilized and are likely to improve. Reexaminations disclosing improvement, physical or mental, in these disabilities will warrant reduction in rating.


RATINGS FOR SPECIAL PURPOSES

§ 3.350 Special monthly compensation ratings.
§ 3.351 Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings.
§ 3.352 Criteria for determining need for aid and attendance and 'permanently bedridden.'
§ 3.353 Determinations of incompetency and competency.
§ 3.354 Determinations of insanity.
§ 3.355 Testamentary capacity for insurance purposes.
§ 3.356 Conditions which determine permanent incapacity for self-support.
§ 3.357 Civil service preference ratings.
§ 3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).
§ 3.359 Determination of service connection for former members of the Armed Forces of Czechoslovakia or Poland.
§ 3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable condition.
§ 3.361 Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program.
§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).
§ 3.363 Bar to benefits under 38 U.S.C. 1151.

§ 3.350 Special monthly compensation ratings.

xcDiscussion and Analysis in the Veterans Benefits Manual
The rates of special monthly compensation stated in this section are those provided under 38 U.S.C. 1114.
(a) Ratings under 38 U.S.C. 1114(k). Special monthly compensation under 38 U.S.C. 1114(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, complete organic aphonia with constant inability to communicate by speech or, in the case of a woman veteran, loss of 25% or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy), or following receipt of radiation treatment of breast tissue. This special compensation is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed the monthly rate set forth in 38 U.S.C. 1114(l) when authorized in conjunction with any of the provisions of 38 U.S.C. 1114 (a) through (j) or (s). When there is entitlement under 38 U.S.C. 1114 (l) through (n) or an intermediate rate under (p) such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates, provided the total does not exceed the monthly rate set forth in 38 U.S.C. 1114(o). The limitations on the maximum compensation payable under this paragraph are independent of and do not preclude payment of additional compensation for dependents under 38
U.S.C. 1115, or the special allowance for aid and attendance provided by 38 U.S.C. 1114(r).

(1) Creative organ. (i) Loss of a creative organ will be shown by acquired absence of one or both testicles (other than undescended testicles) or ovaries or other creative organ. Loss of use of one testicle will be established when examination by a board finds that:

(a) The diameters of the affected testicle are reduced to one-third of the corresponding diameters of the paired normal testicle, or
(b) The diameters of the affected testicle are reduced to one-half or less of the corresponding normal testicle and there is alteration of consistency so that the affected testicle is considerably harder or softer than the corresponding normal testicle; or
(c) If neither of the conditions (a) or (b) is met, when a biopsy, recommended by a board including a genitourologist and accepted by the veteran, establishes the absence of spermatozoa.

(ii) When loss or loss of use of a creative organ resulted from wounds or other trauma sustained in service, or resulted from operations in service for the relief of other conditions, the creative organ becoming incidentally involved, the benefit may be granted.

(iii) Loss or loss of use traceable to an elective operation performed subsequent to service, will not establish entitlement to the benefit. If, however, the operation after discharge was required for the correction of a specific injury caused by a preceding operation in service, it will support authorization of the benefit. When the existence of disability is established meeting the above requirements for nonfunctioning testicle due to operation after service, resulting in loss of use, the benefit may be granted even though the operation is one of election. An operation is not considered to be one of election where it is advised on sound medical judgment for the relief of a pathological condition or to prevent possible future pathological consequences.

(iv) Atrophy resulting from mumps followed by orchitis in service is service connected. Since atrophy is usually perceptible within 1 to 6 months after infection subsides, an examination more than 6 months after the subsidence of orchitis demonstrating a normal genitourinary system will be considered in determining rebuttal of service incurrence of atrophy later demonstrated. Mumps not followed by orchitis in service will not suffice as the antecedent cause of subsequent atrophy for the purpose of authorizing the benefit.

(2) Foot and hand. (i) Loss of use of a hand or a foot will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below elbow or knee with use of a suitable prosthetic appliance. The determination will be made on the basis of the actual remaining function, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance, propulsion, etc., in the case of the foot, could be accomplished equally well by an amputation stump with prosthesis; for example:

(a) Extremely unfavorable complete ankylosis of the knee, or complete ankylosis of two major joints of an extremity, or shortening of the lower extremity of 3 1/2 inches or more, will constitute loss of use of the hand or foot involved.

(b) Complete paralysis of the external popliteal nerve (common peroneal) and consequent footdrop, accompanied by characteristic organic changes including trophic and circulatory disturbances and other concomitants confirmatory of complete paralysis of this nerve, will be taken as loss of use of the foot.
(3) Both buttocks. (i) Loss of use of both buttocks shall be deemed to exist when there is severe damage by disease or injury to muscle group XVII, bilateral, (diagnostic code 5317) and additional disability making it impossible for the disabled person, without assistance, to rise from a seated position and from a stooped position (fingers to toes position) and to maintain postural stability (the pelvis upon head of femur). The assistance may be done by the person's own hands or arms, and, in the matter of postural stability, by a special appliance.

(Authority: 38 U.S.C. 1114(k))

(ii) Special monthly compensation for loss or loss of use of both lower extremities (38 U.S.C. 1114(l) through (n)) will not preclude additional compensation under 38 U.S.C. 1114(k) for loss of use of both buttocks where appropriate tests clearly substantiate that there is such additional loss.

(4) Eye. Loss of use or blindness of one eye, having only light perception, will be held to exist when there is inability to recognize test letters at 1 foot and when further examination of the eye reveals that perception of objects, hand movements, or counting fingers cannot be accomplished at 3 feet. Lesser extents of vision, particularly perception of objects, hand movements, or counting fingers at distances less than 3 feet is considered of negligible utility.

(5) Deafness. Deafness of both ears, having absence of air and bone conduction will be held to exist where examination in a Department of Veterans Affairs authorized audiology clinic under current testing criteria shows bilateral hearing loss is equal to or greater than the minimum bilateral hearing loss required for a maximum rating evaluation under the rating schedule.

(Authority: Pub. L. 88-20)

(6) Aphonia. Complete organic aphonia will be held to exist where there is a disability of the organs of speech which constantly precludes communication by speech.

(Authority: Pub. L. 88-22)

(b) Ratings under 38 U.S.C. 1114(l). The special monthly compensation provided by 38 U.S.C. 1114(l) is payable for anatomical loss or loss of use of both feet, one hand and one foot, blindness in both eyes with visual acuity of 5/200 or less or being permanently bedridden or so helpless as to be in need of regular aid and attendance.

(1) Extremities. The criteria for loss and loss of use of an extremity contained in paragraph (a)(2) of this section are applicable.

(2) Eyes, bilateral. 5/200 visual acuity or less bilaterally qualifies for entitlement under 38 U.S.C. 1114(l). However, evaluation of 5/200 based on acuity in excess of that degree but less than 10/200 (§ 4.83 of this chapter), does not qualify. Concentric contraction of the field of vision beyond 5 degrees in both eyes is the equivalent of 5/200 visual acuity.

(3) Need for aid and attendance. The criteria for determining that a veteran is so helpless as to be in need of regular aid and attendance are contained in § 3.352(a).

(4) Permanently bedridden. The criteria for rating are contained in § 3.352(a). Where possible, determinations should be on the basis of permanently bedridden rather than for need of aid and attendance (except where 38 U.S.C. 1114(r) is involved) to avoid reduction during hospitalization where aid and attendance is provided in kind.

(c) Ratings under 38 U.S.C. 1114(m). (1) The special monthly compensation provided by 38 U.S.C. 1114(m) is payable for any of the following conditions:

(i) Anatomical loss or loss of use of both hands;
(ii) Anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prosthesis in place;
(iii) Anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place;
(iv) Blindness in both eyes having only light perception;
(v) Blindness in both eyes leaving the veteran so helpless as to be in need of regular aid and attendance.

(2) Natural elbow or knee action. In determining whether there is natural elbow or knee action with prosthesis in place, consideration will be based on whether use of the proper prosthetic appliance requires natural use of the joint, or whether necessary motion is otherwise controlled, so that the muscles affecting joint motion, if not already atrophied, will become so. If there is no movement in the joint, as in ankylosis or complete paralysis, use of prosthesis is not to be expected, and the determination will be as though there were one in place.

(3) Eyes, bilateral. With visual acuity 5/200 or less or the vision field reduced to 5 degree concentric contraction in both eyes, entitlement on account of need for regular aid and attendance will be determined on the facts in the individual case.

(d) Ratings under 38 U.S.C. 1114(n). The special monthly compensation provided by 38 U.S.C. 1114(n) is payable for any of the conditions which follow: Amputation is a prerequisite except for loss of use of both arms and blindness without light perception in both eyes. If a prosthesis cannot be worn at the present level of amputation but could be applied if there were a reamputation at a higher level, the requirements of this paragraph are not met; instead, consideration will be given to loss of natural elbow or knee action. 
(1) Anatomical loss or loss of use of both arms at a level or with complications, preventing natural elbow action with prosthesis in place;
(2) Anatomical loss of both legs so near the hip as to prevent use of a prosthetic appliance;
(3) Anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance;
(4) Anatomical loss of both eyes or blindness without light perception in both eyes.

(e) Ratings under 38 U.S.C. 1114(o). (1) The special monthly compensation provided by 38 U.S.C. 1114(o) is payable for any of the following conditions:
(i) Anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance;
(ii) Conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 1114(l) through (n);
(iii) Bilateral deafness rated at 60 percent or more disabling (and the hearing impairment in either one or both ears is service connected) in combination with service-connected blindness with bilateral visual acuity 5/200 or less.
(iv) Service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling (and the hearing impairment in either one of both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less.
(2) Paraplegia. Paralysis of both lower extremities together with loss of anal and bladder sphincter control will entitle to the maximum rate under 38 U.S.C. 1114(o), through the combination of loss of use of both legs and helplessness. The requirement of loss of anal and bladder sphincter control is met even though incontinence has been overcome under a strict regimen of rehabilitation of bowel and bladder training and other auxiliary measures.

(3) Combinations. Determinations must be based upon separate and distinct disabilities. This requires, for example, that where a veteran who had suffered the loss or loss of use of two extremities is being considered for the maximum rate on account of helplessness requiring regular aid and attendance, the latter must be based on need resulting from pathology other than that of the extremities. If the loss or loss of use of two extremities or being permanently bedridden leaves the person helpless, increase is not in order on account of this helplessness. Under no circumstances will the combination of "being permanently bedridden" and "being so helpless as to require regular aid and attendance" without separate and distinct anatomical loss, or loss of use, of two extremities, or blindness, be taken as entitling to the maximum benefit. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss, or loss of use of both hands and both feet, result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude maximum entitlement.

(4) Helplessness. The maximum rate, as a result of including helplessness as one of the entitling multiple disabilities, is intended to cover, in addition to obvious losses and blindness, conditions such as the loss of use of two extremities with absolute deafness and nearly total blindness or with severe multiple injuries producing total disability outside the useless extremities, these conditions being construed as loss of use of two extremities and helplessness.

(f) Intermediate or next higher rate. An intermediate rate authorized by this paragraph shall be established at the arithmetic mean, rounded to the nearest dollar, between the two rates concerned.

(Authority: 38 U.S.C. 1114(p))

(1) Extremities. (i) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one leg at a level, or with complications preventing natural knee action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(l) and (m).

(ii) Anatomical loss or loss of use of one foot with anatomical loss of one leg so near the hip as to prevent use of prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(m).

(iii) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114(l) and (m).

(iv) Anatomical loss or loss of use of one foot with anatomical loss or loss of use of one arm so near the shoulder as to prevent use of a prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(m).

(v) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114(m) and (n).
(vi) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss or loss of use of one hand, shall entitle to the rate between 38 U.S.C. 1114 (l) and (m).
(vii) Anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114 (m) and (n).
(viii) Anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance with anatomical loss or loss of use of one hand shall entitle to the rate under 38 U.S.C. 1114(m).
(ix) Anatomical loss of one leg so near the hip as to prevent use of a prosthetic appliance with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114 (m) and (n).
(x) Anatomical loss or loss of use of one hand with anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place, shall entitle to the rate between 38 U.S.C. 1114 (m) and (n).
(xi) Anatomical loss or loss of use of one arm so near the shoulder as to prevent use of a prosthetic appliance shall entitle to the rate under 38 U.S.C. 1114(n).
(xii) Anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss of one arm so near the shoulder as to prevent use of a prosthetic appliance, shall entitle to the rate between 38 U.S.C. 1114 (n) and (o).
(2) Eyes, bilateral, and blindness in connection with deafness and/or loss or loss of use of a hand or foot.
(i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate between 38 U.S.C. 1114 (l) and (m).
(ii) Blindness of one eye with 5/200 visual acuity or less and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate equal to 38 U.S.C. 1114(m).
(iii) Blindness of one eye having only light perception and anatomical loss of, or blindness having no light perception in the other eye, will entitle to a rate between 38 U.S.C. 1114 (m) and (n).
(iv) Blindness in both eyes with visual acuity of 5/200 or less, or blindness in both eyes rated under subparagraph (2) (i) or (ii) of this paragraph, when accompanied by service-connected total deafness in one ear, will afford entitlement to the next higher intermediate rate of if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).
(v) Blindness in both eyes having only light perception or less, or rated under subparagraph (2)(iii) of this paragraph, when accompanied by bilateral deafness (and the hearing impairment in either one or both ears is service-connected) rated at 10 or 20 percent disabling, will afford entitlement to the next higher intermediate rate, or if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).
(Authority: Sec. 1112, Pub. L. 98-223)

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(vi) Blindness in both eyes rated under 38 U.S.C. 1114 (l), (m) or (n), or rated under subparagraphs (2)(i), (ii) or (iii) of this paragraph, when accompanied by bilateral deafness rated at no less than 30 percent, and the hearing impairment in one or both ears is service-connected, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114, or if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o).
(Authority: 38 U.S.C. 1114(p))

(vii) Blindness in both eyes rated under 38 U.S.C. 1114 (l), (m), or (n), or under the intermediate or next higher rate provisions of this subparagraph, when accompanied by:
(A) Service-connected loss or loss of use of one hand, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or
(B) Service-connected loss or loss of use of one foot which by itself or in combination with another compensable disability would be ratable at 50 percent or more, will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114 or, if the veteran is already entitled to an intermediate rate, to the next higher intermediate rate, but in no event higher than the rate for (o); or
(C) Service-connected loss or loss of use of one foot which is ratable at less than 50 percent and which is the only compensable disability other than bilateral blindness, will afford entitlement to the next higher intermediate rate or, if the veteran is already entitled to an intermediate rate, to the next higher statutory rate under 38 U.S.C. 1114, but in no event higher than the rate for (o).
(Authority: 38 U.S.C. 1114(p))

(3) Additional independent 50 percent disabilities. In addition to the statutory rates payable under 38 U.S.C. 1114 (l) through (n) and the intermediate or next higher rate provisions outlined above, additional single permanent disability or combinations of permanent disabilities independently ratable at 50 percent or more will afford entitlement to the next higher intermediate rate or if already entitled to an intermediate rate to the next higher statutory rate under 38 U.S.C. 1114, but not above the (o) rate. In the application of this subparagraph the disability or disabilities independently ratable at 50 percent or more must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. 1114 (l) through (n) or the intermediate rate provisions outlined above. The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

(4) Additional independent 100 percent ratings. In addition to the statutory rates payable under 38 U.S.C. 1114 (l) through (n) and the intermediate or next higher rate provisions outlined above additional single permanent disability independently ratable at 100 percent apart from any consideration of individual unemployability will afford entitlement to the next higher statutory rate under 38 U.S.C. 1114 or if already entitled to an intermediate rate to the next higher intermediate rate, but in no event higher than the rate for (o). In the application of this subparagraph the single permanent disability independently ratable at 100 percent must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. 1114 (l) through (n) or the intermediate rate provisions outlined above.
(i) Where the multiple loss or loss of use entitlement to a statutory or intermediate rate between 38 U.S.C. 1114 (l) and (o) is caused by the same etiological disease or injury, that disease or injury may not serve as the basis for the independent 50 percent or 100 percent unless it is so rated without regard to the loss or loss of use.
(ii) The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.
(5) Three extremities. Anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities shall entitle a veteran to the next higher rate without regard to whether that rate is a statutory rate or an intermediate rate. The maximum monthly payment under this provision may not exceed the amount stated in 38 U.S.C. 1114(p).

(g) Inactive tuberculosis (complete arrest). The rating criteria for determining inactivity of tuberculosis are set out in § 3.375.
(1) For a veteran who was receiving or entitled to receive compensation for tuberculosis on August 19, 1968, the minimum monthly rate is $ 67. This minimum special monthly compensation is not to be combined with or added to any other disability compensation.
(2) For a veteran who was not receiving or entitled to receive compensation for tuberculosis on August 19, 1968, the special monthly compensation authorized by paragraph (g)(1) of this section is not payable.

(h) Special aid and attendance benefit; 38 U.S.C. 1114(r) -- (1) Maximum compensation cases. A veteran receiving the maximum rate under 38 U.S.C. 1114 (o) or (p) who is in need of regular aid and attendance or a higher level of care is entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) Determination of this need is subject to the criteria of § 3.352. The regular or higher level aid and attendance allowance is payable whether or not the need for regular aid and attendance or a higher level of care was a partial basis for entitlement to the maximum rate under 38 U.S.C. 1114 (o) or (p), or was based on an independent factual determination.
(2) Entitlement to compensation at the intermediate rate between 38 U.S.C. 1114 (n) and (o) plus special monthly compensation under 38 U.S.C. 1114(k). A veteran receiving compensation at the intermediate rate between 38 U.S.C. 1114 (n) and (o) plus special monthly compensation under 38 U.S.C. 1114(k) who establishes a factual need for regular aid and attendance or a higher level of care, is also entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) Determination of the factual need for aid and attendance is subject to the criteria of § 3.352:
(3) Amount of the allowance. The amount of the additional allowance payable to a veteran in need of regular aid and attendance is specified in 38 U.S.C. 1114(r)(1). The amount of the additional allowance payable to a veteran in need of a higher level of care is specified in 38 U.S.C. 1114(r)(2). The higher level aid and attendance allowance authorized by 38 U.S.C. 1114(r)(2) is payable in lieu of the regular aid and attendance allowance authorized by 38 U.S.C. 1114(r)(1).
(i) Total plus 60 percent, or housebound; 38 U.S.C. 1114(s). The special monthly compensation provided by 38 U.S.C. 1114(s) is payable where the veteran has a single service-connected disability rated as 100 percent and,

(1) Has additional service-connected disability or disabilities independently ratable at 60 percent, separate and distinct from the 100 percent service-connected disability and involving different anatomical segments or bodily systems, or

(2) Is permanently housebound by reason of service-connected disability or disabilities. This requirement is met when the veteran is substantially confined as a direct result of service-connected disabilities to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical areas, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime.


§ 3.351 Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings.

(a) General. This section sets forth criteria for determining whether:

(1) Increased pension is payable to a veteran by reason of need for aid and attendance or by reason of being housebound.

(Authority: 38 U.S.C. 1521(d),(e))

(2) Increased compensation is payable to a veteran by reason of the veteran's spouse being in need of aid and attendance.

(Authority: 38 U.S.C. 1115(1)(E))

(3) Increased dependency and indemnity compensation is payable to a surviving spouse or parent by reason of being in need of aid and attendance.

(Authority: 38 U.S.C. 1311(c), 1315(h))

(4) Increased dependency and indemnity compensation is payable to a surviving spouse who is not in need of aid and attendance but is housebound.

(Authority: 38 U.S.C. 1311(d))

(5) Increased pension is payable to a surviving spouse by reason of need for aid and attendance, or if not in need of aid and attendance, by reason of being housebound.

(Authority: 38 U.S.C. 1541(d), (e))

(6) Increased death compensation is payable to a surviving spouse by reason of being in need of aid and attendance.

(Authority: 38 U.S.C. 1122)

(b) Aid and attendance; need. Need for aid and attendance means helplessness or being so nearly helpless as to require the regular aid and attendance of another person. The criteria
set forth in paragraph (c) of this section will be applied in determining whether such need exists.

(c) Aid and attendance; criteria. The veteran, spouse, surviving spouse or parent will be considered in need of regular aid and attendance if he or she:

(1) Is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; or

(2) Is a patient in a nursing home because of mental or physical incapacity; or

(3) Establishes a factual need for aid and attendance under the criteria set forth in §3.352(a).

(Authority: 38 U.S.C. 1502(b))

(d) Housebound, or permanent and total plus 60 percent; disability pension. The rate of pension payable to a veteran who is entitled to pension under 38 U.S.C. 1521 and who is not in need of regular aid and attendance shall be as prescribed in 38 U.S.C. 1521(e) if, in addition to having a single permanent disability rated 100 percent disabling under the Schedule for Rating Disabilities (not including ratings based upon unemployability under §4.17 of this chapter) the veteran:

(1) Has additional disability or disabilities independently ratable at 60 percent or more, separate and distinct from the permanent disability rated as 100 percent disabling and involving different anatomical segments or bodily systems, or

(2) Is "permanently housebound" by reason of disability or disabilities. This requirement is met when the veteran is substantially confined to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical area, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime.

(Authority: 38 U.S.C. 1502(c), 1521(e))

(e) Housebound; dependency and indemnity compensation. The monthly rate of dependency and indemnity compensation payable to a surviving spouse who does not qualify for increased dependency and indemnity compensation under 38 U.S.C. 1311(c) based on need for regular aid and attendance shall be increased by the amount specified in 38 U.S.C. 1311(d) if the surviving spouse is permanently housebound by reason of disability. The "permanently housebound" requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse's lifetime.

(Authority: 38 U.S.C. 1311(d))

(f) Housebound; improved pension; death. The annual rate of death pension payable to a surviving spouse who does not qualify for an annual rate of death pension payable under §3.23(a)(6) based on need for aid and attendance shall be as set forth in §3.23(a)(7) if the surviving spouse is permanently housebound by reason of disability. The "permanently housebound" requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse's lifetime.

[44 FR 45939, Aug. 6, 1979; 59 FR 35851, July 14, 1994]

(38 U.S.C. 1541(e))
§ 3.352 Criteria for determining need for aid and attendance and 'permanently bedridden.'

 xcii Discussion and Analysis in the Veterans Benefits Manual

(a) Basic criteria for regular aid and attendance and permanently bedridden. The following will be accorded consideration in determining the need for regular aid and attendance (§ 3.351(c)(3): inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment. "Bedridden" will be a proper basis for the determination. For the purpose of this paragraph "bedridden" will be that condition which, through its essential character, actually requires that the claimant remain in bed. The fact that claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice. It is not required that all of the disabling conditions enumerated in this paragraph be found to exist before a favorable rating may be made. The particular personal functions which the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need. Determinations that the veteran is so helpless, as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant's condition is such as would require him or her to be in bed. They must be based on the actual requirement of personal assistance from others.

(b) Basic criteria for the higher level aid and attendance allowance. (1) A veteran is entitled to the higher level aid and attendance allowance authorized by § 3.350(h) in lieu of the regular aid and attendance allowance when all of the following conditions are met:

(i) The veteran is entitled to the compensation authorized under 38 U.S.C. 1114(o), or the maximum rate of compensation authorized under 38 U.S.C. 1114(p).

(ii) The veteran meets the requirements for entitlement to the regular aid and attendance allowance in paragraph (a) of this section.

(iii) The veteran needs a "higher level of care" (as defined in paragraph (b)(2) of this section) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care the veteran would require hospitalization, nursing home care, or other residential institutional care.

(iv) [Removed. See 60 FR 27409, May 24, 1995.]

(2) Need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. Personal health-care services include (but are not limited to) such services as physical therapy, administration of injections, placement of indwelling catheters, and the changing of sterile dressings, or like functions which require professional health-care training or the regular supervision of a trained health-care
professional to perform. A licensed health-care professional includes (but is not limited to) a doctor of medicine or osteopathy, a registered nurse, a licensed practical nurse, or a physical therapist licensed to practice by a State or political subdivision thereof.

(3) The term "under the regular supervision of a licensed health-care professional", as used in paragraph (b)(2) of this section, means that an unlicensed person performing personal health-care services is following a regimen of personal health-care services prescribed by a health-care professional, and that the health-care professional consults with the unlicensed person providing the health-care services at least once each month to monitor the prescribed regimen. The consultation need not be in person; a telephone call will suffice.

(4) A person performing personal health-care services who is a relative or other member of the veteran's household is not exempted from the requirement that he or she be a licensed health-care professional or be providing such care under the regular supervision of a licensed health-care professional.

(5) The provisions of paragraph (b) of this section are to be strictly construed. The higher level aid-and-attendance allowance is to be granted only when the veteran's need is clearly established and the amount of services required by the veteran on a daily basis is substantial.

(Authority: 38 U.S.C. 501, 1114(R)(2))

(c) Attendance by relative. The performance of the necessary aid and attendance service by a relative of the beneficiary or other member of his or her household will not prevent the granting of the additional allowance.


§ 3.353 Determinations of incompetency and competency.

(a) Definition of mental incompetency. A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

(b) Authority. (1) Rating agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance (38 U.S.C. 1922), and, subject to § 13.56 of this chapter, disbursement of benefits. Such determinations are final and binding on field stations for these purposes.

(2) Where the beneficiary is rated incompetent, the Veterans Service Center Manager will develop information as to the beneficiary's social, economic and industrial adjustment; appoint (or recommend appointment of) a fiduciary as provided in § 13.55 of this chapter; select a method of disbursing payment as provided in § 13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in § 13.57 of this chapter; and authorize disbursement of the benefit.

(3) If in the course of fulfilling the responsibilities assigned in paragraph (b)(2) the Veterans Service Center Manager develops evidence indicating that the beneficiary may be capable of administering the funds payable without limitation, he or she will refer that
evidence to the rating agency with a statement as to his or her findings. The rating agency will consider this evidence, together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect. Reexamination may be requested as provided in § 3.327(a) if necessary to properly evaluate the beneficiary's mental capacity to contract or manage his or her own affairs.

(c) Medical opinion. Unless the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency, the rating agency will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities. Considerations of medical opinions will be in accordance with the principles in paragraph (a) of this section. Determinations relative to incompetency should be based upon all evidence of record and there should be a consistent relationship between the percentage of disability, facts relating to commitment or hospitalization and the holding of incompetency.

(d) Presumption in favor of competency. Where reasonable doubt arises regarding a beneficiary's mental capacity to contract or to manage his or her own affairs, including the disbursement of funds without limitation, such doubt will be resolved in favor of competency (see § 3.102 on reasonable doubt).

(e) Due process. Whenever it is proposed to make an incompetency determination, the beneficiary will be notified of the proposed action and of the right to a hearing as provided in § 3.103. Such notice is not necessary if the beneficiary has been declared incompetent by a court of competent jurisdiction or if a guardian has been appointed for the beneficiary based upon a court finding of incompetency. If a hearing is requested it must be held prior to a rating decision of incompetency. Failure or refusal of the beneficiary after proper notice to request or cooperate in such a hearing will not preclude a rating decision based on the evidence of record.


(38 U.S.C. 501(a))


§ 3.354 Determinations of insanity.

(a) Definition of insanity. An insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.

(b) Insanity causing discharge. When a rating agency is concerned with determining whether a veteran was insane at the time he committed an offense leading to his court-martial, discharge or resignation (38 U.S.C. 5303(b)), it will base its decision on all
§ 3.355 Testamentary capacity for insurance purposes.

When cases are referred to a rating agency involving the testamentary capacity of the insured to execute designations or changes of beneficiary, or designations or changes of option, the following considerations will apply:

(a) Testamentary capacity is that degree of mental capacity necessary to enable a person to perform a testamentary act. This, in general, requires that the testator reasonably comprehend the nature and significance of his act, that is, the subject and extent of his disposition, recognition of the object of his bounty, and appreciation of the consequence of his act, uninfluenced by any material delusion as to the property or persons involved.

(b) Due consideration should be given to all facts of record, with emphasis being placed on those facts bearing upon the mental condition of the testator (insured) at the time or nearest the time he executed the designation or change. In this connection, consideration should be given to lay as well as medical evidence.

(c) Lack of testamentary capacity should not be confused with insanity or mental incompetence. An insane person might have a lucid interval during which he would possess testamentary capacity. On the other hand, a sane person might suffer a temporary mental aberration during which he would not possess testamentary capacity. There is a general but rebuttable presumption that every testator possesses testamentary capacity. Therefore, reasonable doubts should be resolved in favor of testamentary capacity.

[26 FR 1590, Feb. 24, 1961]

§ 3.356 Conditions which determine permanent incapacity for self-support.

(a) Basic determinations. A child must be shown to be permanently incapable of self-support by reason of mental or physical defect at the date of attaining the age of 18 years.

(b) Rating criteria. Rating determinations will be made solely on the basis of whether the child is permanently incapable of self-support through his own efforts by reason of physical or mental defects. The question of permanent incapacity for self-support is one of fact for determination by the rating agency on competent evidence of record in the individual case. Rating criteria applicable to disabled veterans are not controlling. Principal factors for consideration are:

(1) The fact that a claimant is earning his or her own support is prima facie evidence that he or she is not incapable of self-support. Incapacity for self-support will not be considered to exist when the child by his or her own efforts is provided with sufficient income for his or her reasonable support.

(2) A child shown by proper evidence to have been permanently incapable of self-support prior to the date of attaining the age of 18 years, may be so held at a later date even though there may have been a short intervening period or periods when his or her
condition was such that he or she was employed, provided the cause of incapacity is the same as that upon which the original determination was made and there were no intervening diseases or injuries that could be considered as major factors. Employment which was only casual, intermittent, tryout, unsuccessful, or terminated after a short period by reason of disability, should not be considered as rebutting permanent incapability of self-support otherwise established.

(3) It should be borne in mind that employment of a child prior or subsequent to the delimiting age may or may not be a normal situation, depending on the educational progress of the child, the economic situation of the family, indulgent attitude of parents, and the like. In those cases where the extent and nature of disability raises some doubt as to whether they would render the average person incapable of self-support, factors other than employment are for consideration. In such cases there should be considered whether the daily activities of the child in the home and community are equivalent to the activities of employment of any nature within the physical or mental capacity of the child which would provide sufficient income for reasonable support. Lack of employment of the child either prior to the delimiting age or thereafter should not be considered as a major factor in the determination to be made, unless it is shown that it was due to physical or mental defect and not to mere disinclination to work or indulgence of relatives or friends.

(4) The capacity of a child for self-support is not determinable upon employment afforded solely upon sympathetic or charitable considerations and which involved no actual or substantial rendition of services.


CROSS REFERENCES: Basic pension and eligibility determinations. See § 3.314.

§ 3.357 Civil service preference ratings.
For the purpose of certifying civil service disability preference only, a service-connected disability may be assigned an evaluation of "less than ten percent." Any directly or presumptively service-connected disease or injury which exhibits some extent of actual impairment may be held to exist at the level of less than ten percent. For disabilities incurred in combat, however, no actual impairment is required.


§ 3.358 Compensation for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).
Disc. Analysis in the Veterans Benefits Manual
(a) General. This section applies to claims received by VA before October 1, 1997. If it is determined that there is additional disability resulting from a disease or injury or aggravation of an existing disease or injury suffered as a result of hospitalization, medical or surgical treatment, examination, or vocational rehabilitation training, compensation will be payable for such additional disability. For claims received by VA on or after October 1, 1997, see Sec. 3.361
(b) Additional disability. In determining that additional disability exists, the following considerations will govern:

(Authority: 38 U.S.C. 1151)

1. The veteran's physical condition immediately prior to the disease or injury on which the claim for compensation is based will be compared with the subsequent physical condition resulting from the disease or injury, each body part involved being considered separately.

   (i) As applied to examinations, the physical condition prior to the disease or injury will be the condition at time of beginning the physical examination as a result of which the disease or injury was sustained.

   (ii) As applied to medical or surgical treatment, the physical condition prior to the disease or injury will be the condition which the specific medical or surgical treatment was designed to relieve.

2. Compensation will not be payable under this section for the continuance or natural progress of a disease or injury for which the hospitalization, medical or surgical treatment, or examination was furnished, unless VA's failure to exercise reasonable skill and care in the diagnosis or treatment of the disease or injury caused additional disability or death that probably would have been prevented by proper diagnosis or treatment. Compensation will not be payable under this section for the continuance or natural progress of a disease or injury for which vocational rehabilitation training was provided.

(c) Cause. In determining whether such additional disability resulted from a disease or an injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, the following considerations will govern:

1. It will be necessary to show that the additional disability is actually the result of such disease or injury or an aggravation of an existing disease or injury and not merely coincidental therewith.

2. The mere fact that aggravation occurred will not suffice to make the additional disability compensable in the absence of proof that it resulted from disease or injury or an aggravation of an existing disease or injury suffered as the result of training, hospitalization, medical or surgical treatment, or examination.

3. Compensation is not payable for the necessary consequences of medical or surgical treatment or examination properly administered with the express or implied consent of the veteran, or, in appropriate cases, the veteran's representative. "Necessary consequences" are those which are certain to result from, or were intended to result from, the examination or medical or surgical treatment administered. Consequences otherwise certain or intended to result from a treatment will not be considered uncertain or unintended solely because it had not been determined at the time consent was given whether that treatment would in fact be administered.

4. When the proximate cause of the injury suffered was the veteran's willful misconduct or failure to follow instructions, it will bar him (or her) from receipt of compensation hereunder except in the case of incompetent veterans.

5. Compensation for disability resulting from the pursuit of vocational rehabilitation is not payable unless there is established a direct (proximate) causal connection between the injury or aggravation of an existing injury and some essential activity or function which
is within the scope of the vocational rehabilitation course, not necessarily limited to activities or functions specifically designated by the Department of Veterans Affairs in the individual case, since ordinarily it is not to be expected that each and every different function and act of a veteran pursuant to his or her course of training will be particularly specified in the outline of the course or training program. For example, a disability resulting from the use of an item of mechanical or other equipment is within the purview of the statute if training in its use is implicit within the prescribed program or course outlined or if its use is implicit in the performance of some task or operation the trainee must learn to perform, although such use may not be especially mentioned in the training program. In determining whether the element of direct or proximate causation is present, it remains necessary for a distinction to be made between an injury arising out of an act performed in pursuance of the course of training, that is, a required "learning activity", and one arising out of an activity which is incident to, related to, or coexistent with the pursuit of the program of training. For a case to fall within the statute there must have been sustained an injury which, but for the performance of a "learning activity" in the prescribed course of training, would not have been sustained. A meticulous examination into all the circumstances is required, including a consideration of the time and place of the incident producing the injury.

(6) Nursing home care furnished under section 1720 of title 38, United States Code is not hospitalization within the meaning of this section. Such a nursing home is an independent contractor and, accordingly, its agents and employees are not to be deemed agents and employees of the Department of Veterans Affairs. If additional disability results from medical or surgical treatment or examination through negligence or other wrongful acts or omissions on the part of such a nursing home, its employees, or its agents, entitlement does not exist under this section unless there was an act or omission on the part of the Department of Veterans Affairs independently giving rise to such entitlement and such acts on the part of both proximately caused the additional disability.

(Authority: 38 U.S.C. 1151, 1720.)


§ 3.359 Determination of service connection for former members of the Armed Forces of Czechoslovakia or Poland.

Rating boards will determine whether or not the condition for which treatment is claimed by former members of the Armed Forces of Czechoslovakia or Poland under 38 U.S.C. 109(c) is service connected. This determination will be made using the same criteria that applies to determinations of service connection based on service in the Armed Forces of the United States.

[43 FR 4424, Feb. 2, 1978]
§ 3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable condition.

xcviii Discussion and Analysis in the Veterans Benefits Manual

(a) General. The health-care and related benefits authorized by chapter 17 of title 38 U.S.C. shall be provided to certain former service persons with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty.

(b) Discharge categorization. With certain exceptions such benefits shall be furnished for any disability incurred or aggravated during a period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in § 3.12(c) applies.

(c) Eligibility criteria. In making determinations of health-care eligibility the same criteria will be used as is now applicable to determinations of service incurrence and in line of duty when there is no character of discharge bar.

[43 FR 15154, Apr. 11, 1978]


§ 3.361 Benefits under 38 U.S.C. 1151(a) for additional disability or death due to hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy program.

xcviii Discussion and Analysis in the Veterans Benefits Manual

(a) Claims subject to this section--(1) General. Except as provided in paragraph (2), this section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors. The effective date of benefits is subject to the provisions of § 3.400(i). For claims received by VA before October 1, 1997, see § 3.358.

(2) Compensated Work Therapy. With respect to claims alleging disability or death due to compensated work therapy, this section applies to claims that were pending before VA on November 1, 2000, or that were received by VA after that date. The effective date of benefits is subject to the provisions of §§3.114(a) and 3.400(i), and shall not be earlier than November 1, 2000.

(b) Determining whether a veteran has an additional disability. To determine whether a veteran has an additional disability, VA compares the veteran's condition immediately before the beginning of the hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program upon which the claim is based to the veteran's condition after such care, treatment, examination, services, or program has stopped. VA considers each involved body part or system separately.

(c) Establishing the cause of additional disability or death. Claims based on additional disability or death due to hospital care, medical or surgical treatment, or examination must meet the causation requirements of this paragraph and paragraph (d)(1) or (d)(2) of this section. Claims based on additional disability or death due to training and
rehabilitation services or compensated work therapy program must meet the causation requirements of paragraph (d)(3) of this section.
(1) Actual causation required. To establish causation, the evidence must show that the hospital care, medical or surgical treatment, or examination resulted in the veteran's additional disability or death. Merely showing that a veteran received care, treatment, or examination and that the veteran has an additional disability or died does not establish cause.
(2) Continuance or natural progress of a disease or injury. Hospital care, medical or surgical treatment, or examination cannot cause the continuance or natural progress of a disease or injury for which the care, treatment, or examination was furnished unless VA's failure to timely diagnose and properly treat the disease or injury proximately caused the continuance or natural progress. The provision of training and rehabilitation services or CWT program cannot cause the continuance or natural progress of a disease or injury for which the services were provided.
(3) Veteran's failure to follow medical instructions. Additional disability or death caused by a veteran's failure to follow properly given medical instructions is not caused by hospital care, medical or surgical treatment, or examination.
(d) Establishing the proximate cause of additional disability or death. The proximate cause of disability or death is the action or event that directly caused the disability or death, as distinguished from a remote contributing cause.
(1) Care, treatment, or examination. To establish that carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on VA's part in furnishing hospital care, medical or surgical treatment, or examination proximately caused a veteran's additional disability or death, it must be shown that the hospital care, medical or surgical treatment, or examination caused the veteran's additional disability or death (as explained in paragraph (c) of this section); and
(i) VA failed to exercise the degree of care that would be expected of a reasonable health care provider; or
(ii) VA furnished the hospital care, medical or surgical treatment, or examination without the veteran's or, in appropriate cases, the veteran's representative's informed consent. To determine whether there was informed consent, VA will consider whether the health care providers substantially complied with the requirements of § 17.32 of this chapter. Minor deviations from the requirements of § 17.32 of this chapter that are immaterial under the circumstances of a case will not defeat a finding of informed consent. Consent may be express (i.e., given orally or in writing) or implied under the circumstances specified in § 17.32(b) of this chapter, as in emergency situations.
(2) Events not reasonably foreseeable. Whether the proximate cause of a veteran's additional disability or death was an event not reasonably foreseeable is in each claim to be determined based on what a reasonable health care provider would have foreseen. The event need not be completely unforeseeable or unimaginable but must be one that a reasonable health care provider would not have considered to be an ordinary risk of the treatment provided. In determining whether an event was reasonably foreseeable, VA will consider whether the risk of that event was the type of risk that a reasonable health care provider would have disclosed in connection with the informed consent procedures of § 17.32 of this chapter.
(3) Training and rehabilitation services or compensated work therapy program. To establish that the provision of training and rehabilitation services or a CWT program proximately caused a veteran's additional disability or death, it must be shown that the veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the disability or death. The veteran must have been participating in such training, services, or CWT program provided or authorized by VA as part of an approved rehabilitation program under 38 U.S.C. chapter 31 or as part of a CWT program under 38 U.S.C. 1718. It need not be shown that VA approved that specific activity or function, as long as the activity or function is generally accepted as being a necessary component of the training, services, or CWT program that VA provided or authorized.

(e) Department employees and facilities. (1) A Department employee is an individual--
(i) Who is appointed by the Department in the civil service under title 38, United States Code, or title 5, United States Code, as an employee as defined in 5 U.S.C. 2105;
(ii) Who is engaged in furnishing hospital care, medical or surgical treatment, or examinations under authority of law; and
(iii) Whose day-to-day activities are subject to supervision by the Secretary of Veterans Affairs.

(2) A Department facility is a facility over which the Secretary of Veterans Affairs has direct jurisdiction.

(f) Activities that are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility. The following are not hospital care, medical or surgical treatment, or examination furnished by a Department employee or in a Department facility within the meaning of 38 U.S.C. 1151(a):

(1) Hospital care or medical services furnished under a contract made under 38 U.S.C. 1703.

(2) Nursing home care furnished under 38 U.S.C. 1720.

(3) Hospital care or medical services, including examination, provided under 38 U.S.C. 8153 in a facility over which the Secretary does not have direct jurisdiction.

(g) Benefits payable under 38 U.S.C. 1151 for a veteran's death.

(1) Death before January 1, 1957. The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring before January 1, 1957, is death compensation. See §§3.5(b)(2) and 3.702 for the right to elect dependency and indemnity compensation.

(2) Death after December 31, 1956. The benefit payable under 38 U.S.C. 1151(a) to an eligible survivor for a veteran's death occurring after December 31, 1956, is dependency and indemnity compensation.

[69 FR 46426, Aug. 3, 2004]

(Authority: 38 U.S.C. 1151)

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

(a) Claims subject to this section. This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.
(b) Offset of veterans' awards of compensation. If a veteran's disability is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any compensation awarded under 38 U.S.C. 1151(a) is the entire amount of the veteran's share of the judgment, settlement, or compromise, including the veteran's proportional share of attorney fees.

(c) Offset of survivors' awards of dependency and indemnity compensation. If a veteran's death is the basis of a judgment under 28 U.S.C. 1346(b) awarded, or a settlement or compromise under 28 U.S.C. 2672 or 2677 entered, on or after December 1, 1962, the amount to be offset under 38 U.S.C. 1151(b) from any dependency and indemnity compensation awarded under 38 U.S.C. 1151(a) to a survivor is only the amount of the judgment, settlement, or compromise representing damages for the veteran's death the survivor receives in an individual capacity or as distribution from the decedent veteran's estate of sums included in the judgment, settlement, or compromise to compensate for harm suffered by the survivor, plus the survivor's proportional share of attorney fees.

(d) Offset of structured settlements. This paragraph applies if a veteran's disability or death is the basis of a structured settlement or structured compromise under 28 U.S.C. 2672 or 2677 entered on or after December 1, 1962.

(1) The amount to be offset. The amount to be offset under 38 U.S.C. 1151(b) from benefits awarded under 38 U.S.C. 1151(a) is the veteran's or survivor's proportional share of the cost to the United States of the settlement or compromise, including the veteran's or survivor's proportional share of attorney fees.

(2) When the offset begins. The offset of benefits awarded under 38 U.S.C. 1151(a) begins the first month after the structured settlement or structured compromise has become final that such benefits would otherwise be paid.

(Authority: 38 U.S.C. 1151)

(e) Offset of award of benefits under 38 U.S.C. chapter 39. (1) If a judgment, settlement, or compromise covered in paragraphs (b) through (d) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(2) If the amount described in paragraph (e)(1) of this section is greater than the amount of an award under 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

[69 FR 46426, Aug. 3, 2004; 71 FR 44915, August 8, 2006]

§ 3.363 Bar to benefits under 38 U.S.C. 1151.

(a) Claims subject to this section. This section applies to claims received by VA on or after October 1, 1997. This includes original claims and claims to reopen or otherwise readjudicate a previous claim for benefits under 38 U.S.C. 1151 or its predecessors.
(b) Administrative award, compromises, or settlements, or judgments that bar benefits under 38 U.S.C. 1151. If a veteran's disability or death was the basis of an administrative award under 28 U.S.C. 1346(b) made, or a settlement or compromise under 28 U.S.C. 2672 or 2677 finalized, before December 1, 1962, VA may not award benefits under 38 U.S.C. 1151 for any period after such award, settlement, or compromise was made or became final. If a veteran's disability or death was the basis of a judgment that became final before December 1, 1962, VA may award benefits under 38 U.S.C. 1151 for the disability or death unless the terms of the judgment provide otherwise.

(Authority: 38 U.S.C. 1151)

[69 FR 46426, Aug. 3, 2004]
§ 3.370 Pulmonary tuberculosis shown by X-ray in active service.

(a) Active disease. X-ray evidence alone may be adequate for grant of direct service connection for pulmonary tuberculosis. When under consideration, all available service department films and subsequent films will be secured and read by specialists at designated stations who should have a current examination report and X-ray. Resulting interpretations of service films will be accorded the same consideration for service-connection purposes as if clinically established, however, a compensable rating will not be assigned prior to establishment of an active condition by approved methods.

(b) Inactive disease. Where the veteran was examined at time of entrance into active service but X-ray was not made, or if made, is not available and there was no notation or other evidence of active or inactive reinfection type pulmonary tuberculosis existing prior to such entrance, it will be assumed that the condition occurred during service and direct service connection will be in order for inactive pulmonary tuberculosis shown by X-ray evidence during service in the manner prescribed in paragraph (a) of this section, unless lesions are first shown so soon after entry on active service as to compel the conclusion, on the basis of sound medical principles, that they existed prior to entry on active service.

(c) Primary lesions. Healed primary type tuberculosis shown at the time of entrance into active service will not be taken as evidence to rebut direct or presumptive service connection for active reinfection type pulmonary tuberculosis.


§ 3.371 Presumptive service connection for tuberculous disease; wartime and service on or after January 1, 1947.

(a) Pulmonary tuberculosis. (1) Evidence of activity on comparative study of X-ray films showing pulmonary tuberculosis within the 3-year presumptive period provided by §
3.307(a)(3) will be taken as establishing service connection for active pulmonary tuberculosis subsequently diagnosed by approved methods but service connection and evaluation may be assigned only from the date of such diagnosis or other evidence of clinical activity.

(2) A notation of inactive tuberculosis of the reinfection type at induction or enlistment definitely prevents the grant of service connection under § 3.307 for active tuberculosis, regardless of the fact that it was shown within the appropriate presumptive period.

(b) Pleurisy with effusion without obvious cause. Pleurisy with effusion with evidence of diagnostic studies ruling out obvious nontuberculous causes will qualify as active tuberculosis. The requirements for presumptive service connection will be the same as those for tuberculous pleurisy.

(c) Tuberculous pleurisy and endobronchial tuberculosis. Tuberculous pleurisy and endobronchial tuberculosis fall within the category of pulmonary tuberculosis for the purpose of service connection on a presumptive basis. Either will be held incurred in service when initially manifested within 36 months after the veteran's separation from service as determined under § 3.307(a)(2).

(d) Miliary tuberculosis. Service connection for miliary tuberculosis involving the lungs is to be determined in the same manner as for other active pulmonary tuberculosis.


§ 3.372 Initial grant following inactivity of tuberculosis.

When service connection is granted initially on an original or reopened claim for pulmonary or nonpulmonary tuberculosis and there is satisfactory evidence that the condition was active previously but is now inactive (arrested), it will be presumed that the disease continued to be active for 1 year after the last date of established activity, provided there is no evidence to establish activity or inactivity in the intervening period. For a veteran entitled to receive compensation on August 19, 1968, the beginning date of graduated ratings will commence at the end of the 1-year period. For a veteran who was not receiving or entitled to receive compensation on August 19, 1968, ratings will be assigned in accordance with the Schedule for Rating Disabilities (part 4 of this chapter). This section is not applicable to running award cases.

[33 FR 16275, Nov. 6, 1968]


§ 3.373 [Reserved]

§ 3.374 Effect of diagnosis of active tuberculosis.

(a) Service diagnosis. Service department diagnosis of active pulmonary tuberculosis will be accepted unless a board of medical examiners, Clinic Director or Chief, Outpatient Service certifies, after considering all the evidence, including the favoring or opposing tuberculosis and activity, that such diagnosis was incorrect. Doubtful cases may be referred to the Chief Medical Director in Central Office.
(b) Department of Veterans Affairs diagnosis. Diagnosis of active pulmonary tuberculosis by the medical authorities of the Department of Veterans Affairs as the result of examination, observation, or treatment will be accepted for rating purposes. Reference to the Clinic Director or Chief, Outpatient Service, will be in order in questionable cases and, if necessary, to the Chief Medical Director in Central Office.

(c) Private physician's diagnosis. Diagnosis of active pulmonary tuberculosis by private physicians on the basis of their examination, observation or treatment will not be accepted to show the disease was initially manifested after discharge from active service unless confirmed by acceptable clinical, X-ray or laboratory studies, or by findings of active tuberculosis based upon acceptable hospital observation or treatment.


§ 3.375 Determination of inactivity (complete arrest) in tuberculosis.

(a) Pulmonary tuberculosis. A veteran shown to have had pulmonary tuberculosis will be held to have reached a condition of "complete arrest" when a diagnosis of inactive is made.

(b) Nonpulmonary disease. Determination of complete arrest of nonpulmonary tuberculosis requires absence of evidence of activity for 6 months. If there are two or more foci of such tuberculosis, one of which is active, the condition will not be considered to be inactive until the tuberculous process has reached arrest in its entirety.

(c) Arrest following surgery. Where there has been surgical excision of the lesion or organ, the date of complete arrest will be the date of discharge from the hospital, or 6 months from the date of excision, whichever is later.


§§ 3.376 -- 3.377 [Reserved]

§ 3.378 Changes from activity in pulmonary tuberculosis pension cases.

A permanent and total disability rating in effect during hospitalization will not be discontinued before hospital discharge on the basis of a change in classification from active. At hospital discharge, the permanent and total rating will be discontinued unless

(a) the medical evidence does not support a finding of complete arrest (§ 3.375), or

(b) where complete arrest is shown but the medical authorities recommend that employment not be resumed or be resumed only for short hours (not more than 4 hours a day for a 5-day week). If either of the two aforementioned conditions is met, discontinuance will be deferred pending examination in 6 months. Although complete arrest may be established upon that examination, the permanent and total rating may be extended for a further period of 6 months provided the veteran's employment is limited to short hours as recommended by the medical authorities (not more than 4 hours a day for a 5-day week). Similar extensions may be granted under the same conditions at the end of 12 and 18 months periods. At the expiration of 24 months after hospitalization, the case will be considered under § 3.321(b) if continued short hours of employment is recommended or if other evidence warrants submission.
§ 3.379 Anterior poliomyelitis.
If the first manifestations of acute anterior poliomyelitis present themselves in a veteran within 35 days of termination of active military service, it is probable that the infection occurred during service. If they first appear after this period, it is probable that the infection was incurred after service.

[26 FR 1592, Feb. 24, 1961]

§ 3.380 Diseases of allergic etiology.
Diseases of allergic etiology, including bronchial asthma and urticaria, may not be disposed of routinely for compensation purposes as constitutional or developmental abnormalities. Service connection must be determined on the evidence as to existence prior to enlistment and, if so existent, a comparative study must be made of its severity at enlistment and subsequently. Increase in the degree of disability during service may not be disposed of routinely as natural progress nor as due to the inherent nature of the disease. Seasonal and other acute allergic manifestations subsiding on the absence of or removal of the allergen are generally to be regarded as acute diseases, healing without residuals. The determination as to service incurrence or aggravation must be on the whole evidentiary showing.

[26 FR 1592, Feb. 24, 1961]

§ 3.381 Service connection of dental conditions for treatment purposes.
(a) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease will be considered service-connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided in § 17.161 of this chapter.
(b) The rating activity will consider each defective or missing tooth and each disease of the teeth and periodontal tissues separately to determine whether the condition was incurred or aggravated in line of duty during active service. When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the veteran was interned as a prisoner of war.
(c) In determining service connection, the condition of teeth and periodontal tissues at the time of entry into active duty will be considered. Treatment during service, including filling or extraction of a tooth, or placement of a prosthesis, will not be considered evidence of aggravation of a condition that was noted at entry, unless additional pathology developed after 180 days or more of active service.
(d) The following principles apply to dental conditions noted at entry and treated during service:
(1) Teeth noted as normal at entry will be service-connected if they were filled or extracted after 180 days or more of active service.
(2) Teeth noted as filled at entry will be service-connected if they were extracted, or if the existing filling was replaced, after 180 days or more of active service.
(3) Teeth noted as carious but restorable at entry will not be service-connected on the basis that they were filled during service. However, new caries that developed 180 days or more after such a tooth was filled will be service-connected.
(4) Teeth noted as carious but restorable at entry, whether or not filled, will be service-connected if extraction was required after 180 days or more of active service.
(5) Teeth noted at entry as non-restorable will not be service-connected, regardless of treatment during service.
(6) Teeth noted as missing at entry will not be service connected, regardless of treatment during service.
(e) The following will not be considered service-connected for treatment purposes:
(1) Calculus;
(2) Acute periodontal disease;
(3) Third molars, unless disease or pathology of the tooth developed after 180 days or more of active service, or was due to combat or in-service trauma; and
(4) Impacted or malposed teeth, and other developmental defects, unless disease or pathology of these teeth developed after 180 days or more of active service.
(f) Teeth extracted because of chronic periodontal disease will be service-connected only if they were extracted after 180 days or more of active service.

[26 FR 1592, Feb. 24, 1961; 64 FR 30392, 30393, June 8, 1999]

(38 U.S.C. 1712)

[EFFECTIVE DATE NOTE: 64 FR 30392, 30393, June 8, 1999, revised this section, effective June 8, 1999.]

§ 3.382 [Reserved]

§ 3.383 Special consideration for paired organs and extremities.

(a) Entitlement criteria. Compensation is payable for the combinations of service-connected and nonservice-connected disabilities specified in paragraphs (a)(1) through (a)(5) of this section as if both disabilities were service-connected, provided the nonservice-connected disability is not the result of the veteran's own willful misconduct.
(1) Blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of nonservice-connected disability.
(2) Loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of nonservice-connected disability.
(3) Hearing impairment in one ear compensable to a degree of 10 percent or more as a result of service-connected disability and hearing impairment as a result of nonservice-connected disability that meets the provisions of § 3.385 in the other ear.
(4) Loss or loss of use of one hand or one foot as a result of service-connected disability and loss or loss of use of the other hand or foot as a result of nonservice-connected disability.
(5) Permanent service-connected disability of one lung, rated 50 percent or more disabling, in combination with a nonservice-connected disability of the other lung.
(b) Effect of judgment or settlement. (1) If a veteran receives any money or property of value pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the nonservice-connected disability which established entitlement under this section, the increased compensation payable by reason of this section shall not be paid for any month following the month in which any such money or property is received until such time as the total amount of such increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received. The provisions of this paragraph do not apply, however, to any portion of such increased compensation payable for any period preceding the end of the month in which such money or property of value was received.

(2) With respect to the disability combinations specified in paragraphs (a)(1), (a)(2), (a)(3) and (a)(5) of this section, the provisions of this paragraph apply only to awards of increased compensation made on or after October 28, 1986.

(c) Social security and workers' compensation. Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) Veteran's duty to report. Any person entitled to increased compensation under this section shall promptly report to VA the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the nonservice-connected loss or loss of use of the impaired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorneys' fees, may not be deducted from the amount to be reported.

(Authority 38 U.S.C. 501(a), 1160(a)(3))

[53 FR 23236, June 21, 1988; 69 FR 48148, Aug. 9, 2004]

CROSS-REFERENCES: § 3.385 Disability due to impaired hearing; § 4.85 Evaluation of hearing impairment.

§ 3.384 Psychosis

For purposes of this part, the term "psychosis" means any of the following disorders listed in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, of the American Psychiatric Association (DSM-IV-TR):

(a) Brief Psychotic Disorder;
(b) Delusional Disorder;
(c) Psychotic Disorder Due to General Medical Condition;
(d) Psychotic Disorder Not Otherwise Specified;
(e) Schizoaffective Disorder;
(f) Schizophrenia;
(g) Schizophreniform Disorder;
(h) Shared Psychotic Disorder; and
(i) Substance-Induced Psychotic Disorder.

[71 FR 42758, July 28, 2006]

38 U.S.C. 501(a), 1101, 1112(a) and (b).
§ 3.385 Disability due to impaired hearing.

For the purposes of applying the laws administered by VA, impaired hearing will be considered to be a disability when the auditory threshold in any of the frequencies 500, 1000, 2000, 3000, 4000 Hertz is 40 decibels or greater; or when the auditory thresholds for at least three of the frequencies 500, 1000, 2000, 3000, or 4000 Hertz are 26 decibels or greater; or when speech recognition scores using the Maryland CNC Test are less than 94 percent.


EFFECTIVE DATES

§ 3.400 General.
§ 3.401 Veterans.
§ 3.402 Surviving spouse.
§ 3.403 Children.
§ 3.404 Parents.
§ 3.405 Filipino veterans and their survivors; benefits at the full-dollar rate.

§ 3.400 General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later.

(Authority: 38 U.S.C. 5110(a))

(a) Unless specifically provided. On basis of facts found.
(b) Disability benefits -- (1) Disability pension (§ 3.3). An award of disability pension may not be effective prior to the date entitlement arose.
(i) Claims received prior to October 1, 1984. Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.
(ii) Claims received on or after October 1, 1984. (A) Except as provided in paragraph (b)(1)(ii)(B) of this section, date of receipt of claim.
(B) If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of this subparagraph, the presumptive provisions of § 3.342(a) do not apply.
(2) Disability compensation -- (i) Direct service connection (§ T33.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.
(ii) Presumptive service connection (§§ 3.307, 3.308, 3.309). Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation.
from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

(c) Death benefits -- (1) Death in service (38 U.S.C. 5110(j), Pub. L. 87-825) (§§ 3.4(c), 3.5(b)). First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received with 1 year after the date the initial report of actual death or finding of presumed death was made; however benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) Service-connected death after separation from service (38 U.S.C. 5110(d), Pub. L. 87-825) (§§ 3.4(c), 3.5(b)). First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(3) Nonservice-connected death after separation from service. (i) For awards based on claims received prior to October 1, 1984, or on or after December 10, 2004, first day of the month in which the veteran's death occurred if claim is received within one year after the date of death; otherwise, date of receipt of claim.

(ii) For awards based on claims received between October 1, 1984, and December 9, 2004, first day of the month in which the veteran's death occurred if claim is received within 45 days after the date of death; otherwise, date of receipt of claim.

(Authority: 38 U.S.C. 5110(d))

(4) Dependency and indemnity compensation -- (i) Deaths prior to January 1, 1957 (§ 3.702). Date of receipt of election.

(ii) Child (38 U.S.C. 5110(e), Pub. L. 87-835). First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.

(iii) Deaths on or after May 1, 1957 (in-service waiver cases) (§§ 3.5(b)(3) and 3.702). Date of receipt of election. (See § 3.114(a)).

(d) [Reserved]

(e) Apportionment (§§ 3.450 through 3.461, 3.551). On original claims, in accordance with the facts found. On other than original claims from the first day of the month following the month in which:

(1) Claim is received for apportionment of a veteran's award, except that where payments to him (her) have been interrupted, apportionment will be effective the day following date of last payment if a claim for apportionment is received within 1 year after that date;

(2) Notice is received that a child included in the surviving spouse's award is not in the surviving spouse's custody, except that where payments to the surviving spouse have been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date.

(f) Federal employees' compensation cases (§ 3.708). Date authorized by applicable law, subject to any payments made by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act over the same period of time.

(g) Correction of military records (38 U.S.C. 5110(i); Pub. L. 87-825). Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a Board established under 10 U.S.C. 1552 or 1553, or because of other corrective action by competent military naval, or air authority, the award will be effective from the latest of these dates:
(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;
(2) Date of receipt of claim if claim was disallowed; or
(3) One year prior to date of reopening of disallowed claim.
(h) Difference of opinion (§ 3.105). (1) As to decisions not final prior to receipt of an application for reconsideration or to reopen, or prior to reconsideration on Department of Veterans Affairs initiative, the date from which benefits would have been payable if the former decision had been favorable.
(2) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) prior to receipt of an application for reconsideration or to reopen, the date of receipt of such application or the date entitlement arose, whichever is later.
(3) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) and reconsideration is undertaken solely on Department of Veterans Affairs initiative, the date of Central Office approval authorizing a favorable decision or the date of the favorable Board of Veterans Appeals decision.
(4) Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death.
(i) Disability or death due to hospitalization, etc. (38 U.S.C. 5110 (c), (d); Pub. L. 87-825; §§3.358, 3.361, and 3.800) -- (1) Disability. Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.
(2) Death. First day of month in which the veteran's death occurred if a claim is received within 1 year following the date of death; otherwise, date of receipt of claim.
(j) Election of Department of Veterans Affairs benefits (§ 3.700 series). (1) Unless otherwise provided, the date of receipt of election, subject to prior payments.
(2) July 1, 1960, as to pension payable under Pub. L. 86-211, where pension is payable for June 30, 1960, under the law in effect on that date, including an award approved after that date, if the election is filed within (generally) 120 days from date of notice of the award. The award will be subject to prior payments over the same period of time.
(3) January 1, 1965, as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election if filed prior to May 1, 1965.
(4) January 1, 1965, as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility on that date for pension on the basis of service in the Indian wars or Spanish-American War and an election is filed prior to May 1, 1965.
(5) January 1, 1969, as to pension payable under Pub. L. 86-211 (73 Stat. 432), as amended by Pub. L. 90-275 (82 Stat. 64), if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election is filed prior to May 1, 1969.
(6) August 1, 1972, as to pension payable under Pub. L. (73 Stat. 432) as amended by Pub. L. 92-328 (86 Stat. 393) if there was basic eligibility on that date based on death of a veteran of the Spanish-American War and an election is filed prior to December 1, 1972.
(k) Error (§ 3.105). Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision.
(l) Foreign residence. (See § 3.653).
(m) Forfeiture (§§ 3.901, 3.902). Day following date of last payment on award to payee who forfeited.
(n) Guardian. Day following date of last payment to prior payee or fiduciary.
NOTE: Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients.
(o) Increases (38 U.S.C. 5110(a) and 5110(b)(T32), Pub. L. 94-71, 89 Stat. 395; §§ 3.109, 3.156, 3.157) -- (1) General. Except as provided in paragraph (o)(2) of this section and § 3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has been terminated, such as by severance of service connection.
(2) Disability compensation. Earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date otherwise, date of receipt of claim.
(p) Liberalizing laws and Department of Veterans Affairs issues. See § 3.114.
(q) New and material evidence (§ 3.156) -- (1) Other than service department records -- (i) Received within appeal period or prior to appellate decision. The effective date will be as though the former decision had not been rendered. See §§ 20.1103, 20.1104 and 20.1304(b)(1) of this chapter.
(ii) Received after final disallowance. Date of receipt of new claim or date entitlement arose, whichever is later.
(2) Service department records. To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later, subject to rules on original claims filed within 1 year after separation from service. See paragraph (g) of this section as to correction of military records.
(r) Reopened claims. (§§ 3.109, 3.156, 3.157, 3.160(e)) Date of receipt of claim or date entitlement arose, whichever is later, except as provided in § 20.1304(b)(1) of this chapter.
(Authority: 38 U.S.C. 501)
(s) Renouncement (§ 3.106). Except as provided in § 3.106(c), date of receipt of new claim.
(t) Whereabouts now known. (See § 3.158(c).)
(u) Void, annulled or terminated marriage of a child (38 U.S.C. 5110 (a), (k), (l); Pub. L. 93-527, 88 Stat. 1702; § 1A3.55) -- (1) Void. Date the parties ceased to cohabit or date of receipt of claim, whichever is later.
(2) Annulled. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.
(3) Death. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of § 3.55(b) of this part are met.
(4) Divorce. Date the decree became final if claim is filed within 1 year of that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of § 3.55(b) of this part are met.
(v) Termination of remarriage of surviving spouse (38 U.S.C. 5110(a), (k); 38 U.S.C. 103(d) and 3010(l) effective January 1, 1971; § 3.55) --

(1) Void. Date the parties ceased to cohabit or date of receipt of claim, whichever is the later.

(2) Annulled. Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) Death. Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of § 3.55(a) of this part are met.

(4) Divorce. Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable unless the provisions of § 3.55(a) of this part are met.

(w) Termination of relationship or conduct resulting in restriction on payment of benefits (38 U.S.C. 5110(m), effective January 1, 1971; §§ 1A3.50(b)(2) and 3.55).

Date of receipt of application filed after termination of relationship and after December 31, 1970. Benefits are not payable unless the provisions of § 3.55(a), as applicable, are met.

(x) Effective date of determination of incompetency (§ 3.353). Date of rating of incompetency. (Not applicable to an incompetency determination made for insurance purposes under 38 U.S.C. 1922).

(y) Effective date of determination restoring competency (§ 3.353). Date shown by evidence of record that competency was regained.

(z) Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group (Pub. L. 95-202). (1) Original claim: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) Reopened claim: Latest of the following dates:


(ii) Date entitlement arose.

(iii) One year prior to date of receipt of reopened claim.


[EFFECTIVE DATE NOTE: 68 FR 34539, 34542, June 10, 2003, revised the headings for paragraphs (b)(1) and (e), effective June 10, 2003.]

§ 3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

(a) Aid and attendance and housebound benefits. (1) Except as provided in § 3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status...
shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established.
(Authority: 38 U.S.C. 501; 511(b)(1), (3))
(2) Date of departure from hospital, institution, or domiciliary.
(Authority: 38 U.S.C. 501)
(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need for aid and attendance shall also be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established.
(Authority: 501; 511(b)(1), (2))
(b) Dependent, additional compensation or pension for. Latest of the following dates:
(1) Date of claim. This term means the following, listed in their order of applicability:
(i) Date of veteran's marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event; otherwise.
(ii) Date notice is received of the dependent's existence, if evidence is received within 1 year of the Department of Veterans Affairs request.
(2) Date dependency arises.
(3) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action.
(Authority: 38 U.S.C. 5110(f))
(4) Date of commencement of veteran's award. (Other increases, see § 3.400(o). For school attendance see § 3.667.)
(Authority: 38 U.S.C. 5110(f), (n))
(c) Divorce of veteran and spouse. See § 3.501(d).
(d) Institutional awards (§ 3.852)--(1) Chief officer of non-Department of Veterans Affairs hospital or institution. From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.
Note: If apportionment under §§ 3.452(c) and 3.454 is in order or payment under § 3.850(a), Personal Funds of Patients account will not be set up but difference withheld for dependents.
(2) Director of a Department of Veterans Affairs medical center or domiciliary. From day following date of last payment to veteran where veteran previously received payments. On initial or resumed payments from date of entitlement to benefits subject to any amounts payable to or withheld for apportionments for dependents.
(e) Retirement pay (§ 3.750)--(1) Election. Date of entitlement if timely filed. Subject to prior payments of retirement pay.
(2) Waiver. Day following date of discontinuance or reduction of retirement pay.
(3) Reelection. Day the reelection is received by the Department of Veterans Affairs.
(f) Service pension (§ 3.3(a)). Date of receipt of claim.
(g) Tuberculosis, special compensation for arrested. As of the date the graduated evaluation of the disability or compensation for that degree of disablement combined with other service-connected disabilities would provide compensation payable at a rate less than $ 67. See § 3.350(g).
(h) Temporary increase "General Policy in Rating," 1945 Schedule for Rating Disabilities--(1) Section 4.29 of this chapter. Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.
(2) Section 4.30 of this chapter. Date of entrance into hospital, after discharge from hospitalization (regular or release to non-bed care).
(i) Increased disability pension based on attainment of age 78. First day of the month during which veteran attains age 78.


[EFFECTIVE DATE NOTE: 62 FR 5528, 5529, Feb. 6, 1997, substituted "spouse" for "wife (husband)" in paragraph (c), effective Feb. 6, 1997.]

§ 3.402 Surviving spouse.
Awards of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be effective as follows:
(a) Additional allowance of dependency and indemnity compensation for children § 3.5(e). Commencing date of surviving spouse's award. See § 3.400(c).
(b) Legal surviving spouse entitled. See § 3.657.
(c) Aid and attendance and housebound benefits. (1) Date of receipt of claim or date entitlement arose whichever is later. However, when an award of dependency and indemnity compensation (DIC) or pension based on an original or reopened claim is effective for a period prior to date of receipt of the claim, any additional DIC or pension payable to the surviving spouse by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established.

(Authority: 38 U.S.C. 501; 5110(d))
(2) Date of departure from hospital, institutional or domiciliary care at Department of Veterans Affairs expense. This is applicable only to aid and attendance benefits. Housebound benefits may be awarded during hospitalization at Department of Veterans Affairs expense.

[45 FR 34887, May 23, 1980]

(38 U.S.C. 501)

§ 3.403 Children.
(ciii Discussion and Analysis in the Veterans Benefits Manual
(a) Awards of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be effective as follows:
(1) Permanently incapable of selfsupport (§ 3.57(a)(3)). In original claims, date fixed by §§ 3.400(b) or (c) or 3.401(b). In claims for continuation of payments, 18th birthday if the condition is claimed prior to or within 1 year after that date; otherwise from date of receipt of claim.
(2) Majority (§ 3.854). Direct payment to child if competent, from date of majority or, date of last payment, whichever is the earlier date.

(3) Posthumous child. Date of child's birth if proof of birth is received within 1 year of that date, or if notice of the expected or actual birth meeting the requirements of an informal claim, is received within 1 year after the veteran's death; otherwise, date of claim.

(Authority: 38 U.S.C. 5110(n))

(4) School attendance. (See § 3.667.)

(5) Adopted child. Date of adoption either interlocutory or final or date of adoptive placement agreement, but not earlier than the date from which benefits are otherwise payable.

(b) Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran. An award of the monetary allowance under 38 U.S.C. 1805 to or for an individual suffering from spina bifida who is a child of a Vietnam veteran will be effective either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1822, 5110; sec. 422(c), Pub. L. 104-204, 110 Stat. 2926)

(c) Monetary allowance under 38 U.S.C. 1815 for an individual with covered birth defects who is a child of a woman Vietnam veteran. Except as provided in § 3.114(a) or § 3.815(i), an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with one or more covered birth defects who is a child of a woman Vietnam veteran will be effective as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest.

(Authority: 38 U.S.C. 1815, 1822, 1824, 5110)


[EFFECTIVE DATE NOTE: 67 FR 49585, 49587, July 31, 2002, revised paragraph (b) and added paragraph (c), effective July 31, 2002.]

§ 3.404 Parents.

Awards of additional amounts of compensation and dependency and indemnity compensation based on a parent's need for aid and attendance will be effective the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of dependency and indemnity compensation based on an original or reopened claim is effective for a period prior to date of receipt of claim, any additional dependency and indemnity compensation payable by reason of need for aid and attendance may also be awarded for any part of the award's retroactive period for which entitlement to aid and attendance is established. When the parent is provided hospital, institutional or domiciliary care at Department of Veterans Affairs expense, the effective date will be the date of departure therefrom.

[45 FR 34887, May 23, 1980]

(38 U.S.C. 501; 5110(d))
§ 3.405 Filipino veterans and their survivors; benefits at the full-dollar rate.
Public Laws 106-377 and 108-183, which provide disability compensation and dependency and indemnity compensation at full-dollar rates to certain Filipino veterans and their survivors, are considered liberalizing laws. As such, the provisions of 38 CFR 3.114(a) apply when determining the effective date of an award. If the requirements of §3.114(a) are not satisfied, then the effective date of an award of benefits at the full-dollar rate under §3.42 will be determined as follows:
(a) Initial entitlement to full-dollar rate. The latest of the following:
   (1) Date entitlement arose;
   (2) Date on which the veteran or survivor first met the residency and citizenship or permanent resident alien status requirements in §3.42, if VA receives evidence of this within one year of that date; or
   (3) Effective date of service connection, provided VA receives evidence that the veteran or survivor meets the residency and citizenship or permanent resident alien status requirements in §3.42 within one year of the date of notification of the decision establishing service connection.
(b) Resumption of full-dollar rate.
   (1) Date the veteran or survivor returned to the United States after an absence of more than 60 consecutive days; or
   (2) First day of the calendar year following the year in which the veteran or survivor was absent from the United States for a total of 183 days or more, or the first day after that date that the veteran or survivor returns to the United States.
[66 FR 66763, 66768, Dec. 27, 2001; 71 FR 8215, Feb. 16, 2006]
(38 U.S.C. 107)
[EFFECTIVE DATE NOTE: 66 FR 66763, 66768, Dec. 27, 2001, added this section, effective Dec. 27, 2001.]
APPORTIONMENTS

§ 3.450 General.
§ 3.451 Special apportionments.
§ 3.452 Situations when benefits may be apportioned.
§ 3.453 Veterans compensation or service pension or retirement pay.
§ 3.454 Veterans disability pension.
§ 3.458 Veteran's benefits not apportionable.
§ 3.459 Death compensation.
§ 3.460 Death pension.
§ 3.461 Dependency and indemnity compensation.

§ 3.450 General.

Discussion and Analysis in the Veterans Benefits Manual

(a)(1) All or any part of the pension, compensation, or emergency officers' retirement pay payable on account of any veteran may be apportioned.
(i) On behalf of his or her spouse, children, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof.
(ii) If the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.
(2) Where any of the children of a deceased veteran are not living with the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned.

(Authority: 38 U.S.C. 5307)

(b) Except as provided in § 3.458(e), no apportionment of disability or death benefits will be made or changed solely because a child has entered active duty with the air, military, or naval services of the United States.

(c) No apportionment will be made where the veteran, the veteran's spouse (when paid "as wife" or "as husband"), surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, spouse, surviving spouse, or fiduciary.

(d) Any amounts payable for children under §§ 3.459, 3.460 and 3.461 will be equally divided among the children.

(e) The amount payable for a child in custody of and residing with the surviving spouse shall be paid to the surviving spouse. Amounts payable to a surviving spouse for a child in the surviving spouse's custody but residing with someone else may be apportioned if the surviving spouse is not reasonably contributing to the child's support.

(f) Prior to release of any amounts the relationship of the claimant and the dependency of a parent will be fully developed, and the necessary evidence secured.

(g) The provisions of § 3.460 are applicable where the surviving spouse is entitled to a higher rate of pension under the circumstances described in that section.

§ 3.451 Special apportionments.
Without regard to any other provision regarding apportionment where hardship is shown to exist, pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation may be specially apportioned between the veteran and his or her dependents or the surviving spouse and children on the basis of the facts in the individual case as long as it does not cause undue hardship to the other persons in interest, except as to those cases covered by § 3.458(b) and (c). In determining the basis for special apportionment, consideration will be given such factors as: Amount of Department of Veterans Affairs benefits payable; other resources and income of the veteran and those dependents in whose behalf apportionment is claimed; and special needs of the veteran, his or her dependents, and the apportionment claimants. The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee.
[44 FR 45940, Aug. 6, 1979]

§ 3.452 Situations when benefits may be apportioned.
Veterans benefits may be apportioned:
(a) If the veteran is not residing with his or her spouse or his or her children and a claim for apportionment is filed for or on behalf of the spouse or children.
(b) Pending the appointment of a guardian or other fiduciary.
(c)(1) Where an incompetent veteran without a fiduciary is receiving institutional care by the United States or a political subdivision, his or her benefit may be apportioned for a spouse or child, or, except as provided in paragraph (c)(2), for a dependent parent, unless such benefit is paid to a spouse ("as wife" or "as husband") for the use of the veteran and his or her dependents.
(2) Where a married veteran is receiving section 306 or improved pension and the amount payable is reduced under § 3.551(c) because of hospitalization, an apportionment may be paid to the veteran's spouse as provided in § 3.454(b).

[EFFECTIVE DATE NOTE: 68 FR 34539, 34542, June 10, 2003, amended this section, effective June 10, 2003.]
§ 3.453 Veterans compensation or service pension or retirement pay.
Rates of apportionment of disability compensation, service pension or retirement pay will be determined under § 3.451.
[26 FR 7266, Aug. 11, 1961]


§ 3.454 Veterans disability pension.
Apportionment of disability pension will be as follows:
(a) Where a veteran with spouse, or child is incompetent and without legal fiduciary and is maintained in an institution by the United States or any political subdivision thereof, $25 monthly will be paid as an institutional award to the Director of a Department of Veterans Affairs medical center or chief officer of a non-Department of Veterans Affairs institution for the use of the veteran, and the balance will be paid to the dependent or dependents. If the veteran has no spouse, or child but has a dependent parent, apportionment will be in accordance with § 3.451.
(b)(1) Where the amount of section 306 pension payable to a married veteran under 38 U.S.C. 1521(b), as in effect on December 31, 1978, is reduced to $50 monthly under § 3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $50 and the total amount of pension payable on December 31, 1978.
(Authority: 38 U.S.C. 5503(a))
(2) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to $60 monthly under § 3.551(d) or (e)(2), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $50 and the rate payable if pension was being paid under 38 U.S.C. 1521(c) including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.
(Authority: 38 U.S.C. 5503(a))
(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to $90 monthly under § 3.551(e)(1) an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension was being paid under 38 U.S.C. 1521(c) including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.
(Authority: 38 U.S.C. 5503(a))

[EFFECTIVE DATE NOTE: 68 FR 34539, 34542, June 10, 2003, removed paragraphs (c) and (d), effective June 10, 2003.]

§ 3.458 Veteran's benefits not apportionable.
Discussion and Analysis in the Veterans Benefits Manual
Veteran's benefits will not be apportioned:
(a) Where the total benefit payable to the disabled person does not permit payment of a reasonable amount to any apportionee.
(b) Where the spouse of the disabled person has been found guilty of conjugal infidelity by a court having proper jurisdiction.
(c) For purported or legal spouse of the veteran if it has been determined that he or she has lived with another person and held herself or himself out openly to the public to be the spouse of such other person, except where such relationship was entered into in good faith with a reasonable basis (for example trickery on the part of the veteran) for the spouse believing that the marriage to the veteran was legally terminated. No apportionment to the spouse will thereafter be made unless there has been a reconciliation and later estrangement.
(d) Where the child of the disabled person has been legally adopted by another person, except the additional compensation payable for the child.
(e) Where a child enters the active military, air, or naval service, any additional amount will be paid to the veteran unless such child is included in an existing apportionment to an estranged spouse. No adjustment in the apportioned award will be made based on the child's entry into service.
(f)(1) For the spouse, child, father or mother of a disabled veteran, where forfeiture was declared prior to September 2, 1959, if the dependent is determined by the Department of Veterans Affairs to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies.
(2) For any dependent of a disabled veteran, or surviving spouse where forfeiture of benefits by a person primarily entitled was declared after September 1, 1959, by reason of fraud, treasonable acts, or subversive activities.
(Authority: 38 U.S.C. 6103(b); 6104(c); 6105(a))
(g) Until the estranged spouse of a veteran files claim for an apportioned share. If there are any children of the veteran not in his or her custody an apportionment will not be authorized unless and until a claim for an apportioned share is filed in their behalf.

§ 3.459 Death compensation.
(a) Death compensation will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse.
(b) The surviving spouse may not be paid less than $65 monthly plus the amount of an aid and attendance allowance where applicable.
[40 FR 21725, May 19, 1975, as amended at 44 FR 45940, Aug. 6, 1979]

§ 3.460 Death pension.
Death pension will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse. Where the surviving spouse's rate is in excess of $70 monthly because of having been the spouse of the veteran during service or because of

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need for regular aid and attendance, the additional amount will be added to the surviving spouse's share.
(a) Civil, Indian and Spanish-American wars. Where pension is payable under 38 U.S.C. 1532, 1534, or 1536 apportionment will be based on the facts in the individual case in accordance with § 3.451.
(b) Section 306 and old-law death pension. Appointment of benefits provided under these pension programs will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451. (Authority: 38 U.S.C. 5307)
(c) Improved death pension. Apportionment of the benefits provided under this program shall be made under the special apportionment provision of § 3.451.
(38 U.S.C. 5307)
[EFFECTIVE DATE NOTE: 61 FR 20726, 20727, May 8, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (b), became effective May 8, 1996.]

§ 3.461 Dependency and indemnity compensation.
(a) Conditions under which apportionment may be made. The surviving spouse's award of dependency and indemnity compensation will be apportioned where there is a child or children under 18 years of age and not in the custody of the surviving spouse. The surviving spouse's award of dependency and indemnity compensation will not be apportioned under this condition for a child over the age of 18 years.
(b) Rates payable. (1) The share for each of the children under 18 years of age, including those in the surviving spouse's custody as well as those who are not in such custody, will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451. The share for the surviving spouse will be the difference between the children's share and the total amount payable. In the application of this rule, however, the surviving spouse's share will not be reduced to an amount less than 50 percent of that to which the surviving spouse would otherwise be entitled.
(2) The additional amount of aid and attendance, where applicable, will be added to the surviving spouse's share and not otherwise included in the computation.
(3) Where the surviving spouse has elected to receive dependency and indemnity compensation instead of death compensation, the share of dependency and indemnity compensation for a child or children under 18 years of age will be whichever is the greater:
(i) The apportioned share computed under paragraph (b)(1) of this section; or
(ii) The share which would have been payable as death compensation but not in excess of the total dependency and indemnity compensation.
[EFFECTIVE DATE NOTE: 61 FR 20726, 20727, May 8, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (b)(1), became effective May 8, 1996.]
REDUCTIONS AND DISCONTINUANCES

§ 3.500 General.
§ 3.501 Veterans.
§ 3.502 Surviving spouses.
§ 3.503 Children.
§ 3.504 Parents; aid and attendance.
§ 3.505 Filipino veterans and their survivors; benefits at the full-dollar rate.

§ 3.500 General.
evDiscussion and Analysis in the Veterans Benefits Manual
The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in § 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 5112(b))
(a) Except as otherwise provided (38 U.S.C. 5112(a)). In accordance with the facts found.
(b) Error; payee's or administrative (38 U.S.C. 5112(b), (9), (10)). (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with the payee's knowledge.
(2) Except as provided in paragraph (r) of this section, and § 3.501 (e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.
(c) Annual income. See § 3.660.
(d) Apportionment (§§ 3.450 series; § 3.556). (1) Except as otherwise provided, date of last payment when reason for apportionment no longer exists.
(2) Where pension was apportioned under § 3.551(c), day preceding date of veteran's release from hospital, unless overpayment would result; date of last payment if necessary to avoid overpayment.
(e) Federal employees' compensation (§ 3.708). The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective. End of month following the month in which there is received from Office of Workers' Compensation Programs notice that payee has elected benefits under the Federal Employees' Compensation Act. If children on rolls and surviving spouse has primary title, award to children discontinued same date as surviving spouse's award.

(Authority: 5 U.S.C. 8116)
(f) Contested claims § 3.402(b) and § subpart F of part 20 of this chapter). Date of last payment.
(g) Death (38 U.S.C. 5112 (a), (b)) -- (1) Payee (includes apportionee). Last day of month before death.
(2) Dependent of payee (includes apportionee):
(i) Death prior to October 1, 1982: last day of the calendar year in which death occurred.
(ii) Death on or after October 1, 1982: last day of the month in which death occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which death occurred.

(3) Veteran receiving retirement pay. Date of death.


(i) Election of Department of Veterans Affairs benefits (§ 3.700 series). Day preceding beginning date of award under other law.

(j) Foreign residence (38 U.S.C. 5308(a)). See § 3.653.

(k) Fraud (38 U.S.C. 6103(a), (d); §§ 3.669 and 3.901). Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) Guardian, marriage or divorce of (§ 3.856). Date of last payment (pending receipt of information as to change of name).

(m) Incompetency (§ 3.855). Date of last payment.

(n) Marriage (or remarriage) (38 U.S.C. 101(3), 5112 (b)) -- (1) Payee (includes apportionee). Last day of month before marriage.

(2) Dependent of payee (includes apportionee):

(i) Marriage prior to October 1, 1982: last day of the calendar year in which marriage occurred.

(ii) Marriage on or after October 1, 1982: last day of the month in which marriage occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which marriage occurred.

(3) Conduct of surviving spouse. Last day of month before inception of relationship.

(Authority: 38 U.S.C. 101(4), 501)

(o) Penal institutions. See § 3.666.

(p) Philippines (38 U.S.C. 107(a)(3); § 3.40). Date of last payment when recognition of service withdrawn.

(q) Renouncement (§ 3.106). Last day of the month in which the renouncement is received.

(r) Service connection (38 U.S.C. 5112(b)(6); § 3.105). Last day of month following 60 days after notice to payee. Applies to reduced evaluation, and severance of service connection.

(s) Treasonable acts or subversive activities (38 U.S.C. 6104 and 6105; §§ 3.902, 3.903).

(1) Treasonable acts. Date of the forfeiture decision or date of last payment, whichever is earlier.

(2) Subversive activities. Beginning date of award or day preceding date of commission of subversive activities for which convicted, whichever is later.

(t) Whereabouts unknown (§§ 3.158, 3.656). Date of last payment.

(u) Change in law or Department of Veterans Affairs issue, or interpretation. See § 3.114.

(v) Failure to furnish evidence of continued eligibility. See § 3.652 (a) and (b).

(w) Failure to furnish Social Security number. Last day of the month during which the 60 day period following the date of VA request expires.

(x) Radiation Exposure Compensation Act of 1990 (§ 3.715). (Compensation or dependency and indemnity compensation only.) Last day of the month preceding the month in which payment under the Radiation Exposure Compensation Act of 1990 is issued.
(y) Compensation for certain disabilities due to undiagnosed illnesses (§§ 3.105; 3.317). Last day of the month in which the 60-day period following notice to the payee of the final rating action expires. This applies to both reduced evaluations and severance of service connection. (Authority: Pub. L. 103-446; 38 U.S.C. 501(a))


(38 U.S.C. 8301)
CROSS REFERENCE: Failure to return questionnaire. See § 3.661(b).

§ 3.501 Veterans.
The effective date of discontinuance of pension or compensation to or for a veteran will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) Active service pay (38 U.S.C. 5112(b)(3); Pub. L. 87-825; § 3.700(a)). Day preceding entrance on active duty. See § 3.654.

(b) Aid and attendance -- (1) Section 3.552(b)(1). Last day of calendar month following month in which veteran is hospitalized at Department of Veterans Affairs expense.

(2) Section 3.552(b)(2). Last day of calendar month following month in which veteran hospitalized at United States Government expense.

(3) Aid and attendance for spouse. End of month in which award action is taken if need for aid and attendance has ceased.

(c) Disappearance of veteran. See § 3.656.

(d) Divorce or annulment (38 U.S.C. 5112(b)(2));
(1) Divorce or annulment prior to October 1, 1982: last day of the calendar year in which divorce or annulment occurred.

(2) Divorce or annulment on or after October 1, 1982: last day of the month in which divorce or annulment occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which divorce or annulment occurred.

(e) Employability regained (38 U.S.C. 5112(b) (5), (6); Pub. L. 87-825; § 3.105) -- (1) Pension. Last day of month in which discontinuance is approved.

(2) Compensation. Last day of month following 60 days after notice to payee.

(f) Employment questionnaire, failure to return. Reduce award to the amount payable for the schedular evaluation shown in the current rating as of the day following the date of last payment.

(g) Evaluation reduced (38 U.S.C. 5112(b) (5), (6); Pub. L. 87-825; § 3.105) -- (1) Pension. Last day of month in which discontinuance is approved.

(2) Compensation. Last day of month following 60 days after notice to payee.

(h) Examination; failure to report. See § 3.655.

(i) Hospitalization. (1) Section 3.551(b). Last day of the sixth calendar month following admission if veteran without dependents.

(2) Section 3.551(c). (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (ii) Last day of the third calendar month following admission for hospital or nursing home care if veteran without dependents.
spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(c)(1), the last day of the month of such readmission.

(3) Section 3.552(b) Upon readmission to hospital care within 6 months of a period of hospital care for which pension was affected by the provisions of § 3.552(b)(1) and (2) or § 3.552(k) and discharge or release was against medical advice or was the result of disciplinary action, the day preceding the date of such readmission.

(4) Section 3.551(d) (i) Last day of the second calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(ii) Last day of the third calendar month following admission for hospitalization or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents.

(iii) Upon readmission to hospital, domiciliary, or nursing home care within 6 months of a period for which pension was reduced under § 3.551(d)(1) or (2), the last day of the month of such readmission.

(5) Section 3.551(e) (i) Last day of the third calendar month following admission to domiciliary or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (ii) Upon readmission to domiciliary or nursing home care within 6 months of a period of domiciliary or nursing home care for which pension was reduced under § 3.551(e)(1), the last day of the month of such readmission.

(6) Section 3.551(h). (i) Last day of the calendar month in which Medicaid payments begin, last day of the month following 60 days after issuance of a prereduction notice required under § 3.103(b)(2), or the earliest date on which payment may be reduced without creating an overpayment, whichever date is later; or

(ii) If the veteran willfully conceals information necessary to make the reduction, the last day of the month in which that willful concealment occurred.

(Authority: 38 U.S.C. 5503)

(j) Institutional award and/or to Personal Funds of Patients (§ 3.852). Date of last payment, when veteran is discharged from hospital, fiduciary appointed, or veteran rated competent.

(k) Lump-sum readjustment pay. See § 3.700(a)(2).

(l) Retirement pay (38 U.S.C. 5112(b)(3); Pub. L. 87-825; § 3.750). Day before effective date of retirement pay.

(m) Temporary increase (38 U.S.C. 5112(b)(8); § 4.29 of this chapter). Last day of month in which hospitalization or treatment terminated, whichever is earlier, where temporary increase in compensation was authorized because of hospitalization for treatment.

(n) Section 3.853. Incompetents; estate over $ 25,000. Incompetent veteran receiving compensation, without spouse, child, or dependent parent, whose estate exceeds $ 25,000: Last day of the first month in which the veteran's estate exceeds $ 25,000, but not earlier than November 1, 1990.

(Authority: 38 U.S.C. 5505)

§ 3.502 Surviving spouses.
The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.
(Authority: 38 U.S.C. 501)
(a) Additional allowance of dependency and indemnity compensation for children (38 U.S.C. 5112(b) § 3.5(e)(3). (1) If marriage occurred prior to October 1, 1982, the day preceding child's 18th birthday or last day of calendar year in which child's marriage occurred (see § 3.500(n) (2) and (3)), whichever is earlier.
(2) If marriage occurred on or after October 1, 1982, the day preceding child's 18th birthday or last day of the month in which marriage occurred (see § 3.500(n) (2) and (3)) whichever is earlier.
(b) Pay grade; dependency and indemnity compensation (38 U.S.C. 1311(a), 5112(b)(10); Pub. L. 91-96, 83 Stat. 144). Date of last payment when rate is reduced because of new certification of pay grade.
(c) Legal surviving spouse entitled. Date of last payment on award to another person as surviving spouse. See § 3.657.
(Authority: 38 U.S.C. 501)
(d) Marriage. See § 3.500(n).
(e) Aid and attendance (§ 3.351(a)). (1) Date of last payment, if need for aid and attendance has ceased.
(2) If hospitalized at Department of Veterans Affairs expense as a veteran, the date specified in § 3.552(b) (1) or (3).
(f) Medicaid-covered nursing home care (§ 3.551(i)). (1) Last day of the calendar month in which Medicaid payments begin, last day of the month following 60 days after issuance of a prereduction notice required under § 3.103(b)(2), or the earliest date on which payment may be reduced without creating an overpayment, whichever date is later; or
(2) If the surviving spouse willfully conceals information necessary to make the reduction, the last day of the month in which that willful concealment occurred.
(38 U.S.C. 5503)

§ 3.503 Children.
(a) The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(Authority; 38 U.S.C. 501)
(1) Age 18 (or 23) (38 U.S.C. 5112(a); § 3.57). Day before 18th (or 23d birthday).
(2) Enters service. Date of last payment of apportioned disability benefits for child not in custody of estranged spouse. Full rate payable to veteran. No change where payments are being made for the child to the veteran, his (her) estranged spouse, his (her) surviving spouse, or to the fiduciary of a child not in the surviving spouse's custody.

(Authority: 38 U.S.C. 501)
(3) Permanently incapable of selfsupport (38 U.S.C. 5112(a), (b)(6); Pub. L. 87-825; §§ 3.57, 3.950) -- (1) Pension. Date of last payment.
(2) Compensation or dependency and indemnity compensation. Last day of month following 60 days after notice to payee.
(4) Marriage. See § 3.500(n).
(5) School attendance. See § 3.667.
(6) Stepchild no longer member of veteran's household (§ 3.57). Last day child was a member of household.
(7) Two parent cases (§ 3.703). Day preceding beginning date of award based on service of the other parent.
(8) Dependents' educational assistance (§§ 3.707, 3.807, and § 21.3023 of this chapter). Day preceding beginning date of educational assistance allowance.
(9) Surviving spouse becomes entitled. Date of last payment. See § 3.657.

(Authority: 38 U.S.C. 501)
(10) Interlocutory adoption decree or adoptive placement agreement. Date child left custody of adopting parent during the interlocutory period or during adoptive placement agreement, or date of rescission of the decree or date of termination of the adoptive placement agreement, whichever first occurs.

(b) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans. The effective date of discontinuance of the monthly allowance under 38 U.S.C. chapter 18 will be the last day of the month before the month in which the death of the individual occurred.

(Authority: 38 U.S.C. 1822, 5112(b))

[EFFECTIVE DATE NOTE: 67 FR 49585, 49587, July 31, 2002, revised paragraph (b), effective July 31, 2002.]

§ 3.504 Parents; aid and attendance.
The effective date of discontinuance of an increased award because of the parent's need for aid and attendance will be the day of last payment if need for aid and attendance has
§ 3.505 Filipino veterans and their survivors; benefits at the full-dollar rate.
The effective date of discontinuance of compensation or dependency and indemnity compensation for a Filipino veteran or his or her survivor under § 3.42 will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) If a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 is physically absent from the U.S. for a total of 183 days or more during any calendar year, VA will reduce benefits to the rate of $0.50 for each dollar authorized under the law, effective on the 183rd day of absence from the U.S.

(b) If a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 is physically absent from the U.S. for more than 60 consecutive days, VA will reduce benefits to the rate of $0.50 for each dollar authorized under the law, effective on the 61st day of the absence.

(c) If a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 loses either U.S. citizenship or status as an alien lawfully admitted for permanent residence in the U.S., VA will reduce benefits to the rate of $0.50 for each dollar authorized under the law, effective on the day he or she no longer satisfies one of these criteria.

(d) If mail to a veteran or survivor receiving benefits at the full-dollar rate under § 3.42 is returned to VA by the U.S. Postal Service, VA will make reasonable efforts to determine the correct mailing address. If VA is unable to determine the veteran's or survivor's correct address through reasonable efforts, VA will reduce benefits to the rate of $0.50 for each dollar authorized under law, effective the first day of the month that follows the month for which VA last paid benefits.

(Authority: 38 U.S.C. 107)

[66 FR 66763, 66768, Dec. 27, 2001; 71 FR 8215, Feb. 16, 2006]

[EFFECTIVE DATE NOTE: 66 FR 66763, 66768, Dec. 27, 2001, added this section, effective Dec. 27, 2001.]
HOSPITALIZATION ADJUSTMENTS

§ 3.551 Reduction because of hospitalization.
§ 3.552 Adjustment of allowance for aid and attendance.
§§ 3.553 -- 3.555 [Reserved]
§ 3.556 Adjustment on discharge or release.
§ 3.557 [Reserved]
§ 3.558 Resumption and payment of withheld benefits; incompetents with estates that equaled or exceeded statutory limit.
§ 3.559 [Reserved]

§ 3.551 Reduction because of hospitalization.

cvi) Discussion and Analysis in the Veterans Benefits Manual
(a) General. Pension is subject to reduction as specified below when a veteran who has neither spouse, child nor dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitalization. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in § 3.552. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§ 3.551 through 3.556 mean:
(1) Hospital treatment in a Department of Veterans Affairs hospital or in any hospital at Department of Veterans Affairs expense.
(2) Institutional, domiciliary or nursing home care in a Department of Veterans Affairs institution or domiciliary or at Department of Veterans Affairs expense.
(Authority: 38 U.S.C. 5503(a))
(b) Old-law pension. (1) Old law pension in excess of $ 30 monthly for a veteran who has neither spouse, child nor dependent parent shall continue at the full monthly rate until the end of the sixth calendar month following the month of admission for hospitalization. The rate payable will be reduced effective the first of the seventh calendar month to $ 30 monthly or 50 percent of the amount otherwise payable, whichever is greater. The reduced rate will be effective the first day of the seventh calendar month following admission. Payment of the amount withheld may be made on termination of hospitalization, as provided in § 1A3.556. (Sec. 306(b))
(2) Readmission following regular discharge. Where a veteran has been given an approved discharge or release, readmission the next day to the same or any other VA institution begins a new period of hospitalization, unless the veteran was released for purposes of admission to another VA institution.
(3) Readmission following irregular discharge. When a veteran whose award is subject to reduction under this paragraph has been discharged or released from a VA institution against medical advice or as a result of disciplinary action, reentry within 6 months from the date of previous admission constitutes a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release shall be considered a new admission.

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(Authority: 38 U.S.C. 5503(a))

(c) Section 306 pension. (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished hospital, nursing home or domiciliary care by the Department of Veterans Affairs, no pension in excess of $50 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care. (Authority: 38 U.S.C. 5503(a))

(2) No pension in excess of $50 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (c) (1) of this section. (Authority: 38 U.S.C. 5503(a))

(3) Where section 306 pension is being paid to a married veteran at a rate for a veteran without dependents all or any part of the monthly amount of pension withheld in excess of $50 may be apportioned for a spouse as provided in § 3.454(b).

(d) Improved pension prior to February 1, 1990. (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished domiciliary care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care. (38 U.S.C. 5503(a))

(2) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or nursing home care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 5503(a))

(3) No pension in excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (d)(1) or (2) of this section. (38 U.S.C. 5503(a))

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 1521(b) all or any part of the rate payable under 38 U.S.C. 1521(c) may be apportioned for a spouse as provided in § 3.454(b). (38 U.S.C. 5503(a))

(5) The provisions of paragraphs (d) (1), (2), and (3) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 1522(b).

(6) For the purpose of paragraphs (d) (1), (2), and (3) of this section, if a veteran is furnished hospital or nursing home care by VA and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by VA and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.
(e) Improved pension after January 31, 1990. (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished domiciliary or nursing home care by VA, no pension in excess of $90 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (Authority: 38 U.S.C. 5503(a))

(2) No pension in excess of $90 monthly shall be paid to a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 1521(b) all or any part of the rate payable under 38 U.S.C. 1521(c) may be apportioned for a spouse as provided in §3.454(b). (Authority: 38 U.S.C. 5503(a))

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e)(1) and (2) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 1522(b).

(f) Computation of period. For purposes of computing periods of hospitalization in paragraph (c) of this section, authorized absences of 96 hours or less will be included as periods of hospitalization, and those of over 96 hours excluded. Also, for purposes of that paragraph, periods of treatment or care of 60 total days will be considered two calendar months of hospitalization and periods of 90 total days considered three calendar months, exclusive of authorized absences in excess of 96 hours.

(g) Proof of dependents. The veteran will be considered to have neither spouse, child nor dependent parent in the absence of satisfactory proof. Statements contained in the claims folder concerning the existence of such dependents will be considered a prima facie showing. If the necessary evidence is not received: (1) Within 60 days after the date of request where the award is subject to reduction under paragraph (b) of this section, or (2) prior to the effective date of reduction under paragraph (c) of this section, the veteran's
award will be reduced on the basis of no dependents. The full rate may be authorized from the date of reduction if the necessary evidence is received within 1 year after the date of request.

(h) Hospitalization. (1) General. The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

(i) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing hospital or nursing home care during the additional period is to provide the veteran with a prescribed program of rehabilitation under chapter 17 of title 38, United States Code, designed to restore the veteran's ability to function within the veteran's family and community; and

(ii) The veteran is admitted to a Department of Veterans Affairs hospital or nursing home after October 16, 1981.

(2) Continued hospitalization for rehabilitation. The reduction required by paragraph (d) or (e) of this section shall not be made for periods after the expiration of the additional period provided by paragraph (h)(1) of this section under the following conditions:

(i) The veteran remains hospitalized or in a nursing home after the expiration of the additional period provided by paragraph (h)(1) of this section; and

(ii) The Chief Medical Director, or designee, certifies that the primary purpose for furnishing continued hospital or nursing home care after the additional period provided by paragraph (h)(1) of this section is to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code, designed to restore the veteran's ability to function within the veteran's family and community.

(3) Termination of hospitalization for rehabilitation. Pension in excess of $60 monthly or $90, if reduction is under paragraph (e)(1) payable to a veteran under this paragraph shall be reduced the end of the calendar month in which the primary purpose of hospitalization or nursing home care is no longer to provide the veteran with a program of rehabilitation under chapter 17 of title 38, United States Code designed to restore the veteran's ability to function within the veteran's family and community.

(Authority: 38 U.S.C. 5503(a))

(i) Certain veterans and surviving spouses receiving Medicaid-covered nursing home care. Effective November 5, 1990, and terminating on September 30, 2011, if a veteran having neither spouse nor child, or a surviving spouse having no child, is receiving Medicaid-covered nursing home care, no pension or death pension in excess of $90 per month shall be paid to or for the veteran or the surviving spouse for any period after the month in which the Medicaid payments begin. A veteran or surviving spouse is not liable for any pension paid in excess of the $90 per month by reason of the Secretary's inability or failure to reduce payments, unless that inability or failure is the result of willful concealment by the veteran or surviving spouse of information necessary to make that reduction.

(Authority: 38 U.S.C. 5503)

§ 3.552 Adjustment of allowance for aid and attendance.

(a)(1) When a veteran who is already entitled to the aid and attendance allowance is hospitalized, the additional compensation or increased pension for aid and attendance shall be discontinued as provided in paragraph (b) of this section except as to disabilities specified in paragraph (a)(2) of this section. (See paragraph (k) of this section for rules applicable to a veteran who establishes entitlement to the aid and attendance allowance on or after date of admission to hospitalization).

(2) The allowance for aid and attendance will be continued during hospitalization where the disability is paraplegia involving paralysis of both lower extremities together with loss of anal and bladder sphincter control, or Hansen's disease, except where discontinuance is required by paragraph (b)(2) of this section. In addition, in pension cases only, the aid and attendance allowance will be continued where the pensionable disability is blindness (visual acuity 5/200 or less) or concentric contraction of visual field to 5 degrees or less. Awards are, however, subject to the provisions of § 3.551 (except where the disabling condition is Hansen's disease).

(3) Additional compensation for dependents under § 3.4(b)(2) is payable during hospitalization in addition to the rates authorized by this section. The rates specified will also be increased by amounts authorized under 38 U.S.C. 1114(k) based on independently ratable disability, subject to the statutory ceiling on the total amount of compensation payable as set forth in § 3.350(a).

(b)(1) Where a veteran is admitted for hospitalization on or after October 1, 1964, the additional compensation or increased pension for aid and attendance will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization at the expense of the Department of Veterans Affairs.

(2) When a veteran is hospitalized at the expense of the United States Government, the additional aid and attendance allowance authorized by 38 U.S.C. 1114(r) (1) or (2) will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization.

(3) Where a veteran affected by the provisions of paragraph (b) (1) and (2) or paragraph (k) of this section is discharged or released from the hospital against medical advice or as the result of disciplinary action, and is readmitted to such hospitalization within 6 months after that date, the allowance, additional compensation, or increased pension will be discontinued effective the day preceding the date of readmission. A readmission 6 months or more after such discharge or release will be considered as a new admission. (Authority: 38 U.S.C. 5503(e))

(c) Reduction will not be made where the same monthly rate of compensation would be payable without consideration of need for regular aid and attendance. This can only be
determined after careful review of the current maximum entitlement without regard to any amount for aid and attendance.
(d) Where entitlement by reason of need for regular aid and attendance is the basis of the monthly rate under 38 U.S.C. 1114(1) the award will be reduced to the rate payable under 38 U.S.C. 1114(s).
(e) Where a veteran is in receipt of section 306 pension, the aid and attendance allowance shall be reduced to the housebound rate of $ 61 monthly (or $ 76.25 if the veteran was age 78 or older on December 31, 1978). Where a veteran is in receipt of old-law pension, the total amount payable shall be reduced to $ 100 monthly. Where a veteran is in receipt of improved pension, the applicable aid and attendance rate shall be reduced to the otherwise applicable rate under 38 U.S.C. 1521(e). No reduction shall be made, however, for any case involving the disabilities specified in paragraph (a)(2) of this section.
(f) Where entitlement to the rate in 38 U.S.C. 1114(o) is based in part on need for regular aid and attendance reduction because of being hospitalized will be to the rate payable for the other conditions shown.
(g) Where a veteran entitled to one of the rates under 38 U.S.C. 1114 (l), (m), or (n) by reason of anatomical losses or losses of use of extremities, blindness (visual acuity 5/200 or less or light perception only), or anatomical loss of both eyes is being paid compensation at the rate under 38 U.S.C. 1114(o) because of entitlement to another rate under section 314(l) on account of need for aid and attendance, the compensation will be reduced while hospitalized to the following:
(1) If entitlement is under section 1114(l) and in addition there is need for regular aid and attendance for another disability, the award during hospitalization will be at the rate under 38 U.S.C. 1114(m) since the disability requiring aid and attendance is 100 percent disabling.
(Authority: 38 U.S.c. 1114(p))
(2) If entitlement is under section 1114(m), at the rate under 38 U.S.C. 1114(n).
(3) If entitlement is under section 1114(n), the rate under 38 U.S.C. 1114(o) would be continued, since the disability previously causing the need for regular aid and attendance would then be totally disabling entitling the veteran to the maximum rate under 38 U.S.C. 1114(p).
(h) If, because of blindness, a veteran requires regular aid and attendance, but has better vision than "light perception only" the award under 38 U.S.C. 1114(m) will be reduced while hospitalized to the rate payable under 38 U.S.C. 1114(1).
(i) If the disability meets the aid and attendance requirements of 38 U.S.C. 1114(l) and the intermediate or next higher rate was assigned for disability independently ratable at 50 percent or 100 percent, the award based on such entitlement will be reduced because of hospitalization to the amount payable under 38 U.S.C. 1114(s).
(j) The section 306 pension aid and attendance allowance authorized by § 3.252(f) is subject to reduction for hospitalization under the provisions of this section in the same manner as the regular section 306 pension aid and attendance allowance. The amount payable shall not be reduced to less than the housebound rate of $ 61 monthly (or $ 76.25 monthly if the veteran was age 78 or older on December 31, 1978).
(k)(1) This paragraph is applicable to hospitalized veterans who were not entitled to the aid and attendance allowance prior to hospital admission but who establish entitlement to it on or after the date of hospital admission.
(2) If the effective date of entitlement to the aid and attendance allowance is on or after the date of admission to hospitalization, the aid and attendance allowance shall not be paid until the date of discharge or release from hospitalization, unless the aid and attendance allowance is based on a disability specified in paragraph (a)(2) of this section. If the aid and attendance allowance is based on a disability specified in paragraph (a)(2) of this section, the aid and attendance allowance shall be paid during hospitalization.

(3) If the aid and attendance allowance is not payable to a veteran under paragraph (k)(2) of this section, the veteran shall receive the appropriate reduced rate under paragraphs (d) through (j) of this section while hospitalized.


§§ 3.553 -- 3.555 [Reserved]

§ 3.556 Adjustment on discharge or release.
(a) Temporary Absence--30 days. (1) Where a competent veteran whose award was reduced under § 3.551(b) is placed on non-bed care status or other authorized absence of 30 days or more the full monthly rate, excluding any allowance for regular aid and attendance, will be restored effective the date of reduction. The full monthly rate for an incompetent veteran, or for a competent veteran whose pension was reduced under § 3.551(c), will be restored effective the date of departure from the hospital unless it is determined that apportionment for a spouse should be continued. In all instances, any allowance for regular aid and attendance will be restored effective the date of departure from the hospital.

(2) Upon the veteran's return to the hospital, an award which is subject to reduction under § 3.551 (b) or (c) will again be reduced effective the date of the veteran's return to the hospital. In all instances, any allowance for regular aid and attendance will be discontinued, if in order, effective the date of the veteran's return to the hospital.

(b) Temporary absence--less than 30 days. A temporary absence of less than 30 days, including the day of departure, will not require adjustment of the award. This applies to any approved absence. Any allowance for regular aid and attendance for such periods will be authorized after the veteran has been discharged from the hospital.

(c) Adjustment based on need. Where an award of pension was reduced under § 3.551(c), the full rate covering absences of less than 30 days may be restored, subject to prior payments, prior to discharge from hospitalization at the request of the Director of the hospital, center or domiciliary, where this action is necessary to meet the veteran's financial needs, if the veteran has been hospitalized for more than 6 months and the periods of absence exceed a total of 30 days.

(d) Irregular discharge. When a competent veteran is given an irregular discharge, the full rate will be restored effective the date of release from the hospital. Payment of any amount withheld under § 3.551(b) will not be authorized until the expiration of 6 months after termination of hospitalization unless the prior release is changed to a regular release.
However, amounts not paid under paragraph (c) of this section covering absence of less than 30 days where the award was reduced under § 3.551(c) will be authorized immediately.

(e) Regular discharge. When a veteran, either competent or incompetent, is given a regular discharge or release, the full rate, including any allowance for regular aid and attendance will be restored effective the date of release from the hospital, subject to prior payments. The award will be based on the most recent rating and, where the award was reduced under § 3.551(b), will include, in the case of a competent veteran, any amounts withheld because of hospitalization. The amount withheld for an incompetent veteran will not be authorized until the expiration of 6 months following a rating of competency by VA. Any institutional award will be discontinued effective date of last payment, as provided in § 3.501(j). Where an apportionment made under § 3.551(c) is not continued, the apportionment will be discontinued effective the day preceding the date of the veteran's release from the hospital, or, if adjusted, effective the date of the veteran's release from the hospital, unless an overpayment would result. In the excepted cases, the awards to the veteran and apportionee will be adjusted as of date of last payment.

(Authority: 38 U.S.C. 5503)

(f) Types of discharges. A discharge is considered regular if it is granted because of having received maximum hospital benefits. A discharge for disciplinary reasons or because of the patient's refusal to accept, neglect of or obstruction of treatment; refusal to accept transfer, or failure to return from authorized absence, is considered irregular.


§ 3.557 [Reserved]

§ 3.558 Resumption and payment of withheld benefits; incompetents with estates that equaled or exceeded statutory limit.

(a) Payments for the veteran will be resumed and apportionment awards discontinued under the applicable provisions of § 3.556(a), (d), and (e) upon authorized absence from the hospital for 30 days or more or a regular or irregular discharge or release. Care and maintenance payments to an institution will not be made for any period the veteran is not receiving such care and maintenance.

(b) Any amount not paid because of the provisions of former § 3.557(b) (as in effect prior to December 27, 2001), and any amount of compensation or retirement pay withheld pursuant to the provisions of § 3.551(b) (and/or predecessor regulatory provisions) as it was constituted prior to August 1, 1972, and not previously paid because of the provisions of former § 3.557(b) (as in effect prior to December 27, 2001), will be awarded to the veteran if he or she is subsequently rated competent by VA for a period of not less than six months.

(Authority: 38 U.S.C. 5503)

34539, 34542, June 10, 2003]

[EFFECTIVE DATE NOTE: 68 FR 34539, 34542, June 10, 2003, amended this section, effective June 10, 2003.]

§ 3.559 [Reserved]
ADJUSTMENTS AND RESUMPTIONS

§ 3.650 Rate for additional dependent.
§ 3.651 Change in status of dependents.
§ 3.652 Periodic certification of continued eligibility.
§ 3.653 Foreign residence.
§ 3.654 Active service pay.
§ 3.655 Failure to report for Department of Veterans Affairs examination.
§ 3.656 Disappearance of veteran.
§ 3.657 Surviving spouse becomes entitled, or entitlement terminates.
§ 3.658 Offsets; dependency and indemnity compensation.
§ 3.659 Two parents in same parental line.
§ 3.660 Dependency, income and estate.
§ 3.661 Eligibility Verification Reports.
§§ 3.662 -- 3.664 [Reserved]
§ 3.665 Incarcerated beneficiaries and fugitive felons -- compensation.
§ 3.666 Incarcerated beneficiaries and fugitive felons -- pension.
§ 3.667 School attendance.
§ 3.668 [Reserved]
§ 3.669 Forfeiture.

§ 3.650 Rate for additional dependent.

(a) Running awards. Except as provided in paragraph (c) of this section where a claim is filed by an additional dependent who has apparent entitlement which, if established, would require reduction of pension, compensation or dependency and indemnity compensation being paid to another dependent, payments to the person or persons on the rolls will be reduced as follows:

(1) Where benefits would be payable from a date prior to the date of filing claim, the reduction will be effective from the date of potential entitlement of the additional dependent.

(2) Where benefits would be payable from the date of filing claim, the reduction will be effective the date of receipt of the claim by the additional dependent, or date of last payment, whichever is later.

If entitlement of the additional dependent is not established, benefits previously being paid will be resumed, if otherwise in order, commencing the day following the effective date of reduction.

(b) New awards. If the additional dependent is found to be entitled, the full rate payable will be authorized effective the date of entitlement.

(c) Retroactive DIC award to a school child--(1) General. If DIC (dependency and indemnity compensation) is being currently paid to a veteran's child or children under 38 U.S.C. 1313(a), and DIC is retroactively awarded to an additional child of the veteran based on school attendance, the full rate payable to the additional child shall be awarded the first of the month following the month in which the award to the additional child is approved. The rate payable under the current award shall be reduced effective the date the full rate is awarded to the additional child. The rate payable to the additional child for periods prior to the date the full rate is awarded shall be the difference between the rate
payable for all the children and the rate that was payable before the additional child established entitlement.

(2) Applicability. The provisions of paragraph (c)(1) of this section are applicable only when the following conditions are met:

(i) The additional child was receiving DIC under 38 U.S.C. 1313(a) prior to attaining age 18; and

(ii) DIC for the additional child was discontinued on or after attainment of age 18; and

(iii) After DIC has been discontinued, the additional child reestablishes entitlement to DIC under 38 U.S.C. 1313(a) based on attendance at an approved school and the effective date of entitlement is prior to the date the Department of Veterans Affairs receives the additional child's claim to reestablish entitlement.

(Authority: 38 U.S.C. 1313(b))

(3) Effective date. This paragraph is applicable to DIC paid after September 30, 1981. If DIC is retroactively awarded for a period prior to October 1, 1981, payment for the period prior to October 1, 1981 shall be made under paragraph (a) of this section and payment for the period after September 30, 1981, shall be made under this paragraph.

[29 FR 9564, July 15, 1964, as amended at 47 FR 24551, June 7, 1982]


§ 3.651 Change in status of dependents.
Except as otherwise provided:

(a) A payee who becomes entitled to pension, compensation, or dependency and indemnity compensation or to a greater rate because payment of that benefit to another payee has been reduced or discontinued will be awarded the benefit or increased benefit without the filing of a new claim.

(b) The commencement or adjustment will be effective the day following the reduction or discontinuance of the award to the other payee if the necessary evidence is received in the Department of Veterans Affairs within 1 year from the date of request therefor; otherwise from the date of receipt of a new claim.

(c) The rate for the persons entitled will be the rate that would have been payable if they had been the only original persons entitled.


§ 3.652 Periodic certification of continued eligibility.
Except as otherwise provided:

(a) Individuals to whom benefits are being paid are required to certify, when requested, that any or all of the eligibility factors which established entitlement to the benefit being paid continue to exist. The beneficiary will be advised at the time of the request that the certification must be furnished within 60 days from the date of the request therefor and that failure to do so will result in the reduction or termination of benefits.

(1) If the certification is not received within 60 days from the date of the request, the eligibility factor(s) for which certification was requested will be considered to have ceased to exist as of the end of the month in which it was last shown by the evidence of
record to have existed. For purposes of this paragraph, the effective date of reduction or termination of benefits will be in accordance with §§ 3.500 through 3.504 as in effect on the date the eligibility factor(s) is considered to have ceased to exist. The claimant will be advised of the proposed reduction or termination of benefits and the date the proposed action will be effective. An additional 60 days from the date of notice of the proposed action will be provided for the claimant to respond.

(2) If the certification is not received within the additional 60 day period, the proposed reduction or termination of benefits will be put into effect.

(b) When the required certification is received, benefits will be adjusted, if necessary, in accordance with the facts found.

[52 FR 43063, Nov. 9, 1987]

(38 U.S.C. 501)


§ 3.653 Foreign residence.

(a) General. Pension, compensation, or dependency and indemnity compensation is not payable to an alien who is located in the territory of or under the control of an enemy of the United States or of its allies. The benefit may, however, be paid to the dependents of such alien, but not in excess of the amount which would be payable to the dependent if the alien were dead.

(Authority: 38 U.S.C. 5308)

(b) Retroactive payments. Any amount not paid to an alien under this section, together with any amounts placed to the alien's credit in the special deposit account in the Treasury or covered into the Treasury as miscellaneous receipts under 31 U.S.C. 123-128 will be paid to him or her on the filing of a new claim. Such claim should be supported with evidence that the alien has not been guilty of mutiny, treason, sabotage or rendering assistance to an enemy, as provided in § 3.902(a).

(Authority: 38 U.S.c. 5309)

(c) Treasury Department list. This paragraph is applicable to claims for benefits for aliens residing in countries identified on the list established by the Secretary of the Treasury as countries to which checks could not be delivered with reasonable assurance that the payee would actually receive and be able to negotiate a check for full value.

(1) Evidence requests. Requests for evidence to establish either basic or continued entitlement will not be made where such evidence would be obtained from a country on the Treasury Department list unless the claimant requests that checks be sent to him or her in care of a U.S. Foreign Service post in a country which is not on the list.

(2) Awards. Payments for a claimant residing in a country included in the Treasury Department list will not be authorized unless the claimant requests that checks be sent to him or her in care of a U.S. Foreign Service post in a country which is not on the list.

(3) Retroactive payments. Where award action is authorized under paragraph (c)(2) of this section, or a new claim has been filed after a country has been removed from the Treasury Department list, all benefits to which the payee is otherwise entitled will be paid as provided in paragraph (b) of this section. There is no time limit for filing claim.
§ 3.654 Active service pay.

(a) General. Pension, compensation, or retirement pay will be discontinued under the circumstances stated in § 3.700(a)(1) for any period for which the veteran received active service pay. For the purposes of this section, active service pay means pay received for active duty, active duty for training or inactive duty training.

(b) Active duty. (1) Where the veteran returns to active duty status, the award will be discontinued effective the day preceding reentrance into active duty status. If the exact date is not known, payments will be discontinued effective date of last payment and as of the correct date when the date of reentrance has been ascertained from the service department.

(2) Payments, if otherwise in order, will be resumed effective the day following release from active duty if claim for recommencement of payments is received within 1 year from the date of such release; otherwise payments will be resumed effective 1 year prior to the date of receipt of a new claim. Prior determinations of service connection will not be disturbed except as provided in § 3.105. Compensation will be authorized based on the degree of disability found to exist at the time the award is resumed. Disability will be evaluated on the basis of all facts, including records from the service department relating to the most recent period of active service. If a disability is incurred or aggravated in the second period of service, compensation for that disability cannot be paid unless a claim therefor is filed.

(c) Training duty. Prospective adjustment of awards may be made where the veteran waives his or her Department of Veterans Affairs benefit covering anticipated receipt of active service pay because of expected periods of active duty for training or inactive duty training. Where readjustment is in order because service pay was not received for expected training duty, retroactive payments may be authorized if a claim for readjustment is received within 1 year after the end of the fiscal year for which payments were waived.

[27 FR 11890, Dec. 1, 1962]

§ 3.655 Failure to report for Department of Veterans Affairs examination.

(a) General. When entitlement or continued entitlement to a benefit cannot be established or confirmed without a current VA examination or reexamination and a claimant, without good cause, fails to report for such examination, or reexamination, action shall be taken in accordance with paragraph (b) or (c) of this section as appropriate. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death
of an immediate family member, etc. For purposes of this section, the terms examination and reexamination include periods of hospital observation when required by VA.

(b) Original or reopened claim, or claim for increase. When a claimant fails to report for an examination scheduled in conjunction with an original compensation claim, the claim shall be rated based on the evidence of record. When the examination was scheduled in conjunction with any other original claim, a reopened claim for a benefit which was previously disallowed, or a claim for increase, the claim shall be denied.

(c) Running award. (1) When a claimant fails to report for a reexamination and the issue is continuing entitlement, VA shall issue a pretermination notice advising the payee that payment for the disability or disabilities for which the reexamination was scheduled will be discontinued or, if a minimum evaluation is established in part 4 of this title or there is an evaluation protected under § 3.951(b) of this part, reduced to the lower evaluation. Such notice shall also include the prospective date of discontinuance or reduction, the reason therefor and a statement of the claimant's procedural and appellate rights. The claimant shall be allowed 60 days to indicate his or her willingness to report for a reexamination or to present evidence that payment for the disability or disabilities for which the reexamination was scheduled should not be discontinued or reduced.

(2) If there is no response within 60 days, or if the evidence submitted does not establish continued entitlement, payment for such disability or disabilities shall be discontinued or reduced as of the date indicated in the pretermination notice or the date of last payment, whichever is later.

(3) If notice is received that the claimant is willing to report for a reexamination before payment has been discontinued or reduced, action to adjust payment shall be deferred. The reexamination shall be rescheduled and the claimant notified that failure to report for the rescheduled examination shall be cause for immediate discontinuance or reduction of payment. When a claimant fails to report for such rescheduled examination, payment shall be reduced or discontinued as of the date of last payment and shall not be further adjusted until a VA examination has been conducted and the report reviewed.

(4) If within 30 days of a pretermination notice issued under paragraph (c)(1) of this section the claimant requests a hearing, action to adjust payment shall be deferred as set forth in § 3.105(h)(1) of this part. If a hearing is requested more than 30 days after such pretermination notice but before the proposed date of discontinuance or reduction, a hearing shall be scheduled, but payment shall nevertheless be discontinued or reduced as of the date proposed in the pretermination notice or date of last payment, whichever is later, unless information is presented which warrants a different determination. When the claimant has also expressed willingness to report for an examination, however, the provisions of paragraph (c)(3) of this section shall apply.


(38 U.S.C. 501)
CROSS REFERENCES: Procedural due process and appellate rights. See § 3.103.

§ 3.656 Disappearance of veteran.
(a) When any veteran has disappeared for 90 days or more and his or her whereabouts remain unknown to the members of his or her family and the Department of Veterans
Affairs, disability compensation which he or she was receiving or entitled to receive may be paid to or for his or her spouse, children and parents, effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from the date of receipt of a claim. The total amount payable will be the lesser of these amounts:
(1) Dependency and indemnity compensation.
(2) Amount of compensation payable to the veteran at the time of disappearance, subject to authorized insurance deductions.
(b) Where a veteran's whereabouts become known to the Department of Veterans Affairs after an award to dependents has been made as provided in this section, the award to the dependents will be discontinued effective date of last payment, and appropriate action will be taken to adjust the veteran's award in accordance with the facts found.
(Authority: 38 U.S.C. 1158)
(c) Awards to dependents will not be continued under this section in any case where the facts are such as to bring into effect the presumption of death under § 3.212.
(d) When any veteran has disappeared for 90 days or more and the veteran's whereabouts remain unknown to members of the veteran's family and the Department of Veterans Affairs, any improved pension, section 306 or service pension which the veteran was receiving or entitled to receive may be paid to or for the spouse or children. The status of the veteran at the time of disappearance, with respect to permanent and total disability, income and net worth will be presumed to continue unchanged. Payment for the spouse or children will be effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from date of receipt of a claim. The total amount payable will be the lesser of these amounts:
(1) The service death pension rate if the veteran was receiving service pension or the improved death pension rate if the veteran was receiving section 306 or improved pension.
(2) The amount of pension payable to the veteran at the time of disappearance.

(38 U.S.C. 1507)

§ 3.657 Surviving spouse becomes entitled, or entitlement terminates.
Where a surviving spouse establishes entitlement to pension, compensation, or dependency and indemnity compensation, an award to another person as surviving spouse, or for a child or children as if there were no surviving spouse will be discontinued or adjusted as provided in this section.
(a) Surviving spouse's awards. For periods on or after December 1, 1962, where a legal surviving spouse establishes entitlement after payments have been made to another person as surviving spouse, the full rate payable to the legal surviving spouse will be authorized effective the date of entitlement. Payments to the former payee will be discontinued as follows:
(1) Where benefits are payable to the legal surviving spouse from a date prior to the date of filing claim, the award to the former payee will be terminated the day preceding the effective date of the award to the legal surviving spouse.
(2) Where benefits are payable to the legal surviving spouse from the date of filing claim, the award to the former payee will be terminated effective the date of receipt of the claim or date of last payment, whichever is later.

(b) Children's awards. (1) Where a surviving spouse establishes entitlement and:
   (i) Payments were being made for a child or children at a lower monthly rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the date provided by the applicable law, and will be the difference between the rate paid for the children and the rate payable for the surviving spouse and children. The full rate will be payable for the surviving spouse effective the day following the date of last payment for the children;
   (ii) Payments were being made for a child or children at the same or higher monthly rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the day following the date of last payment on the awards on behalf of the children.

(2) Where a surviving spouse has received benefits after entitlement was terminated and,
   (i) The child or children were entitled to a lower monthly rate, the award to the surviving spouse will be amended to authorize payment at the rate provided for the children as if there were no surviving spouse, covering the period from the date the surviving spouse's entitlement terminated to the date of last payment. The award for the child or children will be made effective the following day.
   (ii) The child or children were entitled to a higher monthly rate, the award to the surviving spouse will be discontinued effective date of last payment. The award to the children will be effective the day following the date the surviving spouse's entitlement terminated and will be the difference between the rate payable for the children and the rate paid on the surviving spouse's award. The full rate will be payable for the children effective the day following the date of last payment to the surviving spouse.

[39 FR 20204, June 7, 1974, as amended at 44 FR 45942, Aug. 6, 1979]


§ 3.658 Offsets; dependency and indemnity compensation.

(a) When an award of dependency and indemnity compensation is made covering a period for which death compensation or benefits under the Federal Employee's Compensation Act, based on military service, have been paid to the same payee based on the same death, the award of dependency and indemnity compensation will be made subject to an offset of payments of death compensation or benefits under the Federal Employees' Compensation Act over the same period.

(b) When an award of dependency and indemnity compensation is made covering a period for which death benefits have been paid to the same payee based on the death of another spouse the award will be made subject to an offset of payments of death pension or compensation, or dependency and indemnity compensation over the same period in the case of the other spouse.

[41 FR 17387, Apr. 26, 1976]

(38 U.S.C. 103(d)(2), 5304(b)(3))

§ 3.659 Two parents in same parental line.
The provisions of this section are applicable for periods commencing on or after January 1, 1957 in cases involving payments of death compensation or dependency and indemnity compensation, and in addition, for periods commencing on or after June 9, 1960, in cases involving payments of death pension based on death on or after that date.

(a) If death pension, compensation or dependency and indemnity compensation is payable based on the service of one parent, an award of such benefits to or on account of a child will be made subject to any payments of these benefits made to or on account of that child over the same period of time based on the service of another parent in the same parental line.

(b) Any reduction or discontinuance of an award to the child or to a surviving spouse will be effective the day preceding the commencing date of death pension, compensation, or dependency and indemnity compensation or, under the circumstances described in § 3.707, the commencing date of dependents' educational assistance under 38 U.S.C. ch. 35, to or on account of the child based on the service of another parent in the same parental line. Any increase to a surviving spouse or another child will be effective the commencing date of the award to the child.


CROSS REFERENCE: Two-parent cases. See § 3.503(a)(7). Two parents in same parental line. See § 3.703.

§ 3.660 Dependency, income and estate.

(a) Reduction or discontinuance--(1) General. A veteran, surviving spouse or child who is receiving pension, or a parent who is receiving compensation or dependency and indemnity compensation must notify the Department of Veterans Affairs of any material change or expected change in his or her income or other circumstances which would affect his or her entitlement to receive, or the rate of, the benefit being paid. Such notice must be furnished when the recipient acquires knowledge that he or she will begin to receive additional income or when his or her marital or dependency status changes. In pension claims subject to § 3.252(b) or § 3.274 and in compensation claims subject to § 3.250(a)(2), notice must be furnished of any material increase in corpus of the estate or net worth.

(2) Effective dates. Where reduction or discontinuance of a running award of section 306 pension or old-law pension is required because dependency of another person ceased due to marriage, annulment, divorce or death, or because of an increase in income, which increase could not reasonably have been anticipated based on the amount actually received from that source the year before, the reduction or discontinuance shall be made effective the end of the year in which the increase occurred. Where reduction or discontinuance of a running award of improved pension or dependency and indemnity compensation is required because of an increase in income, the reduction or discontinuance shall be made effective the end of the month in which the increase occurred. Where reduction or discontinuance of a running award of any benefit is
required because of an increase in net worth or corpus of estate, because dependency of a parent ceased, or because dependency of another person ceased prior to October 1, 1982, due to marriage, annulment, divorce, or death, the award shall be reduced or discontinued effective the last day of the calendar year in which the increase occurred or dependency ceased. Except as noted in this subparagraph for section 306 or old-law pension, where the dependency of another person ceased on or after October 1, 1982, due to marriage, annulment, divorce or death, the reduction or discontinuance shall be effective the last day of the month in which dependency ceased.

(Authority: 38 U.S.C. 5112(b))

(3) Overpayments. Overpayments created by retroactive discontinuance of benefits will be subject to recovery if not waived. Where dependency and indemnity compensation was being paid to two parents living together, an overpayment will be established on the award to each parent.

(b) Award or increase; income. Where pension or dependency and indemnity compensation was not paid for a particular 12-month annualization period because the claim was disallowed, an award was deferred under § 3.260(b) or § 3.271(f), payments were discontinued or made at a lower rate based on anticipated or actual income, benefits otherwise payable may be authorized commencing the first of a 12-month annualization period as provided in this paragraph. In all other cases, benefits may not be authorized for any period prior to the date of receipt of a new claim.

(1) Anticipated income. Where payments were not made or were made at a lower rate because of anticipated income, pension or dependency and indemnity compensation may be awarded or increased in accordance with the facts found but not earlier than the beginning of the appropriate 12-month annualization period if satisfactory evidence is received within the same or the next calendar year.

(Authority: 38 U.S.C. 5110(h))

(2) Actual income. Where the claimant's actual income did not permit payment, or payment was made at a lower rate, for a given 12-month annualization period, pension or dependency and indemnity compensation may be awarded or increased, effective the beginning of the next 12-month annualization period, if satisfactory evidence is received within that period.

(c) Increases; change in status. Where there is change in the payee's marital status or status of dependents which would permit payment at a higher rate and the change in status is by reason of the claimant's marriage or birth or adoption of a child, the effective date of the increase will be the date of the event if the required evidence is received within 1 year of the event. Where there is a change in dependency status for any reason other than marriage, or the birth or adoption of a child, which would permit payment at a higher rate, the increased rate will be effective the date of receipt of notice constituting an informal claim if the required evidence is received within 1 year of Department of Veterans Affairs request. The rate payable for each period will be determined, as provided in §§ 3.260(f) or 3.273(c). (See § 3.651 as to increase due to termination of payments to another payee. Also see § 3.667 as to increase based on school attendance.)

d) Corpus of estate; net worth. Where a claim has been finally disallowed or terminated because of the corpus of estate and net worth provisions of § § 3.263 or 3.274 and entitlement is established on the basis of a reduction in estate or net worth, or a change in circumstances such as health, acquisition of a dependent, or increased rate of depletion of
the estate, benefits or increased benefits will not be paid for any period prior to the date of receipt of a new claim.


§ 3.661 Eligibility Verification Reports.
(a) Determination and entitlement. (1) Where the report shows a change in income, net worth, marital status, status of dependents or change in circumstances affecting the application of the net worth provisions, the award will be adjusted in accordance with § 3.660(a)(2).
(2) Where there is doubt as to the extent of anticipated income payment of pension or dependency and indemnity compensation will be authorized at the lowest appropriate rate or will be withheld, as provided in § 3.260(b) or § 3.271 (f).
(b) Failure to return report--(1) Section 306 and old-law pension--1(i) Discontinuance. Discontinuance of old-law or section 306 pension shall be effective the last day of the calendar year for which income (and net worth in a section 306 pension case) was to be reported.
(ii) Resumption of benefits. Payment of old-law or section 306 pension may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the calendar year following the calendar year for which income (and net worth in a section 306 pension case) was to be reported; otherwise pension may not be paid for any period prior to the date of receipt of a new claim.
(2) Improved pension and dependency and indemnity compensation--(i) Discontinuance. Discontinuance of dependency and indemnity compensation (DIC) or improved pension shall be effective the first day of the 12-month annualization period for which income (and net worth in an improved pension case) was to be reported or the effective date of the award, whichever is the later date.
(ii) Adjustment of overpayment. If evidence of entitlement to improved pension or DIC for any period for which payment of improved pension or DIC was discontinued for failure to file an Eligibility Verification Report is received at any time, payment of improved pension or DIC shall be awarded for the period of entitlement for which benefits were discontinued for failure to file an Eligibility Verification Report.
(iii) Resumption of benefits. Payment of improved pension and DIC may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the 12-month annualization period following the 12-month annualization period for which income (and net worth in an improved pension case) was to be reported; otherwise pension or DIC may not be paid for any period prior to receipt of a new claim.

(38 U.S.C. 501)

§§ 3.662 -- 3.664 [Reserved]

§ 3.665 Incarcerated beneficiaries and fugitive felons -- compensation.

Discussion and Analysis in the Veterans Benefits Manual

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(a) General. Any person specified in paragraph (c) of this section who is incarcerated in a Federal, State or local penal institution in excess of 60 days for conviction of a felony will not be paid compensation or dependency and indemnity compensation (DIC) in excess of the amount specified in paragraph (d) of this section beginning on the 61st day of incarceration. VA will inform a person whose benefits are subject to this reduction of the rights of the person's dependents to an apportionment while the person is incarcerated, and the conditions under which payments to the person may be resumed upon release from incarceration. In addition, VA will also notify the person's dependents of their right to an apportionment if VA is aware of their existence and can obtain their addresses. However, no apportionment will be made if the veteran or the dependent is a fugitive felon as defined in paragraph (n) of this section.

(b) Definitions. For the purposes of this section the term compensation includes disability compensation under 38 U.S.C. 1151. The term dependency and indemnity compensation (DIC) includes death compensation payable under 38 U.S.C. 1121 or 1141, death compensation and DIC payable under 38 U.S.C. 1151, and any benefit payable under chapter 13 of title 38, United States Code. The term release from incarceration includes participation in a work release or halfway house program, parole, and completion of sentence. For purposes of this section, a felony is any offense punishable by death or imprisonment for a term exceeding 1 year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.

(c) Applicability. The provisions of paragraph (a) of this section are applicable to the following persons:

(1) A person serving a period of incarceration for conviction of a felony committed after October 7, 1980.

(2) A person serving a period of incarceration after September 30, 1980 (regardless of when the felony was committed) when the following conditions are met:
   (i) The person was incarcerated on October 1, 1980; and
   (ii) An award of compensation or DIC is approved after September 30, 1980.

(3) A veteran who, on October 7, 1980, was incarcerated in a Federal, State, or local penal institution for a felony committed before that date, and who remains so incarcerated for a conviction of that felony as of December 27, 2001.

(d) Amount payable during incarceration -- (1) Veteran rated 20 percent or more. A veteran to whom the provisions of paragraphs (a) and (c) of this section apply with a service-connected disability evaluation of 20 percent or more shall receive the rate of compensation payable under 38 U.S.C. 1114(a).

(2) Veteran rated less than 20 percent. A veteran to whom the provisions of paragraphs (a) and (c) of this section apply with a service-connected disability evaluation of less than 20 percent (even though the rate for 38 U.S.C. 1114 (k) or (q) is paid) shall receive one-half the rate of compensation payable under 38 U.S.C. 1114(a).

(3) Surviving spouse, parent or child. A surviving spouse, parent, or child, beneficiary to whom the provisions of paragraphs (a) and (c) of this section apply shall receive one-half the rate of compensation payable under 38 U.S.C. 1114(a).

(e) Apportionment -- (1) Compensation. All or part of the compensation not paid to an incarcerated veteran may be apportioned to the veteran's spouse, child or children and dependent parents on the basis of individual need. In determining individual need consideration shall be given to such factors as the apportioneer claimant's income and
living expenses, the amount of compensation available to be apportioned, the needs and living expenses of other apportionee claimants as well as any special needs, if any, of all apportionee claimants.

(2) DIC. All or part of the DIC not paid to an incarcerated surviving spouse or other children not in the surviving spouse's custody may be apportioned to another child or children. All or part of the DIC not paid to an incarcerated child may be apportioned to the surviving spouse or other children. These apportionments shall be made on the basis of individual need giving consideration to the factors set forth in paragraph (e)(1) of this section.

(f) Effective dates. An apportionment under this section shall be effective the date of reduction of payments made to the incarcerated person, subject to payments to the incarcerated person over the same period, if an informal claim is received within 1 year after notice to the incarcerated person as required by paragraph (a) of this section, and any necessary evidence is received within 1 year from the date of request by the Department of Veterans Affairs; otherwise, payments may not be made for any period prior to the date of receipt of a new informal claim.

(g) Incarcerated dependent. No apportionment may be made to or on behalf of any person who is incarcerated in a Federal, State, or local penal institution for conviction of a felony.

(h) Notice to dependent for whom apportionment granted. A dependent for whom an apportionment is granted under this section shall be informed that the apportionment is subject to immediate discontinuance upon the incarcerated person's release or participation in a work release or halfway house program. A dependent shall also be informed that if the dependent and the incarcerated person do not live together when the incarcerated person is released (or participates in a work release or halfway house program) the dependent may submit a new claim for apportionment.

(i) Resumption upon release -- (1) No apportionment or family reunited. If there was no apportionment at the time of release from incarceration, or if the released person is reunited with all dependents for whom an apportionment was granted, the released person's award shall be resumed the date of release from incarceration if the Department of Veterans Affairs receives notice of release within 1 year following release; otherwise the award shall be resumed the date of receipt of notice of release. If there was an apportionment award during incarceration, it shall be discontinued date of last payment to the apportionee upon receipt of notice of release of the incarcerated person. Payment to the released person shall then be resumed at the full rate from date of last payment to the apportionee. Payment to the released person from date of release to date of last payment to the apportionee shall be made at the rate which is the difference between the released person's full rate and the sum of (i) the rate that was payable to the apportionee and (ii) the rate payable during incarceration.

(2) Apportionment granted and family not reunited. If there was an apportionment granted during incarceration and the released person is not reunited with all dependents for whom an apportionment was granted, the released person's award shall be resumed as stated in paragraph (i)(1) of this section except that when the released person's award is resumed it shall not include any additional amount payable by reason of a dependent(s) not reunited with the released person. The award to this dependent(s) will then be reduced to the additional amount payable for the dependent(s).
(3) Apportionment to a dependent parent. An apportionment made to a dependent parent under this section cannot be continued beyond the veteran's release from incarceration unless the veteran is incompetent and the provisions of § 3.452(c) (1) and (2) are for application. When a competent veteran is released from incarceration an apportionment made to a dependent parent shall be discontinued and the veteran's award resumed as provided in paragraph (i)(1) of this section.

(j) Increased compensation during incarceration -- (1) General. The amount of any increased compensation awarded to an incarcerated veteran that results from other than a statutory rate increase may be subject to reduction due to incarceration. This applies to a veteran whose compensation is subject to reduction under paragraphs (a) and (c) of this section prior to approval of an award of increased compensation as well as to veteran whose compensation is not subject to reduction under paragraphs (a) and (c) of this section prior to approval of an award of increased compensation.

(2) Veteran subject to reduction under paragraphs (a) and (c) of this section. If prior to approval of an award of increased compensation the veteran's compensation was reduced under the provisions of paragraphs (a) and (c) of this section, the amount of the increase shall be reduced as follows if the veteran remains incarcerated:

(i) If the veteran's schedular evaluation is increased from 10 percent to 20 percent or greater, the amount payable to the veteran shall be increased from one-half the rate payable under 38 U.S.C. 1114(a) to the rate payable under section 1114(a).

(ii) If the veteran's schedular evaluation was 20 percent or more, none of the increased compensation shall be paid to the veteran while the veteran remains incarcerated.

(3) Veteran's compensation not subject to reduction under paragraphs (a) and (c) of this section prior to award of increased compensation. If prior to the approval of an award of increased compensation the veteran is incarcerated in a Federal, State, or local penal institution for conviction of a felony and the veteran's compensation was not reduced under the provisions of paragraphs (a) and (c) of this section, none of the increased compensation shall be paid to the veteran for periods after October 7, 1980, subject to the following conditions:

(i) The veteran remains incarcerated after October 7, 1980 in a Federal, State, or local penal institution for conviction of a felony; and

(ii) The award of increased compensation is approved after October 7, 1980. If the effective date of the increase is prior to October 8, 1980, the amount payable for periods prior to October 8, 1980, shall not be reduced.

(4) Apportionments. The amount of any increased compensation reduced under this paragraph may be apportioned as provided in paragraph (e) of this section.

(k) Retroactive awards. Whenever compensation or DIC is awarded to an incarcerated person any amounts due for periods prior to date of reduction under this section shall be paid to the incarcerated person.

(l) DIC parents. If two parents are both entitled to DIC and were living together prior to the time of the DIC payable to one parent was reduced due to incarceration, they shall be considered as two parents not living together for the purpose of determining entitlement to DIC.

(m) Conviction overturned on appeal. If a conviction is overturned on appeal, any compensation or DIC withheld under this section as a result of incarceration for such conviction (less the amount of any apportionment) shall be restored to the beneficiary.
(n) Fugitive felons.
(1) Compensation is not payable on behalf of a veteran for any period during which he or
she is a fugitive felon. Compensation or DIC is not payable on behalf of a dependent of a
veteran for any period during which the veteran or the dependent is a fugitive felon.
(2) For purposes of this section, the term fugitive felon means a person who is a fugitive
by reason of:
(i) Fleeing to avoid prosecution, or custody or confinement after conviction, for an
offense, or an attempt to commit an offense, which is a felony under the laws of the place
from which the person flees; or
(ii) Violating a condition of probation or parole imposed for commission of a felony
under Federal or State law.
(3) For purposes of paragraph (n) of this section, the term felony includes a high
misdemeanor under the laws of a State which characterizes as high misdemeanors
offenses that would be felony offenses under Federal law.
(4) For purposes of paragraph (n) of this section, the term dependent means a spouse,
surviving spouse, child, or dependent parent of a veteran.

996-997)

§ 3.666 Incarcerated beneficiaries and fugitive felons -- pension.

If any individual to or for whom pension is being paid under a public or private law
administered by the Department of Veterans Affairs is imprisoned in a Federal, State or
local penal institution as the result of conviction of a felony or misdemeanor, such
pension payments will be discontinued effective on the 61st day of imprisonment
following conviction. The payee will be informed of his or her rights and the rights of
dependents to payments while he or she is imprisoned as well as the conditions under
which payments to him or to her may be resumed on his or her release from
imprisonment. However, no apportionment will be made if the veteran or the dependent
is a fugitive felon as defined in paragraph (e) of this section. Payments of pension
authorized under this section will continue until notice is received by the Department of
Veterans Affairs that the imprisonment has terminated.

(a) Disability pension. Payment may be made to the spouse, child or children of a veteran
disqualified under this section:
(1) If the veteran continues to be eligible except for the provisions of this section, and
(2) If the annual income of the spouse or child is such that death pension would be
payable.
(3) At the rate payable under the death pension law or the rate which the veteran was
receiving at the time of imprisonment, whichever is less.
(4) From the day following the date of discontinuance of payments to the veteran, subject
to payments made to the veteran over the same period, if an informal claim is received
within 1 year after notice to the veteran as required by this section and any necessary
evidence is received within 1 year from the date of request; otherwise payments may not be made for any period prior to the date of receipt of a new informal claim.

(b) Death pension. Payment may be made to a child or children where a surviving spouse or child is disqualified under this section:

(1) If surviving spouse is disqualified to child or children at the rate of death pension payable if there were no such surviving spouse; or
(2) If a child is disqualified, to a surviving spouse or other child or children at the rate of death pension payable if there were no such child, and
(3) From the day following the date of discontinuance of payments to the disqualified person, subject to payments made to that person over the same period if evidence of income is received within 1 year after date of request; otherwise payments may not be made for any period prior to the date of receipt of an informal claim.

(4) The income limitation applicable to eligible persons will be that which would apply if the imprisoned person did not exist.

(c) Resumption of pension upon release from incarceration. Pension will be resumed as of the day of release if notice (which constitutes an informal claim) is received within 1 year following release; otherwise resumption will be effective the date of receipt of such notice. Where an award or increased award was made to any other payee based upon the disqualification of the veteran, surviving spouse, or child while in prison, such award will be reduced or discontinued as of date of last payment and pension will be resumed to the released prisoner at a rate which will be the difference, if any, between the total pension payable and the amount which was paid to the other person or persons through the date of last payment and thereafter the full rate.

(d) Veteran entitled to compensation. If an imprisoned veteran is entitled to a lesser rate of disability compensation, it shall be awarded as of the 61st day of imprisonment in lieu of the pension the veteran was receiving if the veteran has neither spouse nor child. If the veteran has a spouse or a child, compensation will be awarded only after the veteran has been furnished an explanation of the effect of electing compensation on the amount available for apportionment. If the veteran then requests compensation, it shall be awarded from the date veteran requests the Department of Veterans Affairs to take such action.

(e) Fugitive felons.

(1) Pension is not payable on behalf of a veteran for any period during which he or she is a fugitive felon. Pension or death pension is not payable on behalf of a dependent of a veteran for any period during which the veteran or the dependent is a fugitive felon.

(2) For purposes of this section, the term fugitive felon means a person who is a fugitive by reason of:

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

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

(3) For purposes of paragraph (e) of this section, the term felony includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law.
§ 3.667 School attendance.

(a) General. (1) Pension or compensation may be paid from a child's 18th birthday based upon school attendance if the child was at that time pursuing a course of instruction at an approved educational institution and a claim for such benefits is filed within 1 year from the child's 18th birthday.

(2) Pension or compensation based upon a course of instruction at an approved educational institution which was begun after a child's 18th birthday may be paid from the commencement of the course if a claim is filed within 1 year from that date.

(3) An initial award of DIC (dependency and indemnity compensation) to a child in the child's own right is payable from the first day of the month in which the child attains age 18 if the child was pursuing a course of instruction at an approved educational institution on the child's 18th birthday, and if a claim for benefits is filed within 1 year from the child's 18th birthday. In the case of a child who attains age 18 after September 30, 1981, if the child was, immediately before attaining age 18, counted under 38 U.S.C. 1311(b) for the purpose of determining the amount of DIC payable to the surviving spouse, the effective date of an award of DIC to the child shall be the date the child attains age 18 if a claim for DIC is filed within 1 year from that date.

(b) Vacation periods. A child is considered to be in school during a vacation or other holiday period if he or she was attending an approved educational institution at the end of the preceding school term and resumes attendance, either in the same or a different approved educational institution, at the beginning of the next term. If an award has been made covering a vacation period, and the child fails to commence or resume school...
attendance, benefits will be terminated the date of last payment or the last day of the month preceding the date of failure to pursue the course, whichever is the earlier.

(c) Ending dates. Except as provided in paragraph (b) of this section, benefits may be authorized through the last day of the month in which a course was or will be completed. (Authority: 38 U.S.C. 5112(b)(7))

(d) Transfers to other schools. When benefits have been authorized based upon school attendance and it is shown that during a part or all of that period the child was pursuing a different course in the same approved educational institution or a course in a different approved educational institution, payments previously made will not be disturbed.

(e) Accrued benefits only. When a claim for accrued benefits is filed by or on behalf of a veteran's child over 18 but under 23 years of age, who was pursuing a course of instruction at the time of the payee's death and payment of accrued benefits only is involved, evidence of school attendance need not be confirmed by the school. When the payee's death occurred during a school vacation period, the requirements will be considered to have been met if the child was carried on the school rolls on the last day of the regular school term immediately preceding the date of the payee's death. (Authority: 38 U.S.C. 5112(b)(7))

(f) Nonduplication. Pension, compensation or dependency and indemnity compensation may not be authorized:

(1) After a child has elected to receive educational assistance under 38 U.S.C. chapter 35 (see § 3.707 and § 21.3023 of this chapter); or

(2) Based on an educational program in a school where the child is wholly supported at the expense of the Federal Government, such as a service academy.


[EFFECTIVE DATE NOTE: 65 FR 12116, Mar. 8, 2000, amended this section, effective Mar. 8, 2000.]

[CROSS REFERENCE: Dependents' educational assistance. See § 3.707.]

§ 3.668 [Reserved]

§ 3.669 Forfeiture.

(a) General. Upon receipt of notice from a Regional Counsel the Veterans Service Center Manager in the Manila Regional Office that a case is being formally submitted for consideration of forfeiture of a payee's rights or that the payee has been indicted for subversive activities, payments will be suspended effective date of last payment.

(b) Fraud or treasonable act -- (1) Fraud. If forfeiture of rights is not declared, payments shall be resumed from date of last payment, if otherwise in order. If it is determined that rights have been forfeited, benefits shall be discontinued effective the commencing date of the award or the day preceding the commission of the act resulting in the forfeiture, whichever is later.

(2) Treasonable acts. If forfeiture of rights is not declared, payments shall be resumed from date of last payment, if otherwise in order. If it is determined that rights have been
forfeited, benefits shall be discontinued the date of the forfeiture decision or date of last payment, whichever is earlier.

(c) Subversive activities. If the payee is acquitted of the charge, payments will be resumed from date of last payment, if otherwise in order. If the payee is convicted, benefits will be discontinued effective the commencing date of the award or the day preceding the commission of the act resulting in the forfeiture, whichever is later.

(d) Pardons. (1) Where the payee's offense has been pardoned by the President of the United States, the award will be resumed, if otherwise in order, effective the date of the pardon if claim is filed within 1 year from that date; otherwise benefits may not be authorized for any period prior to the date of filing claim. The award will be subject to any existing overpayment.

(2) Payments to a dependent of the person whose benefits were declared forfeited before September 2, 1959, will be discontinued effective the day preceding the date of the pardon.


(38 U.S.C. 501)
CROSS REFERENCES: Fraud. See § 3.901. Treasonable acts. See § 3.902. Subversive activities. See § 3.903.
CONCURRENT BENEFITS AND ELECTIONS

§ 3.700 General.
§ 3.701 Elections of pension or compensation.
§ 3.702 Dependency and indemnity compensation.
§ 3.703 Two parents in same parental line.
§ 3.704 Elections within class of dependents.
§§ 3.705 -- 3.706 [Reserved]
§ 3.707 Dependents' educational assistance.
§ 3.708 Federal Employees' Compensation.
§ 3.710 Civil service annuitants.
§ 3.711 Improved pension elections.
§ 3.712 Improved pension elections; surviving spouses of Spanish-American War veterans.
§ 3.713 Effective dates of improved pension elections.
§ 3.714 Improved pension elections -- public assistance beneficiaries.

§ 3.700 General.

Not more than one award of pension, compensation, or emergency officers', regular or reserve retirement pay will be made concurrently to any person based on his or her own service except as provided in § 3.803 relating to naval pension and § 3.750(c) relating to waiver of retirement pay. Not more than one award of pension, compensation, or dependency and indemnity compensation may be made concurrently to a dependent on account of more than one period of service of a veteran.

(Authority: 38 U.S.C. 5304(a))

(a) Veterans -- (1) Active service pay. (i) Pension, compensation, or retirement pay on account of his or her own service will not be paid to any person for any period for which he or she receives active service pay.

(Authority: 38 U.S.c. 5304(c))

(ii) Time spent by members of the ROTC in drills as part of their activities as members of the corps is not active service.

(iii) Reservists may waive their pension, compensation, or retirement pay for periods of field training, instruction, other duty or drills. A waiver may include prospective periods and contain a right of recoupment for the days for which the reservists did not receive payment for duty by reason of failure to report for duty.

(2) Lump-sum readjustment pay. (i) Where entitlement to disability compensation was established prior to September 15, 1981, a veteran who has received a lump-sum readjustment payment under former 10 U.S.C. 687 (as in effect on September 14, 1981) may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of lump-sum readjustment payment subject to deduction of an amount equal to 75 percent of the amount received as readjustment payment.

(Authority: 38 U.S.C. 501)
(ii) Readjustment pay authorized under former 10 U.S.C. 3814(a) is not subject to recoupment through withholding of disability compensation, entitlement to which was established prior to September 15, 1981.
(Authority: 38 U.S.C. 501)
(iii) Where entitlement to disability compensation was established on or after September 15, 1981, a veteran who has received a lump-sum readjustment payment may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of the lump-sum readjustment payment, subject to recoupment of the readjustment payment. Where payment of readjustment pay was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of readjustment pay. Where payment of readjustment pay was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of readjustment pay less the amount of Federal income tax withheld from such pay.
(Authority: 10 U.S.C 1174(h)(2) and 1212(c))
(iv) The receipt of readjustment pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting readjustment pay based on a prior period of service.
(Authority: 10 U.S.C. 1174(h)(2))
(3) Severance pay. Where the disability or disabilities found to be service-connected are the same as those upon which disability severance pay is granted, or where entitlement to disability compensation was established on or after September 15, 1981, an award of compensation will be made subject to recoupment of the disability severance pay. Prior to the initial determination of the degree of disability recoupment will be at the full monthly compensation rate payable for the disability or disabilities for which severance pay was granted. Following initial determination of the degree of disability recoupment shall not be at a monthly rate in excess of the monthly compensation payable for that degree of disability. For this purpose the term "initial determination of the degree of disability" means the first regular schedular compensable rating in accordance with the provisions of subpart B, part 4 of this chapter and does not mean a rating based in whole or in part on a need for hospitalization or a period of convalescence. Where entitlement to disability compensation was established prior to September 15, 1981, compensation payable for service-connected disability other than the disability for which disability severance pay was granted will not be reduced for the purpose of recouping disability severance pay.
Where entitlement to disability compensation was established on or after September 15, 1981, a veteran may receive disability compensation for disability incurred or aggravated by service prior to the date of receipt of the severance pay, but VA must recoup from that disability compensation an amount equal to the severance pay.
Where payment of severance pay was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of the severance pay. Where payment of severance pay was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of the severance pay less the amount of Federal income tax withheld from such pay.
(Authority: 10 U.S.C. 1174(h)(2) and 1212(c))
(4) Improved pension. If a veteran is entitled to improved pension on the basis of the veteran's own service and is also entitled to pension under any pension program currently or previously in effect on the basis of any other person's service, the Department of Veterans Affairs shall pay the veteran only the greater benefit. (Authority: 38 U.S.C. 1521(i))

(5) Separation pay and special separation benefits. (i) Where entitlement to disability compensation was established on or after September 15, 1981, a veteran who has received separation pay may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of separation pay subject to recoupment of the separation pay. Where payment of separation pay or special separation benefits under section 1174a was made on or before September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of separation pay or special separation benefits. Where payment of separation pay or special separation benefits under section 1174a was made after September 30, 1996, VA will recoup from disability compensation an amount equal to the total amount of separation pay or special separation benefits less the amount of Federal income tax withheld from such pay. (ii) The receipt of separation pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting separation pay based on a prior period of service. (Authority: 10 U.S.C. 1174 and 1174a)

(b) Dependents -- (1) Surviving spouse. Subject to the provisions of paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse because of the death of any veteran, or receipt of pension or compensation because of his or her own service, shall not bar the payment to the surviving spouse of pension, compensation, or dependency and indemnity compensation because of the death or disability of any other veteran; however, other than insurance, concurrent benefits under laws administered by the Department of Veterans Affairs may not be authorized to a surviving spouse by reason of the death of more than one veteran to whom the surviving spouse has been married. The surviving spouse may elect to receive benefits based on the death of one such spouse and the election places the right to benefits based on the deaths of other spouses in suspense. The suspension may be lifted at any time by another election based on the death of another spouse. Benefits payable in the elected case will be subject to prior payments for the same period based on the death of the other spouse where, under the provisions of § 3.400(c), there is entitlement in the elected case prior to date of receipt of the election. (Authority: 38 U.S.C. 5304)

(2) Children. Except as provided in § 3.703 and paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a child on account of the death of a veteran or the receipt by the child of pension or compensation on account of his or her own service will not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other veteran.

(3) Parents. The receipt of compensation or dependency and indemnity compensation by a parent on account of the death of a veteran or receipt by him or her of pension or compensation on account of his or her own service, will not bar the payment of pension,
compensation, or dependency and indemnity compensation on account of the death or
disability of any other person.
Authority: (38 U.S.C. 5304(b))
[26 FR 1601, Feb. 24, 1961, as amended at 29 FR 11359, Aug. 6, 1964; 29 FR 15207,
Nov. 11, 1964; 30 FR 11389, Sept. 8, 1965; 35 FR 10648, July 1, 1970; 40 FR 59346,
11, 1991; 67 FR 60867, 60868, Sept. 27, 2002]

[EFFECTIVE DATE NOTE: 67 FR 60867, 60868, Sept. 27, 2002, amended this section,
effective Sept. 27, 2002.]

§ 3.701 Elections of pension or compensation.
(a) General. Except as otherwise provided, a person entitled to receive pension or
compensation under more than one law or section of a law administered by the
Department of Veterans Affairs may elect to receive whichever benefit, regardless of
whether it is the greater or lesser benefit, even though the election reduces the benefits
payable to his or her dependents. Such person may at any time elect or reelect the other
benefit. An election by a veteran controls the rights of all dependents in that case. An
election by a surviving spouse controls the claims of all children including children over
18 and children not in the custody of the surviving spouse. The election of improved
pension by a surviving spouse, however, shall not prejudice the rights of any child
receiving an apportionment on December 31, 1978. Termination of a marriage or marital
relationship which had been the reason for terminating an award of section 306 or
old-law pension does not restore to the surviving spouse the right to receive section 306
or old-law pension. The claimant's entitlement, if otherwise established, is under the

(b) Form of election. A statement which meets the requirements of an informal claim
may be accepted as an election.
(c) Change from one law to another. Except as otherwise provided, where payments of
pension or compensation are being made to a person under one law, the right to receive
benefits under another law being in suspension, and a higher rate of pension or
compensation becomes payable under the other law, benefits at the higher rate will not be
paid for any date prior to the date of receipt of an election.


§ 3.702 Dependency and indemnity compensation.
(a) Right to elect. A person who is eligible for death compensation and who has
entitlement to dependency and indemnity compensation pursuant to the provisions of §
3.5(b)(2) or (3) may receive dependency and indemnity compensation upon the filing of a
claim. The claim of such a person for service-connected death benefits shall be
considered a claim for dependency and indemnity compensation subject to confirmation

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by the claimant. The effective date of payment is controlled by the provisions of § 3.400(c)(4).

(b) Effect on child's entitlement. Where a surviving spouse is entitled to death compensation, the amount of which is based in part on the existence of a child who has attained the age of 18 years, and elects to receive dependency and indemnity compensation, the independent award of dependency and indemnity compensation to which the child is entitled will be awarded to or for the child without separate election by or for the child. Should such a surviving spouse not elect to receive dependency and indemnity compensation, the independent dependency and indemnity compensation to which a child who has attained 18 years of age is entitled, may be awarded upon application by or for the child. The effective date of award in these situations will be in accordance with § 3.400(c)(4)(ii).

(c) Limitation. A claim for dependency and indemnity compensation may not be filed or withdrawn after the death of the surviving spouse, child, or parent.

(d) Finality of election.

(1) Except as noted in paragraph (d)(2), an election to receive dependency and indemnity compensation is final and the claimant may not thereafter reelect death pension or compensation in that case. An election is final when the payee (or the payee's fiduciary) has negotiated one check for this benefit or when the payee dies after filing an election but prior to negotiation of a check.

(2) Notwithstanding the provisions of paragraph (d)(1), effective November 2, 1994, a surviving spouse who is receiving dependency and indemnity compensation may elect to receive death pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

(e) Surviving spouse becomes entitled. A surviving spouse who becomes eligible to receive death compensation by reason of liberalizing provisions of any law may receive death compensation or elect dependency and indemnity compensation even though dependency and indemnity compensation has been paid to a child or children of the veteran.

(f) Death pension rate.

(1) Effective October 1, 1961, where the monthly rate of dependency and indemnity compensation payable to a surviving spouse who has children is less than the monthly rate of death pension which would be payable to such surviving spouse if the veteran's death had not been service connected, dependency and indemnity compensation shall be paid to such surviving spouse in an amount equal to the pension rate for any month (or part thereof) in which this rate is greater.

(2) Effective June 22, 1966, where the monthly rate of dependency and indemnity compensation payable to a surviving spouse who has children is less than the monthly rate of death pension which would be payable for the children if the veteran's death had not been service connected and the surviving spouse were not entitled to such pension, dependency and indemnity compensation shall be payable to the surviving spouse in an amount equal to the monthly rate of death pension which would be payable to the children for any month (or part thereof) in which this rate is greater.

§ 3.703 Two parents in same parental line.

(a) General. Death compensation or dependency and indemnity compensation is not payable for a child if dependency and indemnity compensation is paid to or for a child or to the surviving spouse on account of the child by reason of the death of another parent in the same parental line where both parents died before June 9, 1960. Where the death of one such parent occurred on or after June 9, 1960, gratuitous benefits may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line.

(b) Election. The child or his or her fiduciary may elect to receive benefits based on the service of either veteran. An election of pension, compensation or dependency and indemnity compensation based on the death of one parent places the right to such benefits based on the death of another parent in suspension. The suspension may be lifted at any time by making another election.

(c) Other payees. Where a child has elected to receive pension, compensation, dependency and indemnity compensation or dependents' educational assistance under 38 U.S.C. ch. 35 based on the death of a veteran, he (or she) will be excluded from consideration in determining the eligibility or rate payable to a surviving spouse or another child or children in the case of another deceased veteran in the same parental line. See § 3.659(b).


CROSS REFERENCES: Two-parent cases. See § 3.503(a)(7). Two parents in same parental line. See § 3.659.

§ 3.704 Elections within class of dependents.

(a) Children. Where children are eligible to receive monthly benefits under more than one law in the same case, the election of benefits under one law by or on behalf of one child will not serve to increase the rate allowable for any other child under another law in that case. The rate payable for each child will not exceed the amount which would be paid if all children were receiving benefits under the same law. Where a child is no longer eligible to receive pension, compensation or dependency and indemnity compensation because of having elected dependents' educational assistance under 38 U.S.C. chapter 35, the child will be excluded from consideration in determining the rate payable for another child or children.

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(b) Parents. If there are two parents eligible for dependency and indemnity compensation and only one parent files claim for this benefit, the rate of dependency and indemnity compensation for that parent will not exceed the amount which would be paid to him or her if both parents had filed claim for dependency and indemnity compensation. The rate of death compensation for the other parent will not exceed the amount which would be paid if both parents were receiving this benefit.


§§ 3.705 -- 3.706 [Reserved]

§ 3.707 Dependents' educational assistance.

(a) Child. The conditions applicable to the bar to payment of pension, compensation or dependency and indemnity compensation for a child concurrently with educational assistance allowance under 38 U.S.C. chapter 35 are set forth in § 21.3023 of this chapter.

(b) Spouse or surviving spouse. There is no bar to the payment of pension, compensation or dependency and indemnity compensation to a spouse concurrently with educational assistance allowance under 38 U.S.C. ch. 35.


CROSS REFERENCES: Discontinuance. See § 3.503(a)(8). Certification. See § 3.807.

§ 3.708 Federal Employees' Compensation.

(a) Military service--(1) Initial election. Where a person is entitled to compensation from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based upon disability or death due to service in the Armed Forces and is also entitled based upon service in the Armed Forces to pension, compensation or dependency and indemnity compensation under the laws administered by the Department of Veterans Affairs, the claimant will elect which benefit he or she will receive. Pension compensation, or dependency and indemnity compensation may not be paid in such instances by the Department of Veterans Affairs concurrently with compensation from the Office of Workers' Compensation Programs. Benefits are not payable by the Office of Workers' Compensation Programs for disability or death incurred on or after January 1, 1957, based on military service.

(2) Right of reelection. Persons receiving compensation from the Office of Workers' Compensation Programs based on death due to military service may elect to receive dependency and indemnity compensation at any time. Once payment of dependency and indemnity compensation has been granted, all further right to FECA benefits is extinguished and only dependency and indemnity compensation is payable thereafter.

(3) Rights of children. Where primary title is vested in the surviving spouse, the claimant's election controls the rights of any of the veteran's children, regardless of whether they are in the claimant's custody and regardless of the fact that such children
may not be eligible to receive benefits under laws administered by the Office of Workers' Compensation Programs. A child who is eligible for dependency and indemnity compensation or other benefits independent of the surviving spouse's entitlement may receive such benefits concurrently with payment of FECA benefits to the surviving spouse.

(4) Entitlement based on 38 U.S.C. 1151. The provisions of this paragraph are applicable also in those cases in which disability or death occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or hospital care, training, or compensated work therapy program. See §§3.358 and 3.361.

(b) Civilian employment--(1) Same disability or death. Where a person is entitled to compensation from the Office of Workers' Compensation Programs based upon civilian employment and is also entitled to compensation or dependency and indemnity compensation under laws administered by the Department of Veterans Affairs for the same disability or death, the claimant will elect which benefit he or she will receive. On or after September 13, 1960, an award cannot be approved for payment of compensation or dependency and indemnity compensation concurrently with compensation from the Office of Workers' Compensation Programs in such instances and an election to receive benefits from either agency is final. See § 3.958. There is no right of reelection. (5 U.S.C. 8116(b)) A child who is eligible for dependency and indemnity compensation or other benefits independent of the surviving spouse's entitlement may receive such benefits concurrently with payment of FECA benefits to the surviving spouse.

(2) Not the same disability or death. There is no prohibition against payment of benefits under the Federal Employees' Compensation Act concurrently with other benefits administered by the Department of Veterans Affairs when such benefits are not based on the same disability or death.


§ 3.710 Civil service annuitants.
Department of Veterans Affairs benefits may be paid concurrently with civil service retirement benefits. However, payments will be considered income as provided in § 3.262 (e) and (h).

[29 FR 15208, Nov. 11, 1964]


§ 3.711 Improved pension elections.
Except as otherwise provided by this section and § 3.712, a person entitled to receive section 306 or old-law pension on December 31, 1978, may elect to receive improved pension under the provisions of 38 U.S.C. 1521, 1541, or 1542 as in effect on January 1, 1979. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right to reelection. Any veteran eligible to make an election under this section who is married to a veteran who is also eligible to make such an election may not receive improved pension unless the veteran's spouse also elects to receive improved pension.
§ 3.712 Improved pension elections; surviving spouses of Spanish-American War veterans.

(a) Surviving spouses -- General. A surviving spouse of a Spanish-American War veteran eligible for pension under 38 U.S.C. 1536 may elect to receive improved pension under 38 U.S.C. 1541. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right of reelection.

(b) Aid and attendance. A surviving spouse of a Spanish-American War veteran who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 1536 (a) and (b) and 1544 or the monthly rate authorized by 38 U.S.C. 1541 and 544, as 38 U.S.C. 1541 and 1544 were in effect on December 31, 1978, based on the surviving spouse's current income and net worth. Pension under 38 U.S.C. 1541 and 1544, as in effect on December 31, 1978, is not payable if the current size of the surviving spouse's net worth is a bar to payment under § 3.252(b) or if the surviving spouse's income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not required for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change.

§ 3.713 Effective dates of improved pension elections.

(a) General. Except as provided in paragraph (b) of this section an election to receive improved pension shall be effective the date of receipt of the election.

(b) Persons entitled to pension on December 31, 1978. The effective date of an election to receive improved pension filed before October 1, 1979, by a person entitled to receive either old-law pension or section 306 pension on December 31, 1978, shall be January 1, 1979, or if to the beneficiary's advantage, at any date after January 1, 1979, and before October 1, 1979. The amount of improved pension payable from the effective date of the election shall be reduced by the amount of old-law pension or section 306 pension paid to the beneficiary for such period.

§ 3.714 Improved pension elections -- public assistance beneficiaries.

(a) Definitions. The following definitions are applicable to this section.

(1) Pensioner. This means a person who was entitled to section 306 or old-law pension, or a dependent of such a person for the purposes of chapter 15 of title 38, United States Code as in effect on December 31, 1978.
(2) Public assistance. This means payments under the following titles of the Social Security Act:
(i) Title I (Grants to States for Old Age Assistance and Medical Assistance to the Aged).
(ii) Title X (Grants to States for Aid to the Blind).
(iii) Title XIV (Grants to States for Aid to the Permanently and Totally Disabled).
(iv) Part A of title IV (Aid to Families with Dependent Children).
(v) Title XVI (Supplemental Security Income for the Aged, Blind and Disabled).
(3) Medicaid. This means a State plan for medical assistance under title XIX of the Social Security Act.
(4) Informed election. The term "informed election" means an election of improved pension (or a reaffirmation of a previous election of improved pension) after the Department of Veterans Affairs has complied with the requirements of paragraph (e) of this section.

(b) General. In some States only a person in receipt of public assistance is eligible for medicaid. When this is the case the following applies effective January 1, 1979:
(1) A pensioner may not be required to elect improved pension to receive, or to continue to receive, public assistance; or
(2) A pensioner may not be denied (or suffer a reduction in the amount of) public assistance by reason of failure or refusal to elect improved pension.

c) Public assistance deemed to continue. Public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) payable to a pensioner may have been terminated because the pensioner's income increased as a result of electing improved pension. In this instance public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) shall be deemed to have remained payable to a pensioner for each month after December 1978 when the following conditions are met:
(1) The pensioner was in receipt of pension for the month of December 1978; and
(2) The pensioner was in receipt of public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) prior to June 17, 1980, and for the month of December 1978, and
(3) The pensioner's public assistance payments (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) were discontinued because of an increase in income resulting from an election of improved pension.

d) End of the deemed period of entitlement to public assistance. The deemed period of entitlement to public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) ends the first calendar month that begins more than 10 days after a pensioner makes an informed election of improved pension. (If the pensioner is unable to make an informed election the informed election may be made by a member of the pensioner's family.) A pensioner who fails to disaffirm a previously made election of improved pension within the time limits set forth in paragraph (e) of this section shall be deemed to have reaffirmed the previous election. This will also end the deemed period of entitlement to public assistance.

e) Notice of right to make informed election or disaffirm election previously made. The Department of Veterans Affairs shall send a written notice to each pensioner to whom paragraph (b) of this section applies and who is eligible to elect or who has elected improved pension. The notice shall be in clear and understandable language. It shall include the following:
(1) A description of the consequences to the pensioner (and the pensioner's family if applicable) of losing medicaid eligibility because of an increase in income resulting from electing improved pension; and
(2) A description of the provisions of paragraph (b) of this section; and
(3) In the case of a pensioner who has previously elected improved pension, a form for the purpose of enabling the pensioner to disaffirm the previous election of improved pensions; and
(4) The following provisions of Pub. L. 96-272, sec. 310(b)(2)(B):
   (i) That a pensioner has 90 days from the date the notice is mailed to the pensioner to disaffirm a previous election by completing the disaffirmation form and mailing it to the Department of Veterans Affairs.
   (ii) That a pensioner who disaffirms a previous election shall receive, beginning the calendar month after the calendar month in which the Department of Veterans Affairs receives the disaffirmation, the amount of pension payable if improved pension had not been elected.
   (iii) That a pensioner who disaffirms a previous election may again elect improved pension but without a right to disaffirm the subsequent election.
   (iv) That a pensioner who disaffirms an election of improved pension shall not be indebted to the United States for the period in which the pensioner received improved pension.
(Authority: Pub. L. 96-272, sec. 310; 94 Stat. 500)
(f) Notification to the Social Security Administration. The Department of Veterans Affairs shall promptly furnish the Department of Health and Human Services the following information:
(1) The name and identifying information of each pensioner who disaffirms his or her election of improved pension.
(2) The name and identifying information of each pensioner who fails to disaffirm and election of improved pension within the 90-day period described in paragraph (e)(4)(i) of this section.
(3) The name and identifying information of each pensioner who after disaffirming his or her election of improved pension, subsequently reelected improved pension.
[46 FR 11661, Feb. 10, 1981; 71 FR 44915, August 8, 2006]

(a) Compensation. (1) A radiation-exposed veteran, as defined in 38 CFR 3.309(d)(3), who receives a payment under the Radiation Exposure Compensation Act of 1990, as amended (42 U.S.C. 2210 note) (RECA), will not be denied compensation to which the veteran is entitled under 38 CFR 3.309(d) for months beginning after March 26, 2002.
   (2) A veteran who is not a `radiation-exposed veteran," as defined in 38 CFR 3.309(d)(3), is not entitled to VA compensation for disability caused by a disease that is attributable to exposure to radiation for which the veteran has received a payment under RECA.
(b) Dependency and indemnity compensation. A person who receives a payment under RECA based upon a veteran's death will not be denied dependency and
indemnity compensation to which the person is entitled under 38 CFR 3.5 and 3.22 for months beginning after March 26, 2002.

(c) Offset of RECA payment against VA benefits. Notwithstanding paragraph (a) or (b) of this section, the amount of a RECA payment will be deducted from the amount of compensation payable pursuant to Sec. 3.309(d) or the amount of dependency and indemnity compensation payable.

(Authority: 38 U.S.C. 1112(c)(4), 1310(c); 42 U.S.C. 2210 note)
[58 FR 25564, Apr. 27, 1993; 71 FR 44915, August 8, 2006]

(42 U.S.C. 2210 note)
CROSS REFERENCE: See § 3.500(x) for effective date of discontinuance.
§ 3.750 Retirement pay.
§ 3.751 Statutory awards; retired service personnel.
§ 3.752 [Reserved]
§ 3.753 Public Health Service.
§ 3.754 Emergency officers' retirement pay.

§ 3.750 Retirement pay.

(a) General. Except as provided in paragraphs (c) and (d) of this section and § 3.751, any person entitled to receive retirement pay based on service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration; or the National Oceanic and Atmospheric Administration may not receive such pay concurrently with benefits payable under laws administered by the Department of Veterans Affairs. The term "retirement pay" includes retired pay and retainer pay.

(b) Election. A veteran entitled to retirement pay or compensation may elect which of the benefits he or she desires to receive. An election of retirement pay does not bar him or her from making a subsequent election of the other benefit to which he or she is entitled. An election filed within 1 year from the date of notification of Department of Veterans Affairs entitlement will be considered as "timely filed" for the purpose of § 3.401(e)(1). If the veteran is incompetent the 1-year period will begin on the date notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if the claimant was not advised of his or her right of election and the effect thereof.

(c) Waiver. A person specified in paragraph (a) of this section may receive compensation upon filing with the service department concerned a waiver of so much of his (or her) retirement pay as is equal in amount to the compensation to which he (or she) is entitled. In the absence of a specific statement to the contrary, the filing of an application for compensation by a veteran entitled to retirement pay constitutes such a waiver.

(Authority: 38 U.S.C. 5305)

(d) Pension--(1) Improved pension. A person specified in paragraph (a) of this section may receive improved pension and retirement pay concurrently without having to waive any portion of the person's retirement pay. In determining entitlement to improved pension, retirement pay shall be treated in the same manner as countable income from other sources.

(2) Old-law and section 306 pension. A person specified in paragraph (a) of this section may not receive old-law or section 306 pension and retirement pay concurrently without waiver of retirement pay as provided in paragraph (c) of this section concerning compensation.


(38 U.S.C. 5304(a))
CROSS REFERENCE: Concurrent benefits and elections; general. See § 3.700.

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§ 3.751 Statutory awards; retired service personnel.
Retired Regular and Reserve officers and enlisted personnel are not entitled to statutory awards of disability compensation from the Department of Veterans Affairs in addition to their retirement pay. However, under § 3.750(c), eligible persons may waive an amount equal to the basic disability compensation and any statutory award otherwise payable by the Department of Veterans Affairs.
[41 FR 53797, Dec. 9, 1976]


§ 3.752 [Reserved]

§ 3.753 Public Health Service.
Disability compensation may be paid concurrently with retirement pay to an officer of the commissioned corps of the Public Health Service, who was receiving disability compensation on December 31, 1956, as follows:
(a) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes prior to such date.
(b) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes between July 4, 1952, and December 31, 1956.
(c) An officer who incurred a disability between July 29, 1945, and July 3, 1952, but retired for nondisability purposes between July 4, 1952, and December 31, 1956.
[26 FR 1604, Feb. 24, 1961]


§ 3.754 Emergency officers' retirement pay.
A retired emergency officer of World War I has basic eligibility to retirement pay by the Department of Veterans Affairs under Pub. L. 87-875 (sec. 11(b), Pub. L. 85-857) from date of filing application therefor after October 24, 1962, if the following requirements are met:
(a) Emergency officers' retirement pay would have been granted under Pub. L. 506, 70th Congress (Act of May 24, 1928) if application therefor had been filed before May 25, 1929.
(b) Such retirement pay would have continued to be payable under section 10 of Pub. L. 2, 73d Congress, or under section 1 of Pub. L. 743, 76th Congress.
(c) The monthly rate of retirement pay at any time between May 24, 1928 and May 24, 1929, inclusive, would have been lower than the monthly rate of disability compensation payable to the retired emergency officer.
[28 FR 72, Jan. 3, 1963]

CROSS REFERENCE: Emergency officers' retirement pay. See § 3.953(b).
SPECIAL BENEFITS

§ 3.800 Disability or death due to hospitalization, etc.
§ 3.801 Special acts.
§ 3.802 Medal of Honor.
§ 3.803 Naval pension.
§ 3.804 Special allowance under 38 U.S.C. 1312.
§ 3.805 Loan guaranty for surviving spouses; certification.
§ 3.806 Death gratuity; certification.
§ 3.807 Dependents' educational assistance; certification.
§ 3.808 Automobiles or other conveyances; certification.
§ 3.809 Specially adapted housing under 38 U.S.C. 2101(a).
§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).
§ 3.810 Clothing allowance.
§ 3.811 Minimum income annuity and gratuitous annuity.
§ 3.813 Interim benefits for disability or death due to chloracne or porphyria cutanea tarda.
§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.
§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.
§ 3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.

§ 3.800 Disability or death due to hospitalization, etc.

Discussion and Analysis in the Veterans Benefits Manual

This section applies to claims received by VA before October 1, 1997. For claims received by VA on or after October 1, 1997, see §§ 3.362 and 3.363.

(a) Where disease, injury, death or the aggravation of an existing disease or injury occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or the pursuit of a course of vocational rehabilitation under any law administered by the Department of Veterans Affairs and not the result of his (or her) own willful misconduct, disability or death compensation, or dependency and indemnity compensation will be awarded for such disease, injury, aggravation, or death as if such condition were service connected. The commencing date of benefits is subject to the provisions of § 3.400(i).

(Authority: 38 U.S.C. 1151)

(1) Benefits under paragraph (a) of this section will be in lieu of any benefits the veteran may be entitled to receive under the Federal Employees' Compensation Act inasmuch as concurrent payments are prohibited. (See § 3.708.)

(2) Where any person is awarded a judgment on or after December 1, 1962, against the United States in a civil action brought pursuant to 28 U.S.C. 1346(b), or enters into a settlement or compromise on or after December 1, 1962, under 28 U.S.C. 2672 or 2677, by reason of a disability, aggravation or death within the purview of this section, no
compensation or dependency and indemnity compensation shall be paid to such person for any month beginning after the date such judgment, settlement, or compromise on account of such disability, aggravation, or death becomes final until the total amount of benefits which would be paid except for this provision equals the total amount included in such judgment, settlement, or compromise. The provisions of this paragraph do not apply, however, to any portion of such compensation or dependency and indemnity compensation payable for any period preceding the end of the month in which such judgment, settlement or compromise becomes final.

(Authority: 38 U.S.C. 501)

(3) If an administrative award was made or a settlement or compromise became final before December 1, 1962, compensation or dependency and indemnity compensation may not be authorized for any period after such award settlement, or compromise whether before or after December 1, 1962. There is no bar to payment of compensation or dependency and indemnity compensation and no set-off because of a judgment which became final before December 1, 1962, unless specified in the terms of the judgment.

(4) Offset of award of benefits under 38 U.S.C. chapter 39. (i) If a judgment, settlement, or compromise covered by paragraph (a)(2) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for automobile assistance benefits under 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(ii) If the amount described in paragraph (4)(i) of this section is greater than the amount of an award under 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151(b)(2))

(b)(1) If death occurred prior to January 1, 1957, the benefit payable will be death compensation. See §§ 3.5(b)(2) and 3.702 as to right of election to dependency and indemnity compensation.

(2) If death occurs on or after January 1, 1957, the benefit payable will be dependency and indemnity compensation.


[EFFECTIVE DATE NOTE: 64 FR 1131, 1132, Jan. 8, 1999, removed the introductory text of this section, effective Jan. 8, 1999.]

CROSS REFERENCES: Claims; injury due to hospital treatment, etc. See § 3.154.

Effective dates; disability or death due to hospitalization, etc. See § 3.400(i).

§ 3.801 Special acts.
(a) General. A special act is one authorizing the payment of benefits to a particular person or persons. If a beneficiary in a special act has no claim before the Department of Veterans Affairs, a formal application must be filed before benefits may be awarded.

(b) Limitations. Where the rate, commencement, and duration are fixed by a special act, they are not subject to be varied by the provisions and limitations of the public laws, but where not fixed, the rate and continuance of the benefit is subject to variance in accordance with the public laws.

(c) Provisions of act. (1) When pension or compensation is granted by a special act, which fixes the rate and commencement, the rate thereunder cannot be increased nor can any other pension or compensation be paid in the absence of the payee's election, unless the special act expressly states that the benefit granted thereby is in addition to the benefit which the person is entitled to receive under any public law.

(2) If a special act corrects the nature of separation from military service and does not grant pension or compensation directly, the claimant acquires a status so that he or she may apply for and be allowed benefits. The claimant, then, is placed in the same position he or she would have been if originally released under conditions other than dishonorable.

(d) Service. A special act of Congress, reciting that a person is considered to have been mustered into the service on a named date and honorably discharged on a subsequently named date, is sufficient regardless of whether the service department has any record of such service.

(e) Hospitalization. Pension payable under special acts is subject to reduction pursuant to § 3.551.


(38 U.S.C. 501(a), 5503)

[EFFECTIVE DATE NOTE: 68 FR 34539, 34543, June 10, 2003, amended this section, effective June 10, 2003.]

§ 3.802 Medal of Honor.

(a) The Secretary of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Department of Transportation will determine the eligibility of applicants to be entered on the Medal of Honor Roll and will deliver to the Secretary of the Department of Veterans Affairs a certified copy of each certificate issued in which the right of the person named in the certificate to the special pension is set forth. The special pension will be authorized on the basis of such certification.

(Authority: 38 U.S.C. 1560, 1561)

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 1562 will be made as of the date of filing of the application with the Secretary concerned. The special pension will be paid in addition to all other payments under laws of the United States. However, a person awarded more than one Medal of Honor may not receive more than one special pension.

(Authority: 38 U.S.C. 1562)

(c) VA will pay to each person who is receiving or who in the future receives Medal of Honor pension a retroactive lump sum payment equal to the total amount of Medal of Honor pension that person would have received during the period beginning the first day
of the month after the date of the event for which the veteran earned the Medal of Honor and ending on the last day of the month preceding the month in which pension was awarded under paragraph (b) of this section. VA will calculate the lump sum payment using the monthly Medal of Honor pension rates in effect from the first day of the month after the date of the event for which the veteran earned the Medal of Honor, to the last day of the month preceding the month in which the individual was initially awarded the Medal of Honor pension. VA will not make a retroactive lump sum payment under this section before October 1, 2003.

(Authority: 38 U.S.C. 1562(f))

[EFFECTIVE DATE NOTE: 68 FR 55466, 55467, Sept. 26, 2003, added paragraph (c), effective Dec. 6, 2002.]

§ 3.803 Naval pension.
(a) Payment of naval pension will be authorized on the basis of a certification by the Secretary of the Navy.

(Authority: 38 U.S.C. 5304(a))
(b) Awards of naval pension in effect prior to July 14, 1943, or renewed or continued may be paid concurrently with Department of Veterans Affairs pension or compensation; however, naval pension allowance under 10 U.S.C. 6160 may not exceed one-fourth of the rate of disability pension or compensation otherwise payable, exclusive of additional allowances for dependents or specific disabilities.

(c) New awards of naval pension may not be made concurrently with Department of Veterans Affairs pension or compensation.

(d) Naval pension remaining unpaid at the date of the veteran's death is not payable by the Department of Veterans Affairs as an accrued benefit.


§ 3.804 Special allowance under 38 U.S.C. 1312.
(a) The provisions of this section are applicable to the payment of a special allowance by the Department of Veterans Affairs to the surviving dependents of a veteran who served after September 15, 1940, and who died on or after January 1, 1957, as a result of such service and who was not a fully and currently insured individual under title II of the Social Security Act.

(b) The special allowance is not payable: (1) Where the veteran's death resulted from Department of Veterans Affairs hospitalization, treatment, examination, or training; (2) Where the veteran's death was due to service rendered with the Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, or was due to service in the Philippine Scouts under section 14, Pub. L. 190, 79th Congress.

(c) A claim for dependency and indemnity compensation on a form prescribed will be accepted as a claim for the special allowance where it is determined that this benefit is
payable or where a specific inquiry concerning entitlement to the special allowance is received.

(d) Payment of this allowance will be authorized on the basis of a certification from the Social Security Administration. Award actions subsequent to the original award, including adjustment and discontinuance, will be made in accordance with new certifications from the Social Security Administration.

(e)(1) The special allowance will be payable only if the death occurred: (i) While on active duty, active duty for training, or inactive duty training as a member of a uniformed service (line of duty is not a factor); or

(ii) As the result of a disease or injury which was incurred or aggravated in line of duty while on active duty or active duty for training, or an injury which was incurred or aggravated in line of duty while on inactive duty training, as a member of a uniformed service after September 15, 1940, if the veteran was discharged or released from the period of such duty, under conditions other than dishonorable.

(2) Where the veteran died after separation from service: (i) Discharge from service must have been under conditions other than dishonorable as outlined in § 3.12.

(ii) Line of duty and service connection will be determined as outlined in § 3.1(k) and (m) and the § 3.300 series.

[26 FR 1605, Feb. 24, 1961]


§ 3.805 Loan guaranty for surviving spouses; certification.

A certification of loan guaranty benefits may be extended to surviving spouses based on an application filed on or after January 1, 1959, if:

(a) The veteran served in the Armed Forces of the United States (Allied Nations are not included) at any time on or after September 16, 1940; and

(b) The veteran died in service; or

(c) The veteran died after separation from service and such separation was under conditions other than dishonorable provided the veteran's death was the result of injury or disease incurred in or aggravated by service in line of duty rendered on or after September 16, 1940, regardless of the date of entrance into such service (cases where compensation is payable because of death resulting from hospitalization, treatment, examination, or training are not included); and

(d) The surviving spouse meets the requirements of the term "surviving spouse" as outlined in § 3.50; and

(e) The veteran's surviving spouse is unmarried; and

(f) The applicant is not an eligible veteran.


[EFFECTIVE DATE NOTE: 62 FR 5528, 5529, Feb. 6, 1997, substituted "surviving spouse" for "widow (widower)" in paragraphs (d) and (e) and amended paragraph (f), effective Feb. 6, 1997.]
CROSS REFERENCES: Wife, widow or spouse. See § 3.50(b). Terminated marital relationships. See § 3.55.

§ 3.806 Death gratuity; certification.
(a) Where a veteran dies on or after January 1, 1957, and during the 120-day period which begins on the day following the date of his or her discharge or release from active duty, active duty for training, or inactive training duty, the Department of Veterans Affairs will certify that fact to the Secretary concerned if the Department of Veterans Affairs determines on the basis of a claim filed with it that:
   (1) Death resulted from:
      (i) Disease or injury incurred or aggravated while on such active duty or active duty for training; or
      (ii) Injury incurred or aggravated while on such inactive duty training; and
   (2) The deceased person was discharged or released from such service under conditions other than dishonorable.
(b) In all cases, other than listed in paragraph (a) of this section, the certification will be furnished at the request of the Secretary concerned.
(c) For the purposes of this section, line of duty is not a factor. The standards, criteria, and procedures for determining incurrence or aggravation of a disease or injury under paragraph (a) of this section are those applicable under disability and death compensation laws administered by the Department of Veterans Affairs.
[26 FR 1605, Feb. 24, 1961, as amended at 40 FR 54245, Nov. 21, 1975]

(38 U.S.C. 1323)

§ 3.807 Dependents' educational assistance; certification.
For the purposes of dependents' educational assistance under 38 U.S.C. chapter 35 (see § 21.3020), the child, spouse or surviving spouse of a veteran or serviceperson will have basic eligibility if the following conditions are met:
(a) General. Basic eligibility exists if the veteran:
   (1) Was discharged from service under conditions other than dishonorable, or died in service; and
   (2) Has a permanent total service-connected disability; or
   (3) A permanent total service-connected disability was in existence at the date of the veteran's death; or
   (4) Died as a result of a service-connected disability; or (if a serviceperson)
   (5) Is on active duty as a member of the Armed Forces and now is, and, for a period of more than 90 days, has been listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign Government or power.
(b) Service. Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89-358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.40(b), (c), or (d) of this part.
(Authority: 38 U.S.C. 3565)
(c) Service connection. The standards and criteria for determining service connection, either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated (38 U.S.C. 3501(a)). Cases where eligibility for service-connected benefits is established under § 3.358, 3.361, or 3.800 are not included.

(d) Relationship -- (1) "Child" means the son or daughter of a veteran who meets the requirements of § 3.57, except as to age and marital status.

(2) "Spouse" means a person whose marriage to the veteran meets the requirements of § 3.50(a) of this part.

(3) "Surviving spouse" means a person whose marriage to the veteran meets the requirements of §§ 3.50(b) or 3.52 of this part.

(Authority: 38 U.S.C. 1160, 3501)


§ 3.808 Automobiles or other conveyances; certification.

Discussed and Analysis in the Veterans Benefits Manual

(a) Entitlement. A certificate of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 3902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be provided to--

(1) A veteran who is entitled to compensation under chapter 11 of title 38, United States Code, for a disability described in paragraph (b) of this section; or

(2) A member of the Armed Forces serving on active duty who has a disability described in paragraph (b) of this section that is the result of an injury or disability incurred or disease contracted in or aggravated by active military, naval, or air service.

(b) One of the following must exist and be the result of injury or disease incurred or aggravated during active military, naval or air service;

(1) Loss or permanent loss of use of one or both feet;

(2) Loss or permanent loss of use of one or both hands;

(3) Permanent impairment of vision of both eyes: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20[degrees] in the better eye.

(4) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips.

(Authority: 38 U.S.C. 3902)

(c) Claim for conveyance and certification for adaptive equipment. A specific application for financial assistance in purchasing a conveyance is required which must contain a
certification by the claimant that the conveyance will be operated only by persons properly licensed. The application will also be considered as an application for the adaptive equipment to insure that the claimant will be able to operate the conveyance in a manner consistent with safety and to satisfy the applicable standards of licensure of the proper licensing authorities. Simultaneously with the certification provided pursuant to the introductory text of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment as may be appropriate to the claimant's losses unless the need for such equipment is contraindicated by a physical or legal inability to operate the vehicle. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with VA on the date it is shown to have been placed in the hands of military authority for transmittal.

(d) Additional eligibility criteria for adaptive equipment. Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§ 17.156, 17.157, and 17.158 of this chapter.

(e) Definition. The term adaptive equipment, means generally, that equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant and to assist him or her in meeting the applicable standards of licensure of the proper licensing authority.

(1) With regard to automobiles and similar vehicles the term includes a basic automatic transmission as to a claimant who has lost or lost the use of a limb. In addition, the term includes, but is not limited to, power steering, power brakes, power window lifts and power seats. The term also includes air-conditioning equipment when such equipment is necessary to the health and safety of the veteran and to the safety of others, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(2) With regard to automobiles and similar vehicles the term includes such items of equipment as the Chief Medical Director may, by directive, specify as ordinarily necessary for any of the classes of losses specified in paragraph (b) of this section and for any combination of such losses. Such specifications of equipment may include a limit on the financial assistance to be provided based on judgment and experience.

(3) The term also includes other equipment which the Chief Medical Director or designee may deem necessary in an individual case.

(Authority: 38 U.S.C. 501(a), 1151(c)(2), 3902)


§ 3.809 Specially adapted housing under 38 U.S.C. 2101(a).
A certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a) may be extended to a veteran if the following requirements are met:

(a) Service. Active military, naval or air service after April 20, 1898, is required. Benefits are not restricted to veterans with wartime service.

(b) Disability. The disability must have been incurred or aggravated as the result of service as indicated in paragraph (a) of this section and the veteran must be entitled to compensation for permanent and total disability due to:

(1) The loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair, or

(2) Blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity, or

(3) The loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

(4) The loss or loss of use of one lower extremity together with the loss of loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

(c) Duplication of benefits. The assistance referred to in this section will not be available to any veteran more than once.

(d) "Preclude locomotion." This term means the necessity for regular and constant use of a wheelchair, braces, crutches or canes as a normal mode of locomotion although occasional locomotion by other methods may be possible.


(38 U.S.C. 2101, 2104)

CROSS REFERENCE: Assistance to certain disabled veterans in acquiring specially adapted housing. See §§ 36.4400 through 36.4410 of this chapter.

§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

A certificate of eligibility for assistance in acquiring necessary special home adaptations, or, on or after October 28, 1986, for assistance in acquiring a residence already adapted with necessary special features, under 38 U.S.C. 2101(b) may be issued to a veteran who served after April 20, 1898, if the following requirements are met:

(Authority: 38 U.S.C. 2101(b))

(a) The veteran is not entitled to a certificate of eligibility for assistance in acquiring specially adapted housing under § 3.809 nor had the veteran previously received assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a). A veteran who first establishes entitlement under this section and who later becomes eligible for a certificate of eligibility under § 3.809 may be issued a certificate of eligibility under § 3.809. However, no particular type of adaptation, improvement, or structural alteration may be provided to a veteran more than once.

(b) The veteran is entitled to compensation for permanent and total disability which (1) is due to blindness in both eyes with 5/200 visual acuity or less, or (2) includes the anatomical loss or loss of use of both hands.

(Authority: 38 U.S.C. 2101(b))
(c) The assistance referred to in this section will not be available to any veteran more than once.

(38 U.S.C. 2102)

§ 3.810 Clothing allowance.

(a) Except as provided in paragraph (d) of this section a veteran who has a service-connected disability, or a disability compensable under 38 U.S.C. 1151 as if it were service-connected, is entitled, upon application therefor, to an annual clothing allowance as specified in 38 U.S.C. 1162. The annual clothing allowance is payable in a lump sum, and the following eligibility criteria must also be satisfied:

(1) A VA examination or hospital or examination report from a facility specified in § 3.326(c) discloses that the veteran wears or uses certain prosthetic or orthopedic appliances which tend to wear or tear clothing (including a wheelchair) because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in § 3.350(a), (b), (c), (d), (f); or

(2) The Chief Medical Director or designee certifies that because of such disability a prosthetic or orthopedic appliance is worn or used which tends to wear or tear the veteran's clothing, or that because of the use of a physician-prescribed medication for a skin condition which is due to the service-connected disability irreparable damage is done to the veteran's outergarments. For the purposes of this paragraph "appliance" includes a wheelchair.

(b) Effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. Subsequent annual payments for those meeting the eligibility requirements of paragraphs (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement.

(c)(1) Except as provided in paragraph (c)(2) of this section, the application for clothing allowance must be filed within 1 year of the anniversary date (August 1) for which entitlement is initially established, otherwise, the application will be acceptable only to effect payment of the clothing allowance becoming due on any succeeding anniversary date for which entitlement is established, provided the application is filed within 1 year of such date. The 1-year period for filing application will include the anniversary date and terminate on July 31 of the following year.

(2) Where the initial determination of service connection for the qualifying disability is made subsequent to an anniversary date for which entitlement is established, the application for clothing allowance may be filed within 1 year from the date of notification to the veteran of such determination.

(d) If a veteran is incarcerated in a Federal, State, or local penal institution for a period of more than 60 days and is furnished clothing without charge by the institution, VA shall reduce the amount of the annual clothing allowance by 1/365th of the amount otherwise payable for each day the veteran was incarcerated during the 12-month period preceding the anniversary date for which entitlement is established. No reduction shall be made for the first 60 days of incarceration.

(Authority: 38 U.S.C. 5313A)
§ 3.811 Minimum income annuity and gratuitous annuity.
(a) Eligibility for minimum income annuity. The minimum income annuity authorized by Public Law 92-425 as amended is payable to a person:
(1) Whom the Department of Defense or the Department of Transportation has determined meets the eligibility criteria of section 4(a) of Pub. L. 92-425 as amended other than section 4(a)(1) and (2); and
(2) Who is eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and
(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).
(b) Computation of the minimum income annuity payment -- (1) Annual income. VA will determine a beneficiary's annual income for minimum income annuity purposes under the provisions of §§ 3.271 and 3.272 of this part for beneficiaries receiving improved pension, or under §§ 3.260 through 3.262 of this part for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.
(2) VA will determine the minimum income annuity payment for beneficiaries entitled to improved pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).
(3) VA will determine the minimum income annuity payment for beneficiaries receiving old law and section 306 pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.
(4) VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b), and whenever there is a change in the beneficiary's income.
(c) An individual otherwise eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 shall be considered eligible for pension for purposes of determining eligibility for the minimum income annuity even though as a result of adding the amount of the minimum income annuity authorized under Public Law 92-425 as amended to any other countable income, no amount of pension is due.
(d) If the Department of Defense or the Department of Transportation determines that a minimum income annuitant also is entitled to the gratuitous annuity authorized by Pub. L. 100-456 as amended, which is payable to certain surviving spouses of servicemembers who died before November 1, 1953, and were entitled to retired or retainer pay on the date of death, VA will combine the payment of the gratuitous annuity with the minimum income annuity payment.
(e) Termination. Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date.

(Sec. 4, Pub. L. 92-425, 86 Stat. 706, 712, as amended (10 U.S.C. 1448 note))
[EFFECTIVE DATE NOTE: 63 FR 62943, Nov. 10, 1998, amended this section, effective Nov. 10, 1998.]


The provisions of this section apply to the payment of a special allowance to certain surviving spouses and children of individuals who died on active duty prior to August 13, 1981, or who died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. This special allowance is a replacement for certain social security benefits which were either reduced or terminated by provisions of the Omnibus Budget Reconciliation Act of 1981.

(a) Eligibility requirements. (1) A determination must first be made that the person on whose earnings record the claim is based either died on active duty prior to August 13, 1981, or died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. For purposes of this determination, character of discharge is not a factor for consideration, and death on active duty subsequent to August 12, 1981, is qualifying provided that the death resulted from a service-connected disability which was incurred or aggravated prior to August 13, 1981.

(2) Once a favorable determination has been made under paragraph (a)(1) of this section, determinations as to the age, relationship and school attendance requirements contained in paragraphs (a)(1) and (b)(1) of section 156 of Pub. L. 97-377 will be made. In making these eligibility determinations VA shall apply the provisions of the Social Security Act, and any regulations promulgated pursuant thereto, as in effect during the claimant's period of eligibility. Unless otherwise provided in this section, when issues are raised concerning eligibility or entitlement to this special allowance which cannot be appropriately resolved under the provisions of the Social Security Act, or the regulations promulgated pursuant thereto, the provisions of title 38, Code of Federal Regulations, are for application.

(b) Computation of payment rate -- (1) Basic entitlement rate. A basic entitlement rate will be computed for each eligible claimant in accordance with the provisions of subparagraphs (a)(2) and (b)(2) of section 156 of Pub. L. 97-377 using data to be provided by the Social Security Administration. This basic entitlement rate will then be used to compute the monthly payment rate as described in paragraphs (b)(2) to (b)(6) of this section.

(2) Original or reopened awards to surviving spouses. The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in dependency and indemnity compensation rates under 38 U.S.C. 1311 which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

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(3) Original and reopened awards to children. The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in the rates of educational assistance allowance under 38 U.S.C. 3531(b) which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(4) Subsequent legislative increases in rates. The monthly rate of special allowance payable to a surviving spouse shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 1311. The monthly rate of special allowance payable to a child shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 3531(b).

(5) Amendment of awards. Prompt action shall be taken to amend any award of this special allowance to conform with evidence indicating a change in basic eligibility, any basic entitlement rate, or any effective date previously determined. It is the claimant's responsibility to promptly notify VA of any change in their status or employment which affects eligibility or entitlement.

(6) Rounding of monthly rates. Any monthly rate computed under the provisions of this paragraph, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(c) Claimants not entitled to this special allowance. The following are not entitled to this special allowance for the reasons indicated.

(1) Claimants eligible for death benefits under 38 U.S.C. 1151. The deaths in such cases are not service-connected.

(2) Claimants eligible for death benefits under 38 U.S.C. 1318. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).


(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or


(d) Appellate jurisdiction. VA shall have appellate jurisdiction of all determinations made in connection with this special allowance.

(e) Claims -- formal and informal. Formal claims for this special allowance must be filed on a form prescribed by the Secretary of Veterans Affairs. When informal claims or inquiries as to eligibility are received, the appropriate application form shall be provided. In such cases, the date of receipt of the informal claim or inquiry will be accepted as the date of claim for this special allowance if a formal claim on the prescribed form is received within one year from that date.

(f) Retroactivity and effective dates. There is no time limit for filing a claim for this special allowance. Upon the filing of a claim, benefits shall be payable for all periods of
§ 3.813 Interim benefits for disability or death due to chloracne or porphyria cutanea tarda.

(a) Disability benefits. Except as provided in paragraph (c) of this section, a veteran who served in the active military, naval or air service in the Republic of Vietnam during the Vietnam era, and who suffers from chloracne or porphyria cutanea tarda which became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during such service, shall be paid interim disability benefits under this section in the same manner and to the same extent that compensation would be payable if such disabilities were service-connected.

(b) Death benefits. Except as provided in paragraph (c) of this section, if a veteran described in paragraph (a) of this section dies as a result of chloracne or porphyria cutanea tarda, the veteran's survivors shall be paid interim death benefits under this section based upon the same eligibility requirements and at the same rates that dependency and indemnity compensation would be payable if the death were service-connected.

(c) Exceptions. Benefits under this section are not payable for any month for which compensation or dependency and indemnity compensation is payable for the same disability or death, nor are benefits payable under this section (1) when there is affirmative evidence that the disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era, (2) when there is affirmative evidence to establish that an intercurrent injury or disease, which is a recognized cause of the disease for which benefits are being claimed, was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval or air service and the onset of the claimed disease, or (3) if it is determined, based on evidence in the veteran's service records and other records provided by the Secretary of Defense, that the veteran was not exposed to dioxin during active military, naval or air service in the Republic of Vietnam during the Vietnam era.

(d) Similarity to service-connected benefits. For purposes of all laws administered by VA (except chapters 11 and 13 of title 38 U.S.C.), a disease establishing eligibility for disability or death benefits under this section shall be treated as if it were service-connected, and the receipt of disability or death benefits shall be treated as if such benefits were compensation or dependency and indemnity compensation, respectively.

(e) Effective dates. Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986.

[50 FR 34460, Aug. 26, 1985]
§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) Monthly monetary allowance. VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. Receipt of this allowance will not affect the right of the individual or any related person to receive any other benefit to which he or she may be entitled under any law administered by VA. An individual suffering from spina bifida is entitled to only one monthly allowance under this section, even if the individual's biological father and mother are or were both Vietnam veterans.

(b) [Reserved]

(c) Definitions -- (1) Vietnam veteran. For the purposes of this section, the term "Vietnam veteran" means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) Individual. For the purposes of this section, the term "individual" means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish in the judgment of the Secretary that a person is the biological son or daughter of a Vietnam veteran.

(3) Spina bifida. For the purposes of this section, the term "spina bifida" means any form and manifestation of spina bifida except spina bifida occulta.

(d) Disability evaluations. (1) Except as otherwise specified in this paragraph, VA will determine the level of payment as follows:

(i) Level I. The individual walks without braces or other external support as his or her primary means of mobility in the community, has no sensory or motor impairment of the upper extremities, has an IQ of 90 or higher, and is continent of urine and feces without the use of medication or other means to control incontinence.

(ii) Level II. Provided that none of the disabilities is severe enough to warrant payment at Level III, and the individual: walks with braces or other external support as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires medication or other means to control the effects of urinary bladder impairment and no more than two times per week is unable to remain dry for at least three hours at a time during waking hours; or, requires bowel management techniques or other treatment to control the effects of bowel impairment but does not have fecal leakage severe or frequent enough to require wearing of absorbent materials at least four days a week; or, has a colostomy that does not require wearing a bag.
(iii) Level III. The individual uses a wheelchair as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, despite the use of medication or other means to control the effects of urinary bladder impairment, at least three times per week is unable to remain dry for three hours at a time during waking hours; or, despite bowel management techniques or other treatment to control the effects of bowel impairment, has fecal leakage severe or frequent enough to require wearing of absorbent materials at least four days a week; or, regularly requires manual evacuation or digital stimulation to empty the bowel; or, has a colostomy that requires wearing a bag.

(2) If an individual who would otherwise be paid at Level I or II has one or more disabilities, such as blindness, uncontrolled seizures, or renal failure that result either from spina bifida, or from treatment procedures for spina bifida, the Director of the Compensation and Pension Service may increase the monthly payment to the level that, in his or her judgment, best represents the extent to which the disabilities resulting from spina bifida limit the individual's ability to engage in ordinary day-to-day activities, including activities outside the home. A Level II or Level III payment will be awarded depending on whether the effects of a disability are of equivalent severity to the effects specified under Level II or Level III.

(3) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination, provided the statements or reports are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section. In the absence of adequate medical information, VA will schedule an examination for the purpose of assessing the level of disability.

(4) VA will pay an individual eligible for a monetary allowance due to spina bifida at Level I unless or until it receives medical evidence supporting a higher payment. When required to reassess the level of disability under paragraph (d)(5) or (d)(6) of this section, VA will pay an individual eligible for this monetary allowance at Level I in the absence of evidence adequate to support a higher level of disability or if the individual fails to report, without good cause, for a scheduled examination. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc.

(5) VA will pay individuals under the age of one year at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the individual from ambulating, grasping a pen, feeding himself or herself, performing self care, or from achieving urinary or fecal continence. If any of those deficits are present, VA will pay the individual at Level III. In either case, VA will reassess the level of disability when the individual reaches the age of one year.

(6) VA will reassess the level of payment whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it must reassess the level of payment at least every five years.

(e) Effective dates. Except as otherwise provided, VA will award the monetary allowance for an individual suffering from spina bifida based on an original claim, a claim reopened
after final disallowance, or a claim for increase as of the date VA received the claim or the date entitlement arose, whichever is later.
(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.
(2) If a claimant reopen a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.
(f) Reductions and discontinuances. VA will generally reduce or discontinue awards according to the facts found except as provided in §§ 3.105 and 3.114(b).
(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.
(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.
(38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)
[EFFECTIVE DATE NOTE: 66 FR 13435, 13436, Mar. 6, 2001, revised the section heading and paragraphs (a), (c)(2), and (d), effective Apr. 5, 2001; 67 FR 49585, 49587, July 31, 2002, amended this section, effective July 31, 2002.]

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.
(cxxv) Discussion and Analysis in the Veterans Benefits Manual
(a) Monthly monetary allowance. (1) General. VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.
(2) Affirmative evidence of cause other than mother's service during Vietnam era. No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.
(3) Nonduplication; spina bifida. In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth
defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III, or IV, respectively.

(b) No effect on other VA benefits. Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) Definitions. (1) Vietnam veteran. For the purposes of this section, the term Vietnam veteran means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) Individual. For the purposes of this section, the term individual means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) Covered birth defect. For the purposes of this section, the term covered birth defect means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term covered birth defect does not include a condition due to a:

(i) Familial disorder;
(ii) Birth-related injury; or
(iii) Fetal or neonatal infirmity with well-established causes.

(d) Identification of covered birth defects. All birth defects that are not excluded under the provisions of this paragraph are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

(i) Achondroplasia;
(ii) Cleft lip and cleft palate;
(iii) Congenital heart disease;
(iv) Congenital talipes equinovarus (clubfoot);
(v) Esophageal and intestinal atresia;
(vi) Hallerman-Streiff syndrome;
(vii) Hip dysplasia;
(viii) Hirschprung's disease (congenital megacolon);
(ix) Hydrocephalus due to aqueductal stenosis;
(x) Hypospadias;
(xi) Imperforate anus;
(xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);
(xiii) Poland syndrome;
(xiv) Pyloric stenosis;
(xv) Syndactyly (fused digits);
(xvi) Tracheoesophageal fistula;
(xvii) Undescended testicle; and
(xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

(i) Albinism;
(ii) Alpha-antitrypsin deficiency;
(iii) Crouzon syndrome;
(iv) Cystic fibrosis;
(v) Duchenne's muscular dystrophy;
(vi) Galactosemia;
(vii) Hemophilia;
(viii) Huntington's disease;
(ix) Hurler syndrome;
(x) Kartagener's syndrome (Primary Ciliary Dyskinesia);
(xi) Marfan syndrome;
(xii) Neurofibromatosis;
(xiii) Osteogenesis imperfecta;
(xiv) Pectus excavatum;
(xv) Phenylketonuria;
(xvi) Sickle cell disease;
(xvii) Tay-Sachs disease;
(xviii) Thalassemia; and

(3) Conditions that are congenital malignant neoplasms are not covered birth defects. These include, but are not limited to, the following:

(i) Medulloblastoma;
(ii) Neuroblastoma;
(iii) Retinoblastoma;
(iv) Teratoma; and
(v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Down syndrome and other Trisomies;
(ii) Fragile X syndrome;
(iii) Klinefelter's syndrome; and
(iv) Turner's syndrome.
(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:
(i) Brain damage due to anoxia during or around time of birth;
(ii) Cerebral palsy due to birth trauma, (iii) Facial nerve palsy or other peripheral nerve injury;
(iv) Fractured clavicle; and
(v) Horner's syndrome due to forceful manipulation during birth.
(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:
(i) Asthma and other allergies;
(ii) Effects of maternal infection during pregnancy, including but not limited to, maternal rubella, toxoplasmosis, or syphilis;
(iii) Fetal alcohol syndrome or fetal effects of maternal drug use;
(iv) Hyaline membrane disease;
(v) Maternal-infant blood incompatibility;
(vi) Neonatal infections;
(vii) Neonatal jaundice;
(viii) Post-infancy deafness/hearing impairment (onset after the age of one year);
(ix) Prematurity; and
(x) Refractive disorders of the eye.
(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:
(i) Attention deficit disorder;
(ii) Autism;
(iii) Epilepsy diagnosed after infancy (after the age of one year);
(iv) Learning disorders; and
(v) Mental retardation (unless part of a syndrome that is a covered birth defect).
(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:
(i) Conditions rendered non-disabling through treatment;
(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;
(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;
(iv) Hemangiomas that have resolved with or without treatment; and
(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.
(e) Disability evaluations. Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:
(1) Levels of disability.
(i) Level 0. The individual has no current disability resulting from covered birth defects.

(ii) Level I. The individual meets one or more of the following criteria:
(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or
(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) Level II. The individual meets one or more of the following criteria:
(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or
(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) Level III. The individual meets one or more of the following criteria:
(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or
(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) Level IV. The individual meets one or more of the following criteria:
(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene; or
(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or
(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

2) Assessing limitation of daily activities. Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:
(i) Mobility (ability to stand and walk, including balance and coordination);
(ii) Manual dexterity;
(iii) Stamina;
(iv) Speech;
(v) Hearing;
(vi) Vision (other than correctable refraction errors);
(vii) Memory;
(viii) Ability to concentrate;
(ix) Appropriateness of behavior; and

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(x) Urinary and fecal continence.
(f) Information for determining whether individuals have covered birth defects and rating disability levels. (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.
(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.
(g) Redeterminations. VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.
(h) Referrals. If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.
(i) Effective dates. Except as provided in § 3.114(a) or paragraph (i)(1) or (2) of this section, VA will award the monetary allowance under subchapter II of 38 U.S.C. chapter 18, for an individual with disability resulting from one or more covered birth defects, based on an original claim, a claim reopened after final disallowance, or a claim for increase, as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest. Subject to the condition that no benefits may be paid for any period prior to December 1, 2001:
(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.
(2) If a claimant reopen a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.
(j) Reductions and discontinuances. VA will generally reduce or discontinue awards under subchapter II of 38 U.S.C. chapter 18 according to the facts found except as provided in §§ 3.105 and 3.114(b).
(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.
(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.
[67 FR 49585, 49587, July 31, 2002]
(38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)
§ 3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.

Discussion and Analysis in the Veterans Benefits Manual

(a) Purpose. This section states effective-date rules required by orders of a United States district court in the class-action case of Nehmer v. United States Department of Veterans Affairs, No. CV-86-6160 TEH (N.D. Cal.).

(b) Definitions. For purposes of this section --

(1) Nehmer class member means:
(i) A Vietnam veteran who has a covered herbicide disease; or
(ii) A surviving spouse, child, or parent of a deceased Vietnam veteran who died from a covered herbicide disease.

(2) Covered herbicide disease means a disease for which the Secretary of Veterans Affairs has established a presumption of service connection before October 1, 2002 pursuant to the Agent Orange Act of 1991, Public Law 102-4, other than chloracne. Those diseases are:
(i) Type 2 Diabetes (Also known as type II diabetes mellitus or adult-onset diabetes).
(ii) Hodgkin's disease.
(iii) Multiple myeloma.
(iv) Non-Hodgkin's lymphoma.
(v) Acute and Subacute peripheral neuropathy.
(vi) Porphyria cutanea tarda.
(vii) Prostate cancer.
(viii) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea).
(ix) Soft-tissue sarcoma (as defined in § 3.309(e)).

(c) Effective date of disability compensation. If a Nehmer class member is entitled to disability compensation for a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied compensation for the same covered herbicide disease in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which the prior denial was based or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A prior decision will be construed as having denied compensation for the same disease if the prior decision denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded. Minor differences in the terminology used in the prior decision will not preclude a finding, based on the record at the time of the prior decision, that the prior decision denied compensation for the same covered herbicide disease.

(2) If the class member's claim for disability compensation for the covered herbicide disease was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, the effective date of the award will be the later of the date such claim was received by VA or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A claim will be considered a claim for compensation for a particular covered herbicide disease if:
(i) The claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing compensation claims, as indicating an intent to apply for compensation for the covered herbicide disability; or
(ii) VA issued a decision on the claim, between May 3, 1989 and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, in which VA denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded.

(3) If the class member's claim referred to in paragraph (c)(1) or (c)(2) of this section was received within one year from the date of the class member's separation from service, the effective date of the award shall be the day following the date of the class member's separation from active service.

(4) If the requirements of paragraph (c)(1) or (c)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(d) Effective date of dependency and indemnity compensation (DIC). If a Nehmer class member is entitled to DIC for a death due to a covered herbicide disease, the effective date of the award will be as follows:
(1) If VA denied DIC for the death in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which such prior denial was based or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section.
(2) If the class member's claim for DIC for the death was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered herbicide disease that caused the death, the effective date of the award will be the later of the date such claim was received by VA or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section. In accordance with § 3.152(b)(1), a claim by a surviving spouse or child for death pension will be considered a claim for DIC. In all other cases, a claim will be considered a claim for DIC if the claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing DIC claims, as indicating an intent to apply for DIC.
(3) If the class member's claim referred to in paragraph (d)(1) or (d)(2) of this section was received within one year from the date of the veteran's death, the effective date of the award shall be the first day of the month in which the death occurred.
(4) If the requirements of paragraph (d)(1) or (d)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(e) Effect of other provisions affecting retroactive entitlement. (1) General. If the requirements specified in paragraphs (c)(1) or (c)(2) or (d)(1) or (d)(2) of this section are satisfied, the effective date shall be assigned as specified in those paragraphs, without regard to the provisions in 38 U.S.C. 5110(g) or § 3.114 prohibiting payment for periods prior to the effective date of the statute or regulation establishing a presumption of service connection for a covered herbicide disease. However, the provisions of this section will not apply if payment to a Nehmer class member based on a claim described in paragraph (c) or (d) of this section is otherwise prohibited by statute or regulation, as,
for example, where a class member did not qualify as a surviving spouse at the time of the prior claim or denial.

(2) Claims Based on Service in the Republic of Vietnam Prior To August 5, 1964. If a claim referred to in paragraph (c) or (d) of this section was denied by VA prior to January 1, 1997, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective-date rules of this regulation do not apply. The effective date of benefits in such cases shall be determined in accordance with 38 U.S.C. 5110. If a claim referred to in paragraph (c) or (d) of this section was pending before VA on January 1, 1997, or was received by VA after that date, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective date shall be the later of the date provided by paragraph (c) or (d) of this section or January 1, 1997.

(Authority: Public Law 104-275, sec. 505)

(f) Payment of Benefits to Survivors or Estates of Deceased Beneficiaries. (1) General. If a Nehmer class member entitled to retroactive benefits pursuant to paragraphs (c)(1) through (c)(3) or (d)(1) through (d)(3) of this section dies prior to receiving payment of any such benefits, VA shall pay such unpaid retroactive benefits to the first individual or entity listed below that is in existence at the time of payment:
(i) The class member's spouse, regardless of current marital status.

Note to Paragraph (f)(1)(i): For purposes of this paragraph, a spouse is the person who was legally married to the class member at the time of the class member's death.
(ii) The class member's child(ren), regardless of age or marital status (if more than one child exists, payment will be made in equal shares, accompanied by an explanation of the division).

Note to Paragraph (f)(1)(ii): For purposes of this paragraph, the term "child" includes natural and adopted children, and also includes any stepchildren who were members of the class member's household at the time of the class member's death.
(iii) The class member's parent(s), regardless of dependency (if both parents are alive, payment will be made in equal shares, accompanied by an explanation of the division).

Note to Paragraph (f)(1)(iii): For purposes of this paragraph, the term "parent" includes natural and adoptive parents, but in the event of successive parents, the persons who last stood as parents in relation to the class member will be considered the parents.
(iv) The class member's estate.

(2) Inapplicability of certain accrued benefit requirements. The provisions of 38 U.S.C. 5121(a) and § 3.1000(a) limiting payment of accrued benefits to amounts due and unpaid for a period not to exceed 2 years do not apply to payments under this section. The provisions of 38 U.S.C. 5121(c) and § 3.1000(c) requiring survivors to file claims for accrued benefits also do not apply to payments under this section. When a Nehmer class member dies prior to receiving retroactive payments under this section, VA will pay the amount to an identified payee in accordance with paragraph (f)(1) of this section without requiring an application from the payee. Prior to releasing such payment, however, VA may ask the payee to provide further information as specified in paragraph (f)(3) of this section.

(3) Identifying payees. VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section based on information in the veteran's claims file. If further information is needed to determine whether any appropriate payee exists or whether there are any persons having equal or higher precedence than a known
prospective payee, VA will request such information from a survivor or authorized representative if the claims file provides sufficient contact information. Before releasing payment to an identified payee, VA will ask the payee to state whether there are any other survivors of the class member who may have equal or greater entitlement to payment under this section, unless the circumstances clearly indicate that such a request is unnecessary. If, following such efforts, VA releases the full amount of unpaid benefits to a payee, VA may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover the payment previously released.

(4) Bar to accrued benefit claims. Payment of benefits pursuant to paragraph (f)(1) of this section shall bar a later claim by any individual for payment of all or any part of such benefits as accrued benefits under 38 U.S.C. 5121 and § 3.1000.

(g) Awards covered by this section. This section applies only to awards of disability compensation or DIC for disability or death caused by a disease listed in paragraph (b)(2) of this section.

(Authority: 38 U.S.C. 501)

[68 FR 50966, 50970, Aug. 25, 2003]

[EFFECTIVE DATE NOTE: 68 FR 50966, 50970, Aug. 25, 2003, added this section, effective Sept. 24, 2003.]
INCOMPETENTS, GUARDIANSHIP AND INSTITUTIONAL AWARDS

§ 3.850 General.
§ 3.851 St. Elizabeths Hospital, Washington, D.C.
§ 3.852 Institutional awards.
§ 3.853 Incompetents; estate over $ 25,000.
§ 3.854 Limitation on payments for minor.
§ 3.855 Beneficiary rated or reported incompetent.
§ 3.856 Change of name of female fiduciary.
§ 3.857 Children's benefits to fiduciary of surviving spouse.

§ 3.850 General.

(a) Payment of benefits to a duly recognized fiduciary may be made on behalf of a person who is mentally incompetent or who is a minor; or, payment may be made directly to the beneficiary or to a relative or other person for the use of the beneficiary, regardless of legal disability, when it is determined to be in the best interest of the beneficiary by the Veterans Service Center Manager.

(Authority: 38 U.S.C. 5502)

(1) Unless otherwise contraindicated by evidence of record payment will be made direct to the following classes of minors without any referral to the Veterans Service Center Manager:

(i) Those who are serving in or have been discharged from the military forces of the United States; and

(ii) Those who qualify for survivors benefits as a surviving spouse.

(2) Unless otherwise contraindicated by evidence of record, immediate payment of benefits may be made to the spouse of an incompetent veteran having no guardian for the use of the veteran and his or her dependents prior to referral to the Veterans Service Center Manager. (Sec. 13.57 of this chapter.)

(b) When payments have been discontinued or withheld from a fiduciary, benefits may be temporarily paid to the person having custody of the minor or incompetent.

(c) Where a child is in the custody of a natural, adoptive or stepparent, benefits payable on behalf of such child may be paid to the parent as custodian of the child.

(d) Benefits due a minor or incompetent adult Indian who is a recognized ward of the Government, for whom no fiduciary has been appointed, may be paid to the proper officer of the Indian Service designated by the Secretary of the Interior to receive funds for said person.


[EFFECTIVE DATE NOTE: 67 FR 46868, July 17, 2002, substituted "Government" for "Goverment" in paragraph (d), effective July 17, 2002.]

§ 3.851 St. Elizabeths Hospital, Washington, D.C.
 Benefits due or becoming due any person who is a patient at St. Elizabeths Hospital will be paid to a duly appointed fiduciary of such person. The benefits payable to a veteran who has no spouse, child, or dependent parent will be paid by an institutional award in accordance with § 3.852 if there is no such fiduciary. Benefits payable to veterans' dependents who are patients at this hospital will be paid direct or to a fiduciary of such dependent, except that any awards now being paid to the superintendent will be continued while such dependent remains a patient.  


§ 3.852 Institutional awards.  

(a) When an incompetent veteran entitled to pension, compensation or retirement pay is a patient in a hospital or other institution, payments on his (or her) account may be made to the chief officer of a Department of Veterans Affairs or non-Department of Veterans Affairs institution:  

(1) When no fiduciary has been appointed or when payments to an unsatisfactory fiduciary have been discontinued;  

(2) When the Veterans Service Center Manager certifies that a fiduciary is not furnishing the chief officer funds required for the veteran's comforts and desires not otherwise provided by the institution.  

(Authority: 38 U.S.C. 501(a); 5307; 5502)  

(b) In an institutional award of pension, compensation or retirement pay there may be paid to the chief officer of a non-Department of Veterans Affairs institution on behalf of the veteran an amount not in excess of $60 per month. An institutional award of disability pension will not exceed $25 per month if the award is apportionable under § 3.454(a).  

(Authority: 38 U.S.C. 501)  

(1) All sums, otherwise payable in excess of the institutional award, apportionments or awards to fiduciaries, will be deposited in Personal Funds of Patients.  

(2) There may be paid on behalf of a veteran, having no spouse, child or dependent parent and receiving care in a non-Department of Veterans Affairs institution, such additional amount, within the limit of the total payable and as may be certified by the Veterans Service Center Manager, needed for the benefit of the veteran and to pay for his (or her) care and maintenance. Moneys on deposit in Personal Funds of Patients will not be used for this purpose except as authorized by the Veterans Service Center Manager under § 13.72 of this chapter.  

(3) If the veteran has dependents, or more is payable under his (or her) rating, or there are funds to his (or her) credit in "Funds Due Incompetent Beneficiaries," such additional amount as may be needed will be allowed on the basis of a certification by the chief officer with respect to need and amount required.  

(c) Where there arises a situation as enumerated in paragraph (a)(1) of this section, apportionment to dependents will be under § 3.451.  

(Authority: 38 U.S.C. 5307)  

(d) Any excess funds held by the chief officer of a non-Department of Veterans Affairs institution, not necessary for the benefit of the veteran, will be returned to the Department
of Veterans Affairs or to a fiduciary, if one is serving. Upon death of a veteran with no surviving heirs, excess funds will be returned to the Department of Veterans Affairs. (Authority: 38 U.S.C. 5502)


[EFFECTIVE DATE NOTE: 68 FR 34539, 34543, June 10, 2003, amended this section, effective June 10, 2003.]
CROSS REFERENCES: Veterans Benefits Apportionable. See § 3.452. Payment to Chief Officer of Institution. See § 13.61 of this chapter.

**§ 3.853 Incompetents; estate over $25,000.**

(a) Effective November 1, 1990, through September 30, 1992, where a veteran:

(1) Is rated incompetent by VA, and

(2) Has neither spouse, child, nor dependent parent, and

(3) Has an estate, excluding the value of the veteran's home, which exceeds $25,000, further payments of compensation shall not be made until the estate is reduced to less than $10,000. The value of the veteran's estate shall be computed under the provisions of § 13.109 of this chapter. Payment of compensation shall be discontinued the last day of the first month in which the veteran's estate exceeds $25,000.

(b) Where payment of compensation has been discontinued by reason of paragraph (a) of this section, it shall not be resumed for any period prior to October 1, 1992, until VA has received evidence showing the estate has been reduced to less than $10,000, or any criterion of paragraph (a) (1) or (2) of this section is no longer met. Payments shall not be made for any period prior to the date on which the estate was reduced to less than $10,000, or a criterion of paragraph (a) (1) or (2) of this section was no longer met.

(c) If a veteran denied payment of compensation under paragraph (a) of this section is subsequently rated competent for more than 90 days, the withheld compensation shall be paid to the veteran in a lump-sum. However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent.


(38 U.S.C. 5505)

[EFFECTIVE DATE NOTE: 68 FR 34539, 34543, June 10, 2003, removed paragraph (d), effective June 10, 2003.]

**§ 3.854 Limitation on payments for minor.**

Benefits will not be authorized to a fiduciary recognized or appointed for a child, by reason of its minority, for any period subsequent to the day preceding the date on which the child will attain its majority under the law of the State in which the child resides. Payments on or after that date, if otherwise in order, will be made direct to the child, if competent, or, if incompetent and direct payment under § 3.850 is not in order, to a fiduciary appointed for the child as a mentally incompetent adult.

[39 FR 34533, Sept. 26, 1974]

§ 3.855 Beneficiary rated or reported incompetent.
(a) General. Payments being made directly to a beneficiary who is or may be incompetent will not be routinely suspended pending certification of a fiduciary (or a recommendation that payments should be paid directly to the beneficiary) by the Veterans Service Center Manager or development of the issue of incompetency.
(b) Application. This policy applies to all cases including (but not limited to) the following:
(1) Notice or evidence is received that a guardian has been appointed for the beneficiary.
(2) Notice or evidence is received that the beneficiary has been committed to a hospital.
(3) The beneficiary has been rated incompetent by the Department of Veterans Affairs.
[42 FR 2069, Jan. 10, 1977]


§ 3.856 Change of name of female fiduciary.
If a female fiduciary receiving benefits in such capacity marries or is restored to her former name by divorce decree, her statement setting forth her present name may be accepted.
[39 FR 34533, Sept. 26, 1974]


§ 3.857 Children's benefits to fiduciary of surviving spouse.
Where children are separated from the surviving spouse by reason of her (or his) incompetency, no apportionment is required. All amounts payable on behalf of the children may be paid to the fiduciary of the surviving spouse provided the fiduciary is adequately taking care of the needs of the children from the beneficiary's estate voluntarily or pursuant to a decree of court.

[EFFECTIVE DATE NOTE: 62 FR 5528, 5529, Feb. 6, 1997, substituted "surviving spouse" for "widow or widower" in this section, effective Feb. 6, 1997.]
§ 3.900 General.
§ 3.901 Fraud.
§ 3.902 Treasonable acts.
§ 3.903 Subversive activities.
§ 3.904 Effect of forfeiture after veteran's death.
§ 3.905 Declaration of forfeiture or remission of forfeiture.

§ 3.900 General.
(a) Forfeiture of benefits based on one period of service does not affect entitlement to benefits based on a period of service beginning after the offense causing the prior forfeiture.
(b)(1) Except as provided in paragraph (b)(2) of this section, any offense committed prior to January 1, 1959, may cause a forfeiture and any forfeiture in effect prior to January 1, 1959, will continue to be a bar on and after January 1, 1959.
(Authority: Section 3, Pub. L. 85-857)
(2) Effective September 2, 1959, forfeiture of benefits may not be declared except under the circumstances set forth in § 3.901(d), § 3.902(d), or § 3.903. Forfeitures declared before September 2, 1959, will continue to be a bar on and after that date.
(Authority: 38 U.S.C. 6103(d) and 6105)
(c) Pension or compensation payments are not subject to forfeiture because of violation of hospital rules.
(d) When the person primarily entitled has forfeited his or her rights by reason of fraud or a treasonable act determination as to the rights of any dependents of record to benefits under § 3.901(c) or § 3.902(c) may be made upon receipt of an application.

(38 U.S.C. 6103(b) and 38 U.S.C. 6104(b))

§ 3.901 Fraud.
(a) Definition. An act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the Department of Veterans Affairs (except laws relating to insurance benefits).
(b) Effect on claim. For the purposes of paragraph (d) of this section, any person who commits fraud forfeits all rights to benefits under all laws administered by the Department of Veterans Affairs other than laws relating to insurance benefits.
(c) Forfeiture before September 2, 1959. Where forfeiture for fraud was declared before September 2, 1959, in the case of a veteran entitled to disability compensation, the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents provided the decision to apportion was authorized prior to September 2, 1959. The total amount payable will be the lesser of these amounts:
(Authority: 38 U.S.C. 6103)
(1) Service-connected death benefit payable.
(2) Amount of compensation payable but for the forfeiture.
No benefits are payable to any person who participated in the fraud causing the forfeiture.
(d) Forfeiture after September 1, 1959. After September 1, 1959, forfeiture by reason of fraud may be declared only
(1) Where the person was not residing or domiciled in a State as defined in § 3.1(i) at the time of commission of the fraudulent act; or
(2) Where the person ceased to be a resident of or domiciled in a State as defined in § 3.1(i) before expiration of the period during which criminal prosecution could be instituted; or
(3) The fraudulent act was committed in the Philippine Islands.
Where the veteran's rights have been forfeited, no part of his or her benefit may be paid to his or her dependents.
(Authority: 38 U.S.C. 6103)
(e) Remission of forfeitures imposed prior to September 2, 1959. Where it is determined that a forfeiture for fraud which was imposed prior to September 2, 1959, would not be imposed under the law and regulation in effect on and after September 2, 1959, the forfeiture shall be remitted effective June 30, 1972. Benefits to which a person becomes eligible by virtue of the remission, upon application therefor, shall be awarded effective as provided by § 3.114.

(38 U.S.C. 6103)
§ 3.902 Treasonable acts.
(a) Definition. An act of mutiny, treason, sabotage or rendering assistance to an enemy of the United States or of its allies.
(b) Effect on claim. For the purposes of paragraph (d) of this section, any person determined by the Department of Veterans Affairs to be guilty of a treasonable act forfeits all gratuitous benefits under laws administered by the Department of Veterans Affairs which he or she may be receiving or would have been entitled to receive in the future.
(c) Forfeiture before September 2, 1959. Where forfeiture for treasonable acts was declared before September 2, 1959, the Secretary may pay any part of benefits so forfeited to the dependents of the person provided the decision to apportion was authorized prior to September 2, 1959, except that the amount may not be in excess of that which the dependent would be entitled to as a death benefit.
(Authority: 38 U.S.C. 6104(c))
(1) Compensation. Whenever a veteran entitled to disability compensation has forfeited his or her right, any part of the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents. The total amount payable will be the lesser of these amounts:
(i) Service-connected death benefit payable.
(ii) Amount of compensation payable but for the forfeiture.
No benefits are payable to any person participating in the treasonable act causing the forfeiture.

(2) Pension. Whenever a veteran entitled to pension has forfeited his or her right, any part of the pension payable except for the forfeiture provision may be paid to the veteran's spouse and children. The total amount payable will be the lesser of these amounts:
(i) Nonservice-connected death benefit payable.
(ii) Amount of pension being paid the veteran at the time of forfeiture.

No benefits are payable to any person who participated in the treasonable act causing the forfeiture.

(d) Forfeiture after September 1, 1959. After September 1, 1959, forfeiture by reason of a treasonable act may be declared only
(1) Where the person was not residing or domiciled in a State as defined in § 3.1(i) at the time of commission of the act; or
(2) Where the person ceased to be a resident of or domiciled in a State as defined in § 3.1(i) before expiration of the period during which criminal prosecution could be instituted; or
(3) The treasonable act was committed in the Philippine Islands.

No part of the benefits forfeited by the person primarily entitled shall be paid to any dependent.

(Authority: 38 U.S.C. 6104)

(e) Children. A treasonable act committed by a child or children, regardless of age, who are in the surviving spouse's custody and included in an award to such person will not affect the award to the surviving spouse.


§ 3.903 Subversive activities.
(a) Definition. Any offense for which punishment is prescribed: (1) In title 18 U.S.C., sections 792, 793, 794, 798, 2381 through 2385, 2387 through 2390, and chapter 105; (2) In title 18 U.S.C., sections 175, 229, 831, 1091, 2332a, and 2332b, for claims filed on or after December 17, 2003; (3) In the Uniform Code of Military Justice, Articles 94, 104 and 106 (10 U.S.C. 894, 904, and 906); (4) In the following sections of the Atomic Energy Act of 1954: Sections 222 through 226 (42 U.S.C. 2272-2276); and (5) In section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

(b) Effect on claim. (1) Any person who is convicted after September 1, 1959, of subversive activities shall from and after the date of commission of such offense have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Department of Veterans Affairs based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such person.

(2) The Attorney General will notify the Department of Veterans Affairs in each case in which a person is indicted or convicted of an offense listed in paragraphs (a)(1), (3), and (4) of this section. The Secretary of Defense or the Secretary of the Treasury, as may be
appropriate, will notify the Department of Veterans Affairs in each case in which a person is convicted of an offense listed in paragraph (a)(2) of this section.

(c) Presidential pardon. Where any person whose right to benefits has been so terminated is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon, if otherwise eligible.


(38 U.S.C. 6105)

§ 3.904 Effect of forfeiture after veteran's death.

(a) Fraud. Whenever a veteran has forfeited his or her right by reason of fraud, his or her surviving dependents upon proper application may be paid pension, compensation, or dependency and indemnity compensation, if otherwise eligible. No benefits are payable to any person who participated in the fraud causing the forfeiture.

(Authority: 38 U.S.C. 6103(c))

(b) Treasonable acts. Death benefits may be paid as provided in paragraph (a) of this section where forfeiture by reason of a treasonable act was declared before September 2, 1959, and such benefits were authorized prior to that date. Otherwise, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commission of the offense which resulted in the forfeiture.

(Authority: 38 U.S.C. 6104(c))

(c) Subversive activities. Where the veteran was convicted of subversive activities after September 1, 1959, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commission of the offense which resulted in the forfeiture unless the veteran had been granted a pardon of the offense by the President of the United States. If pardoned, the veteran's surviving dependents upon proper application may be paid pension, compensation or dependency and indemnity compensation, if otherwise eligible, and the right to burial in a national cemetery is restored.


(38 U.S.C. 6105(a))

§ 3.905 Declaration of forfeiture or remission of forfeiture.

(cxxvii) Discussion and Analysis in the Veterans Benefits Manual

(a) Jurisdiction. At the regional office level, except in VA Regional Office, Manila, Philippines, the Regional Counsel is authorized to determine whether the evidence warrants formal consideration as to forfeiture. In the Manila Regional Office the Veterans Service Center Manager is authorized to make this determination. Submissions may also be made by the director of a service, the Chairman, Board of Veterans Appeals, and the General Counsel. Jurisdiction to determine whether the claimant or payee has forfeited the right to gratuitous benefits or to remit a prior forfeiture is vested in the Director, Compensation and Pension Service, and personnel to whom authority has been delegated under the provisions of § 1A3.100(c).
(b) Fraud or treasonable acts. Forfeiture of benefits under § 3.901 or § 3.902 will not be declared until the person has been notified by the Regional Counsel or, in VA Regional Office, Manila, Philippines, the Veterans Service Center Manager, of the right to present a defense. Such notice shall consist of a written statement sent to the person's latest address of record setting forth the following:

1. The specific charges against the person;
2. A detailed statement of the evidence supporting the charges, subject to regulatory limitations on disclosure of information;
3. Citation and discussion of the applicable statute;
4. The right to submit a statement or evidence within 60 days, either to rebut the charges or to explain the person's position;
5. The right to a hearing within 60 days, with representation by counsel of the person's own choosing, that fees for the representation are limited in accordance with 38 U.S.C. 5904(c) and that no expenses incurred by a claimant, counsel or witness will be paid by VA.

(c) Subversive activities. Automatic forfeiture of benefits under § 3.903 will be effectuated by an official authorized to declare a forfeiture as provided in paragraph (a) of this section.

(d) Finality of decisions. A decision of forfeiture is subject to the provisions of § 3.104(a) and §§ 20.1103 and 20.1104 of this chapter. The officials authorized to file administrative appeals and the time limit for filing such appeals are set forth in § 19.51 of this chapter.

(e) Remission of forfeiture. In event of remission of forfeiture under § 3.901(e), any amounts paid as an apportionment(s) during periods of the previously forfeited beneficiary's reentitlement will be offset.


CROSS REFERENCES: Effective dates; forfeiture. See § 3.400(m). Reductions and discontinuances; fraud. See § 3.500(k). Reductions and discontinuances; treasonable acts or subversive activities. See § 3.500(s). Adjustments and resumptions. See § 3.669. Burial benefits. See § 3.1609.
PROTECTION

§ 3.950 Helpless children; Spanish-American and prior wars.
§ 3.951 Preservation of disability ratings.
§ 3.952 Protected ratings.
§ 3.954 Burial allowance.
§§ 3.955 -- 3.956 [Reserved]
§ 3.957 Service connection.
§ 3.958 Federal employees' compensation cases.
§ 3.959 Tuberculosis.
§ 3.960 Section 306 and old-law pension protection.
§ 3.950 Helpless children; Spanish-American and prior wars.

Marriage is not a bar to the payment of pension or compensation to a helpless child under an award approved prior to April 1, 1944. The presumption, arising from the fact of marriage, that helplessness has ceased may be overcome by positive proof of continuing helplessness. As to awards approved on or after April 1, 1944, pension or compensation may not be paid to a helpless child who has married.

[26 FR 1608, Feb. 24, 1961]


§ 3.951 Preservation of disability ratings.

(a) A readjustment to the Schedule for Rating Disabilities shall not be grounds for reduction of a disability rating in effect on the date of the readjustment unless medical evidence establishes that the disability to be evaluated has actually improved.

(Authority: 38 U.S.C. 1155)

(b) A disability which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes under laws administered by the Department of Veterans Affairs will not be reduced to less than such evaluation except upon a showing that such rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes which has been in force for 20 or more years will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation.

[34 FR 11970, July 16, 1969, as amended at 57 FR 10426, Mar. 26, 1992]

(38 U.S.C. 110)

§ 3.952 Protected ratings.

Ratings under the Schedule of Disability Ratings, 1925, which were the basis of compensation on April 1, 1946, are subject to modification only when a change in physical or mental condition would have required a reduction under the 1925 schedule, or
an increased evaluation has been assigned under the Schedule for Rating Disabilities, 1945 (looseleaf edition), after which time all evaluations will be under the 1945 schedule (loose-leaf edition) only. Such increased evaluations must be of an other than temporary nature (due to hospitalization, surgery, etc.). When a temporary evaluation is involved, the 1925 schedule evaluation will be restored after the period of increase has elapsed unless the permanent residuals would have required reduction under that schedule, or unless an increased evaluation would be assignable under a 1945 schedule (looseleaf edition) rating. In any instance where the changed condition represents an increased degree of disability under either rating schedule but the evaluation provided by the 1945 schedule (looseleaf edition) is less than the evaluation in effect under the 1925 schedule on April 1, 1946, the 1925 schedule evaluation and award are protected.
[26 FR 12766, Dec. 30, 1961]


(a) In receipt of or entitled to receive benefits on December 31, 1958. Any person receiving or entitled to receive benefits under any public law administered by the Department of Veterans Affairs on December 31, 1958, may, except where there was fraud, clear and unmistakable error of fact or law, or misrepresentation of material facts, continue to receive such benefits as long as the conditions warranting such payment under those laws continue. The greater benefit under the previous law or the corresponding section of title 38 U.S.C., will be paid in the absence of an election to receive the lesser benefit.
(Authority: Section 10, Pub. L. 85-857)
(b) Emergency officers' retirement pay. Any person who was receiving, or entitled to receive, emergency officers' retirement pay, or other privileges or benefits as a retired emergency officer of World War I, on December 31, 1958, under the laws in effect on that day, will, except where there was fraud, clear and unmistakable error as to conclusion of fact or law, or misrepresentation of material facts, continue to receive, or be entitled to receive, emergency officers' retirement pay at the rate otherwise payable on December 31, 1958, and such other privileges and benefits, so long as the conditions warranting such pay, privileges, and benefits under those laws continue.
(Authority: Section 11, Pub. L. 85-857)
(c) Service connection established under prior laws. In the absence of fraud, misrepresentation of material facts or clear and unmistakable error, all cases where compensation was payable on December 31, 1957, for disability service connected under prior laws, repealed by Pub. L. 85-56, including those service connected under the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, are protected by section 2316(b), Pub. L. 85-56 and section 10, Pub. L. 85-857 as to both service connection and rate of compensation, so long as the conditions warranting such status and rate continue. Any disability so service connected may be evaluated under the Schedule for Rating Disabilities, 1945 (looseleaf edition) and benefits awarded on the basis thereof, as well as special monthly compensation under 38 U.S.C. 1114, provided such action results in compensation payable at a rate equal to or higher than that payable on December 31, 1957. Where a changed physical condition warrants reevaluation of

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service-connected disabilities, compensation will be awarded under the provisions of 38 U.S.C. 1114. 


§ 3.954 Burial allowance.
Discussion and Analysis in the Veterans Benefits Manual
When any person who had a status under any law in effect on December 31, 1957, which afforded entitlement to burial benefits dies, the burial allowance will be paid, if otherwise in order, even though such status does not meet the service requirements of 38 U.S.C. ch. 23. 
[26 FR 1608, Feb. 24, 1961]

(38 U.S.C. 2305)

§§ 3.955 -- 3.956 [Reserved]

§ 3.957 Service connection.
Discussion and Analysis in the Veterans Benefits Manual
Service connection for any disability or death granted or continued under title 38 U.S.C., which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Department of Veterans Affairs finding of service connection to the effective date of the rating decision severing service connection, after compliance with § 3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation. 
[33 FR 15286, Oct. 15, 1968]

(38 U.S.C. 1159)

§ 3.958 Federal employees' compensation cases.
Any award approved prior to September 13, 1960, authorizing Department of Veterans Affairs benefits concurrently with an award of benefits under the Federal Employees' Compensation Act based on a finding that the same disability or death was due to civilian employment is not affected by the prohibition against concurrent awards contained in 5 U.S.C. 8116(b). 
[41 FR 20408, May 18, 1976]


§ 3.959 Tuberculosis.
Any veteran who, on August 19, 1968, was receiving or entitled to receive compensation for active or inactive (arrested) tuberculosis may receive compensation under 38 U.S.C. 1114(q) and 1156 as in effect before August 20, 1968.
§ 3.960 Section 306 and old-law pension protection.

(a) General. Except as provided in paragraphs (b) and (c) of this section, any person eligible to elect improved pension under § 3.711 or 3.712 who is in receipt of section 306 or old-law pension on December 31, 1978, shall in the absence of an election to receive improved pension, continue to receive such pension at the monthly rate payable on December 31, 1978.

(b) Termination. Pension payable under paragraph (a) of this section shall be terminated for any one of the following reasons:

1. A veteran pensioner ceases to be permanently and totally disabled.
4. A section 306 pensioner's countable annual income, determined under §§ 3.250 to 3.270, exceeds the applicable amount stated in § 3.26(a).
5. An old-law pensioner's countable annual income determined under §§ 3.250 to 3.270 exceeds the applicable amount stated in § 3.26(c).
6. A section 306 pensioner has a net worth of such size that it is reasonable that some part of it be consumed for the pensioner's maintenance. Evaluation of net worth shall be made under § 3.263.

(c) Reduction. The pension rate payable under paragraph (a) of this section shall be reduced by the amount of any additional pension payable by reason of a dependent upon the loss of such dependent. A veteran or surviving spouse who no longer has any dependents shall not continue to receive either section 306 pension or old-law pension if countable annual income exceeds the appropriate rate in § 3.26(a), (b), or (c).

(d) Finality of termination. Termination of section 306 pension or old-law pension for one of the reasons listed in paragraph (b) of this section precludes a person from thereafter establishing entitlement under any other pension program except the improved pension program.

[44 FR 45944, Aug. 6, 1979, as amended at 56 FR 28824, June 25, 1991]

(Sec. 306 of Pub. L. 95-588, 92 Stat. 2497)
ACCRUED

§ 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.
§ 3.1001 Hospitalized competent veterans.
§ 3.1002 Political subdivisions of United States.
§ 3.1003 Returned and canceled checks.
§§ 3.1004 -- 3.1006 [Reserved]
§ 3.1007 Hospitalized incompetent veterans.
§ 3.1008 Accrued benefits payable to foreign beneficiaries.
§ 3.1009 Personal funds of patients.

§ 3.1000 Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary.

cxxiv Discussion and Analysis in the Veterans Benefits Manual
(a) Basic entitlement. Except as provided in §§ 3.1001 and 3.1008, where death occurred on or after December 1, 1962, periodic monetary benefits (other than insurance and servicemen's indemnity) authorized under laws administered by the Department of Veterans Affairs, to which a payee was entitled at his death under existing ratings or decisions, or those based on evidence in the file at date of death, and due and unpaid for a period not to exceed 2 years prior to the last date of entitlement as provided in § 3.500(g) will, upon the death of such person, be paid as follows:
(Authority: 38 U.S.C. 5121(a)
(1) Upon the death of a veteran to the living person first listed as follows:
   (i) His or her spouse;
   (ii) His or her children (in equal shares);
   (iii) His or her dependent parents (in equal shares) or the surviving parent.
(2) Upon the death of a surviving spouse or remarried surviving spouse, to the veteran's children.
(3) Upon the death of a child, to the surviving children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation.
(4) In all other cases, only so much of the accrued benefit may be paid as may be necessary to reimburse the person who bore the expense of last sickness or burial. (See § 3.1002.)
(b) Apportionments. (1) Upon the death of a person receiving an apportioned share of benefits payable to a veteran, all or any part of such unpaid amount is payable to the veteran or to any other dependent or dependents of the veteran.
(Authority: 38 U.S.C. 5121(a)(1))
(2) Where at the date of death of the veteran an apportioned share is being paid to or has been withheld on behalf of another person, the apportioned amount remaining unpaid for periods prior to the last day of the month before the veteran's death is payable to the apportionee.
(3) Where the accrued death pension, compensation or dependency and indemnity compensation was payable for a child as an apportioned share of the surviving spouse's benefit, payment will be made under the provisions of paragraph (a)(4) of this section, on the expenses of such deceased child's last sickness or burial.
(c) Claims and evidence. Application for accrued benefits must be filed within 1 year after the date of death. A claim for death pension, compensation, or dependency and indemnity compensation, by an apportionee, surviving spouse, child or parent is deemed to include claim for any accrued benefits. (See § 3.152(b)).

(1) If an application for accrued benefits is incomplete because the claimant has not furnished information necessary to establish that he or she is within the category of eligible persons under the provisions of paragraphs (a)(1) through (a)(4) or paragraph (b) of this section and that circumstances exist which make the claimant the specific person entitled to payment of all or part of any benefits which may have accrued, VA shall notify the claimant:
   (i) Of the type of information required to complete the application;
   (ii) That VA will take no further action on the claim unless VA receives the required information; and
   (iii) That if VA does not receive the required information within 1 year of the date of the original VA notification of information required, no benefits will be awarded on the basis of that application.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

(Authority: 38 U.S.C. 5121(c); 5112(b))

(d) Definitions. (1) Spouse means the surviving spouse of the veteran, whose marriage meets the requirements of § 3.1(j) or § 3.52. Where the marriage meets the requirements of § 3.1(j) date of marriage and continuous cohabitation are not factors.

(2) Child is as defined in § 3.57 and includes an unmarried child who became permanently incapable of self-support prior to attaining 18 years of age as well as an unmarried child over the age of 18 but not over 23 years of age, who was pursuing a course of instruction within the meaning of § 3.57 at the time of the payee's death. However, upon the death of a child in receipt of death pension, compensation, or dependency and indemnity compensation, any accrued will be payable to the surviving child or children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation. Upon the death of a child, another child who has elected dependents' educational assistance under 38 U.S.C. chapter 35 may receive accrued death pension, compensation, or dependency and indemnity compensation, payable on behalf of the deceased child for periods prior to the commencement of benefits under that chapter.

(3) Dependent parent is as defined in § 3.59: Provided, That the mother or father was dependent within the meaning of § 3.250 at the date of the veteran's death.

(4) Evidence in the file at date of death means evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in the VA claims folder on or before the date of death.

(e) Subsistence allowance. Subsistence allowance under the provisions of 38 U.S.C. ch. 31 remaining due and unpaid at the date of the veteran's death, is payable under the provisions of this section.

(f) Dependents' educational assistance. Educational assistance allowance or special restorative training allowance under 38 U.S.C. ch. 35, remaining due and unpaid at the
date of death of an eligible surviving spouse or eligible child is payable to a child or children of the veteran (see paragraphs (a)(2), (a)(3) and (d)(2) of this section), or on the expenses of last sickness and burial (see paragraph (a)(4) of this section.) Benefits due and unpaid at the date of death of an eligible spouse are payable only on the expenses of last sickness and burial (see paragraph (a)(4) of this section).

(g) Veterans educational assistance. Educational assistance allowance under 38 U.S.C chapters 30, 32, or 34, and 10 U.S.C. chapter 1606 remaining due and unpaid at the date of the veteran's death is payable under the provisions of this section.

(Authority: 38 U.S.C. 5121)

(h) Clothing allowance. Clothing allowance under 38 U.S.C. 1162 remaining due and unpaid at the date of the veteran's death is payable under the provisions of this section.


[EFFECTIVE DATE NOTE: 67 FR 65707, 65708, Oct. 28, 2002, revised the section heading and paragraphs (c)(1), and (d)(4), effective Nov. 27, 2002.]

§ 3.1001 Hospitalized competent veterans.

The provisions of this section apply only to the payment of amounts actually withheld on a running award under § 3.551(b) which are payable in a lump sum after the veteran's death.

(a) Basic entitlement. Where an award of disability pension for a competent veteran without dependents was reduced because of hospital treatment or institutional or domiciliary care by the Department of Veterans Affairs and the veteran dies while receiving such treatment or care or before payment of amounts withheld, the lump sum is payable to the living person first listed as follows:

1. The veteran's spouse, as defined in § 3.1000(d)(1);
2. The veteran's children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;
3. The veteran's dependent parents (in equal shares), or the surviving dependent parent, as defined in § 3.1000(d)(3);
4. In all other cases, only so much of the lump sum may be paid as may be necessary to reimburse a person who bore the expenses of last sickness or burial. (See § 3.1002.)

(b) Claim. Applications must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

1. There is no time limit on the retroactive period of an award or for furnishing evidence.
2. Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.
(c) Lump sum withheld after discharge from institution. The provisions of paragraphs (a) and (b) of this section will apply in the event of the death of any veteran prior to receiving a lump sum which was withheld because treatment or care was terminated against medical advice or as the result of disciplinary action.


(38 U.S.C. 5503)

§ 3.1002 Political subdivisions of United States.

No part of any accrued benefits will be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary. (See § 3.1(o)).

[39 FR 15126, May 1, 1974]

(38 U.S.C. 5121(b) and 5502(d))

§ 3.1003 Returned and canceled checks.

cxxxvDiscussion and Analysis in the Veterans Benefits Manual

Where the payee of a check for benefits has died prior to negotiating the check, the check shall be returned to the issuing office and canceled.

(a) The amount represented by the returned check, or any amount recovered following improper negotiation of the check, shall be payable to the living person or persons in the order of precedence listed in § 3.1000(a)(1) through (4), except that the total amount payable shall not include any payment for the month in which the payee died (see § 3.500(g)), and payments to persons described in § 3.1000(a)(4) shall be limited to the amount necessary to reimburse such persons for the expenses of last sickness and/or burial.

(1) There is no limit on the retroactive period for which payment of the amount represented by the check may be made, and no time limit for filing a claim to obtain the proceeds of the check or for furnishing evidence to perfect a claim.

(2) Nothing in this section will preclude payment to an otherwise entitled claimant having a lower order of precedence under § 3.1000(a)(1) through (4), if it is shown that the person or persons having a higher order of precedence are deceased at the time the claim is adjudicated.

(b) Subject to the limitations in § 3.500(g) of this part, any amount not paid in the manner provided in paragraph (a) of this section shall be paid to the estate of the deceased payee, provided that the estate, including the amount paid under this paragraph, will not revert to the state because there is no one eligible to inherit it.

(c) The provisions of this section do not apply to checks for lump sums representing amounts withheld under § 3.551(b) or § 3.557. These amounts are subject to the provisions of § 3.1001 and § 3.1007, as applicable.


38 U.S.C. 501(a), 5122
§§ 3.1004 -- 3.1006 [Reserved]

§ 3.1007 Hospitalized incompetent veterans.
Where an award of disability pension for an incompetent veteran without dependents was reduced under § 3.551(b) because of hospitalization, institutional or domiciliary care by the Department of Veterans Affairs, or an award of disability pension, compensation or emergency officers' retirement pay was discontinued under former § 3.557(b) (as applicable prior to December 27, 2001) because the veteran was hospitalized by the United States or a political subdivision and had an estate which equaled or exceeded the statutory maximum, and the veteran dies before payment of amounts withheld or not paid by reason of such care, no part of such amount will be paid to any person. The provisions of this section are applicable to amounts withheld for periods prior to as well as subsequent to the rating of incompetency. The term dies before payment includes cases in which a check was issued and the veteran died before negotiating the check.

(38 U.S.C. 5503)
[EFFECTIVE DATE NOTE: 68 FR 34539, 34543, June 10, 2003, amended this section, effective June 10, 2003.]

§ 3.1008 Accrued benefits payable to foreign beneficiaries.
In case of death of the payee of any check in payment of periodic monetary benefits (other than insurance and servicemen's indemnity) accruing under laws administered by the Department of Veterans Affairs, while the amount thereof remains in the special deposit account established by Pub. L. 828, 76th Congress, such amount will be payable under section 3 of that act. (31 U.S.C. 125) However, the accrued amount will be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.
[26 FR 1609, Feb. 24, 1961]


§ 3.1009 Personal funds of patients.
The provisions of this section are applicable to gratuitous benefits deposited by the Department of Veterans Affairs either before, on, or after December 1, 1959, in a personal funds of patients account for an incompetent veteran who was incompetent at the date of death. Where the veteran died after November 30, 1959:
(a) Eligible persons. Gratuitous benefits shall be paid to the living person first listed as follows:
   (1) His or her spouse, as defined in § 3.1000(d)(1);
   (2) His or her children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;
(3) His or her dependent parents (in equal shares) as defined in § 3.59 or the surviving parent, provided that the parent was dependent within the meaning of § 3.250 at the date of the veteran's death.  
(4) In all other cases, only so much may be paid as may be necessary to reimburse a person who bore the expense of last sickness or burial. (See § 3.1002.)  
(Authority: 38 U.S.C. 5502(d))  

(b) Claim. Application must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.  
(1) There is no time limit for the submission of evidence.  
(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.  

SUBPART B -- BURIAL BENEFITS

§ 3.1600 Payment of burial expenses of deceased veterans.
§ 3.1601 Claims and evidence.
§ 3.1602 Special conditions governing payments.
§ 3.1603 Authority for burial of certain unclaimed bodies.
§ 3.1604 Payments from non-Department of Veterans Affairs sources.
§ 3.1605 Death while traveling under prior authorization or while hospitalized by the Department of Veterans Affairs.
§ 3.1606 Transportation items.
§ 3.1607 Cost of flags.
§ 3.1608 Nonallowable expenses.
§ 3.1609 Forfeiture.
§ 3.1610 Burial in national cemeteries; burial of unclaimed bodies.
§ 3.1611 Official Department of Veterans Affairs representation at funeral.
§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

§ 3.1600 Payment of burial expenses of deceased veterans.

For the purpose of payment of burial expenses the term veteran includes a person who died during a period deemed to be active military, naval or air service under § 3.6(b)(6). The period of active service upon which the claim is based must have been terminated by discharge or release from active service under conditions other than dishonorable.

(a) Service-connected death and burial allowance. If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 2307 (or if entitlement is under § 3.40(b), (c), or (d), an amount computed in accordance with the provisions of § 3.40(b) or (c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement to this benefit is subject to the applicable further provisions of this section and §§ 3.1601 through 3.1610. Except as provided in § 3.1604(d)(5), payment of the service-connected death burial allowance is in lieu of payment of any benefit authorized under paragraph (b), (c) or (f) of this section.

(Authority: 38 U.S.C. 2307)

(b) Nonservice-connected death burial allowance. If a veteran's death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 2302 (or if entitlement is under § 3.40(b), (c), or (d), an amount computed in accordance with the provisions of § 3.40(b) or (c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

(1) At the time of death the veteran was in receipt of pension or compensation (or but for the receipt of military retirement pay would have been in receipt of compensation); or

(2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran's death, and
(i) In the case of an original claim there is sufficient evidence of record on the date of the veteran's death to have supported an award of compensation or pension effective prior to the date of the veteran's death, or
(ii) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of the veteran's death to indicate that the deceased would have been entitled to compensation or pension prior to date of death. If the Department of Veterans Affairs determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Department of Veterans Affairs within 1 year from date of request, the burial allowance claim shall be disallowed; or
(3) The deceased was a veteran of any war or was discharged or released from active military, naval, or air service for a disability incurred or aggravated in line of duty, and the body of the deceased is being held by a State (or a political subdivision of a State), and the Secretary determines,
(i) That there is no next of kin or other person claiming the body of the deceased veteran, and
(ii) That there are not available sufficient resources in the veteran's estate to cover burial and funeral expenses; and
(Authority: 38 U.S.C. 2302(a))
(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610.
(Authority: 38 U.S.C. 501, 2302)
(c) Death while properly hospitalized. If a person dies from non-service-connected causes while properly hospitalized by VA, there is payable an allowance not to exceed the amount specified in 38 U.S.C. 2303(a) for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term hospitalized by VA means admission to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a); admission (transfer) to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703; admission (transfer) to a nursing home under the authority of 38 U.S.C. 1720 for nursing home care at the expense of the United States; or admission (transfer) to a State nursing home for nursing home care with respect to which payment is authorized under the authority of 38 U.S.C. 1741. (If the hospitalized person's death is service-connected, entitlement to the burial allowance and transportation expenses fall under paragraphs (a) and (g) of this section instead of this paragraph.)
(Authority: 38 U.S.C. 2303(a))
(d) Determinations. Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Department of Veterans Affairs will determine line of duty. The burden of proof will rest upon the claimant.
(e) Persons not included. Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:
(1) A discharged or rejected draftee or selectee.
(2) A member of the National Guard who reported to camp in answer to the President's call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.

(3) An alien who does not come within the purview of § 3.7(b).

(4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Pub. L. 190, 79th Congress.

(5) Temporary members of the Coast Guard Reserve.

(f) Plot or interment allowance. A plot or interment allowance is payable to the person or entity who incurred the expenses in an amount not to exceed the amount specified in 38 U.S.C. 2303(b) (or if the entitlement is under § 3.40 (c) or (d), an amount computed in accordance with the provisions of § 3.40(c)) if the following conditions are met:

(1) For claims filed on or after December 16, 2003:
   (i) The deceased veteran is eligible for burial in a national cemetery;
   (ii) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States;
   (iii) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(2) For claims filed before December 16, 2003:
   (i) The deceased veteran is eligible for the burial allowance under paragraph (b) or (c) of this section; or
   (ii) The veteran served during a period of war and the conditions set forth in § 3.1604(d)(1)(ii)-(v) (relating to burial in a state veterans' cemetery) are met; or
   (iii) The veteran was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty (or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Department of Veterans Affairs has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty); and
   (iv) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States; and
   (v) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(Authority: 38 U.S.C. 2303(b))

(g) Transportation expenses for burial in national cemetery. Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or nonservice-connected disability pension would have been entitled to disability compensation at time of death), there is payable, in addition to the burial allowance (either the amount specified in 38 U.S.C. 2302 or the amount specified in 38 U.S.C. 2307 if the cause of death was service connected), an additional amount for payment of the cost of transporting the body to the national cemetery for burial. This amount may not exceed the cost of transporting the body from the veteran's place of death to the national cemetery nearest the veteran's last place of residence in which burial space is available. The amounts payable under this paragraph are subject to the limitations set forth in §§ 3.1604 and 3.1606.
§ 3.1601 Claims and evidence.

(a) Claims. Claims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(b) and plot or interment allowance under § 3.1600(f) must be received by VA within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. This time limit does not apply to claims for service-connected burial allowance under § 3.1600(a) or for the cost of transporting a veteran's body to the place of burial under § 3.1600(c) or § 3.1600(g).

(1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The individual whose personal funds were used to pay burial, funeral, and transportation expenses; or

(iii) The executor or administrator of the estate of the veteran or the estate of the person who paid the expenses of the veteran's burial or provided such services. If no executor or administrator has been appointed then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of interstate estates in the State of the decedent's personal domicile.

(2) Claims for the plot or interment allowance (except for claims filed by a State or an agency or political subdivision thereof, under § 3.1604(d)) may be executed by:

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

(ii) The person(s) whose personal funds were used to defray the cost of the plot or interment expenses; or

(iii) The person or entity from whom the plot was purchased or who provided interment services if the bill for such is unpaid in whole or in part. An unpaid bill for a plot will take precedence in payment of the plot or interment allowance over an unpaid bill for other interment expenses or a claim for reimbursement for such expenses. Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or
(iv) The executor or administrator of the estate of the veteran or the estate of the person who bore the expense of the plot or interment expenses. If no executor or administrator has been appointed, claim for the plot or interment allowance may be filed as provided in paragraph (a)(1)(iii) of this section for the burial allowance.

(3) For the purposes of the plot and interment allowance plot or burial plot means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. Interment expenses are those costs associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of bodies for burial or interment.

(b) Supporting evidence. Evidence required to complete a claim for the burial allowance and the plot or interment allowance, when payable, (including a reopened claim filed within the 2-year period) must be submitted within 1 year from date of the Department of Veterans Affairs request for such evidence. In addition to the proper claim form the claimant (other than a § 3.1604(d) claimant) is required to submit:

(1) Statement of account. Preferably on funeral director's or cemetery owner's billhead showing name of the deceased veteran, the plot or interment costs, and the nature and cost of services rendered, and unpaid balance.

(2) Receipted bills. Must show by whom payment was made and show receipt by a person acting for the funeral director or cemetery owner.

(3) Proof of death. In accordance with § 3.211.

(4) Waivers from all other distributees. Where expenses of a veteran's burial, funeral, plot, interment and transportation were paid from funds of the veteran's estate or some other deceased person's estate and the identity and right of all persons to share in that estate have been established, payment may be made to one heir upon unconditional written consent of all other heirs.

(5) Entitlement under § 3.1600(b)(3). In addition to the other evidentiary requirements of this subparagraph, there must be written certification over the signature of a responsible official of the State (or political subdivision of the State) where the body was held that--

(i) There is no next of kin or other person claiming the body of the deceased veteran, and

(ii) There are not available sufficient resources in the veteran's estate to cover burial and funeral expenses.


§ 3.1602 Special conditions governing payments.

(a) Two or more persons expended funds. If two or more persons have paid from their personal funds toward the burial, funeral, plot, interment and transportation expenses, the burial and plot or interment allowance will be divided among such persons in accordance with the proportionate share paid by each, unless waiver is executed in favor of one of such persons by the other person or persons involved. The person in whose favor payment is waived will not be allowed a sum greater than that which was paid by such person. (See § 3.1601(a)(3).)
(b) Person who performed services. A person who performed burial, funeral, and transportation services or furnished the burial plot will have priority over claims of persons whose personal funds were expended.

c) Partial payment. Where partial payment of the expenses of the burial, funeral and transportation of the body are made from funds of the veteran's estate and the balance from the personal funds of another person, the claim of the other person has priority.

d) Escheat. No payment of burial allowance or plot or interment allowance will be made where it would escheat.


§ 3.1603 Authority for burial of certain unclaimed bodies.

If the body of a deceased veteran is unclaimed, there being no relatives or friends to claim the body, and there is burial allowance entitlement which is not based on § 3.1600(b)(3), the amount provided for burial and plot or interment allowance will be available for the burial upon receipt of a claim accompanied by a statement showing what efforts were made to locate relatives or friends. The question of escheat of any part of such deceased veteran's estate is not a factor in such a claim. Burial allowance may be authorized for cost of disinterment and reburial of unclaimed remains originally accorded pauper burial but not for initial expenses of a burial in a potter's field. Burial in a prison cemetery is not considered a pauper burial.

[48 FR 41162, Sept. 14, 1983]


§ 3.1604 Payments from non-Department of Veterans Affairs sources.

cxxxviii Discussion and Analysis in the Veterans Benefits Manual

(a) Contributions or payments by public or private organizations. When contributions or payments on the burial expenses have been made by a state, any agency or political subdivision of the United States or of a State or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed the applicable statutory burial allowance, will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment.

(Authority: 38 U.S.C. 2302, 2307)

(1) A contract or policy which provides for payment at death of a specified amount to a designated beneficiary other than the person rendering burial and funeral services will not bar payment of the burial allowance to the beneficiary even though the organization issuing the contract or policy retains an option to make payment direct to the person rendering burial and funeral services.
(2) The provisions of this paragraph do not apply to contributions or payments on the burial and funeral expenses which are made for humanitarian reasons if the organization making the contribution or payment is under no legal obligation to do so.

(b) Payment by Federal agency. (1) Where a veteran dies while in employment covered by the United States Employees' Compensation Act, as amended, or other similar laws specifically providing for payment of the expenses of funeral, transportation, and interment out of Federal funds, burial allowance will not be authorized by the Department of Veterans Affairs.

(2) A provision in any Federal law or regulation permitting the application of funds due or accrued to the credit of the deceased toward the expenses of funeral, transportation and interment (such as Social Security benefits), as distinguished from a provision specifically prescribing a definite allowance for such purpose, will not bar payment of the burial allowance. In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed the amount specified in 38 U.S.C. 2302, will be authorized.

(Authority: 38 U.S.C. 2302(b))

(3) Burial allowance is not payable for deaths in active service, or during the duty periods set forth in § 3.6, or for other deaths where the cost of burial and transportation is paid by the service department.

(c) Payment of plot or interment allowance by public or private organization except as provided for by § 3.1604(d). Where any part of the plot or interment expenses has been paid or assumed by a state, any agency or political subdivision of a State, or the employer of the deceased veteran, only the difference between the total amount of such expenses and the amount paid or assumed by any of these agencies or organizations, not to exceed the statutory plot or interment allowance, will be authorized.

(Authority: 38 U.S.C. 2303(b)(1))

(d) Payment of the plot or interment allowance to a State or political subdivision thereof -- (1) Conditions warranting payment. All of the following conditions must be met:

(i) The plot or interment allowance is payable based on the deceased veteran's eligibility for burial in a national cemetery (or, in claims filed prior to December 16, 2003, the deceased veteran's service). See § 38.620 of this chapter.

(ii) The deceased veteran is buried in a cemetery or a section thereof which is used solely for the interment of persons who are eligible for burial in a national cemetery or who, with respect to persons dying on or after November 1, 2000, were at the time of death members of a reserve component of the Armed Forces not otherwise eligible for such burial or were former members of such a reserve component not otherwise eligible for such burial who were discharged or released from service under conditions other than dishonorable.

(iii) The cemetery or the section thereof where the veteran is buried is owned by the State, or an agency or political subdivision of the State claiming the plot or interment allowance.

(iv) No charge is made by the State, or an agency or political subdivision of the State for the cost of the plot or interment.

(v) The veteran was buried on or after October 1, 1978.

(2) Claims. A claim for payment under this paragraph shall be executed by a State, or an agency or political subdivision of a state on a claim form prescribed by the Department of
Veterans Affairs. Such claim must be received by the Department of Veterans Affairs within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from service, but after the veteran's death the veteran's discharge was corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from the date of correction of the discharge.

(3) Amount of the allowance. A State or an agency or political subdivision of a state entitled to payment under this paragraph shall be paid the maximum statutory amount as a plot or interment allowance without regard to the actual cost of the plot or interment.

(Authority: 38 U.S.C. 2303(b))

(4) Priority of payment. A claim filed under this paragraph shall take precedence in payment of the plot or interment allowance over any claim filed for the plot or interment allowance under § 3.1601(a)(2).

(5) A plot or interment allowance may be paid to a state in addition to a burial allowance under § 3.1600(a) for claims filed on or after December 16, 2003.


(38 U.S.C. 2303(b))


§ 3.1605 Death while traveling under prior authorization or while hospitalized by the Department of Veterans Affairs.

An amount may be paid not to exceed the amount payable under § 3.1600 for the funeral, burial, plot, or interment expenses of a person who dies while in a hospital, domiciliary, or nursing home to which he or she was properly admitted under authority of the Department of Veterans Affairs. (See § 3.1600(c)). In addition, the cost of transporting the body to the place of burial may be authorized. The amount payable under this section is subject to the limitations set forth in paragraph (b) of this section, and §§ 3.1604 and 3.1606.

(a) Death enroute. When a veteran while traveling under proper prior authorization and at Department of Veterans Affairs expense to or from a specified place for the purpose of:

(1) Examination; or
(2) Treatment; or
(3) Care

dies enroute, burial, funeral, plot, interment, and transportation expenses will be allowed as though death occurred while properly hospitalized by the Department of Veterans Affairs. Hospitalization in the Philippines under 38 U.S.C. 631, 632, and 633 does not meet the requirements of this section.

(b) Transportation. Except for retired persons hospitalized under section 5 of Executive Order 10122 (15 FR 2173; 3 CFR 1950 Supp.) issued pursuant to Pub. L. 351, 81st Congress, and not as Department of Veterans Affairs beneficiaries, the cost of transportation of the body to the place of burial in addition to the burial and plot or
interment allowance will be provided by the Department of Veterans Affairs where death occurs:
(1) Within a State or the Canal Zone (38 U.S.C. 101 (20)) while the veteran is hospitalized by the Department of Veterans Affairs and the body is buried in a State or the Canal Zone; or
(2) While hospitalized within but burial is to be outside of a State or the Canal Zone, except that cost of transportation of the body will be authorized only from place of death to port of embarkation, or to border limits of United States where burial is in Canada or Mexico.
(c) Extended entitlement. Entitlement extends to the following persons who die while properly hospitalized by the Department of Veterans Affairs:
(1) Discharged or rejected draftees; or
(2) Members of the National Guard who reported to camp in answer to the President's call for World War I, World War II, or Korean service, but who when medically examined were not finally accepted for active military service; or
(3) A veteran discharged under conditions other than dishonorable from a period of service other than a war period.
(d) Persons properly hospitalized. A person properly hospitalized who dies:
(1) While on authorized absence which has not exceeded 96 hours at time of death;
(2) While in a status of unauthorized absence for a period not in excess of 24 hours; or
(3) While absent from the hospital for a period totaling 24 hours of combined authorized and unauthorized absence (all other cases in which such absence arises at the expiration of an authorized absence are not included);
is considered as having died while hospitalized.
(e) Persons not properly hospitalized. Where a deceased person was not properly hospitalized, benefits will not be authorized under this section.


§ 3.1606 Transportation items.

The transportation costs of those persons who come within the provisions of §§ 3.1600(g) and 3.1605 (a), (b), (c), and (d) may include the following:
(a) Shipment by common carrier. (1) Charge for pickup of remains from place hospitalized or place of death but not to exceed the usual and customary charge made the general public for the same service.
(2) Procuring permit for shipment.
(3) Shipping case. When a box purchased for interment purposes is also used as the shipping case, the amount payable may not exceed the usual and customary charge for a shipping case. In any such instance any excess amount would be an acceptable item to be included in the burial allowance expenses.
(4) Cost of sealing outside case (tin or galvanized iron), if a vault (steel or concrete) is used as a shipping case and also for burial, an allowance of $ 30 may be made thereon in lieu of a separate shipping case.
(5) Cost of hearse to point where remains are to be placed on common carrier for shipment.
(6) Cost of transportation by common carrier including amounts paid as Federal taxes.
(7) Cost of one removal by hearse direct from common carrier plus one later removal by hearse to place of burial.
(b) Transported by hearse. (1) Charge for pickup of remains from place hospitalized, or place of death and
(2) Charge for one later removal by hearse to place of burial. These charges will not exceed those made the general public for the same services.
(3) Payment of hearse charges for transporting the remains over long distances are limited to prevailing common carrier rates when common carrier service is available and can be easily and effectively utilized.


§ 3.1607 Cost of flags.
No reimbursement will be authorized for the cost of a burial flag privately purchased by relatives, friends, or other parties but such cost may be included in a claim for the burial allowance.
[26 FR 1622, Feb. 24, 1961]


§ 3.1608 Nonallowable expenses.
No reimbursement will be allowed for:
(a) Accessory items. Such as items of food and drink.
(b) Duplicate items. Any item or cost of any item or service, such as casket, clothing, etc., previously provided or paid for by any Federal agency (including the Department of Veterans Affairs).
[26 FR 1622, Feb. 24, 1961]


§ 3.1609 Forfeiture.
(a) Forfeiture of benefits for fraud by a veteran during his lifetime will not preclude payment of burial and plot or interment allowance if otherwise in order. No benefits will be paid to a claimant who participated in the fraud which caused the forfeiture by the veteran.
(b) Burial and plot or interment allowance is not payable based on a period of service commencing prior to the date of commission of the offense where either the veteran or claimant has forfeited the right to gratuitous benefits under § 3.902 or § 3.903 by reason of a treasonable act or subversive activities, unless the offense was pardoned by the President of the United States prior to the date of the veteran's death.

(38 U.S.C. 5904(c)(2), 5905(a))
§ 3.1610 Burial in national cemeteries; burial of unclaimed bodies.
The statutory burial allowance and permissible transportation charges as provided in §§3.1600 through 3.1611 are also payable under the following conditions:
(a) Where burial of a deceased veteran is in a national cemetery, provided that burial in a national cemetery is desired by the person or persons entitled to the custody of the remains for interment and permission for burial has been received from the officers having jurisdiction over burials in national cemeteries; or
(b) Where the body of a deceased veteran is unclaimed by relatives or friends (see §3.1603), the Director of the regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of §3.1604(d)(1)(ii)-(iv), provided that the total amount payable for burial and transportation expenses (including the plot allowance, if entitlement is established) does not exceed the total amount payable had burial been in a national cemetery.
[57 FR 29025, June 30, 1992; 57 FR 40944, Sept. 8, 1992]

(38 U.S.C. 1501(a))

§ 3.1611 Official Department of Veterans Affairs representation at funeral.
When requested by the person entitled to the custody of the body of a deceased beneficiary of the Department of Veterans Affairs, official representation at the funeral will be granted provided an employee is available for the purpose and this representation will entail no expense to the Department of Veterans Affairs.
[26 FR 1622, Feb. 24, 1961]


§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.
(a) Purpose. This section provides for the payment of a monetary allowance in lieu of furnishing a headstone or marker at Government expense under the provisions of §1.631(a)(2) and (b) of this chapter to the person entitled to request such a headstone or marker.
(b) Eligibility for the allowance. All of the following conditions shall be met:
(1) The deceased veteran was eligible for burial in a National cemetery (See § 1.620 (a), (b), (c) and (d) of this chapter); or died under circumstances precluding the recovery or identification of the veteran's remains or the veteran's remains were buried at sea.
(2) The veteran was buried on or after October 18, 1978.
(3) The headstone or marker was purchased to mark the otherwise unmarked grave of the deceased veteran or, if death occurred prior to December 18, 1989, the veteran's identifying information was added to an existing headstone or marker.
(Authority: 38 U.S.C. 2306(d))
(4) The headstone or marker is for placement in a cemetery other than a National cemetery or the headstone or marker upon which the veteran's identifying information was added is situated in a cemetery other than a National cemetery.
(c) Person entitled to request a Government-furnished headstone or marker. For purposes of this monetary allowance, the term "person entitled to request a headstone or marker" includes, but is not limited to, the person who purchased the headstone or marker (or if death occurred prior to December 18, 1989, the person who paid for adding the veteran's identifying information to an existing headstone or marker), or the executor, administrator or person representing the deceased's estate.

(Authority: 38 U.S.C. 2306(d))

(d) Receipted bill. A receipted bill describing the headstone or marker (or the services rendered in adding the veteran's identifying information to an existing headstone or marker) date of purchase, purchase price, the amount of payment and the name of the person who made such payment, shall accompany a claim for this monetary allowance.

(e) Payment and amount of the allowance.

(1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker. If funds of the deceased's estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent's personal domicile.

(Authority: 38 U.S.C. 2306(d))

(2) The amount of the allowance payable is the lesser of the following:

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(Authority: 38 U.S.C. 2306(d))

(ii) The average actual cost, as determined by VA, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased.

(3) The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of VA's costs during that fiscal year for procurement, transportation, Office of Memorial Programs and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount. The resulting average actual cost is published at the end of each fiscal year in the "Notices" section of the Federal Register.

(Authority: 38 U.S.C. 2306(d))

(4) The following applies to joint or multiple headstones or markers:

(i) When a joint or multiple non-Government headstone or marker is purchased subsequent to the veteran's death, the amount set forth in paragraph (e)(2)(ii) of this section shall be available as reimbursement for the cost of the veteran's portion of the joint or multiple headstone or marker.

(ii) When a joint or multiple non-Government headstone or marker is existent at the time of the veteran's death, the allowance payable as reimbursement under paragraph (e)(2) of
this section shall be determined based on the cost of the services for adding the veteran's identifying information.

(f) Payment of allowance prohibited. This monetary allowance shall not be paid when a Government headstone or marker has been requested or issued under the provisions of § 1.631(a) (2) and (b) of this chapter.

(g) Claims. There is no time limit for filing claims for monetary allowance in lieu of a Government-furnished headstone or marker.

(Authority: 38 U.S.C. 2306(d))

(h) The monetary allowance in lieu of a Government-furnished headstone or marker is not payable if death occurred on or after November 1, 1990.


(Pub. L. 101-508)

[EFFECTIVE DATE NOTE: 61 FR 20726, 20727, May 8, 1996, which substituted "Office of Memorial Programs" for "Monument Service" in paragraph (e)(3), became effective May 8, 1996.]
Subpart D -- Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

General
Revisions
38 U.S.C. 501(a)
General

§ 3.2100 Scope of Applicability.
§ 3.2130 Will VA accept a signature by mark or thumbprint?

§ 3.2100 Scope of Applicability.
Unless otherwise specified, the provisions of this subpart apply only to claims governed by part 3 of this title.
[66 FR 18194, 18195, Apr. 6, 2001]

(38 U.S.C. 501(a)).
[EFFECTIVE DATE NOTE: 66 FR 18194, 18195, Apr. 6, 2001, added Subpart D, effective Apr. 6, 2001.]

§ 3.2130 Will VA accept a signature by mark or thumbprint?
VA will accept signatures by mark or thumbprint if:
(a) They are witnessed by two people who sign their names and give their addresses, or
(b) They are witnessed by an accredited agent, attorney, or service organization representative, or
(c) They are certified by a notary public or any other person having the authority to administer oaths for general purposes, or
(d) They are certified by a VA employee who has been delegated authority by the Secretary under 38 CFR 2.3.
[66 FR 18194, 18195, Apr. 6, 2001]

[EFFECTIVE DATE NOTE: 66 FR 18194, 18195, Apr. 6, 2001, added Subpart D, effective Apr. 6, 2001.]
§ 3.2600 Review of benefit claims decisions.

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by a Veterans Service Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under § 3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding § 3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see § 3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001.

[66 FR 21871, 21874, May 2, 2001; 67 FR 46868, July 17, 2002]
(38 U.S.C. 5109A and 7105(d))

[EFFECTIVE DATE NOTE: 66 FR 21871, 21874, May 2, 2001, added this section, effective June 1, 2001; 67 FR 46868, July 17, 2002, amended paragraph (a), effective July 17, 2002.]
PART 4 -- SCHEDULE FOR RATING DISABILITIES

SUBPART A -- GENERAL POLICY IN RATING
SUBPART B -- DISABILITY RATINGS
38 U.S.C. 1155.

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SUBPART A -- GENERAL POLICY IN RATING

§ 4.1 Essentials of evaluative rating.
§ 4.2 Interpretation of examination reports.
§ 4.3 Resolution of reasonable doubt.
§ 4.6 Evaluation of evidence.
§ 4.7 Higher of two evaluations.
§ 4.9 Congenital or developmental defects.
§ 4.10 Functional impairment.
§ 4.13 Effect of change of diagnosis.
§ 4.14 Avoidance of pyramiding.
§ 4.15 Total disability ratings.
§ 4.16 Total disability ratings for compensation based on unemployability of the individual.
§ 4.17 Total disability ratings for pension based on unemployability and age of the individual.
§ 4.17a Misconduct etiology.
§ 4.18 Unemployability.
§ 4.19 Age in service-connected claims.
§ 4.20 Analogous ratings.
§ 4.21 Application of rating schedule.
§ 4.22 Rating of disabilities aggravated by active service.
§ 4.23 Attitude of rating officers.
§ 4.24 Correspondence.
§ 4.25 Combined ratings table.
§ 4.26 Bilateral factor.
§ 4.27 Use of diagnostic code numbers.
§ 4.28 Prestabilization rating from date of discharge from service.
§ 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.
§ 4.30 Convalescent ratings.
§ 4.31 Zero percent evaluations.

§ 4.1 Essentials of evaluative rating.

This rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disablimg condition. Over a period of many years, a veteran’s disability claim may require reratings.
in accordance with changes in laws, medical knowledge and his or her physical or mental condition. It is thus essential, both in the examination and in the evaluation of disability, that each disability be viewed in relation to its history.
[41 FR 11292, Mar. 18, 1976]

§ 4.2 Interpretation of examination reports.
Different examiners, at different times, will not describe the same disability in the same language. Features of the disability which must have persisted unchanged may be overlooked or a change for the better or worse may not be accurately appreciated or described. It is the responsibility of the rating specialist to interpret reports of examination in the light of the whole recorded history, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the elements of disability present. Each disability must be considered from the point of view of the veteran working or seeking work. If a diagnosis is not supported by the findings on the examination report or if the report does not contain sufficient detail, it is incumbent upon the rating board to return the report as inadequate for evaluation purposes.
[41 FR 11292, Mar. 18, 1976]

§ 4.3 Resolution of reasonable doubt.
It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding the degree of disability such doubt will be resolved in favor of the claimant. See § 3.102 of this chapter.
[40 FR 42535, Sept. 15, 1975]

§ 4.6 Evaluation of evidence.
The element of the weight to be accorded the character of the veteran's service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law.

§ 4.7 Higher of two evaluations.
Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned.
§ 4.9 Congenital or developmental defects.
Mere congenital or developmental defects, absent, displaced or supernumerary parts, refractive error of the eye, personality disorder and mental deficiency are not diseases or injuries in the meaning of applicable legislation for disability compensation purposes. [41 FR 11292, Mar. 18, 1976]

§ 4.10 Functional impairment.
The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment. Whether the upper or lower extremities, the back or abdominal wall, the eyes or ears, or the cardiovascular, digestive, or other system, or psyche are affected, evaluations are based upon lack of usefulness, of these parts or systems, especially in self-support. This imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person's ordinary activity. In this connection, it will be remembered that a person may be too disabled to engage in employment although he or she is up and about and fairly comfortable at home or upon limited activity. [41 FR 11292, Mar. 18, 1976]

§ 4.13 Effect of change of diagnosis.
The repercussion upon a current rating of service connection when change is made of a previously assigned diagnosis or etiology must be kept in mind. The aim should be the reconciliation and continuance of the diagnosis or etiology upon which service connection for the disability had been granted. The relevant principle enunciated in § 4.125, entitled "Diagnosis of mental disorders," should have careful attention in this connection. When any change in evaluation is to be made, the rating agency should assure itself that there has been an actual change in the conditions, for better or worse, and not merely a difference in thoroughness of the examination or in use of descriptive terms. This will not, of course, preclude the correction of erroneous ratings, nor will it preclude assignment of a rating in conformity with § 4.7. [29 FR 6718, May 22, 1964; 61 FR 52695, 52700, Oct. 8, 1996]

[EFFECTIVE DATE NOTE: 61 FR 52695, 52700, Oct. 8, 1996, which revised the third sentence, became effective Nov. 7, 1996.]

§ 4.14 Avoidance of pyramiding.
The evaluation of the same disability under various diagnoses is to be avoided. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent, so that special rules are included in the appropriate bodily system for their
evaluation. Dyspnea, tachycardia, nervousness, fatigability, etc., may result from many causes; some may be service connected, others, not. Both the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation, and the evaluation of the same manifestation under different diagnoses are to be avoided. 29 FR 6718, May 22, 1964.

§ 4.15 Total disability ratings.

The ability to overcome the handicap of disability varies widely among individuals. The rating, however, is based primarily upon the average impairment in earning capacity, that is, upon the economic or industrial handicap which must be overcome and not from individual success in overcoming it. However, full consideration must be given to unusual physical or mental effects in individual cases, to peculiar effects of occupational activities, to defects in physical or mental endowment preventing the usual amount of success in overcoming the handicap of disability and to the effect of combinations of disability. Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation; Provided, That permanent total disability shall be taken to exist when the impairment is reasonably certain to continue throughout the life of the disabled person. The following will be considered to be permanent total disability: the permanent loss of the use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or permanently bedridden. Other total disability ratings are scheduled in the various bodily systems of this schedule. 29 FR 6718, May 22, 1964.

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

(a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: Provided That, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. For the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: (1) Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable, (2) disabilities resulting from common etiology or a single accident, (3) disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric, (4) multiple injuries incurred in action, or (5) multiple disabilities incurred as a prisoner of war. It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be
disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination.

(Authority: 38 U.S.C. 501)

(b) It is the established policy of the Department of Veterans Affairs that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. Therefore, rating boards should submit to the Director, Compensation and Pension Service, for extra-schedular consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section. The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.

(c) [Removed. See 61 FR 52695, 52700, Oct. 8, 1996.]


[EFFECTIVE DATE NOTE: 61 FR 52695, 52700, Oct. 8, 1996, which removed paragraph (c), became effective Nov. 7, 1996.]

§ 4.17 Total disability ratings for pension based on unemployability and age of the individual.

Discussion and Analysis in the Veterans Benefits Manual

All veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent shall be rated as permanently and totally disabled. For the purpose of pension, the permanence of the percentage requirements of § 4.16 is a requisite. When the percentage requirements are met, and the disabilities involved are of a permanent nature, a rating of permanent and total disability will be assigned if the veteran is found to be unable to secure and follow substantially gainful employment by reason of such disability. Prior employment or unemployment status is immaterial if in the judgment of the rating board the veteran's disabilities render him or her unemployable. In making such determinations, the following guidelines will be used:

(a) Marginal employment, for example, as a self-employed farmer or other person, while employed in his or her own business, or at odd jobs or while employed at less than half the usual remuneration will not be considered incompatible with a determination of unemployability, if the restriction, as to securing or retaining better employment, is due to disability.
(b) Claims of all veterans who fail to meet the percentage standards but who meet the basic entitlement criteria and are unemployable, will be referred by the rating board to the Veterans Service Center Manager under § 3.321(b)(2) of this chapter. [43 FR 45348, Oct. 2, 1978, as amended at 56 FR 57985, Nov. 15, 1991; 71 FR 28585, May 17, 2006]

(38 U.S.C. 1155; 38 U.S.C. 3102)

§ 4.17a Misconduct etiology.
A permanent and total disability rating under the provisions of §§ 4.15, 4.16 and 4.17 will not be precluded by reason of the coexistence of misconduct disability when:
(a) A veteran, regardless of employment status, also has innocently acquired 100 percent disability, or
(b) Where unemployable, the veteran has other disabilities innocently acquired which meet the percentage requirements of §§ 4.16 and 4.17 and would render, in the judgment of the rating agency, the average person unable to secure or follow a substantially gainful occupation.

§ 4.18 Unemployability.
A veteran may be considered as unemployable upon termination of employment which was provided on account of disability, or in which special consideration was given on account of the same, when it is satisfactorily shown that he or she is unable to secure further employment. With amputations, sequelae of fractures and other residuals of traumatism shown to be of static character, a showing of continuous unemployability from date of incurrence, or the date the condition reached the stabilized level, is a general requirement in order to establish the fact that present unemployability is the result of the disability. However, consideration is to be given to the circumstances of employment in individual claims, and, if the employment was only occasional, intermittent, tryout or unsuccessful, or eventually terminated on account of the disability, present unemployability may be attributed to the static disability. Where unemployability for pension previously has been established on the basis of combined service-connected and nonservice-connected disabilities and the service-connected disability or disabilities have increased in severity, § 4.16 is for consideration.

§ 4.19 Age in service-connected claims.
Age may not be considered as a factor in evaluating service-connected disability; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating. Age, as such, is a factor only in evaluations of disability not resulting from service, i.e., for the purposes of pension.
§ 4.20 Analogous ratings.

When an unlisted condition is encountered it will be permissible to rate under a closely related disease or injury in which not only the functions affected, but the anatomical localization and symptomatology are closely analogous. Conjectural analogies will be avoided, as will the use of analogous ratings for conditions of doubtful diagnosis, or for those not fully supported by clinical and laboratory findings. Nor will ratings assigned to organic diseases and injuries be assigned by analogy to conditions of functional origin.


§ 4.21 Application of rating schedule.

In view of the number of atypical instances it is not expected, especially with the more fully described grades of disabilities, that all cases will show all the findings specified. Findings sufficiently characteristic to identify the disease and the disability therefrom, and above all, coordination of rating with impairment of function will, however, be expected in all instances.

[41 FR 11293, Mar. 18, 1976]

§ 4.22 Rating of disabilities aggravated by active service.

In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, whether the particular condition was noted at the time of entrance into the active service, or it is determined upon the evidence of record to have existed at that time. It is necessary therefore, in all cases of this character to deduct from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule, except that if the disability is total (100 percent) no deduction will be made. The resulting difference will be recorded on the rating sheet. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the schedule, no deduction will be made.


§ 4.23 Attitude of rating officers.

It is to be remembered that the majority of applicants are disabled persons who are seeking benefits of law to which they believe themselves entitled. In the exercise of his or her functions, rating officers must not allow their personal feelings to intrude; an antagonistic, critical, or even abusive attitude on the part of a claimant should not in any instance influence the officers in the handling of the case. Fairness and courtesy must at all times be shown to applicants by all employees whose duties bring them in contact, directly or indirectly, with the Department's claimants.

[41 FR 11292, Mar. 18, 1976]

§ 4.24 Correspondence.
All correspondence relative to the interpretation of the schedule for rating disabilities, requests for advisory opinions, questions regarding lack of clarity or application to individual cases involving unusual difficulties, will be addressed to the Director, Compensation and Pension Service. A clear statement will be made of the point or points upon which information is desired, and the complete case file will be simultaneously forwarded to Central Office. Rating agencies will assure themselves that the recent report of physical examination presents an adequate picture of the claimant's condition. Claims in regard to which the schedule evaluations are considered inadequate or excessive, and errors in the schedule will be similarly brought to attention.

[41 FR 11292, Mar. 18, 1976]

§ 4.25 Combined ratings table.

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. The combined value, exactly as found in table I, will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10, adjusting final 5's upward. Thus, if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I).
(b) Except as otherwise provided in this schedule, the disabilities arising from a single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are to be rated separately as are all other disabiling conditions, if any. All disabilities are then to be combined as described in paragraph (a) of this section. The conversion to the nearest degree divisible by 10 will be done only once per rating decision, will follow the combining of all disabilities, and will be the last procedure in determining the combined degree of disability.

Table I -- Combined Ratings Table

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§ 4.26 Bilateral factor.

When a partial disability results from disease or injury of both arms, or of both legs, or of paired skeletal muscles, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (i.e., not combined) before proceeding with further combinations, or converting to degree of disability. The bilateral factor will be applied to such bilateral disabilities before other combinations are carried out and the rating for such disabilities including the bilateral factor in this section will be treated as 1 disability for the purpose of arranging in order of severity and for all further combinations. For example, with disabilities evaluated at 60 percent, 20 percent, 10 percent and 10 percent (the two 10's representing bilateral disabilities), the order of severity would be 60, 21 and 20. The 60 and 21 combine to 68 percent and the 68 and 20 to 74 percent, converted to 70 percent as the final degree of disability.

(a) The use of the terms "arms" and "legs" is not intended to distinguish between the arm, forearm and hand, or the thigh, leg, and foot, but relates to the upper extremities and lower extremities as a whole. Thus with a compensable disability of the right thigh, for example, amputation, and one of the left foot, for example, pes planus, the bilateral factor applies, and similarly whenever there are compensable disabilities affecting use of paired extremities regardless of location or specified type of impairment.
(b) The correct procedure when applying the bilateral factor to disabilities affecting both upper extremities and both lower extremities is to combine the ratings of the disabilities affecting the 4 extremities in the order of their individual severity and apply the bilateral factor by adding, not combining, 10 percent of the combined value thus attained.

(c) The bilateral factor is not applicable unless there is partial disability of compensable degree in each of 2 paired extremities, or paired skeletal muscles.


§ 4.27 Use of diagnostic code numbers.
The diagnostic code numbers appearing opposite the listed ratable disabilities are arbitrary numbers for the purpose of showing the basis of the evaluation assigned and for statistical analysis in the Department of Veterans Affairs, and as will be observed, extend from 5000 to a possible 9999. Great care will be exercised in the selection of the applicable code number and in its citation on the rating sheet. No other numbers than these listed or hereafter furnished are to be employed for rating purposes, with an exception as described in this section, as to unlisted conditions. When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code number will be "built-up" as follows: The first 2 digits will be selected from that part of the schedule most closely identifying the part, or system, of the body involved; the last 2 digits will be "99" for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions, rated by analogy. In the selection of code numbers, injuries will generally be represented by the number assigned to the residual condition on the basis of which the rating is determined. With diseases, preference is to be given to the number assigned to the disease itself; if the rating is determined on the basis of residual conditions, the number appropriate to the residual condition will be added, preceded by a hyphen. Thus, rheumatoid (atrophic) arthritis rated as ankylosis of the lumbar spine should be coded "5002-5240." In this way, the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology will be that of the medical examiner, with no attempt to translate the terms into schedule nomenclature. Residuals of diseases or therapeutic procedures will not be cited without reference to the basic disease.

[41 FR 11293, Mar. 18, 1976; 70 FR 75398, December 20, 2005]

§ 4.28 Prestabilization rating from date of discharge from service.
The following ratings may be assigned, in lieu of ratings prescribed elsewhere, under the conditions stated for disability from any disease or injury. The prestabilization rating is not to be assigned in any case in which a total rating is immediately assignable under the regular provisions of the schedule or on the basis of individual unemployability. The prestabilization 50-percent rating is not to be used in any case in which a rating of 50 percent or more is immediately assignable under the regular provisions.
Unstabilized condition with severe disability --
Substantially gainful employment is not feasible or advisable  100
Unhealed or incompletely healed wounds or injuries --
Material impairment of employability likely  50

Note (1): Department of Veterans Affairs examination is not required prior to assignment of prestabilization ratings; however, the fact that examination was accomplished will not preclude assignment of these benefits. Prestabilization ratings are for assignment in the immediate postdischarge period. They will continue for a 12-month period following discharge from service. However, prestabilization ratings may be changed to a regular schedular total rating or one authorizing a greater benefit at any time. In each pre-stabilization rating an examination will be requested to be accomplished not earlier than 6 months nor more than 12 months following discharge. In those prestabilization ratings in which following examination reduction in evaluation is found to be warranted, the higher evaluation will be continued to the end of the 12th month following discharge or to the end of the period provided under § 3.105(e) of this chapter, whichever is later. Special monthly compensation should be assigned concurrently in these cases whenever records are adequate to establish entitlement.

Note (2): Diagnosis of disease, injury, or residuals will be cited, with diagnostic code number assigned from this rating schedule for conditions listed therein.

[35 FR 11906, July 24, 1970]

§ 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Department of Veterans Affairs or an approved hospital for a period in excess of 21 days or hospital observation at Department of Veterans Affairs expense for a service-connected disability for a period in excess of 21 days.

(a) Subject to the provisions of paragraphs (d), (e), and (f) of this section this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability. A temporary release which is approved by an attending Department of Veterans Affairs physician as part of the treatment plan will not be considered an absence.

(1) An authorized absence in excess of 4 days which begins during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the first day of such authorized absence. An authorized absence of 4 days or less which results in a total of more than 8 days of authorized absence during the first 21 days of hospitalization will be regarded as the equivalent of hospital discharge effective the ninth day of authorized absence.

(2) Following a period of hospitalization in excess of 21 days, an authorized absence in excess of 14 days or a third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which either the authorized absence in excess of 14 days or the third 14 day period begins, except where there is a finding that convalescence is required.
§ 4.30 Convalescent ratings.

A total disability rating (100 percent) will be assigned without regard to other provisions of the rating schedule when it is established by report at hospital discharge (regular discharge or release to non-bed care) or outpatient release that entitlement is warranted under paragraph (a) (1), (2) or (3) of this section effective the date of hospital admission or outpatient treatment and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge or outpatient release. The termination of these total ratings will not be subject to § 3.105(e) of this chapter. Such total rating will be followed by appropriate schedular evaluations. When the evidence is inadequate to assign a schedular evaluation, a physical examination will be scheduled and considered prior to the termination of a total rating under this section.

(a) Total ratings will be assigned under this section if treatment of a service-connected disability resulted in:

as provided by paragraph (e) or (f) of this section. The termination of these total ratings will not be subject to § 3.105(e) of this chapter.

(b) Notwithstanding that hospital admission was for disability not connected with service, if during such hospitalization, hospital treatment for a service-connected disability is instituted and continued for a period in excess of 21 days, the increase to a total rating will be granted from the first day of such treatment. If service connection for the disability under treatment is granted after hospital admission, the rating will be from the first day of hospitalization if otherwise in order.

(c) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under other provisions of the rating schedule, and consideration will be given to the propriety of such a rating in all instances and to the propriety of its continuance after discharge. Particular attention, with a view to proper rating under the rating schedule, is to be given to the claims of veterans discharged from hospital, regardless of length of hospitalization, with indications on the final summary of expected confinement to bed or house, or to inability to work with requirement of frequent care of physician or nurse at home.

(d) On these total ratings Department of Veterans Affairs regulations governing effective dates for increased benefits will control.

(e) The total hospital rating if convalescence is required may be continued for periods of 1, 2, or 3 months in addition to the period provided in paragraph (a) of this section.

(f) Extension of periods of 1, 2 or 3 months beyond the initial 3 months may be made upon approval of the Veterans Service Center Manager.

(g) Meritorious claims of veterans who are discharged from the hospital with less than the required number of days but need post-hospital care and a prolonged period of convalescence will be referred to the Director, Compensation and Pension Service, under § 3.321(b)(1) of this chapter.

(1) Surgery necessitating at least one month of convalescence (Effective as to outpatient surgery March 1, 1989.)
(2) Surgery with severe postoperative residuals such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). (Effective as to outpatient surgery March 1, 1989.)
(3) Immobilization by cast, without surgery, of one major joint or more. (Effective as to outpatient treatment March 10, 1976.)

A reduction in the total rating will not be subject to § 3.105(e) of this chapter. The total rating will be followed by an open rating reflecting the appropriate schedular evaluation; where the evidence is inadequate to assign the schedular evaluation, a physical examination will be scheduled prior to the end of the total rating period.

(b) A total rating under this section will require full justification on the rating sheet and may be extended as follows:
(1) Extensions of 1, 2 or 3 months beyond the initial 3 months may be made under paragraph (a) (1), (2) or (3) of this section.
(2) Extensions of 1 or more months up to 6 months beyond the initial 6 months period may be made under paragraph (a) (2) or (3) of this section upon approval of the Veterans Service Center Manager.


§ 4.31 Zero percent evaluations.
In every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, a zero percent evaluation shall be assigned when the requirements for a compensable evaluation are not met.

[29 FR 6718, May 22, 1964; 58 FR 52018, Oct. 6, 1993]
SUBPART B -- DISABILITY RATINGS

THE MUSCULOSKELETAL SYSTEM
THE ORGANS OF SPECIAL SENSE
IMPAIRMENT OF AUDITORY ACUITY
Infectious Diseases, Immune Disorders and Nutritional Deficiencies
THE RESPIRATORY SYSTEM
THE CARDIOVASCULAR SYSTEM
THE DIGESTIVE SYSTEM
THE GENITOURINARY SYSTEM
GYNECOLOGICAL CONDITIONS AND DISORDERS OF THE BREAST
THE HEMIC AND LYMPHATIC SYSTEMS
THE SKIN
THE ENDOCRINE SYSTEM
NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS
MENTAL DISORDERS
DENTAL AND ORAL CONDITIONS
APPENDIX A TO PART 4 -- TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946
APPENDIX B TO PART 4 -- NUMERICAL INDEX OF DISABILITIES
APPENDIX C TO PART 4 -- ALPHABETICAL INDEX OF DISABILITIES
THE MUSCULOSKELETAL SYSTEM

§ 4.40 Functional loss.
§ 4.41 History of injury.
§ 4.42 Complete medical examination of injury cases.
§ 4.43 Osteomyelitis.
§ 4.44 The bones.
§ 4.45 The joints.
§ 4.46 Accurate measurement.
§ 4.47 [Reserved]
§ 4.48 [Reserved]
§ 4.49 [Reserved]
§ 4.50 [Reserved]
§ 4.51 [Reserved]
§ 4.52 [Reserved]
§ 4.53 [Reserved]
§ 4.54 [Reserved]
§ 4.55 Principles of combined ratings for muscle injuries.
§ 4.56 Evaluation of muscle disabilities.
§ 4.57 Static foot deformities.
§ 4.58 Arthritis due to strain.
§ 4.59 Painful motion.
§ 4.60 [Reserved]
§ 4.61 Examination.
§ 4.62 Circulatory disturbances.
§ 4.63 Loss of use of hand or foot.
§ 4.64 Loss of use of both buttocks.
§ 4.65 [Reserved]
§ 4.66 Sacroiliac joint.
§ 4.67 Pelvic bones.
§ 4.68 Amputation rule.
§ 4.69 Dominant hand.
§ 4.70 Inadequate examinations.
§ 4.71 Measurement of ankylosis and joint motion.
§ 4.71a Schedule of ratings -- musculoskeletal system.
§ 4.72 [Reserved]
§ 4.73 Schedule of Ratings -- Muscle Injuries.

§ 4.40 Functional loss.

Disability of the musculoskeletal system is primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance. It is essential that the examination on which ratings are based adequately portray the anatomical damage, and the functional loss, with respect to all these elements. The functional loss may be due to absence of part, or all, of the necessary bones, joints and muscles, or associated
structures, or to deformity, adhesions, defective innervation, or other pathology, or it may be due to pain, supported by adequate pathology and evidenced by the visible behavior of the claimant undertaking the motion. Weakness is as important as limitation of motion, and a part which becomes painful on use must be regarded as seriously disabled. A little used part of the musculoskeletal system may be expected to show evidence of disuse, either through atrophy, the condition of the skin, absence of normal callosity or the like.


§ 4.41 History of injury.
In considering the residuals of injury, it is essential to trace the medical-industrial history of the disabled person from the original injury, considering the nature of the injury and the attendant circumstances, and the requirements for, and the effect of, treatment over past periods, and the course of the recovery to date. The duration of the initial, and any subsequent, period of total incapacity, especially periods reflecting delayed union, inflammation, swelling, drainage, or operative intervention, should be given close attention. This consideration, or the absence of clear cut evidence of injury, may result in classifying the disability as not of traumatic origin, either reflecting congenital or developmental etiology, or the effects of healed disease.


§ 4.42 Complete medical examination of injury cases.
The importance of complete medical examination of injury cases at the time of first medical examination by the Department of Veterans Affairs cannot be overemphasized. When possible, this should include complete neurological and psychiatric examination, and other special examinations indicated by the physical condition, in addition to the required general and orthopedic or surgical examinations. When complete examinations are not conducted covering all systems of the body affected by disease or injury, it is impossible to visualize the nature and extent of the service connected disability. Incomplete examination is a common cause of incorrect diagnosis, especially in the neurological and psychiatric fields, and frequently leaves the Department of Veterans Affairs in doubt as to the presence or absence of disabling conditions at the time of the examination.


§ 4.43 Osteomyelitis.
Chronic, or recurring, suppurative osteomyelitis, once clinically identified, including chronic inflammation of bone marrow, cortex, or periosteum, should be considered as a continuously disabling process, whether or not an actively discharging sinus or other obvious evidence of infection is manifest from time to time, and unless the focus is entirely removed by amputation will entitle to a permanent rating to be combined with other ratings for residual conditions, however, not exceeding amputation ratings at the site of election.

§ 4.44 The bones.
The osseous abnormalities incident to trauma or disease, such as malunion with deformity throwing abnormal stress upon, and causing malalignment of joint surfaces, should be depicted from study and observation of all available data, beginning with inception of injury or disease, its nature, degree of prostration, treatment and duration of convalescence, and progress of recovery with development of permanent residuals. With shortening of a long bone, some degree of angulation is to be expected; the extent and direction should be brought out by X-ray and observation. The direction of angulation and extent of deformity should be carefully related to strain on the neighboring joints, especially those connected with weight-bearing.

§ 4.45 The joints.
As regards the joints the factors of disability reside in reductions of their normal excursion of movements in different planes. Inquiry will be directed to these considerations:
(a) Less movement than normal (due to ankylosis, limitation or blocking, adhesions, tendon-tie-up, contracted scars, etc.).
(b) More movement than normal (from flail joint, resections, nonunion of fracture, relaxation of ligaments, etc.).
(c) Weakened movement (due to muscle injury, disease or injury of peripheral nerves, divided or lengthened tendons, etc.).
(d) Excess fatigability.
(e) Incoordination, impaired ability to execute skilled movements smoothly.
(f) Pain on movement, swelling, deformity or atrophy of disuse. Instability of station, disturbance of locomotion, interference with sitting, standing and weight-bearing are related considerations. For the purpose of rating disability from arthritis, the shoulder, elbow, wrist, hip, knee, and ankle are considered major joints; multiple involvements of the interphalangeal, metacarpal and carpal joints of the upper extremities, the interphalangeal, metatarsal and tarsal joints of the lower extremities, the cervical vertebrae, the dorsal vertebrae, and the lumbar vertebrae, are considered groups of minor joints, ratable on a parity with major joints. The lumbosacral articulation and both sacroiliac joints are considered to be a group of minor joints, ratable on disturbance of lumbar spine functions.

§ 4.46 Accurate measurement.
Accurate measurement of the length of stumps, excursion of joints, dimensions and location of scars with respect to landmarks, should be insisted on. The use of a goniometer in the measurement of limitation of motion is indispensable in examinations conducted within the Department of Veterans Affairs. Muscle atrophy must also be accurately measured and reported.
[41 FR 11294, Mar. 18, 1976]

§ 4.47 [Reserved]
§ 4.55 Principles of combined ratings for muscle injuries.

(a) A muscle injury rating will not be combined with a peripheral nerve paralysis rating of the same body part, unless the injuries affect entirely different functions.

(b) For rating purposes, the skeletal muscles of the body are divided into 23 muscle groups in 5 anatomical regions: 6 muscle groups for the shoulder girdle and arm (diagnostic codes 5301 through 5306); 3 muscle groups for the forearm and hand (diagnostic codes 5307 through 5309); 3 muscle groups for the foot and leg (diagnostic codes 5310 through 5312); 6 muscle groups for the pelvic girdle and thigh (diagnostic codes 5313 through 5318); and 5 muscle groups for the torso and neck (diagnostic codes 5319 through 5323).

(c) There will be no rating assigned for muscle groups which act upon an ankylosed joint, with the following exceptions:

1. In the case of an ankylosed knee, if muscle group XIII is disabled, it will be rated, but at the next lower level than that which would otherwise be assigned.

2. In the case of an ankylosed shoulder, if muscle groups I and II are severely disabled, the evaluation of the shoulder joint under diagnostic code 5200 will be elevated to the level for unfavorable ankylosis, if not already assigned, but the muscle groups themselves will not be rated.

(d) The combined evaluation of muscle groups acting upon a single unankylosed joint must be lower than the evaluation for unfavorable ankylosis of that joint, except in the case of muscle groups I and II acting upon the shoulder.

(e) For compensable muscle group injuries which are in the same anatomical region but do not act on the same joint, the evaluation for the most severely injured muscle group will be increased by one level and used as the combined evaluation for the affected muscle groups.


[EFFECTIVE DATE NOTE: 62 FR 30235, 30237, June 3, 1997, revised this section, effective July 3, 1997.]
§ 4.56 Evaluation of muscle disabilities.

(a) An open comminuted fracture with muscle or tendon damage will be rated as a severe injury of the muscle group involved unless, for locations such as in the wrist or over the tibia, evidence establishes that the muscle damage is minimal.

(b) A through-and-through injury with muscle damage shall be evaluated as no less than a moderate injury for each group of muscles damaged.

(c) For VA rating purposes, the cardinal signs and symptoms of muscle disability are loss of power, weakness, lowered threshold of fatigue, fatigue-pain, impairment of coordination and uncertainty of movement.

(d) Under diagnostic codes 5301 through 5323, disabilities resulting from muscle injuries shall be classified as slight, moderate, moderately severe or severe as follows:

1. Slight disability of muscles.
   (i) Type of injury. Simple wound of muscle without debridement or infection.
   (ii) History and complaint. Service department record of superficial wound with brief treatment and return to duty. Healing with good functional results. No cardinal signs or symptoms of muscle disability as defined in paragraph (c) of this section.
   (iii) Objective findings. Minimal scar. No evidence of fascial defect, atrophy, or impaired tonus. No impairment of function or metallic fragments retained in muscle tissue.

2. Moderate disability of muscles.
   (i) Type of injury. Through and through or deep penetrating wound of short track from a single bullet, small shell or shrapnel fragment, without explosive effect of high velocity missile, residuals of debridement, or prolonged infection.
   (ii) History and complaint. Service department record or other evidence of in-service treatment for the wound. Record of consistent complaint of one or more of the cardinal signs and symptoms of muscle disability as defined in paragraph (c) of this section, particularly lowered threshold of fatigue after average use, affecting the particular functions controlled by the injured muscles.
   (iii) Objective findings. Entrance and (if present) exit scars, small or linear, indicating short track of missile through muscle tissue. Some loss of deep fascia or muscle substance or impairment of muscle tonus and loss of power or lowered threshold of fatigue when compared to the sound side.

3. Moderately severe disability of muscles.
   (i) Type of injury. Through and through or deep penetrating wound by small high velocity missile or large low-velocity missile, with debridement, prolonged infection, or sloughing of soft parts, and intermuscular scarring.
   (ii) History and complaint. Service department record or other evidence showing hospitalization for a prolonged period for treatment of wound. Record of consistent complaint of cardinal signs and symptoms of muscle disability as defined in paragraph (c) of this section and, if present, evidence of inability to keep up with work requirements.
   (iii) Objective findings. Entrance and (if present) exit scars indicating track of missile through one or more muscle groups. Indications on palpation of loss of deep fascia, muscle substance, or normal firm resistance of muscles compared with sound side. Tests of strength and endurance compared with sound side demonstrate positive evidence of impairment.

4. Severe disability of muscles.
(i) Type of injury. Through and through or deep penetrating wound due to high-velocity missile, or large or multiple low velocity missiles, or with shattering bone fracture or open comminuted fracture with extensive debridement, prolonged infection, or sloughing of soft parts, intermuscular binding and scarring.

(ii) History and complaint. Service department record or other evidence showing hospitalization for a prolonged period for treatment of wound. Record of consistent complaint of cardinal signs and symptoms of muscle disability as defined in paragraph (c) of this section, worse than those shown for moderately severe muscle injuries, and, if present, evidence of inability to keep up with work requirements.

(iii) Objective findings. Ragged, depressed and adherent scars indicating wide damage to muscle groups in missile track. Palpation shows loss of deep fascia or muscle substance, or soft flabby muscles in wound area. Muscles swell and harden abnormally in contraction. Tests of strength, endurance, or coordinated movements compared with the corresponding muscles of the uninjured side indicate severe impairment of function. If present, the following are also signs of severe muscle disability:

(A) X-ray evidence of minute multiple scattered foreign bodies indicating intermuscular trauma and explosive effect of the missile.

(B) Adhesion of scar to one of the long bones, scapula, pelvic bones, sacrum or vertebrae, with epithelial sealing over the bone rather than true skin covering in an area where bone is normally protected by muscle.

(C) Diminished muscle excitability to pulsed electrical current in electrodiagnostic tests.

(D) Visible or measurable atrophy.

(E) Adaptive contraction of an opposing group of muscles.

(F) Atrophy of muscle groups not in the track of the missile, particularly of the trapezius and serratus in wounds of the shoulder girdle.

(G) Induration or atrophy of an entire muscle following simple piercing by a projectile.


(38 U.S.C. 1155)

[EFFECTIVE DATE NOTE: 62 FR 30235, 30238, June 3, 1997, revised this section, effective July 3, 1997.]

§ 4.57 Static foot deformities.

It is essential to make an initial distinction between bilateral flatfoot as a congenital or as an acquired condition. The congenital condition, with depression of the arch, but no evidence of abnormal callosities, areas of pressure, strain or demonstrable tenderness, is a congenital abnormality which is not compensable or pensionable. In the acquired condition, it is to be remembered that depression of the longitudinal arch, or the degree of depression, is not the essential feature. The attention should be given to anatomical changes, as compared to normal, in the relationship of the foot and leg, particularly to the inward rotation of the superior portion of the os calcis, medial deviation of the insertion of the Achilles tendon, the medial tilting of the upper border of the astragalus. This is an unfavorable mechanical relationship of the parts. A plumb line dropped from the middle of the patella falls inside of the normal point. The forepart of the foot is abducted, and the foot everted. The plantar surface of the foot is painful and shows demonstrable tenderness, and manipulation of the foot produces spasm of the Achilles tendon, peroneal spasm due
to adhesion about the peroneal sheaths, and other evidence of pain and limited motion. The symptoms should be apparent without regard to exercise. In severe cases there is gaping of bones on the inner border of the foot, and rigid valgus position with loss of the power of inversion and adduction. Exercise with undeveloped or unbalanced musculature, producing chronic irritation, can be an aggravating factor. In the absence of trauma or other definite evidence of aggravation, service connection is not in order for pes cavus which is a typically congenital or juvenile disease.


§ 4.58 Arthritis due to strain.
With service incurred lower extremity amputation or shortening, a disabling arthritis, developing in the same extremity, or in both lower extremities, with indications of earlier, or more severe, arthritis in the injured extremity, including also arthritis of the lumbosacral joints and lumbar spine, if associated with the leg amputation or shortening, will be considered as service incurred, provided, however, that arthritis affecting joints not directly subject to strain as a result of the service incurred amputation will not be granted service connection. This will generally require separate evaluation of the arthritis in the joints directly subject to strain. Amputation, or injury to an upper extremity, is not considered as a causative factor with subsequently developing arthritis, except in joints subject to direct strain or actually injured.


§ 4.59 Painful motion.

Discussion and Analysis in the Veterans Benefits Manual
With any form of arthritis, painful motion is an important factor of disability, the facial expression, wincing, etc., on pressure or manipulation, should be carefully noted and definitely related to affected joints. Muscle spasm will greatly assist the identification. Sciatic neuritis is not uncommonly caused by arthritis of the spine. The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. Crepitation either in the soft tissues such as the tendons or ligaments, or crepitation within the joint structures should be noted carefully as points of contact which are diseased. Flexion elicits such manifestations. The joints involved should be tested for pain on both active and passive motion, in weight-bearing and nonweight-bearing and, if possible, with the range of the opposite undamaged joint.


§ 4.60 [Reserved]

§ 4.61 Examination.
With any form of arthritis (except traumatic arthritis) it is essential that the examination for rating purposes cover all major joints, with especial reference to Heberden's or Haygarth's nodes.
§ 4.62 Circulatory disturbances.
The circulatory disturbances, especially of the lower extremity following injury in the popliteal space, must not be overlooked, and require rating generally as phlebitis.

§ 4.63 Loss of use of hand or foot.
Loss of use of a hand or a foot, for the purpose of special monthly compensation, will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump; at the site of election below elbow or knee with use of a suitable prosthetic appliance. The determination will be made on the basis of the actual remaining function of the hand or foot, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance and propulsion, etc., in the case of the foot, could be accomplished equally well by an amputation stump with prosthesis.

(a) Extremely unfavorable complete ankylosis of the knee, or complete ankylosis of 2 major joints of an extremity, or shortening of the lower extremity of 3 1/2 inches (8.9 cms.) or more, will be taken as loss of use of the hand or foot involved.

(b) Complete paralysis of the external popliteal nerve (common peroneal) and consequent, footdrop, accompanied by characteristic organic changes including trophic and circulatory disturbances and other concomitants confirmatory of complete paralysis of this nerve, will be taken as loss of use of the foot.

§ 4.64 Loss of use of both buttocks.
Loss of use of both buttocks shall be deemed to exist when there is severe damage to muscle Group XVII, bilateral (diagnostic code number 5317) and additional disability rendering it impossible for the disabled person, without assistance, to rise from a seated position and from a stooped position (fingers to toes position) and to maintain postural stability (the pelvis upon head of femur). The assistance may be rendered by the person's own hands or arms, and, in the matter of postural stability, by a special appliance.

§ 4.65 [Reserved]

§ 4.66 Sacroiliac joint.
The common cause of disability in this region is arthritis, to be identified in the usual manner. The lumbosacral and sacroiliac joints should be considered as one anatomical segment for rating purposes. X-ray changes from arthritis in this location are decrease or obliteration of the joint space, with the appearance of increased bone density of the sacrum and ilium and sharpening of the margins of the joint. Disability is manifest from erector spinae spasm (not accounted for by other pathology), tenderness on deep
palpation and percussion over these joints, loss of normal quickness of motion and resiliency, and postural defects often accompanied by limitation of flexion and extension of the hip. Traumatism is a rare cause of disability in this connection, except when superimposed upon congenital defect or upon an existent arthritis; to permit assumption of pure traumatic origin, objective evidence of damage to the joint, and history of trauma sufficiently severe to injure this extremely strong and practically immovable joint is required. There should be careful consideration of lumbosacral sprain, and the various symptoms of pain and paralysis attributable to disease affecting the lumbar vertebrae and the intervertebral disc.


§ 4.67 Pelvic bones.
The variability of residuals following these fractures necessitates rating on specific residuals, faulty posture, limitation of motion, muscle injury, painful motion of the lumbar spine, manifest by muscle spasm, mild to moderate sciatic neuritis, peripheral nerve injury, or limitation of hip motion.


§ 4.68 Amputation rule.
The combined rating for disabilities of an extremity shall not exceed the rating for the amputation at the elective level, were amputation to be performed. For example, the combined evaluations for disabilities below the knee shall not exceed the 40 percent evaluation, diagnostic code 5165. This 40 percent rating may be further combined with evaluation for disabilities above the knee but not to exceed the above the knee amputation elective level. Painful neuroma of a stump after amputation shall be assigned the evaluation for the elective site of reamputation.


§ 4.69 Dominant hand.
Handedness for the purpose of a dominant rating will be determined by the evidence of record, or by testing on VA examination. Only one hand shall be considered dominant. The injured hand, or the most severely injured hand, of an ambidextrous individual will be considered the dominant hand for rating purposes.


(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 62 FR 30235, 30239, June 3, 1997, revised this section, effective July 3, 1997.]

§ 4.70 Inadequate examinations.
If the report of examination is inadequate as a basis for the required consideration of service connection and evaluation, the rating agency may request a supplementary report from the examiner giving further details as to the limitations of the disabled person's
ordinary activity imposed by the disease, injury, or residual condition, the prognosis for
return to, or continuance of, useful work. When the best interests of the service will be
advanced by personal conference with the examiner, such conference may be arranged
through channels.
[29 FR 6718, May 22, 1964]

§ 4.71 Measurement of ankylosis and joint motion.
Discussion and Analysis in the Veterans Benefits Manual
Plates I and II provide a standardized description of ankylosis and joint motion
measurement. The anatomical position is considered as 0\(^\circ\), with two major
exceptions: (a) Shoulder rotation -- arm abducted to 90\(^\circ\), elbow flexed to
90\(^\circ\) with the position of the forearm reflecting the midpoint 0\(^\circ\) between
internal and external rotation of the shoulder; and (b) supination and pronation -- the arm
next to the body, elbow flexed to 90\(^\circ\), and the forearm in midposition 0\(^\circ\)
between supination and pronation. Motion of the thumb and fingers should be described
by appropriate reference to the joints (See Plate III) whose movement is limited, with a
statement as to how near, in centimeters, the tip of the thumb can approximate the fingers,
or how near the tips of the fingers can approximate the proximal transverse crease of
palm.
Click to view table
48785, July 26, 2002]

[EFFECTIVE DATE NOTE: 67 FR 48784, 48785, July 26, 2002, amended the last
sentence in this section, effective Aug. 26, 2002.]

§ 4.71a Schedule of ratings -- musculoskeletal system.

<table>
<thead>
<tr>
<th>ACUTE, SUBACUTE, OR CHRONIC DISEASES</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>5000 Osteomyelitis, acute, subacute, or chronic:</td>
<td></td>
</tr>
<tr>
<td>Of the pelvis, vertebrae, or extending into major joints, or with multiple localization or with long history of intractability and debility, anemia, amyloid liver changes, or other continuous constitutional symptoms</td>
<td>100</td>
</tr>
<tr>
<td>Frequent episodes, with constitutional symptoms</td>
<td>60</td>
</tr>
<tr>
<td>With definite involucrum or sequestrum, with or without discharging sinus</td>
<td>30</td>
</tr>
<tr>
<td>With discharging sinus or other evidence of active infection within the past 5 years</td>
<td>20</td>
</tr>
<tr>
<td>Inactive, following repeated episodes, without evidence of active infection in past 5 years</td>
<td>10</td>
</tr>
</tbody>
</table>

Note (1): A rating of 10 percent, as an exception to the amputation rule, is to be assigned in any case of active osteomyelitis where the amputation rating for the affected part is no percent. This 10
percent rating and the other partial ratings of 30 percent or less are to be combined with ratings for ankylosis, limited motion, nonunion or malunion, shortening, etc., subject, of course, to the amputation rule. The 60 percent rating, as it is based on constitutional symptoms, is not subject to the amputation rule. A rating for osteomyelitis will not be applied following cure by removal or radical resection of the affected bone.

Note (2): The 20 percent rating on the basis of activity within the past 5 years is not assignable following the initial infection of active osteomyelitis with no subsequent reactivation. The prerequisite for this historical rating is an established recurrent osteomyelitis. To qualify for the 10 percent rating, 2 or more episodes following the initial infection are required. This 20 percent rating or the 10 percent rating, when applicable, will be assigned once only to cover disability at all sites of previously active infection with a future ending date in the case of the 20 percent rating.

5001 Bones and joints, tuberculosis of, active or inactive:

Active 100

Inactive: See §§ 4.88b and 4.89.

5002 Arthritis rheumatoid (atrophic) As an active process:

With constitutional manifestations associated with active joint involvement, totally incapacitating 100

Less than criteria for 100% but with weight loss and anemia productive of severe impairment of health or severely incapacitating exacerbations occurring 4 or more times a year or a lesser number over prolonged periods 60

Symptom combinations productive of definite impairment of health objectively supported by examination findings or incapacitating exacerbations occurring 3 or more times a year 40

One or two exacerbations a year in a well-established diagnosis 20

For chronic residuals:

For residuals such as limitation of motion or ankylosis, favorable or unfavorable, rate under the appropriate diagnostic codes for the specific joints involved. Where, however, the limitation of motion of the specific joint or joints involved is noncompensable under the codes a rating of 10 percent is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5002. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.

Note: The ratings for the active process will not be combined with the residual ratings for limitation of motion or ankylosis. Assign the higher evaluation.

5003 Arthritis, degenerative (hypertrophic or osteoarthritis):

Degenerative arthritis established by X-ray findings will be rated on the basis of limitation of motion under the appropriate
diagnostic codes for the specific joint or joints involved (DC 5200 etc.). When however, the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. In the absence of limitation of motion, rate as below:

With X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups, with occasional incapacitating exacerbations

With X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups

Note (1): The 20 pct and 10 pct ratings based on X-ray findings, above, will not be combined with ratings based on limitation of motion.

Note (2): The 20 pct and 10 pct ratings based on X-ray findings, above, will not be utilized in rating conditions listed under diagnostic codes 5013 to 5024, inclusive.

5004 Arthritis, gonorrheal.
5005 Arthritis, pneumococcic.
5006 Arthritis, typhoid.
5007 Arthritis, syphilitic.
5008 Arthritis, streptococcic.
5009 Arthritis, other types (specify).

With the types of arthritis, diagnostic codes 5004 through 5009, rate the disability as rheumatoid arthritis.

5010 Arthritis, due to trauma, substantiated by X-ray findings: Rate as arthritis, degenerative.

5011 Bones, caisson disease of: Rate as arthritis, cord involvement, or deafness, depending on the severity of disabling manifestations.

5012 Bones, new growths of, malignant

Note: The 100 percent rating will be continued for 1 year following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.

5013 Osteoporosis, with joint manifestations.
5014 Osteomalacia.
5015 Bones, new growths of, benign.
5016 Osteitis deformans.
5017 Gout.
5018 Hydrarthrosis, intermittent.
5019 Bursitis.
5020 Synovitis.
5021 Myositis.
5022 Periostitis.
5023 Myositis ossificans.
5024 Tenosynovitis.

The diseases under diagnostic codes 5013 through 5024 will be rated on limitation of motion of affected parts, as arthritis, degenerative, except gout which will be rated under diagnostic code 5002.

5025 Fibromyalgia (fibrositis, primary fibromyalgia syndrome)
With widespread musculoskeletal pain and tender points, with or without associated fatigue, sleep disturbance, stiffness, paresthesias, headache, irritable bowel symptoms, depression, anxiety, or Raynaud's-like symptoms:
That are constant, or nearly so, and refractory to therapy 40
That are episodic, with exacerbations often precipitated by environmental or emotional stress or by overexertion, but that are present more than one-third of the time
That require continuous medication for control 10

NOTE: Widespread pain means pain in both the left and right sides of the body, that is both above and below the waist, and that affects both the axial skeleton (i.e., cervical spine, anterior chest, thoracic spine, or low back) and the extremities.

### PROSTHETIC IMPLANTS

<table>
<thead>
<tr>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5051</td>
<td>Shoulder replacement (prosthesis).</td>
</tr>
<tr>
<td></td>
<td>Prosthetic replacement of the shoulder joint:</td>
</tr>
<tr>
<td></td>
<td>For 1 year following implantation of prosthesis</td>
</tr>
<tr>
<td></td>
<td>With chronic residuals consisting of severe, painful motion or weakness in the affected extremity</td>
</tr>
<tr>
<td></td>
<td>With intermediate degrees of residual weakness, pain or limitation of motion, rate by analogy to diagnostic codes 5200 and 5203.</td>
</tr>
<tr>
<td></td>
<td>Minimum rating</td>
</tr>
<tr>
<td>5052</td>
<td>Elbow replacement (prosthesis).</td>
</tr>
<tr>
<td></td>
<td>Prosthetic replacement of the elbow joint:</td>
</tr>
<tr>
<td></td>
<td>For 1 year following implantation of prosthesis</td>
</tr>
<tr>
<td></td>
<td>With chronic residuals consisting of severe painful motion or weakness in the affected extremity</td>
</tr>
</tbody>
</table>
With intermediate degrees of residual weakness, pain or limitation of motion rate by analogy to diagnostic codes 5205 through 5208.

<table>
<thead>
<tr>
<th>Minimum evaluation</th>
<th>30</th>
<th>20</th>
</tr>
</thead>
</table>

5053 Wrist replacement (prosthesis).

Prosthetic replacement of wrist joint:

- For 1 year following implantation of prosthesis 100 100
- With chronic residuals consisting of severe, painful motion or weakness in the affected extremity 40 30

With intermediate degrees of residual weakness, pain or limitation of motion, rate by analogy to diagnostic code 5214.

<table>
<thead>
<tr>
<th>Minimum rating</th>
<th>20</th>
<th>20</th>
</tr>
</thead>
</table>

Note: The 100 pct rating for 1 year following implantation of prosthesis will commence after initial grant of the 1-month total rating assigned under § 4.30 following hospital discharge.

5054 Hip replacement (prosthesis).

Prosthetic replacement of the head of the femur or of the acetabulum:

- For 1 year following implantation of prosthesis 100
- Following implantation of prosthesis with painful motion or weakness such as to require the use of crutches fn1 90
- Markedly severe residual weakness, pain or limitation of motion following implantation of prosthesis 70
- Moderately severe residuals of weakness, pain or limitation of motion 50

<table>
<thead>
<tr>
<th>Minimum rating</th>
<th>30</th>
</tr>
</thead>
</table>

5055 Knee replacement (prosthesis).

Prosthetic replacement of knee joint:

- For 1 year following implantation of prosthesis 100
- With chronic residuals consisting of severe painful motion or weakness in the affected extremity 60

With intermediate degrees of residual weakness, pain or limitation of motion rate by analogy to diagnostic codes 5256, 5261, or 5262.

<table>
<thead>
<tr>
<th>Minimum rating</th>
<th>30</th>
</tr>
</thead>
</table>

5056 Ankle replacement (prosthesis).

Prosthetic replacement of ankle joint:
For 1 year following implantation of prosthesis 100

With chronic residuals consisting of severe painful motion or weakness 40

With intermediate degrees of residual weakness, pain or limitation of motion rate by analogy to 5270 or 5271.

Minimum rating 20

Note (1): The 100 pct rating for 1 year following implantation of prosthesis will commence after initial grant of the 1-month total rating assigned under § 4.30 following hospital discharge.

Note (2): Special monthly compensation is assignable during the 100 pct rating period the earliest date permanent use of crutches is established.

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COMBINATIONS OF DISABILITIES

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| 5104 | Anatomical loss of one hand and loss of use of one foot | fn1 100 |
| 5105 | Anatomical loss of one foot and loss of use of one hand | fn1 100 |
| 5106 | Anatomical loss of both hands | fn1 100 |
| 5107 | Anatomical loss of both feet | fn1 100 |
| 5108 | Anatomical loss of one hand and one foot | fn1 100 |
| 5109 | Loss of use of both hands | fn1 100 |
| 5110 | Loss of use of both feet | fn1 100 |
| 5111 | Loss of use of one hand and one foot | fn1 100 |

fn1 Also entitled to special monthly compensation.

**TABLE II -- RATINGS FOR MULTIPLE LOSSES OF EXTREMITIES WITH DICTATOR'S RATING CODE AND 38 CFR CITATION**

<table>
<thead>
<tr>
<th>Impairment of one extremity</th>
<th>Anatomical loss or loss of use below elbow</th>
<th>Anatomical loss or loss of use below knee.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anatomical loss or loss of use below elbow.</td>
<td>M Codes M-1 a, b, or c, 38 CFR 3.350 (c)(1)(i).</td>
<td>L Codes L-1 a, b, or c, 38 CFR 3.350(b).</td>
</tr>
</tbody>
</table>

Anatomical loss or loss of use below knee. | L Codes L-1 a, b, or c, 38 CFR 3.350(b). |
Anatomical loss or loss of use above elbow (preventing use of prosthesis).

Anatomical loss near shoulder (preventing use of prosthesis).

Anatomical loss near hip (preventing use of prosthesis).

Anatomical loss or loss of use above knee (preventing use of prosthesis).

Anatomical loss near shoulder (preventing use of prosthesis).

Anatomical loss near hip (preventing use of prosthesis).

<table>
<thead>
<tr>
<th>Impairment of one extremity</th>
<th>Anatomical loss or loss of use above elbow (preventing use of prosthesis)</th>
<th>Anatomical loss or loss of use above knee (preventing use of prosthesis)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anatomical loss or loss of use above knee (preventing use of prosthesis).</td>
<td></td>
<td>M Code M-2 a, 38 CFR 3.350 (c)(1)(ii).</td>
</tr>
<tr>
<td>Anatomical loss near shoulder (preventing use of prosthesis).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anatomical loss near hip (preventing use of prosthesis).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Impairment of other extremity

<table>
<thead>
<tr>
<th>Impairment of one extremity</th>
<th>Anatomical loss near shoulder (preventing use of prosthesis)</th>
<th>Anatomical loss near hip (preventing use of prosthesis)</th>
</tr>
</thead>
</table>
Anatomical loss or loss of use above knee.

Anatomical loss or near shoulder (preventing use of prosthesis).

Anatomical loss near hip.

Note. -- Need for aid attendance or permanently bedridden qualifies for subpar. L Code L-1 h, i (38 CFR 3.350(b)). Paraplegia with loss of use of both lower extremities and loss of anal and bladder sphincter control qualifies for subpar. O. Code O-2 (38 CFR 3.350(e)(2)). Where there are additional disabilities rated 50% or 100%, or anatomical or loss of use of a third extremity see 38 CFR 3.350(f)(3), (4) or (5).

(Authority: 38 U.S.C. 1115)

### AMPUTATIONS: UPPER EXTREMITY

<table>
<thead>
<tr>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arm, amputation of:</td>
<td>Rating</td>
</tr>
<tr>
<td>5120 Disarticulation</td>
<td>fn1 90</td>
</tr>
<tr>
<td>5121 Above insertion of deltoid</td>
<td>fn1 90 fn1 80</td>
</tr>
<tr>
<td>5122 Below insertion of deltoid</td>
<td>fn1 80 fn1 70</td>
</tr>
<tr>
<td>Forearm, amputation of:</td>
<td></td>
</tr>
<tr>
<td>5123 Above insertion of pronator teres</td>
<td>fn1 80 fn1 70</td>
</tr>
<tr>
<td>5124 Below insertion of pronator teres</td>
<td>fn1 70 fn1 60</td>
</tr>
<tr>
<td>5125 Hand, loss of use of</td>
<td>fn1 70 fn1 60</td>
</tr>
</tbody>
</table>

### MULTIPLE FINGER AMPUTATIONS

<table>
<thead>
<tr>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>5126 Five digits of one hand, amputation of</td>
<td>fn1 70 fn1 60</td>
</tr>
<tr>
<td>Four digits of one hand, amputation of:</td>
<td></td>
</tr>
<tr>
<td>5127 Thumb, index, long and ring</td>
<td>fn1 70 fn1 60</td>
</tr>
<tr>
<td>5128 Thumb, index, long and little</td>
<td>fn1 70 fn1 60</td>
</tr>
<tr>
<td>5129 Thumb, index, ring and little</td>
<td>fn1 70 fn1 60</td>
</tr>
<tr>
<td>5130 Thumb, long, ring and little</td>
<td>fn1 70 fn1 60</td>
</tr>
</tbody>
</table>
5131 Index, long, ring and little  
Three digits of one hand, amputation of:

5132 Thumb, index and long  
5133 Thumb, index and ring  
5134 Thumb, index and little  
5135 Thumb, long and ring  
5136 Thumb, long and little  
5137 Thumb, ring and little  
5138 Index, long and ring  
5139 Index, long and little  
5140 Index, ring and little  
5141 Long, ring and little  

Two digits of one hand, amputation of:

5142 Thumb and index  
5143 Thumb and long  
5144 Thumb and ring  
5145 Thumb and little  
5146 Index and long  
5147 Index and ring  
5148 Index and little  
5149 Long and ring  
5150 Long and little  
5151 Ring and little  

(a) The ratings for multiple finger amputations apply to amputations at the proximal interphalangeal joints or through proximal phalanges.

(b) Amputation through long phalanges will be rated as prescribed for unfavorable ankylosis of the fingers.

(c) Amputations at distal joints, or through distal phalanges, other than negligible losses, will be rated as prescribed for favorable ankylosis of the fingers.

(d) Amputation or resection of metacarpal bones (more than one-half the bone lost) in multiple fingers injuries will require a rating of 10 percent added to (not combined with) the ratings, multiple finger amputations, subject to the amputation rule applied to the forearm.
(e) Combinations of finger amputations at various levels, or finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability; i.e., amputation, unfavorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.

(f) Loss of use of the hand will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump with a suitable prosthetic applicance.

---
SINGLE FINGER AMPUTATIONS
---

5152 Thumb, amputation of:
   With metacarpal resection  40        30
   At metacarpophalangeal joint or through proximal phalanx  30        20
   At distal joint or through distal phalanx  20        20

5153 Index finger, amputation of:
   With metacarpal resection (more than one-half the bone lost)  30        20
   Without metacarpal resection, at proximal interphalangeal joint or proximal thereto  20        20
   Through long phalanx or at distal joint  10        10

5154 Long finger, amputation of:
   With metacarpal resection (more than one-half the bone lost)  20        20
   Without metacarpal resection, at proximal interphalangeal joint or proximal thereto  10        10

5155 Ring finger, amputation of:
   With metacarpal resection (more than one-half the bone lost)  20        20
   Without metacarpal resection, at proximal interphalangeal joint or proximal thereto  10        10

5156 Little finger, amputation of:
   With metacarpal resection (more than one-half the bone lost)  20        20
   Without metacarpal resection, at proximal interphalangeal joint or proximal thereto  10        10

Note: The single finger amputation ratings are the only
applicable ratings for amputations of whole or part of single fingers.

fn1 Entitled to special monthly compensation.

Click to view illustration

**AMPUTATIONS: LOWER EXTREMITY**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Thigh, amputation of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>5160 Disarticulation, with loss of extrinsic pelvic girdle muscles</td>
<td>fn2 90</td>
</tr>
<tr>
<td>5161 Upper third, one-third of the distance from perineum to knee joint measured from perineum</td>
<td>fn2 80</td>
</tr>
<tr>
<td>5162 Middle or lower thirds</td>
<td>fn2 60</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
<th>Leg, amputation of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>5163 With defective stump, thigh amputation recommended</td>
<td>fn2 60</td>
</tr>
<tr>
<td>5164 Amputation not improvable by prosthesis controlled by natural knee action</td>
<td>fn2 60</td>
</tr>
<tr>
<td>5165 At a lower level, permitting prosthesis</td>
<td>fn2 40</td>
</tr>
<tr>
<td>5166 Forefoot, amputation proximal to metatarsal bones (more than one-half of metatarsal loss)</td>
<td>fn2 40</td>
</tr>
<tr>
<td>5167 Foot, loss of use of</td>
<td>fn2 40</td>
</tr>
<tr>
<td>5170 Toes, all, amputation of, without metatarsal loss</td>
<td>30</td>
</tr>
<tr>
<td>5171 Toe, great, amputation of: With removal of metatarsal head</td>
<td>30</td>
</tr>
<tr>
<td>Without metatarsal involvement</td>
<td>10</td>
</tr>
<tr>
<td>5172 Toes, other than great, amputation of, with removal of metatarsal head: One or two</td>
<td>20</td>
</tr>
<tr>
<td>Without metatarsal involvement</td>
<td>0</td>
</tr>
<tr>
<td>5173 Toes, three or four, amputation of, without metatarsal involvement: Including great toe</td>
<td>20</td>
</tr>
</tbody>
</table>

Not including great toe 10

fn2 Also entitled to special monthly compensation.

Click to view illustration

**THE SHOULDER AND ARM**

<table>
<thead>
<tr>
<th>Rating</th>
<th>Scapulohumeral articulation, ankylosis of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major Minor</td>
<td>Note: The scapula and humerus move as one piece.</td>
</tr>
<tr>
<td>5200 Scapulohumeral articulation, ankylosis of:</td>
<td>30</td>
</tr>
</tbody>
</table>

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Unfavorable, abduction limited to 25[degrees] from side 50  40
Intermediate between favorable and unfavorable 40  30
Favorable, abduction to 60[degrees], can reach mouth and head 30  20

5201 Arm, limitation of motion of:
To 25[degrees] from side 40  30
Midway between side and shoulder level 30  20
At shoulder level 20  20

5202 Humerus, other impairment of:
Loss of head of (flail shoulder) 80  70
Nonunion of (false flail joint) 60  50
Fibrous union of 50  40
Recurrent dislocation of at scapulohumeral joint.
   With frequent episodes and guarding of all arm movements 30  20
   With infrequent episodes, and guarding of movement only at shoulder level 20  20
Malunion of:
   Marked deformity 30  20
   Moderate deformity 20  20

5203 Clavicle or scapula, impairment of:
Dislocation of 20  20
Nonunion of:
   With loose movement 20  20
   Without loose movement 10  10
Malunion of 10  10
Or rate on impairment of function of contiguous joint.

THE ELBOW AND FOREARM
Rating

5205 Elbow, ankylosis of:
Unfavorable, at an angle of less than 50[degrees] or with complete loss of supination or pronation 60  50
Intermediate, at an angle of more than 90[degrees], or
between 70[degrees] and 50[degrees]  &  50 & 40  
Favorable, at an angle between 90[degrees] and 70[degrees]  &  40 & 30  

5206 Forearm, limitation of flexion of:  
Flexion limited to 45[degrees]  &  50 & 40  
Flexion limited to 55[degrees]  &  40 & 30  
Flexion limited to 70[degrees]  &  30 & 20  
Flexion limited to 90[degrees]  &  20 & 20  
Flexion limited to 100[degrees]  &  10 & 10  
Flexion limited to 110[degrees]  &  0 & 0  

5207 Forearm, limitation of extension of:  
Extension limited to 110[degrees]  &  50 & 40  
Extension limited to 100[degrees]  &  40 & 30  
Extension limited to 90[degrees]  &  30 & 20  
Extension limited to 75[degrees]  &  20 & 20  
Extension limited to 60[degrees]  &  10 & 10  
Extension limited to 45[degrees]  &  10 & 10  

5208 Forearm, flexion limited to 100[degrees] and extension to 45[degrees]  &  20 & 20  

5209 Elbow, other impairment of Flail joint  &  60 & 50  
Joint fracture, with marked cubitus varus or cubitus valgus deformity or with ununited fracture of head of radius  &  20 & 20  

5210 Radius and ulna, nonunion of, with flail false joint  &  50 & 40  

5211 Ulna, impairment of:  
Nonunion in upper half, with false movement:  
With loss of bone substance (1 inch (2.5 cms.) or more) and marked deformity  &  40 & 30  
Without loss of bone substance or deformity  &  30 & 20  
Nonunion in lower half  &  20 & 20  
Malunion of, with bad alignment  &  10 & 10  

5212 Radius, impairment of:  
Nonunion in lower half, with false movement:  
With loss of bone substance (1 inch (2.5 cms.) or more) and marked deformity  &  40 & 30  
Without loss of bone substance or deformity  &  30 & 20  

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Nonunion in upper half  20  20
Malunion of, with bad alignment  10  10

5213 Supination and pronation, impairment of:
Loss of (bone fusion):
The hand fixed in supination or hyperpronation  40  30
The hand fixed in full pronation  30  20
The hand fixed near the middle of the arc or moderate pronation  20  20

Limitation of pronation:
Motion lost beyond middle of arc  30  20
Motion lost beyond last quarter of arc, the hand does not approach full pronation  20  20

Limitation of supination:
To 30[degrees] or less  10  10

Note: In all the forearm and wrist injuries, codes 5205 through 5213, multiple impaired finger movements due to tendon tie-up, muscle or nerve injury, are to be separately rated and combined not to exceed rating for loss of use of hand.

THE WRIST

Rating

<table>
<thead>
<tr>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
</table>

5214 Wrist, ankylosis of:
Unfavorable, in any degree of palmar flexion, or with ulnar or radial deviation  50  40
Any other position, except favorable  40  30
Favorable in 20[degrees] to 30[degrees] dorsiflexion  30  20

Note: Extremely unfavorable ankylosis will be rated as loss of use of hands under diagnostic code 5125.

5215 Wrist, limitation of motion of:
Dorsiflexion less than 15[degrees]  10  10
Palmar flexion limited in line with forearm  10  10

Evaluation of Ankylosis or Limitation of Motion of Single or Multiple Digits of the Hand
(1) For the index, long, ring, and little fingers (digits II, III, IV, and V), zero degrees of flexion represents the fingers fully extended, making a straight line with the rest of the hand. The position of function of the hand is with the wrist dorsiflexed 20 to 30 degrees, the metacarpophalangeal and proximal interphalangeal joints flexed to 30 degrees, and the thumb (digit I) abducted and rotated so that the thumb pad faces the finger pads. Only joints in these positions are considered to be in favorable position. For digits II through V, the metacarpophalangeal joint has a range of zero to 90 degrees of flexion, the proximal interphalangeal joint has a range of zero to 100 degrees of flexion, and the distal (terminal) interphalangeal joint has a range of zero to 70 or 80 degrees of flexion.

(2) When two or more digits of the same hand are affected by any combination of amputation, ankylosis, or limitation of motion that is not otherwise specified in the rating schedule, the evaluation level assigned will be that which best represents the overall disability (i.e., amputation, unfavorable or favorable ankylosis, or limitation of motion), assigning the higher level of evaluation when the level of disability is equally balanced between one level and the next higher level.

(3) Evaluation of ankylosis of the index, long, ring, and little fingers:

- (i) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation without metacarpal resection, at proximal interphalangeal joint or proximal thereto.
- (ii) If both the metacarpophalangeal and proximal interphalangeal joints of a digit are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed in a favorable position.
- (iii) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as unfavorable ankylosis.
- (iv) If only the metacarpophalangeal or proximal interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the fingertip(s) and the proximal transverse crease of the palm, with the finger(s) flexed to the extent possible, evaluate as favorable ankylosis.

(4) Evaluation of ankylosis of the thumb:

- (i) If both the carpometacarpal and interphalangeal joints are ankylosed, and either is in extension or full flexion, or there is rotation or angulation of a bone, evaluate as amputation at metacarpophalangeal joint or through proximal phalanx.
- (ii) If both the carpometacarpal and interphalangeal joints are ankylosed, evaluate as unfavorable ankylosis, even if each joint is individually fixed.
in a favorable position

(iii) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as unfavorable ankylosis

(iv) If only the carpometacarpal or interphalangeal joint is ankylosed, and there is a gap of two inches (5.1 cm.) or less between the thumb pad and the fingers, with the thumb attempting to oppose the fingers, evaluate as favorable ankylosis

(5) If there is limitation of motion of two or more digits, evaluate each digit separately and combine the evaluations

I. Multiple Digits: Unfavorable Ankylosis

5216 Five digits of one hand, unfavorable ankylosis

60  50

Note: Also consider whether evaluation as amputation is warranted.

5217 Four digits of one hand, unfavorable ankylosis of:

Thumb and any three fingers 60  50
Index, long, ring, and little fingers 50  40

Note: Also consider whether evaluation as amputation is warranted.

5218 Three digits of one hand, unfavorable ankylosis of:

Thumb and any two fingers 50  40
Index, long, and ring; index, long, and little; or index, ring, and little fingers 40  30
Long, ring, and little fingers 30  20

Note: Also consider whether evaluation as amputation is warranted.

5219 Two digits of one hand, unfavorable ankylosis of:

Thumb and any finger 40  30
Index and long; index and ring; or index and little fingers 30  20
Long and ring; long and little; or ring and little fingers 20  20

Note: Also consider whether evaluation as amputation is warranted.

II. Multiple Digits: Favorable Ankylosis

5220 Five digits of one hand, favorable ankylosis of 50  40

5221 Four digits of one hand, favorable ankylosis of:

Thumb and any three fingers 50  40
Index, long, ring, and little fingers 40  30

5222 Three digits of one hand, favorable ankylosis of:

Thumb and any two fingers 40  30
Index, long, and ring; index, long, and little; or index, ring, and little fingers 30  20
Long, ring and little fingers 20  20

5223 Two digits of one hand, favorable ankylosis of:

Thumb and any finger 30  20
Index and long; index and ring; or index and little fingers 20  20
Long and ring; long and little; or ring and little fingers 10  10
fingers

III. Ankylosis of Individual Digits

5224 Thumb, ankylosis of:
   Unfavorable 20  20
   Favorable 10  10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.

5225 Index finger, ankylosis of:
   Unfavorable or favorable 10  10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.

5226 Long finger, ankylosis of:
   Unfavorable or favorable 10  10
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.

5227 Ring or little finger, ankylosis of:
   Unfavorable or favorable 0  0
Note: Also consider whether evaluation as amputation is warranted and whether an additional evaluation is warranted for resulting limitation of motion of other digits or interference with overall function of the hand.

IV. Limitation of Motion of Individual Digits

5228 Thumb, limitation of motion:
   With a gap of more than two inches (5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers 20  20
   With a gap of one to two inches (2.5 to 5.1 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers 10  10
   With a gap of less than one inch (2.5 cm.) between the thumb pad and the fingers, with the thumb attempting to oppose the fingers

5229 Index or long finger, limitation of motion:
   With a gap of one inch (2.5 cm.) or more between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, or; with extension limited by more than 30 degrees 10  10
   With a gap of less than one inch (2.5 cm.) between the fingertip and the proximal transverse crease of the palm, with the finger flexed to the extent possible, and; extension is limited by no more than 30 degrees 0  0

5230 Ring or little finger, limitation of motion:
   Any limitation of motion 0  0
The Spine

General Rating Formula for Diseases and Injuries of the Spine

(For diagnostic codes 5235 to 5243 unless 5243 is evaluated under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes):

With or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease

Unfavorable ankylosis of the entire spine 100

Unfavorable ankylosis of the entire thoracolumbar spine 50

Unfavorable ankylosis of the entire cervical spine; or, forward flexion of the thoracolumbar spine 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine 40

Forward flexion of the cervical spine 15 degrees or less; or, favorable ankylosis of the entire cervical spine 30

Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees; or, forward flexion of the cervical spine greater than 15 degrees but not greater than 30 degrees; or, the combined range of motion of the thoracolumbar spine not greater than 120 degrees; or, the combined range of motion of the cervical spine not greater than 170 degrees; or, muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis 20

Forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees; or, forward flexion of the cervical spine greater than 30 degrees but not greater than 40 degrees; or, combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees; or, combined range of motion of the cervical spine greater than 170 degrees but not greater than 335 degrees; or, muscle spasm, guarding, or localized tenderness not resulting in abnormal gait or abnormal spinal contour; or, vertebral body fracture with loss of 50 percent or more of the height 10

Note (1): Evaluate any associated objective neurologic abnormalities, including, but not limited to, bowel or bladder impairment, separately, under an appropriate diagnostic code.

Note (2): (See also Plate V.) For VA compensation purposes, normal forward flexion of the cervical spine is zero to 45 degrees, extension is zero to 45 degrees, left and right lateral flexion are zero to 45 degrees, and left and right lateral rotation are zero to 80 degrees. Normal forward flexion of the thoracolumbar spine is zero to 90 degrees, extension is zero to 30 degrees, left and right lateral flexion are zero to 30 degrees, and left and right lateral rotation are zero to 30 degrees. The
combined range of motion refers to the sum of the range of forward flexion, extension, left and right lateral flexion, and left and right rotation. The normal combined range of motion of the cervical spine is 340 degrees and of the thoracolumbar spine is 240 degrees. The normal ranges of motion for each component of spinal motion provided in this note are the maximum that can be used for calculation of the combined range of motion.

Note (3): In exceptional cases, an examiner may state that because of age, body habitus, neurologic disease, or other factors not the result of disease or injury of the spine, the range of motion of the spine in a particular individual should be considered normal for that individual, even though it does not conform to the normal range of motion stated in Note (2). Provided that the examiner supplies an explanation, the examiner’s assessment that the range of motion is normal for that individual will be accepted.

Note (4): Round each range of motion measurement to the nearest five degrees.

Note (5): For VA compensation purposes, unfavorable ankylosis is a condition in which the entire cervical spine, the entire thoracolumbar spine, or the entire spine is fixed in flexion or extension, and the ankylosis results in one or more of the following: difficulty walking because of a limited line of vision; restricted opening of the mouth and chewing; breathing limited to diaphragmatic respiration; gastrointestinal symptoms due to pressure of the costal margin on the abdomen; dyspnea or dysphagia; atlantoaxial or cervical subluxation or dislocation; or neurologic symptoms due to nerve root stretching. Fixation of a spinal segment in neutral position (zero degrees) always represents favorable ankylosis.

Note (6): Separately evaluate disability of the thoracolumbar and cervical spine segments, except when there is unfavorable ankylosis of both segments, which will be rated as a single disability.

Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either under the General Rating Formula for Diseases and Injuries of the Spine or under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes, whichever method results in the higher evaluation when all disabilities are combined under § 4.25.

Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes
With incapacitating episodes having a total duration of at least 6 weeks during the past 12 months 60

With incapacitating episodes having a total duration of at least 4 weeks but less than 6 weeks during the past 12 months 40

With incapacitating episodes having a total duration of at least 2 weeks but less than 4 weeks during the past 12 months 20

With incapacitating episodes having a total duration of at least one week but less than 2 weeks during the past 12 months 10

Note (1): For purposes of evaluations under diagnostic code 5243, an incapacitating episode is a period of acute signs and symptoms due to intervertebral disc syndrome that requires bed rest prescribed by a physician and treatment by a physician.

Note (2): If intervertebral disc syndrome is present in more than one spinal segment, provided that the effects in each spinal segment are clearly distinct, evaluate each segment on the basis of incapacitating episodes or under the General Rating Formula for Diseases and Injuries of the Spine, whichever method results in a higher evaluation for that segment.

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**THE HIP AND THIGH**

5250 Hip, ankylosis of:

Unfavorable, extremely unfavorable ankylosis, the foot not reaching ground, crutches necessitated fn3 90

Intermediate 70

Favorable, in flexion at an angle between 20[degrees] and 40[degrees], and slight adduction or abduction 60

5251 Thigh, limitation of extension of:

Extension limited to 5[degrees] 10

5252 Thigh, limitation of flexion of:

Flexion limited to 10[degrees] 40

Flexion limited to 20[degrees] 30

Flexion limited to 30[degrees] 20

Flexion limited to 45[degrees] 10

5253 Thigh, impairment of:
Limitation of abduction of, motion lost beyond 10[degrees] 20
Limitation of adduction of, cannot cross legs 10
Limitation of rotation of, cannot toe-out more than 15[degrees], affected leg 10

5254 Hip, flail joint 80
5255 Femur, impairment of:
Fracture of shaft or anatomical neck of:
   With nonunion, with loose motion (spiral or oblique fracture) 80
   With nonunion, without loose motion, weightbearing preserved with aid of brace 60
Fracture of surgical neck of, with false joint 60
Malunion of:
   With marked knee or hip disability 30
   With moderate knee or hip disability 20
   With slight knee or hip disability 10

fn3 Entitled to special monthly compensation.

THE KNEE AND LEG

5256 Knee, ankylosis of:
Extremely unfavorable, in flexion at an angle of 45[degrees] or more 60
In flexion between 20[degrees] and 45[degrees] 50
In flexion between 10[degrees] and 20[degrees] 40
Favorable angle in full extension, or in slight flexion between 0[degrees] and 10[degrees] 30

5257 Knee, other impairment of:
Recurrent subluxation or lateral instability:
   Severe 30
   Moderate 20
   Slight 10

5258 Cartilage, semilunar, dislocated, with frequent episodes of "locking," pain, and effusion into the joint 20
5259 Cartilage, semilunar, removal of, symptomatic 10
5260 Leg, limitation of flexion of:
Flexion limited to 15[degrees]  30
Flexion limited to 30[degrees]  20
Flexion limited to 45[degrees]  10
Flexion limited to 60[degrees]  0

5261 Leg, limitation of extension of:
Extension limited to 45[degrees]  50
Extension limited to 30[degrees]  40
Extension limited to 20[degrees]  30
Extension limited to 15[degrees]  20
Extension limited to 10[degrees]  10
Extension limited to 5[degrees]  0

5262 Tibia and fibula, impairment of:
Nonunion of, with loose motion, requiring brace  40
Malunion of:
  With marked knee or ankle disability  30
  With moderate knee or ankle disability  20
  With slight knee or ankle disability  10

5263 Genu recurvatum (acquired, traumatic, with weakness and insecurity in weight-bearing objectively demonstrated)  10

THE ANKLE

5270 Ankle, ankylosis of:
In plantar flexion at more than 40[degrees], or in dorsiflexion at more than 10[degrees] or with abduction, adduction, inversion or eversion deformity  40
In plantar flexion, between 30[degrees] and 40[degrees], or in dorsiflexion, between 0[degrees] and 10[degrees]  30
In plantar flexion, less than 30[degrees]  20

5271 Ankle, limited motion of:
Marked  20
Moderate  10

5272 Subastragalar or tarsal joint, ankylosis of:
In poor weight-bearing position  20

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In good weight-bearing position 10

5273 Os calcis or astragalus, malunion of:

Marked deformity 20
Moderate deformity 10
5274 Astragalectomy 20

SHORTINING OF THE LOWER EXTREMITY

5275 Bones, of the lower extremity, shortening of:

Rating

Over 4 inches (10.2 cms.) fn3 60
3 1/2 to 4 inches (8.9 cms. to 10.2 cms.) fn3 50
3 to 3 1/2 inches (7.6 cms. to 8.9 cms.) 40
2 1/2 to 3 inches (6.4 cms. to 7.6 cms.) 30
2 to 2 1/2 inches (5.1 cms. to 6.4 cms.) 20
1 1/4 to 2 inches (3.2 cms. to 5.1 cms.) 10

Note: Measure both lower extremities from anterior superior spine of the ilium to the internal malleolus of the tibia. Not to be combined with other ratings for fracture or faulty union in the same extremity.

fn3 Also entitled to special monthly compensation.

THE FOOT

5276 Flatfoot, acquired:

Rating

Pronounced; marked pronation, extreme tenderness of plantar surfaces of the feet, marked inward displacement and severe spasm of the tendo achillis on manipulation, not improved by orthopedic shoes or appliances

Bilateral 50
Unilateral 30

Severe; objective evidence of marked deformity (pronation, abduction, etc.), pain on manipulation and use accentuated, indication of swelling on use, characteristic callosities:

Bilateral 30
Unilateral 20
Moderate; weight-bearing line over or medial to great toe, inward bowing of the tendo achillis, pain on manipulation and use of the feet, bilateral or unilateral 10

Mild; symptoms relieved by built-up shoe or arch support 0

5277 Weak foot, bilateral:
A symptomatic condition secondary to many constitutional conditions, characterized by atrophy of the musculature, disturbed circulation, and weakness:

Rate the underlying condition, minimum rating 10

5278 Claw foot (pes cavus), acquired:
Marked contraction of plantar fascia with dropped forefoot, all toes hammer toes, very painful callosities, marked varus deformity:

Bilateral 50
Unilateral 30

All toes tending to dorsiflexion, limitation of dorsiflexion at ankle to right angle, shortened plantar fascia, and marked tenderness under metatarsal heads:

Bilateral 30
Unilateral 20

Great toe dorsiflexed, some limitation of dorsiflexion at ankle, definite tenderness under metatarsal heads:

Bilateral 10
Unilateral 10
Slight 0

5279 Metatarsalgia, anterior (Morton's disease), unilateral, or bilateral 10

5280 Hallux valgus, unilateral:
Operated with resection of metatarsal head 10
Severe, if equivalent to amputation of great toe 10

5281 Hallux rigidus, unilateral, severe:
Rate as hallux valgus, severe.

Note: Not to be combined with claw foot ratings.

5282 Hammer toe:
All toes, unilateral without claw foot 10
Single toes 0

5283 Tarsal, or metatarsal bones, malunion of, or nonunion of:
Severe  30
Moderately severe  20
Moderate  10

Note: With actual loss of use of the foot, rate 40 percent.

5284 Foot injuries, other:
Severe  30
Moderately severe  20
Moderate  10

Note: With actual loss of use of the foot, rate 40 percent.

THE SKULL

5296 Skull, loss of part of, both inner and outer tables:
With brain hernia  80
Without brain hernia:
   Area larger than size of a 50-cent piece or 1.140 in 2
   (7.355 cm 2)  50
   Area intermediate  30
   Area smaller than the size of a 25-cent piece or 0.716 in 2
   (4.619 cm 2)  10

Note: Rate separately for intracranial complications.

THE RIBS

5297 Ribs, removal of:
More than six  50
Five or six  40
Three or four  30
Two  20
One or resection of two or more ribs without regeneration  10

Note (1): The rating for rib resection or removal is not to be applied with ratings for purulent pleurisy, lobectomy, pneumonectomy or injuries of pleural cavity.

Note (2): However, rib resection will be considered as rib removal in thoracoplasty performed for collapse therapy or to accomplish
obliteration of space and will be combined with the rating for lung collapse, or with the rating for lobectomy, pneumonectomy or the graduated ratings for pulmonary tuberculosis.

THE COCCYX

5298 Coccyx, removal of:

Partial or complete, with painful residuals                             10
Without painful residuals                                             0

(Authority: 38 U.S.C. 1155)


§ 4.72 [Reserved]

§ 4.73 Schedule of Ratings -- Muscle Injuries.

Discussion and Analysis in the Veterans Benefits Manual

Note: When evaluating any claim involving muscle injuries resulting in loss of use of any extremity or loss of use of both buttocks (diagnostic code 5317, Muscle Group XVII), refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation.

The Shoulder Girdle and Arm

Rating

Dominant Non-dominant

5301 Group I. Function: Upward rotation of scapula; elevation of arm above shoulder level. Extrinsic muscles of shoulder girdle: (1) Trapezius; (2) levator scapulae; (3) serratus magnus

Severe                                      40   30
Moderately Severe                           30   20
Moderate                                    10   10
Slight                                      0    0

5302 Group II. Function: Depression of arm from vertical

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overhead to hanging at side (1, 2); downward rotation of scapula (3, 4); 1 and 2 act with Group III in forward and backward swing of arm.

Extrinsic muscles of shoulder girdle: (1) Pectoralis major II (costosternal); (2) latissimus dorsi and teres major (teres major, although technically an intrinsic muscle, is included with latissimus dorsi); (3) pectoralis minor; (4) rhomboid

Severe 40 30
Moderately Severe 30 20
Moderate 20 20
Slight 0 0

5303 Group III. Function: Elevation and abduction of arm to level of shoulder; act with 1 and 2 of Group II in forward and backward swing of arm.

Intrinsic muscles of shoulder girdle: (1) Pectoralis major I (clavicular); (2) deltoid

Severe 40 30
Moderately Severe 30 20
Moderate 20 20
Slight 0 0

5304 Group IV. Function: Stabilization of shoulder against injury in strong movements, holding head of humerus in socket; abduction; outward rotation and inward rotation of arm. Intrinsic muscles of shoulder girdle: (1) Supraspinatus; (2) infraspinatus and teres minor; (3) subscapularis; (4) coracobrachialis

Severe 30 20
Moderately Severe 20 20
Moderate 10 10
Slight 0 0

5305 Group V. Function: Elbow supination (1) (long head of biceps is stabilizer of shoulder joint); flexion of elbow (1, 2, 3). Flexor muscles of elbow: (1) Biceps; (2) brachialis; (3) brachioradialis

Severe 40 30
Moderately Severe 30 20
Moderate 10 10
Slight 0 0

5306 Group VI. Function: Extension of elbow (long head of triceps is stabilizer of shoulder joint). Extensor muscles of the elbow: (1) Triceps; (2) anconeus.
<table>
<thead>
<tr>
<th></th>
<th>Dominant</th>
<th>Non-dominant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Moderately Severe</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Slight</td>
<td>0</td>
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</tr>
</tbody>
</table>

The Forearm and Hand

5307 Group VII. Function: Flexion of wrist and fingers. Muscles arising from internal condyle of humerus: Flexors of the carpus and long flexors of fingers and thumb; pronator

<table>
<thead>
<tr>
<th></th>
<th>Dominant</th>
<th>Non-dominant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Moderately Severe</td>
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<td>20</td>
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<tr>
<td>Moderate</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Slight</td>
<td>0</td>
<td>0</td>
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</tbody>
</table>

5308 Group VIII. Function: Extension of wrist, fingers, and thumb; abduction of thumb. Muscles arising mainly from external condyle of humerus: Extensors of carpus, fingers, and thumb; supinator

<table>
<thead>
<tr>
<th></th>
<th>Dominant</th>
<th>Non-dominant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Moderately Severe</td>
<td>20</td>
<td>20</td>
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<tr>
<td>Moderate</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Slight</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

5309 Group IX. Function: The forearm muscles act in strong grasping movements and are supplemented by the intrinsic muscles in delicate manipulative movements. Intrinsic muscles of hand: Thenar eminence; short flexor, opponens, abductor and adductor of thumb; hypothenar eminence; short flexor, opponens and abductor of little finger; 4 lumbricales; 4 dorsal and 3 palmar interossei

Note: The hand is so compact a structure that isolated muscle injuries are rare, being nearly always complicated with injuries of bones, joints, tendons, etc. Rate on limitation of motion, minimum 10 percent.

The Foot and Leg

5310 Group X. Function: Movements of forefoot and toes; propulsion thrust in walking. Intrinsic muscles of the foot: Plantar: (1) Flexor digitorum brevis; (2) abductor hallucis; (3) abductor
digiti minimi; (4) quadratus plantae; (5) lumbricales; (6) flexor hallucis brevis; (7) adductor hallucis; (8) flexor digiti minimi brevis; (9) dorsal and plantar interossei. Other important plantar structures: Plantar aponeurosis, long plantar and calcaneonavicular ligament, tendons of posterior tibial, peroneus longus, and long flexors of great and little toes

<table>
<thead>
<tr>
<th>Severity</th>
<th>Rating</th>
</tr>
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<tbody>
<tr>
<td>Severe</td>
<td>30</td>
</tr>
<tr>
<td>Moderately Severe</td>
<td>20</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
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<tr>
<td>Slight</td>
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</tbody>
</table>

Dorsal: (1) Extensor hallucis brevis; (2) extensor digitorum brevis. Other important dorsal structures: cruciate, crural, deltoid, and other ligaments; tendons of long extensors of toes and peronei muscles

<table>
<thead>
<tr>
<th>Severity</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>20</td>
</tr>
<tr>
<td>Moderately Severe</td>
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<tr>
<td>Moderate</td>
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<tr>
<td>Slight</td>
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</tr>
</tbody>
</table>

Note: Minimum rating for through-and-through wounds of the foot -- 10.

5311 Group XI. Function: Propulsion, plantar flexion of foot (1); stabilization of arch (2, 3); flexion of toes (4, 5); flexion of knee (6). Posterior and lateral crural muscles, and muscles of the calf: (1) Triceps surae (gastrocnemius and soleus); (2) tibialis posterior; (3) peroneus longus; (4) peroneus brevis; (5) flexor hallucis longus; (6) flexor digitorum longus; (7) popliteus; (8) plantaris

<table>
<thead>
<tr>
<th>Severity</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>30</td>
</tr>
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<tr>
<td>Moderate</td>
<td>10</td>
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<tr>
<td>Slight</td>
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</tbody>
</table>

5312 Group XII. Function: Dorsiflexion (1); extension of toes (2); stabilization of arch (3). Anterior muscles of the leg: (1) Tibialis anterior; (2) extensor digitorum longus; (3) extensor hallucis longus; (4) peroneus tertius

<table>
<thead>
<tr>
<th>Severity</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>30</td>
</tr>
<tr>
<td>Moderately Severe</td>
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</tr>
<tr>
<td>Moderate</td>
<td>10</td>
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<tr>
<td>Slight</td>
<td>0</td>
</tr>
</tbody>
</table>
The Pelvic Girdle and Thigh

5313 Group XIII. Function:
Extension of hip and flexion of knee; outward and inward rotation of flexed knee; acting with rectus femoris and sartorius (see XIV, 1, 2) synchronizing simultaneous flexion of hip and knee and extension of hip and knee by belt-over-pulley action at knee joint. Posterior thigh group, Hamstring complex of 2-joint muscles: (1) Biceps femoris; (2) semimembranosus; (3) semitendinosus

<table>
<thead>
<tr>
<th>Rating</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>40</td>
</tr>
<tr>
<td>Moderately Severe</td>
<td>30</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
</tr>
<tr>
<td>Slight</td>
<td>0</td>
</tr>
</tbody>
</table>

5314 Group XIV. Function:
Extension of knee (2, 3, 4, 5); simultaneous flexion of hip and flexion of knee (1); tension of fascia lata and iliotibial (Maissiat's) band, acting with XVII (1) in postural support of body (6); acting with hamstrings in synchronizing hip and knee (1, 2). Anterior thigh group: (1) Sartorius; (2) rectus femoris; (3) vastus externus; (4) vastus intermedius; (5) vastus internus; (6) tensor vaginae femoris

<table>
<thead>
<tr>
<th>Rating</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>40</td>
</tr>
<tr>
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</tr>
<tr>
<td>Moderate</td>
<td>10</td>
</tr>
<tr>
<td>Slight</td>
<td>0</td>
</tr>
</tbody>
</table>

5315 Group XV. Function: Adduction of hip (1, 2, 3, 4); flexion of hip (1, 2); flexion of knee (4). Mesial thigh group: (1) Adductor longus; (2) adductor brevis; (3) adductor magnus; (4) gracilis

<table>
<thead>
<tr>
<th>Rating</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>30</td>
</tr>
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<td>20</td>
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<tr>
<td>Moderate</td>
<td>10</td>
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<tr>
<td>Slight</td>
<td>0</td>
</tr>
</tbody>
</table>

5316 Group XVI. Function: Flexion of hip (1, 2, 3). Pelvic girdle group 1: (1) Psoas; (2) iliacus; (3) pectineus

<table>
<thead>
<tr>
<th>Rating</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>40</td>
</tr>
<tr>
<td>Moderately Severe</td>
<td>30</td>
</tr>
<tr>
<td>Moderate</td>
<td>10</td>
</tr>
<tr>
<td>Slight</td>
<td>0</td>
</tr>
</tbody>
</table>

5317 Group XVII. Function:
Extension of hip (1); abduction
of thigh; elevation of opposite side of pelvis (2, 3); tension of fascia lata and iliotibial (Maissiat's) band, acting with XIV (6) in postural support of body steadying pelvis upon head of femur and condyles of femur on tibia (1). Pelvic 

(1) girdle group 2: Gluteus maximus; (2) gluteus medius; 
(3) gluteus minimus

Severe 50
Moderately Severe 40
Moderate 20
Slight 0

5318 Group XVIII. Function: Outward rotation of thigh and stabilization of hip joint. Pelvic girdle group 3: (1) (2) Pyriformis; gemellus (superior or inferior); (3) obturator (external or internal); (4) quadratusfemoris

Severe 30
Moderately Severe 20
Moderate 10
Slight 0

*If bilateral, see § 3.350(a)(3) of this chapter to determine whether the veteran may be entitled to special monthly compensation.

The Torso and Neck Rating

5319 Group XIX. Function: Support and compression of abdominal wall and lower thorax; flexion and lateral motions of spine; synergists in strong downward movements of arm (1). Muscles of the abdominal wall: (1) Rectus abdominis; (2) external oblique; (3) internal oblique; (4) transversalis; (5) quadratus lumborum

Severe 50
Moderately Severe 30
Moderate 10
Slight 0

5320 Group XX. Function: Postural support of body; extension and lateral movements of spine. Spinal muscles: Sacrospinalis (erector spinae and its prolongations in thoracic and$Q$ cervical regions)

Cervical and thoracic region:
Severe 40
Moderately Severe 20
Moderate 10
Slight 0

Lumbar region:
Severe                                 60
Moderately Severe                      40
Moderate                                20
Slight                                    0

5321 Group XXI. Function: 
Respiration. Muscles of respiration: Thoracic muscle group
Severe or Moderately Severe            20
Moderate                                 10
Slight                                    0

5322 Group XXII. Function: Rotary and forward movements of the head; respiration; deglutition. Muscles of the front of the neck: (Lateral, supra-, and infrahyoid group.) (1) Trapezius I (clavicular insertion); (2) sternocleidomastoid; (3) the "hyoid" muscles; (4) sternothyroid; (5) diagastric
Severe                                 30
Moderately Severe                      20
Moderate                                10
Slight                                    0

5323 Group XXIII. Function: Movements of the head; fixation of shoulder movements. Muscles of the side and back of the neck: Suboccipital; lateral vertebral and anterior vertebral muscles
Severe                                 30
Moderately Severe                      20
Moderate                                10
Slight                                    0

Miscellaneous Rating

5324 Diaphragm, rupture of, with herniation. Rate under diagnostic code 7346
5325 Muscle injury, facial muscles. Evaluate functional impairment as seventh (facial) cranial nerve neuropathy (diagnostic code 8207), disfiguring scar (diagnostic code 7800), etc.
Minimum, if interfering to any extent with mastication -- 10
5326 Muscle hernia, extensive. Without other injury to the muscle -- 10
5327 Muscle, neoplasm of, malignant (excluding soft tissue sarcoma) -- 100
Note: A rating of 100 percent shall continue beyond the
cessation of any surgery, radiation treatment, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residual impairment of function.

5328 Muscle, neoplasm of, benign, postoperative. Rate on impairment of function, i.e., limitation of motion, or scars, diagnostic code 7805, etc

5329 Sarcoma, soft tissue (of muscle, fat, or fibrous connective tissue) -- 100

Note: A rating of 100 percent shall continue beyond the cessation of any surgery, radiation treatment, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residual impairment of function.


(38 U.S.C. 1155)

[EFFECTIVE DATE NOTE: 62 FR 30235, 30239, June 3, 1997, revised this section, effective July 3, 1997.]
THE ORGANS OF SPECIAL SENSE

§ 4.75 Examination of visual acuity.
§ 4.76 Examination of field vision.
§ 4.76a Computation of average concentric contraction of visual fields.
§ 4.77 Examination of muscle function.
§ 4.78 Computing aggravation.
§ 4.79 Loss of use of one eye, having only light perception.
§ 4.80 Rating of one eye.
§§ 4.81 -- 4.82 [Reserved]
§ 4.83 Ratings at scheduled steps and distances.
§ 4.83a Impairment of central visual acuity.
§ 4.84 Differences between distant and near visual acuity.
§ 4.84a Schedule of ratings -- eye.

§ 4.75 Examination of visual acuity.
Ratings on account of visual impairments considered for service connection are, when practicable, to be based only on examination by specialists. Such special examinations should include uncorrected and corrected central visual acuity for distance and near, with record of the refraction. Snellen's test type or its equivalent will be used. Mydriatics should be routine, except when contraindicated. Funduscopic and ophthalmological findings must be recorded. The best distant vision obtainable after best correction by glasses will be the basis of rating, except in cases of keratoconus in which contact lenses are medically required. Also, if there exists a difference of more than 4 diopters of spherical correction between the two eyes, the best possible visual acuity of the poorer eye without glasses, or with a lens of not more than 4 diopters difference from that used with the better eye will be taken as the visual acuity of the poorer eye. When such a difference exists, close attention will be given to the likelihood of congenital origin in mere refractive error.
[40 FR 42537, Sept. 15, 1975]

§ 4.76 Examination of field vision.
Measurement of the visual field will be made when there is disease of the optic nerve or when otherwise indicated. The usual perimetric methods will be employed, using a standard perimeter and 3 mm. white test object. At least 16 meridians 22 1/2 degrees apart will be charted for each eye. (See Figure 1. For the 8 principal meridians, see table III.) The charts will be made a part of the report of examination. Not less than 2 recordings, and when possible, 3 will be made. The minimum limit for this function is established as a concentric central contraction of the visual field to 5[degrees]. This type of contraction of the visual field reduces the visual efficiency to zero. Where available the examination for form field should be supplemented, when indicated, by the use of tangent screen or campimeter. This last test is especially valuable in detection of scotoma.
[43 FR 45352, Oct. 2, 1978]
§ 4.76a Computation of average concentric contraction of visual fields.
The extent of contraction of visual field in each eye is determined by recording the extent of the remaining visual fields in each of the eight 45 degree principal meridians. The number of degrees lost is determined at each meridian by subtracting the remaining degrees from the normal visual fields given in Table III. The degrees lost are then added together to determine total degrees lost. This is subtracted from 500. The difference represents the total remaining degrees of visual field. The difference divided by eight represents the average contraction for rating purposes.

Table III — Normal visual Field Extent at 8 Principal Meridians

<table>
<thead>
<tr>
<th>Meridian</th>
<th>Normal degrees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporally</td>
<td>85</td>
</tr>
<tr>
<td>Down temporally</td>
<td>85</td>
</tr>
<tr>
<td>Down</td>
<td>65</td>
</tr>
<tr>
<td>Down nasally</td>
<td>50</td>
</tr>
<tr>
<td>Nasally</td>
<td>60</td>
</tr>
<tr>
<td>Up nasally</td>
<td>55</td>
</tr>
<tr>
<td>Up</td>
<td>45</td>
</tr>
<tr>
<td>Up temporally</td>
<td>55</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>500</strong></td>
</tr>
</tbody>
</table>

Example of computation of concentric contraction under the schedule with abnormal findings taken from Figure 1.

<table>
<thead>
<tr>
<th>Loss</th>
<th>Degrees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporally</td>
<td>55</td>
</tr>
<tr>
<td>Down temporally</td>
<td>55</td>
</tr>
<tr>
<td>Down</td>
<td>45</td>
</tr>
<tr>
<td>Down nasally</td>
<td>30</td>
</tr>
<tr>
<td>Nasally</td>
<td>40</td>
</tr>
<tr>
<td>Up nasally</td>
<td>35</td>
</tr>
<tr>
<td>Up</td>
<td>25</td>
</tr>
<tr>
<td>Up temporally</td>
<td>35</td>
</tr>
<tr>
<td><strong>Total loss</strong></td>
<td><strong>320</strong></td>
</tr>
</tbody>
</table>

[43 FR 45352, Oct. 2, 1978]

§ 4.77 Examination of muscle function.
The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann Perimeter Chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20 [degrees]G1 or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does
not exist within 40[degrees]G1 in the lateral or downward quadrants, or within 30[degrees]G1 in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

§ 4.78 Computing aggravation.
In determining the effect of aggravation of visual disability, even though the visual impairment of only one eye is service connected, evaluate the vision of both eyes, before and after suffering the aggravation, and subtract the former evaluation from the latter except when the bilateral vision amounts to total disability. In the event of subsequent increase in the disability of either eye, due to intercurrent disease or injury not associated with the service, the condition of the eyes before suffering the subsequent increase will be taken as the basis of compensation subject to the provisions of § 3.383(a) of this chapter.

§ 4.79 Loss of use of one eye, having only light perception.
Loss of use or blindness of one eye, having only light perception, will be held to exist when there is inability to recognize test letters at 1 foot (.30m.) and when further examination of the eyes reveals that perception of objects, hand movements or counting fingers cannot be accomplished at 3 feet (.91m.), lesser extents of visions, particularly perception of objects, hand movements, or counting fingers at distances less than 3 feet (.91 m.), being considered of negligible utility. With visual acuity 5/200 (1.5/60) or less or the visual field reduced to 5[degrees] concentric contraction, in either event in both eyes, the question of entitlement on account of regular aid and attendance will be determined on the facts in the individual case.

§ 4.80 Rating of one eye.
Combined ratings for disabilities of the same eye should not exceed the amount for total loss of vision of that eye unless there is an enucleation or a serious cosmetic defect added to the total loss of vision.

§§ 4.81 -- 4.82 [Reserved]

§ 4.83 Ratings at scheduled steps and distances.
In applying the ratings for impairment of visual acuity, a person not having the ability to read at any one of the scheduled steps or distances, but reading at the next scheduled step or distance, is to be rated as reading at this latter step or distance. That is, a person who can read at 20/100 (6/30) but who cannot at 20/70 (6/21), should be rated as seeing at 20/100 (6/30).
§ 4.83a Impairment of central visual acuity.
The percentage evaluation will be found from table V by intersecting the horizontal row appropriate for the Snellen index for one eye and the vertical column appropriate to the Snellen index of the other eye. For example, if one eye has a Snellen index of 5/200 (1.5/60) and the other eye has a Snellen index of 20/70 (6/21), the percentage evaluation is found in the third horizontal row from the bottom and the fourth vertical column from the left. The evaluation is 50 percent and the diagnostic code 6073.


§ 4.84 Differences between distant and near visual acuity.
Discussion and Analysis in the Veterans Benefits Manual
Where there is a substantial difference between the near and distant corrected vision, the case should be referred to the Director, Compensation and Pension Service.

[40 FR 42537, Sept. 15, 1975]

§ 4.84a Schedule of ratings -- eye.

Diseases of the Eye

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
</tr>
<tr>
<td>8</td>
</tr>
<tr>
<td>9</td>
</tr>
<tr>
<td>10</td>
</tr>
</tbody>
</table>

The above disabilities, in chronic form, are to be rated from 10 percent to 100 percent for impairment of visual acuity or field loss, pain, rest-requirements, or episodic incapacity, combining an additional rating of 10 percent during continuance of active pathology. Minimum rating during active pathology 10

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
</tr>
</tbody>
</table>

Eye, tuberculosis of, active or inactive:

Active 100
Inactive: See §§ 4.88b and 4.89.

6011 Retina, localized scars, atrophy, or irregularities of, centrally located, with irregular, duplicated enlarged or diminished image:

Unilateral or bilateral 10

6012 Glaucoma, congestive or inflammatory:

Frequent attacks of considerable duration; during continuance of actual total disability 100

Or, rate as iritis, diagnostic Code 6003.

6013 Glaucoma, simple, primary, noncongestive:

Rate on impairment of visual acuity or field loss.

Minimum rating 10

6014 New growths, malignant (eyeball only):

Pending completion of operation or other indicated treatment 100

Healed; rate on residuals.

6015 New growths, benign (eyeball and adnexa, other than superficial)

Rate on impaired vision, minimum 10

Healed; rate on residuals.

6016 Nystagmus, central 10

6017 Conjunctivitis, trachomatous, chronic:

Active; rate for impairment of visual acuity; minimum rating while there is active pathology 30

Healed; rate on residuals, if no residuals 0

6018 Conjunctivitis, other, chronic:

Active, with objective symptoms 10

Healed; rate on residuals, if no residuals 0

6019 Ptosis, unilateral or bilateral:

Pupil wholly obscured.

Rate equivalent to 5/200 (1.5/60).

Pupile one-half or more obscured.

Rate equivalent to 20/100 (6/30).

With less interference with vision.

Rate as disfigurement.
6020 Ectropion:
- Bilateral: 20
- Unilateral: 10

6021 Entropion:
- Bilateral: 20
- Unilateral: 10

6022 Lagophthalmos:
- Bilateral: 20
- Unilateral: 10

6023 Eyebrows, loss of, complete, unilateral or bilateral: 10

6024 Eyelashes, loss of, complete, unilateral or bilateral: 10

6025 Epiphora (lacrymal duct, interference with, from any cause):
- Bilateral: 20
- Unilateral: 10

6026 Neuritis, optic:
Rate underlying disease, and combine impairment of visual acuity or field loss.

6027 Cataract, traumatic:
Preoperative.

---

### Table IV -- Table for Rating Bilateral Blindness or Blindness Combined With Hearing Loss With Dictator's Code and 38 CFR Citations

<table>
<thead>
<tr>
<th>Vision one eye</th>
<th>Vision other eye</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/200 (1.5/60) or Light perception</td>
<td>No light perception</td>
</tr>
<tr>
<td>less</td>
<td>only</td>
</tr>
<tr>
<td>5/200 (1.5/60) or</td>
<td>L 1 Code LB-1 38</td>
</tr>
<tr>
<td>less.</td>
<td>L + 1/2 fn1 Code MB-2 a or LB-2</td>
</tr>
<tr>
<td></td>
<td>38 CFR 3.350(b)(2)</td>
</tr>
<tr>
<td></td>
<td>38 CFR 3.350(f)(2)(i)</td>
</tr>
<tr>
<td></td>
<td>38 CFR 3.350(f)(2)(ii)</td>
</tr>
</tbody>
</table>

Light perception only.
- M Code MB-1 a
- 38 CFR M+1/2 Code MB-3
- a or b 38 CFR 3.350(c)(1)(iv)
- 3.350(f)(iii)

No light perception or anatomical loss.
- N Code NB-1 a-b
- c 38 CFR 3.350(d)(4)
Plus service-connected Hearing loss

Vision one eye Total deafness one 10% or 20% at 30% at least one ear least one ear SC ear SC

5/200 (1.5/60) or Add 1/2 step Code No additional SMC Add a full step
less. PB-1 38 CFR Code PB-3 38

Light perception O Code OB-2 38 Add 1/2 step Code Add a full step only.
PB-2 38 CFR Code PB-3 38

No light perception O Code OB-2 38 Add 1/2 step Code Add full step Code or anatomical
PB-2 38 CFR PB-3 38 CFR

---

Note. -- (1) Any of the additional SMC payable under Dictator's Codes PB-1, PB-2, or PB-3 is not to exceed the rate payable under Subpar. O. (2) If in addition to any of the above the veteran has the service-connected loss or loss of use of an extremity, additional SMC is payable, not to exceed the rate payable under Subpar. O. See Dictator's Codes PB-4, PB-5, PB-6, and 38 CFR 3.350(f)(2)(vii) (A), (B), (C).

(Authority: 38 U.S.C. 315)

Impairment of Central Visual Acuity

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6061 Anatomical loss both eyes</td>
<td>fn5 100</td>
</tr>
<tr>
<td>6062 Blindness in both eyes having only light perception</td>
<td>fn5 100</td>
</tr>
</tbody>
</table>
Anatomical loss of 1 eye:

6063 In the other eye 5/200 (1.5/60) fn5 100
6064 In the other eye 10/200 (3/60) fn6 90
6064 In the other eye 15/200 (4.5/60) fn6 80
6064 In the other eye 20/200 (6/60) fn6 70
6065 In the other eye 20/100 (6/30) fn6 60
6065 In the other eye 20/70 (6/21) fn6 60
6065 In the other eye 20/50 (6/15) fn6 50
6066 In the other eye 20/40 (6/12) fn6 40

Blindness in 1 eye, having only light perception:

6067 In the other eye 5/200 (1.5/60) fn5 100
6068 In the other eye 10/200 (3/60) fn5 90
6068 In the other eye 15/200 (4.5/60) fn5 80
6068 In the other eye 20/200 (6/60) fn5 70
6069 In the other eye 20/100 (6/30) fn5 60
6069 In the other eye 20/70 (6/21) fn5 50
6069 In the other eye 20/50 (6/15) fn5 40
6070 In the other eye 20/40 (6/12) fn5 30

Vision in 1 eye 5/200 (1.5/60):

6071 In the other eye 5/200 (1.5/60) fn5 100
6072 In the other eye 10/200 (3/60) fn5 90
6072 In the other eye 15/200 (4.5/60) fn5 80
6072 In the other eye 20/200 (6/60) fn5 70
6073 In the other eye 20/100 (6/30) fn5 60
6073 In the other eye 20/70 (6/21) fn5 50
6073 In the other eye 20/50 (6/15) fn5 40
6074 In the other eye 20/40 (6/12) fn5 30

Vision in 1 eye 10/200 (3/60):

6075 In the other eye 10/200 (3/60) fn5 90
6075 In the other eye 15/200 (4.5/60) fn5 80
6075 In the other eye 20/200 (6/60) fn5 70
6076 In the other eye 20/100 (6/30) fn5 60
<table>
<thead>
<tr>
<th>Vision in 1 eye</th>
<th>20/200 (6/60):</th>
</tr>
</thead>
<tbody>
<tr>
<td>6075 In the other eye</td>
<td>20/200 (6/60) 70</td>
</tr>
<tr>
<td>6076 In the other eye</td>
<td>20/100 (6/30) 60</td>
</tr>
<tr>
<td>6076 In the other eye</td>
<td>20/70 (6/21) 40</td>
</tr>
<tr>
<td>6076 In the other eye</td>
<td>20/50 (6/15) 30</td>
</tr>
<tr>
<td>6077 In the other eye</td>
<td>20/40 (6/12) 20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vision in 1 eye</th>
<th>20/100 (6/30):</th>
</tr>
</thead>
<tbody>
<tr>
<td>6078 In the other eye</td>
<td>20/100 (6/30) 50</td>
</tr>
<tr>
<td>6078 In the other eye</td>
<td>20/70 (6/21) 30</td>
</tr>
</tbody>
</table>

| fn5 Also entitled to special monthly compensation. |

| fn6 Add 10% if artificial eye cannot be worn; also entitled to special monthly compensation. |

<table>
<thead>
<tr>
<th>Table V -- Ratings for Central Visual Acuity Impairment</th>
</tr>
</thead>
<tbody>
<tr>
<td>[With Diagnostic Code]</td>
</tr>
<tr>
<td>Vision in one eye</td>
</tr>
<tr>
<td>Vision In other eye</td>
</tr>
<tr>
<td>---------------------</td>
</tr>
<tr>
<td>20/40</td>
</tr>
<tr>
<td>(6/12)</td>
</tr>
<tr>
<td>20/50</td>
</tr>
<tr>
<td>(6/15)</td>
</tr>
<tr>
<td>20/70</td>
</tr>
<tr>
<td>(6/21)</td>
</tr>
<tr>
<td>20/100</td>
</tr>
<tr>
<td>(6/30)</td>
</tr>
<tr>
<td>20/200</td>
</tr>
<tr>
<td>(6/60)</td>
</tr>
<tr>
<td>15/200</td>
</tr>
<tr>
<td>(4.5/60)</td>
</tr>
<tr>
<td>10/200</td>
</tr>
<tr>
<td>(3/60)</td>
</tr>
<tr>
<td>5/200</td>
</tr>
<tr>
<td>(1.5/60)</td>
</tr>
</tbody>
</table>

Anatomical loss of one eye

<table>
<thead>
<tr>
<th>Light perception only</th>
</tr>
</thead>
<tbody>
<tr>
<td>fn5 30</td>
</tr>
<tr>
<td>fn5 40</td>
</tr>
<tr>
<td>fn5 50</td>
</tr>
<tr>
<td>fn5 60</td>
</tr>
</tbody>
</table>

Vision in other eye

<table>
<thead>
<tr>
<th>Vision In one eye</th>
<th>Light perception only</th>
</tr>
</thead>
<tbody>
<tr>
<td>20/200</td>
<td>15/200</td>
</tr>
<tr>
<td>(6/60) (4.5/60)</td>
<td>(3/60) (1.5/60)</td>
</tr>
<tr>
<td>10/200</td>
<td>5/200</td>
</tr>
<tr>
<td>(6/12) (6/15)</td>
<td>(6/30) (6/60)</td>
</tr>
<tr>
<td>20/50</td>
<td>70</td>
</tr>
<tr>
<td>(6/21) (6/30)</td>
<td>(6075) (6075) (6075)</td>
</tr>
<tr>
<td>15/200</td>
<td>70</td>
</tr>
<tr>
<td>(4.5/60) (6/30)</td>
<td>(6075) (6075) (6075)</td>
</tr>
<tr>
<td>10/200</td>
<td>70</td>
</tr>
<tr>
<td>(3/60) (6/60)</td>
<td>(6075) (6075) (6075)</td>
</tr>
</tbody>
</table>
Ratings for Impairment of Field Vision

6080 Field vision, impairment of:

Homonymous hemianopsia 30

Field, visual, loss of temporal half:

Bilateral 30

Unilateral 10

Or rate as 20/70 (6/21).

Field, visual, loss of nasal half:

Bilateral 20

Unilateral 10

Or rate as 20/50 (6/15).

Field, visual, concentric contraction of:

To 5[degrees]:

Bilateral 100

Unilateral 30

Or rate as 5/200 (1.5/60).

To 15[degrees] but not to 5[degrees]:

Bilateral 70

Unilateral 20

Or rate as 20/200 (6/60).

To 30[degrees] but not to 15[degrees]:

fn5 Also entitled to special monthly compensation.

fn6 Add 10 percent if artificial eye cannot be worn; also entitled to special monthly compensation.
Bilateral                                                                   50
Unilateral                                                                  10
Or rate as 20/100 (6/30).
   To 45[degrees] but not to 30[degrees]:
Bilateral                                                                   30
Unilateral                                                                  10
Or rate as 20/70 (6/21):
   To 60[degrees] but not to 45[degrees]:
Bilateral                                                                   20
Unilateral                                                                  10
Or rate as 20/50 (6/15).

Note (1): Correct diagnosis reflecting disease or injury should be cited.

Note (2): Demonstrable pathology commensurate with the functional loss will be required. The concentric contraction ratings require contraction within the stated degrees, temporally; the nasal contraction may be less. The alternative ratings are to be employed when there is ratable defect of visual acuity, or a different impairment of the visual field in the other eye. Concentric contraction resulting from demonstrable pathology to 5 degrees or less will be considered on a parity with reduction of central visual acuity to 5/200 (1.5/60) or less for all purposes including entitlement under § 3.350(b)(2) of this chapter; not however, for the purpose of § 3.350(a) of this chapter. Entitlement on account of blindness requiring regular aid and attendance, § 3.350(c) of this chapter, will continue to be determined on the facts in the individual case.

6081 Scotoma, pathological, unilateral:
Large or centrally located, minimum                                           10

Note: Rate on loss of central visual acuity or impairment of field vision. Do not combine with any other rating for visual impairment.

Ratings for Impairment of Muscle Function
[6090 Diplopia (double vision)]

<table>
<thead>
<tr>
<th>Degree of diplopia</th>
<th>Equivalent visual acuity</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Central 20[degrees]</td>
<td>5/200</td>
</tr>
<tr>
<td>(b) 21[degrees] to 30[degrees]:</td>
<td></td>
</tr>
<tr>
<td>(1) Down</td>
<td>15/200</td>
</tr>
<tr>
<td>(2) Lateral</td>
<td>20/100</td>
</tr>
<tr>
<td>(3) Up</td>
<td>20/70</td>
</tr>
<tr>
<td>(c) 31[degrees] to 40[degrees]:</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Notes</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Correct diagnosis reflecting disease or injury should be cited.</td>
<td></td>
</tr>
<tr>
<td>(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.</td>
<td></td>
</tr>
<tr>
<td>(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.</td>
<td></td>
</tr>
<tr>
<td>(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Condition</th>
<th>Code</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Symblepharon</td>
<td>6091</td>
<td>20/200</td>
</tr>
<tr>
<td>Diplopia, due to limited muscle function.</td>
<td>6092</td>
<td>20/70</td>
</tr>
</tbody>
</table>
IMPAIRMENT OF AUDITORY ACUITY

§ 4.85 Evaluation of hearing impairment.
§ 4.86 Exceptional patterns of hearing impairment.
§ 4.87 Schedule of ratings -- ear.
§ 4.87a Schedule of ratings -- other sense organs.

§ 4.85 Evaluation of hearing impairment.
(a) An examination for hearing impairment for VA purposes must be conducted by a state-licensed audiologist and must include a controlled speech discrimination test (Maryland CNC) and a puretone audiometry test. Examinations will be conducted without the use of hearing aids.
(b) Table VI, "Numeric Designation of Hearing Impairment Based on Puretone Threshold Average and Speech Discrimination," is used to determine a Roman numeral designation (I through XI) for hearing impairment based on a combination of the percent of speech discrimination (horizontal rows) and the puretone threshold average (vertical columns). The Roman numeral designation is located at the point where the percentage of speech discrimination and puretone threshold average intersect.
(c) Table VIa, "Numeric Designation of Hearing Impairment Based Only on Puretone Threshold Average," is used to determine a Roman numeral designation (I through XI) for hearing impairment based only on the puretone threshold average. Table VIa will be used when the examiner certifies that use of the speech discrimination test is not appropriate because of language difficulties, inconsistent speech discrimination scores, etc., or when indicated under the provisions of § 4.86.
(d) "Puretone threshold average," as used in Tables VI and VIa, is the sum of the puretone thresholds at 1000, 2000, 3000 and 4000 Hertz, divided by four. This average is used in all cases (including those in § 4.86) to determine the Roman numeral designation for hearing impairment from Table VI or VIa.
(e) Table VII, "Percentage Evaluations for Hearing Impairment," is used to determine the percentage evaluation by combining the Roman numeral designations for hearing impairment of each ear. The horizontal rows represent the ear having the better hearing and the vertical columns the ear having the poorer hearing. The percentage evaluation is located at the point where the row and column intersect.
(f) If impaired hearing is service-connected in only one ear, in order to determine the percentage evaluation from Table VII, the non-service-connected ear will be assigned a Roman Numeral designation for hearing impairment of I, subject to the provisions of § 3.383 of this chapter.
(g) When evaluating any claim for impaired hearing, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation due either to deafness, or to deafness in combination with other specified disabilities.
(h) Numeric tables VI, VIa*, and VII.

TABLE VI
§ 4.86 Exceptional patterns of hearing impairment.

(a) When the puretone threshold at each of the four specified frequencies (1000, 2000, 3000, and 4000 Hertz) is 55 decibels or more, the rating specialist will determine the Roman numeral designation for hearing impairment from either Table VI or Table VIa, whichever results in the higher numeral. Each ear will be evaluated separately.

(b) When the puretone threshold is 30 decibels or less at 1000 Hertz, and 70 decibels or more at 2000 Hertz, the rating specialist will determine the Roman numeral designation for hearing impairment from either Table VI or Table VIa, whichever results in the higher numeral. That numeral will then be elevated to the next higher Roman numeral. Each ear will be evaluated separately.
§ 4.87 Schedule of ratings -- ear.

DISEASES OF THE EAR

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6200 Chronic suppurative otitis media, mastoiditis, or cholesteatoma (or any combination):</td>
</tr>
<tr>
<td>During suppuration, or with aural polyps</td>
</tr>
</tbody>
</table>

Note: Evaluate hearing impairment, and complications such as labyrinthitis, tinnitus, facial nerve paralysis, or bone loss of skull, separately.

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6201 Chronic nonsuppurative otitis media with effusion (serous otitis media):</td>
</tr>
<tr>
<td>Rate hearing impairment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6202 Otosclerosis:</td>
</tr>
<tr>
<td>Rate hearing impairment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6204 Peripheral vestibular disorders:</td>
</tr>
<tr>
<td>Dizziness and occasional staggering</td>
</tr>
<tr>
<td>Occasional dizziness</td>
</tr>
</tbody>
</table>

Note: Objective findings supporting the diagnosis of vestibular disequilibrium are required before a compensable evaluation can be assigned under this code. Hearing impairment or suppuration shall be separately rated and combined.

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6205 Meniere's syndrome (endolymphatic hydrops):</td>
</tr>
<tr>
<td>Hearing impairment with attacks of vertigo and cerebellar gait occurring more than once weekly, with or without tinnitus</td>
</tr>
<tr>
<td>Hearing impairment with attacks of vertigo and cerebellar gait occurring from one to four times a month, with or without tinnitus</td>
</tr>
<tr>
<td>Hearing impairment with vertigo less than once a month, with or without tinnitus</td>
</tr>
</tbody>
</table>

Note: Evaluate Meniere's syndrome either under these criteria or by separately evaluating vertigo (as a peripheral vestibular disorder), hearing impairment, and tinnitus, whichever method results in a higher overall evaluation. But do not combine an evaluation for hearing impairment, tinnitus, or vertigo with an evaluation under diagnostic code 6205.

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>6207 Loss of auricle:</td>
</tr>
</tbody>
</table>
Complete loss of both 50
Complete loss of one 30
Deformity of one, with loss of one-third or more 10 of the substance

6208 Malignant neoplasm of the ear (other than skin only) 100

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, radiation treatment, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based on that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

6209 Benign neoplasms of the ear (other than skin only):
Rate on impairment of function.

6210 Chronic otitis externa:
Swelling, dry and scaly or serous discharge, and 10 itching requiring frequent and prolonged treatment

6211 Tympanic membrane, perforation of 0

6260 Tinnitus, recurrent 10
(Authority: 38 U.S.C. 1155)

[EFFECTIVE DATE NOTE: 68 FR 25822, 25823, May 14, 2003, amended this section, effective June 13, 2003.]

§ 4.87a Schedule of ratings -- other sense organs.

Rating

6275 Sense of smell, complete loss 10

6276 Sense of taste, complete loss 10

Note: Evaluation will be assigned under diagnostic codes 6275 or 6276 only if there is an anatomical or pathological basis for the condition.
(Authority: 38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 64 FR 25202, 25210, May 11, 1999, revised this section, effective June 10, 1999.]
Infectious Diseases, Immune Disorders and Nutritional Deficiencies

§ 4.88 [Reserved]
§ 4.88a Chronic fatigue syndrome.
§ 4.88b Schedule of ratings -- infectious diseases, immune disorders and nutritional deficiencies.
§ 4.88c Ratings for inactive nonpulmonary tuberculosis initially entitled after August 19, 1968.
§ 4.89 Ratings for inactive nonpulmonary tuberculosis in effect on August 19, 1968.
§ 4.88 [Reserved]

§ 4.88a Chronic fatigue syndrome.
(a) For VA purposes, the diagnosis of chronic fatigue syndrome requires:
(1) new onset of debilitating fatigue severe enough to reduce daily activity to less than 50 percent of the usual level for at least six months; and
(2) the exclusion, by history, physical examination, and laboratory tests, of all other clinical conditions that may produce similar symptoms; and
(3) six or more of the following:
   (i) acute onset of the condition,
   (ii) low grade fever,
   (iii) nonexudative pharyngitis,
   (iv) palpable or tender cervical or axillary lymph nodes,
   (v) generalized muscle aches or weakness,
   (vi) fatigue lasting 24 hours or longer after exercise,
   (vii) headaches (of a type, severity, or pattern that is different from headaches in the pre-morbid state),
   (viii) migratory joint pains,
   (ix) neuropsychologic symptoms,
   (x) sleep disturbance.
(b) [Reserved]
[59 FR 60902, Nov. 29, 1994, as confirmed at 60 FR 37013, July 19, 1995]

§ 4.88b Schedule of ratings -- infectious diseases, immune disorders and nutritional deficiencies.

**Rating**

6300 Cholera, Asiatic:
As active disease, and for 3 months convalescence 100
Thereafter rate residuals such as renal necrosis under the appropriate system

6301 Visceral Leishmaniasis:
During treatment for active disease 100
Note: A 100 percent evaluation shall continue beyond the cessation of treatment for active disease. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by
mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate residuals such as liver damage or lymphadenopathy under the appropriate system.

6302 Leprosy (Hansen’s Disease):
As active disease 100
Note: A 100 percent evaluation shall continue beyond the date that an examining physician has determined that this has become inactive.
Six months after the date of inactivity, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. Rate residuals such as liver damage or lymphadenopathy under the appropriate system.

6304 Malaria:
As active disease 100
Note: The diagnosis of malaria depends on the identification of the malarial parasites in blood smears. If the veteran served in an endemic area and presents signs and symptoms compatible with malaria, the diagnosis may be based on clinical grounds alone. Relapses must be confirmed by the presence of malarial parasites in blood smears. Thereafter rate residuals such as liver or spleen damage under the appropriate system.

6305 Lymphatic Filariasis:
As active disease 100
Thereafter rate residuals such as epididymitis or lymphangitis under the appropriate system.

6306 Bartonellosis:
As active disease, and for 3 months convalescence 100
Thereafter rate residuals such as skin lesions under the appropriate system.

6307 Plague:
As active disease 100
Thereafter rate residuals such as lymphadenopathy under the appropriate system.

6308 Relapsing Fever:
As active disease 100
Thereafter rate residuals such as liver or spleen damage or central nervous system involvement under the appropriate system.

6309 Rheumatic fever:
As active disease 100
Thereafter rate residuals such as heart damage under the appropriate system.

6310 Syphilis, and other treponemal infections:
Rate the complications of nervous system, vascular system, eyes or ears. (See DC 7004, syphilitic heart disease, DC 8013, cerebrospinal syphilis, DC 8014, meningovascular syphilis, DC 8015, tabes dorsalis, and DC 9301, dementia associated with central nervous system syphilis).

6311 Tuberculosis, miliary:
As active disease 100
Inactive: See §§ 4.88c and 4.89.

6313 Avitaminosis:
Marked mental changes, moist dermatitis, inability to retain adequate nourishment, exhaustion, and cachexia 100
With all of the symptoms listed below, plus mental symptoms and impaired bodily vigor 60
With stomatitis, diarrhea, and symmetrical dermatitis 40
With stomatitis, or achlorhydria, or diarrhea 20
Confirmed diagnosis with nonspecific symptoms such as: decreased 10
appetite, weight loss, abdominal discomfort, weakness, inability to concentrate and irritability

6314 Beriberi:
As active disease:
With congestive heart failure, anasarca, or Wernicke-Korsakoff 100
syndrome
With cardiomegaly, or; with peripheral neuropathy with footdrop or
atrophy of thigh or calf muscles
With peripheral neuropathy with absent knee or ankle jerks and loss 30
of sensation, or; with symptoms such as weakness, fatigue, anorexia, dizziness, heaviness and stiffness of legs, headache or sleep disturbance
Thereafter rate residuals under the appropriate body system.

6315 Pellagra:
Marked mental changes, moist dermatitis, inability to retain adequate 100
nourishment, exhaustion, and cachexia
With all of the symptoms listed below, plus mental symptoms and impaired bodily vigor
With stomatitis, diarrhea, and symmetrical dermatitis 40
With stomatitis, or achlorhydria, or diarrhea 20
Confirmed diagnosis with nonspecific symptoms such as: decreased 10
appetite, weight loss, abdominal discomfort, weakness, inability to concentrate and irritability

6316 Brucellosis:
As active disease 100
Thereafter rate residuals such as liver or spleen damage or meningitis under the appropriate system

6317 Typhus, scrub:
As active disease, and for 3 months convalescence 100
Thereafter rate residuals such as spleen damage or skin conditions under the appropriate system

6318 Melioidosis:
As active disease 100
Thereafter rate residuals such as arthritis, lung lesions or meningitis under the appropriate system

6319 Lyme Disease:
As active disease 100
Thereafter rate residuals such as arthritis under the appropriate system

6320 Parasitic diseases otherwise not specified:
As active disease 100
Thereafter rate residuals such as spleen or liver damage under the appropriate system

6350 Lupus erythematosus, systemic (disseminated):
Not to be combined with ratings under DC 7809 Acute, with frequent 100
exacerbations, producing severe impairment of health
Exacerbations lasting a week or more, 2 or 3 times per year 60
Exacerbations once or twice a year or symptomatic during the past 2 10
years
Note: Evaluate this condition either by combining the evaluations for residuals under the appropriate system, or by evaluating DC 6350, whichever method results in a higher evaluation

6351 HIV-Related Illness:
AIDS with recurrent opportunistic infections or with secondary 100
diseases afflicting multiple body systems; HIV-related illness with debility and progressive weight loss, without remission, or few or brief remissions
Refractory constitutional symptoms, diarrhea, and pathological weight 60
loss, or; minimum rating following development of AIDS-related opportunistic infection or neoplasm

Recurrent constitutional symptoms, intermittent diarrhea, and on approved medication(s), or; minimum rating with T4 cell count less than 200, or Hairy Cell Leukoplakia, or Oral Candidiasis

Following development of definite medical symptoms, T4 cell of 200 or more and less than 500, and on approved medication(s), or; with evidence of depression or memory loss with employment limitations

Asymptomatic, following initial diagnosis of HIV infection, with or without lymphadenopathy or decreased T4 cell count

Note (1): The term "approved medication(s)" includes medications prescribed as part of a research protocol at an accredited medical institution.

Note (2): Psychiatric or central nervous system manifestations, opportunistic infections, and neoplasms may be rated separately under appropriate codes if higher overall evaluation results, but not in combination assignable above

6354 Chronic Fatigue Syndrome (CFS):

Debilitating fatigue, cognitive impairments (such as inability to concentrate, forgetfulness, confusion), or a combination of other signs and symptoms:

Which are nearly constant and so severe as to restrict routine daily activities almost completely and which may occasionally preclude self-care

Which are nearly constant and restrict routine daily activities to less than 50 percent of the pre-illness level, or; which wax and wane, resulting in periods of incapacitation of at least six weeks total duration per year

Which are nearly constant and restrict routine daily activities to 50 to 75 percent of the pre-illness level, or; which wax and wane, resulting in periods of incapacitation of at least four but less than six weeks total duration per year

Which are nearly constant and restrict routine daily activities by less than 25 percent of the pre-illness level, or; which wax and wane, resulting in periods of incapacitation of at least two but less than four weeks total duration per year

Which wax and wane but result in periods of incapacitation of at least one but less than two weeks total duration per year, or; symptoms controlled by continuous medication

Note: For the purpose of evaluating this disability, the condition will be considered incapacitating only while it requires bed rest and treatment by a physician.


[EFFECTIVE DATE NOTE: 61 FR 39873, 39875, July 31, 1996, which revised this section, became effective Aug. 30, 1996.]

[CROSS REFERENCE: This section was formerly § 4.88a.]

§ 4.88c Ratings for inactive nonpulmonary tuberculosis initially entitled after August 19, 1968.
Rating

For 1 year after date of inactivity, following active tuberculosis

Thereafter: Rate residuals under the specific body system or systems affected.

Following the total rating for the 1 year period after date of inactivity, the schedular evaluation for residuals of nonpulmonary tuberculosis, i.e., ankylosis, surgical removal of a part, etc., will be assigned under the appropriate diagnostic code for the residual preceded by the diagnostic code for tuberculosis of the body part affected. For example, tuberculosis of the hip joint with residual ankylosis would be coded 5001-5250. Where there are existing residuals of pulmonary and nonpulmonary conditions, the evaluations for residual separate functional impairment may be combined.

Where there are existing pulmonary and nonpulmonary conditions, the total rating for the 1 year, after attainment of inactivity, may not be applied to both conditions during the same period. However, the total rating during the 1-year period for the pulmonary or for the nonpulmonary condition will be utilized, combined with evaluation for residuals of the condition not covered by the 1-year total evaluation, so as to allow any additional benefit provided during such period.

[34 FR 5062, Mar. 11, 1969, redesignated at 59 FR 60902, Nov. 29, 1994, as confirmed at 60 FR 37012, July 19, 1995]

[CROSS REFERENCE: This section was formerly § 4.88b.]

§ 4.89 Ratings for inactive nonpulmonary tuberculosis in effect on August 19, 1968.

Public Law 90-493 repealed section 356 of title 38, United States Code which provided graduated ratings for inactive tuberculosis. The repealed section, however, still applies to the case of any veteran who on August 19, 1968, was receiving or entitled to receive compensation for tuberculosis. The use of the protective provisions of Pub. L. 90-493 should be mentioned in the discussion portion of all ratings in which these provisions are applied. For use in rating cases in which the protective provisions of Pub. L. 90-493 apply, the former evaluations are retained in this section.

Rating

For 2 years after date of inactivity, following active tuberculosis, which was clinically identified during service or subsequently

Thereafter, for 4 years, or in any event, to 6 years after date of inactivity

Thereafter, for 5 years, or to 11 years after date of inactivity

Thereafter, in the absence of a schedular compensable permanent
Following the total rating for the 2-year period after date of inactivity, the schedular evaluation for residuals of nonpulmonary tuberculosis, i.e., ankylosis, surgical removal of a part, etc., if in excess of 50 percent or 30 percent will be assigned under the appropriate diagnostic code for the specific residual preceded by the diagnostic code for tuberculosis of the body part affected. For example, tuberculosis of the hip joint with residual ankylosis would be coded 5001-5250.

The graduated ratings for nonpulmonary tuberculosis will not be combined with residuals of nonpulmonary tuberculosis unless the graduated rating and the rating for residual disability cover separate functional losses, e.g., graduated ratings for tuberculosis of the kidney and residuals of tuberculosis of the spine. Where there are existing pulmonary and nonpulmonary conditions, the graduated evaluation for the pulmonary, or for the nonpulmonary, condition will be utilized, combined with evaluations for residuals of the condition not covered by the graduated evaluation utilized, so as to provide the higher evaluation over such period.

The ending dates of all graduated ratings of nonpulmonary tuberculosis will be controlled by the date of attainment of inactivity.

These ratings are applicable only to veterans with nonpulmonary tuberculosis active on or after October 10, 1949.

THE RESPIRATORY SYSTEM

§ 4.96 Special provisions regarding evaluation of respiratory conditions.
§ 4.97 Schedule of ratings -- respiratory system.

§ 4.96 Special provisions regarding evaluation of respiratory conditions.
(a) Rating coexisting respiratory conditions. Ratings under diagnostic codes 6600 through 6817 and 6822 through 6847 will not be combined with each other. Where there is lung or pleural involvement, ratings under diagnostic codes 6819 and 6820 will not be combined with each other or with diagnostic codes 6600 through 6817 or 6822 through 6847. A single rating will be assigned under the diagnostic code which reflects the predominant disability with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation. However, in cases protected by the provisions of Pub. L. 90-493, the graduated ratings of 50 and 30 percent for inactive tuberculosis will not be elevated.
(b) Rating "protected" tuberculosis cases. Public Law 90-493 repealed section 356 of title 38, United States Code which had provided graduated ratings for inactive tuberculosis. The repealed section, however, still applies to the case of any veteran who on August 19, 1968, was receiving or entitled to receive compensation for tuberculosis. The use of the protective provisions of Pub. L. 90-493 should be mentioned in the discussion portion of all ratings in which these provisions are applied. For application in rating cases in which the protective provisions of Pub. L. 90-493 apply the former evaluations pertaining to pulmonary tuberculosis are retained in § 4.97.
(c) Special monthly compensation. When evaluating any claim involving complete organic aphonia, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate conditions which potentially establish entitlement to special monthly compensation; however, there are other conditions in this section which under certain circumstances also establish entitlement to special monthly compensation.

[34 FR 5062, Mar. 11, 1969; 61 FR 46720, 46727, Sept. 5, 1996]

[EFFECTIVE DATE NOTE: 61 FR 46720, 46727, Sept. 5, 1996, which revised the section heading and paragraph (a), and added paragraph (c), became effective Oct. 7, 1996.]

§ 4.97 Schedule of ratings -- respiratory system.

DISEASES OF THE NOSE AND THROAT

Rating

6502 Septum, nasal, deviation of:
   Traumatic only,
   With 50-percent obstruction of the nasal passage on both sides or complete obstruction on one side 10
6504 Nose, loss of part of, or scars:
   Exposing both nasal passages                      30
Loss of part of one ala, or other obvious disfigurement 10
Note: Or evaluate as DC 7800, scars, disfiguring, head, face, or neck.
6510 Sinusitis, pansinusitis, chronic.
6511 Sinusitis, ethmoid, chronic.
6512 Sinusitis, frontal, chronic.
6513 Sinusitis, maxillary, chronic.
6514 Sinusitis, sphenoid, chronic.
General Rating Formula for Sinusitis (DC's 6510 through 6514):
Following radical surgery with chronic osteomyelitis, or; near 50
constant sinusitis characterized by headaches, pain and tenderness
of affected sinus, and purulent discharge or crusting after
repeated surgeries
Three or more incapacitating episodes per year of sinusitis 30
requiring prolonged (lasting four to six weeks) antibiotic
treatment, or; more than six non-incapacitating episodes per year
of sinusitis characterized by headaches, pain, and purulent
discharge or crusting
One or two incapacitating episodes per year of sinusitis requiring 10
prolonged (lasting four to six weeks) antibiotic treatment, or;
three to six non-incapacitating episodes per year of sinusitis
characterized by headaches, pain, and purulent discharge or crusting
Detected by X-ray only 0
Note: An incapacitating episode of sinusitis means one that
requires bed rest and treatment by a physician.
6515 Laryngitis, tuberculous, active or inactive.
Rate under §§ 4.88c or 4.89, whichever is appropriate.
6516 Laryngitis, chronic:
Hoarseness, with thickening or nodules of cords, polyps, submucous 30
infiltration, or pre-malignant changes on biopsy
Hoarseness, with inflammation of cords or mucous membrane 10
6518 Laryngectomy, total. 1 100
Rate the residuals of partial laryngectomy as laryngitis (DC 6516),
aphonia (DC 6519), or stenosis of larynx (DC 6520).
6519 Aphonia, complete organic:
Constant inability to communicate by speech 1 100
Constant inability to speak above a whisper 60
Note: Evaluate incomplete aphonia as laryngitis, chronic (DC 6516).
6520 Larynx, stenosis of, including residuals of laryngeal trauma
(unilateral or bilateral):
Forced expiratory volume in one second (FEV-1) less than 40 percent 100
of predicted value, with Flow-Volume Loop compatible with upper
airway obstruction, or; permanent tracheostomy
FEV-1 of 40- to 55-percent predicted, with Flow-Volume Loop 60
compatible with upper airway obstruction
FEV-1 of 56- to 70-percent predicted, with Flow-Volume Loop 30
compatible with upper airway obstruction
FEV-1 of 71- to 80-percent predicted, with Flow-Volume Loop 10
compatible with upper airway obstruction
Note: Or evaluate as aphonia (DC 6519).
6521 Pharynx, injuries to:
Stricture or obstruction of pharynx or nasopharynx, or; absence of 50
soft palate secondary to trauma, chemical burn, or granulomatous
disease, or; paralysis of soft palate with swallowing difficulty
(nasal regurgitation) and speech impairment
6522 Allergic or vasomotor rhinitis:
With polyps 30
Without polyps, but with greater than 50-percent obstruction of 10
nasal passage on both sides or complete obstruction on one side
6523 Bacterial rhinitis:
Rhinoscleroma 50
With permanent hypertrophy of turbinates and with greater than 10
50-percent obstruction of nasal passage on both sides or complete
obstruction on one side

6524 Granulomatous rhinitis:
Wegener's granulomatosis, lethal midline granuloma 100
Other types of granulomatous infection 20

DISEASES OF THE TRACHEA AND BRONCHI

6600 Bronchitis, chronic:
FEV-1 less than 40 percent of predicted value, or; the ratio of
Forced Expiratory Volume in one second to Forced Vital Capacity
(FEV-1/FVC) less than 40 percent, or; Diffusion Capacity of the
Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB))
less than 40-percent predicted, or; maximum exercise capacity less
than 15 ml/kg/min oxygen consumption (with cardiac or respiratory
limitation), or; cor pulmonale (right heart failure), or; right
ventricular hypertrophy, or; pulmonary hypertension (shown by Echo
or cardiac catheterization), or; episode(s) of acute respiratory
failure, or; requires outpatient oxygen therapy
FEV-1 of 40- to 55-percent predicted, or; FEV-1/FVC of 40 to 55
percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum
oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory
limit)
FEV-1 of 56- to 70-percent predicted, or; FEV-1/FVC of 56 to 70
percent, or; DLCO (SB) 56- to 65-percent predicted
FEV-1 of 71- to 80-percent predicted, or; FEV-1/FVC of 71 to 80
percent, or; DLCO (SB) 66- to 80-percent predicted

6601 Bronchiectasis:
With incapacitating episodes of infection of at least six weeks
total duration per year
With incapacitating episodes of infection of four to six weeks
total duration per year, or; near constant findings of cough with
purulent sputum associated with anorexia, weight loss, and frank
hemoptysis and requiring antibiotic usage almost continuously
With incapacitating episodes of infection of two to four weeks
total duration per year, or; daily productive cough with sputum
that is at times purulent or blood-tinged and that requires
prolonged (lasting four to six weeks) antibiotic usage more than
twice a year
Intermittent productive cough with acute infection requiring a
course of antibiotics at least twice a year
Or rate according to pulmonary impairment as for chronic bronchitis
(DC 6600).
Note: An incapacitating episode is one that requires bedrest and
treatment by a physician.

6602 Asthma, bronchial:
FEV-1 less than 40-percent predicted, or; FEV-1/FVC less than 40
percent, or; more than one attack per week with episodes of
respiratory failure, or; requires daily use of systemic (oral or
parenteral) high dose corticosteroids or immuno-suppressive
medications
FEV-1 of 40- to 55-percent predicted, or; FEV-1/FVC of 40 to 55
percent, or; at least monthly visits to a physician for required
care of exacerbations, or; intermittent (at least three per year)
courses of systemic (oral or parenteral) corticosteroids
FEV-1 of 56- to 70-percent predicted, or; FEV-1/FVC of 56 to 70
percent, or; daily inhalational or oral bronchodilator therapy, or;
inhalational anti-inflammatory medication
FEV-1 of 71- to 80-percent predicted, or; FEV-1/FVC of 71 to 80
percent, or; intermittent inhalational or oral bronchodilator
therapy
Note: In the absence of clinical findings of asthma at time of
examination, a verified history of asthmatic attacks must be of record.

6603 Emphysema, pulmonary:
FEV-1 less than 40 percent of predicted value, or; the ratio of (FEV-1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy.

FEV-1 of 40- to 55-percent predicted, or; FEV-1/FVC of 40 to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)

FEV-1 of 56- to 70-percent predicted, or; FEV-1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted

FEV-1 of 71- to 80-percent predicted, or; FEV-1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted

6604 Chronic obstructive pulmonary disease:
FEV-1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV-1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy.

FEV-1 of 40- to 55-percent predicted, or; FEV-1/FVC of 40 to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)

FEV-1 of 56- to 70-percent predicted, or; FEV-1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted

FEV-1 of 71- to 80-percent predicted, or; FEV-1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted

DISEASES OF THE LUNGS AND PLEURA--TUBERCULOSIS

Ratings for Pulmonary Tuberculosis Entitled on August 19, 1968

6701 Tuberculosis, pulmonary, chronic, far advanced, active 100
6702 Tuberculosis, pulmonary, chronic, moderately advanced, active 100
6703 Tuberculosis, pulmonary, chronic, minimal, active 100
6704 Tuberculosis, pulmonary, chronic, active, advancement unspecified

6721 Tuberculosis, pulmonary, chronic, far advanced, inactive
6722 Tuberculosis, pulmonary, chronic, moderately advanced, inactive
6723 Tuberculosis, pulmonary, chronic, minimal, inactive
6724 Tuberculosis, pulmonary, chronic, inactive, advancement unspecified

General Rating Formula for Inactive Pulmonary Tuberculosis: For two years after date of inactivity, following active tuberculosis, which was clinically identified during service or subsequently

Thereafter for four years, or in any event, to six years after date of inactivity

Thereafter, for five years, or to eleven years after date of inactivity
Following far advanced lesions diagnosed at any time while the disease process was active, minimum rating 30
Following moderately advanced lesions, provided there is continued disability, emphysema, dyspnea on exertion, impairment of health, etc. Otherwise rating 20

Note (1): The 100-percent rating under codes 6701 through 6724 is not subject to a requirement of precedent hospital treatment. It will be reduced to 50 percent for failure to submit to examination or to follow prescribed treatment upon report to that effect from the medical authorities. When a veteran is placed on the 100-percent rating for inactive tuberculosis, the medical authorities will be appropriately notified of the fact, and of the necessity, as given in footnote 1 to 38 U.S.C. 1156 (and formerly in 38 U.S.C. 356, which has been repealed by Public Law 90-493), to notify the Veterans Service Center in the event of failure to submit to examination or to follow treatment.

Note (2): The graduated 50-percent and 30-percent ratings and the permanent 30 percent and 20 percent ratings for inactive pulmonary tuberculosis are not to be combined with ratings for other respiratory disabilities. Following thoracoplasty the rating will be for removal of ribs combined with the rating for collapsed lung. Resection of the ribs incident to thoracoplasty will be rated as removal.

Ratings for Pulmonary Tuberculosis Initially Evaluated After August 19, 1968

6730 Tuberculosis, pulmonary, chronic, active 100
Note: Active pulmonary tuberculosis will be considered permanently and totally disabling for non-service-connected pension purposes in the following circumstances:
(a) Associated with active tuberculosis involving other than the respiratory system.
(b) With severe associated symptoms or with extensive cavity formation.
(c) Reactivated cases, generally.
(d) With advancement of lesions on successive examinations or while under treatment.
(e) Without retrogression of lesions or other evidence of material improvement at the end of six months hospitalization or without change of diagnosis from "active" at the end of 12 months hospitalization. Material improvement means lessening or absence of clinical symptoms, and X-ray findings of a stationary or retrogressive lesion.

6731 Tuberculosis, pulmonary, chronic, inactive:
Depending on the specific findings, rate residuals as interstitial lung disease, restrictive lung disease, or, when obstructive lung disease is the major residual, as chronic bronchitis (DC 6600). Rate thoracoplasty as removal of ribs under DC 5297.
Note: A mandatory examination will be requested immediately following notification that active tuberculosis evaluated under DC 6730 has become inactive. Any change in evaluation will be carried out under the provisions of § 3.105(e).

6732 Pleurisy, tuberculous, active or inactive:
Rate under §§ 4.88c or 4.89, whichever is appropriate.

NONTUBERCULOUS DISEASES

6817 Pulmonary Vascular Disease:
Primary pulmonary hypertension, or; chronic pulmonary thromboembolism with evidence of pulmonary hypertension, right ventricular hypertrophy, or cor pulmonale, or; pulmonary
hypertension secondary to other obstructive disease of pulmonary arteries or veins with evidence of right ventricular hypertrophy or cor pulmonale

Chronic pulmonary thromboembolism requiring anticoagulant therapy, or; following inferior vena cava surgery without evidence of pulmonary hypertension or right ventricular dysfunction 60
Symptomatic, following resolution of acute pulmonary embolism 30
Asymptomatic, following resolution of pulmonary thromboembolism 0

Note: Evaluate other residuals following pulmonary embolism under the most appropriate diagnostic code, such as chronic bronchitis (DC 6600) or chronic pleural effusion or fibrosis (DC 6844), but do not combine that evaluation with any of the above evaluations.

6819 Neoplasms, malignant, any specified part of respiratory system exclusive of skin growths 100
Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

6820 Neoplasms, benign, any specified part of respiratory system. Evaluate using an appropriate respiratory analogy.

Bacterial Infections of the Lung

6822 Actinomycosis.
6823 Nocardiosis.
6824 Chronic lung abscess.

General Rating Formula for Bacterial Infections of the Lung (diagnostic codes 6822 through 6824):
Active infection with systemic symptoms such as fever, night sweats, weight loss, or hemoptysis 100
Depending on the specific findings, rate residuals as interstitial lung disease, restrictive lung disease, or, when obstructive lung disease is the major residual, as chronic bronchitis (DC 6600).

Interstitial Lung Disease

6825 Diffuse interstitial fibrosis (interstitial pneumonitis, fibrosing alveolitis).
6826 Desquamative interstitial pneumonitis.
6827 Pulmonary alveolar proteinosis.
6828 Eosinophilic granuloma of lung.
6829 Drug-induced pulmonary pneumonitis and fibrosis.
6830 Radiation-induced pulmonary pneumonitis and fibrosis.
6831 Hypersensitivity pneumonitis (extrinsic allergic alveolitis).
6832 Pneumoconiosis (silicosis, anthracosis, etc.).
6833 Asbestosis.

General Rating Formula for Interstitial Lung Disease (diagnostic codes 6825 through 6833):
Forced Vital Capacity (FVC) less than 50-percent predicted, or; 100
Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or;
maximum exercise capacity less than 15 ml/kg/min oxygen consumption with cardiorespiratory limitation, or; cor pulmonale or pulmonary hypertension, or; requires outpatient oxygen therapy
FVC of 50- to 64-percent predicted, or; DLCO (SB) of 40- to 60
55-percent predicted, or; maximum exercise capacity of 15 to 20 ml/kg/min oxygen consumption with cardiorespiratory limitation
FVC of 65- to 74-percent predicted, or; DLCO (SB) of 56- to 30
Mycotic Lung Disease

6834 Histoplasmosis of lung.
6835 Coccidioidomycosis.
6836 Blastomycosis.
6837 Cryptococcosis.
6838 Aspergillosis.
6839 Mucormycosis.

General Rating Formula for Mycotic Lung Disease (diagnostic codes 6834 through 6839):
Chronic pulmonary mycosis with persistent fever, weight loss, night sweats, or massive hemoptysis
Chronic pulmonary mycosis requiring suppressive therapy with no more than minimal symptoms such as occasional minor hemoptysis or productive cough
Chronic pulmonary mycosis with minimal symptoms such as occasional minor hemoptysis or productive cough
Healed and inactive mycotic lesions, asymptomatic

Note: Coccidioidomycosis has delayed up to many years after the initial infection which may have been unrecognized. Accordingly, when service connection is under consideration in the absence of record or other evidence of the disease in service, service in southwestern United States where the disease is endemic and absence of prolonged residence in this locality before or after service will be the deciding factor.

Restrictive Lung Disease

6840 Diaphragm paralysis or paresis.
6841 Spinal cord injury with respiratory insufficiency.
6842 Kyphoscoliosis, pectus excavatum, pectus carinatum.
6843 Traumatic chest wall defect, pneumothorax, hernia, etc.
6844 Post-surgical residual (lobectomy, pneumonectomy, etc.).
6845 Chronic pleural effusion or fibrosis.

General Rating Formula for Restrictive Lung Disease (diagnostic codes 6840 through 6845):
FEV-1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV-1/FVC) less than 40 percent, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40-percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; requires outpatient oxygen therapy
FEV-1 of 40- to 55-percent predicted, or; FEV-1/FVC of 40 to 55 percent, or; DLCO (SB) of 40- to 55-percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)
FEV-1 of 56- to 70-percent predicted, or; FEV-1/FVC of 56 to 70 percent, or; DLCO (SB) 56- to 65-percent predicted
FEV-1 of 71- to 80-percent predicted, or; FEV-1/FVC of 71 to 80 percent, or; DLCO (SB) 66- to 80-percent predicted
Or rate primary disorder.

Note (1): A 100-percent rating shall be assigned for pleurisy with empyema, with or without pleurocutaneous fistula, until resolved.

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Note (2): Following episodes of total spontaneous pneumothorax, a rating of 100 percent shall be assigned as of the date of hospital admission and shall continue for three months from the first day of the month after hospital discharge.

Note (3): Gunshot wounds of the pleural cavity with bullet or missile retained in lung, pain or discomfort on exertion, or with scattered rales or some limitation of excursion of diaphragm or of lower chest expansion shall be rated at least 20-percent disabling. Disabling injuries of shoulder girdle muscles (Groups I to IV) shall be separately rated and combined with ratings for respiratory involvement. Involvement of Muscle Group XXI (DC 5321), however, will not be separately rated.

6846 Sarcoidosis:
Cor pulmonale, or; cardiac involvement with congestive heart failure, or; progressive pulmonary disease with fever, night sweats, and weight loss despite treatment
Pulmonary involvement requiring systemic high dose (therapeutic) corticosteroids for control
Pulmonary involvement with persistent symptoms requiring chronic low dose (maintenance) or intermittent corticosteroids
Chronic hilar adenopathy or stable lung infiltrates without symptoms or physiologic impairment
Or rate active disease or residuals as chronic bronchitis (DC 6600)

and extra-pulmonary involvement under specific body system involved

6847 Sleep Apnea Syndromes (Obstructive, Central, Mixed):
Chronic respiratory failure with carbon dioxide retention or cor pulmonale, or; requires tracheostomy
Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine
Persistent day-time hypersomnolence
Asymptomatic but with documented sleep disorder breathing

1 Review for entitlement to special monthly compensation under § 3.350 of this chapter.


[EFFECTIVE DATE NOTE: 61 FR 46720, 46728, Sept. 5, 1996, which revised this section, became effective Oct. 7, 1996.]
§ 4.104 Schedule of ratings -- cardiovascular system.

Diseases of the Heart
Note (1): Evaluate cor pulmonale, which is a form of secondary heart disease, as part of the pulmonary condition that causes it.
Note (2): One MET (metabolic equivalent) is the energy cost of standing quietly at rest and represents an oxygen uptake of 3.5 milliliters per kilogram of body weight per minute. When the level of METs at which dyspnea, fatigue, angina, dizziness, or syncope develops is required for evaluation, and a laboratory determination of METs by exercise testing cannot be done for medical reasons, an estimation by a medical examiner of the level of activity (expressed in METs and supported by specific examples, such as slow stair climbing or shoveling snow) that results in dyspnea, fatigue, angina, dizziness, or syncope may be used.

Rating
7000 Valvular heart disease (including rheumatic heart disease):
During active infection with valvular heart damage and for three months following cessation of therapy for the active infection
Thereafter, with valvular heart disease (documented by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization) resulting in:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electro-cardiogram, echocardiogram, or X-ray
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or;
7001 Endocarditis:
For three months following cessation of therapy for active infection with cardiac involvement

Thereafter, with endocarditis (documented by findings on physical examination and either echocardiogram, Doppler echocardiogram, or cardiac catheterization) resulting in:

Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent

More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent

Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray

Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

7002 Pericarditis:
For three months following cessation of therapy for active infection with cardiac involvement

Thereafter, with documented pericarditis resulting in:

Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent

More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent

Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray

Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

7003 Pericardial adhesions:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent

More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent

Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray

Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required
7004 Syphilitic heart disease:
Chronic congestive heart failure, or; workload of 3 METs or less
results in dyspnea, fatigue, angina, dizziness, or syncope, or;
left ventricular dysfunction with an ejection fraction of less
than 30 percent
More than one episode of acute congestive heart failure in the past
year, or; workload of greater than 3 METs but not greater than 5
METs results in dyspnea, fatigue, angina, dizziness, or syncope,
or; left ventricular dysfunction with an ejection fraction of 30
to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results
in dyspnea, fatigue, angina, dizziness, or syncope, or;
left ventricular dysfunction with an ejection fraction of 30
to 50 percent
Workload of greater than 7 METs but not greater than 10 METs
results in dyspnea, fatigue, angina, dizziness, or syncope, or;
continuous medication required

Note: Evaluate syphilitic aortic aneurysms under DC 7110 (aortic
aneurysm).

7005 Arteriosclerotic heart disease (Coronary artery disease):
With documented coronary artery disease resulting in:
Chronic congestive heart failure, or; workload of 3 METs or less
results in dyspnea, fatigue, angina, dizziness, or syncope, or;
left ventricular dysfunction with an ejection fraction of less
than 30 percent
More than one episode of acute congestive heart failure in the past
year, or; workload of greater than 3 METs but not greater than 5
METs results in dyspnea, fatigue, angina, dizziness, or syncope,
or; left ventricular dysfunction with an ejection fraction of 30
to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results
in dyspnea, fatigue, angina, dizziness, or syncope, or;
evidence of cardiac hypertrophy or dilatation on electrocardiogram,
echocardiogram, or X-ray
Workload of greater than 7 METs but not greater than 10 METs
results in dyspnea, fatigue, angina, dizziness, or syncope, or;
continuous medication required

Note: If nonservice-connected arteriosclerotic heart disease is
superimposed on service-connected valvular or other non-
arteriosclerotic heart disease, request a medical opinion as to
which condition is causing the current signs and symptoms.

7006 Myocardial infarction:
During and for three months following myocardial infarction,
documented by laboratory tests
Thereafter:
With history of documented myocardial infarction, resulting in:
Chronic congestive heart failure, or; workload of 3 METs
or less
results in dyspnea, fatigue, angina, dizziness, or syncope, or;
left ventricular dysfunction with an ejection fraction of less
than 30 percent
More than one episode of acute congestive heart failure in the past
year, or; workload of greater than 3 METs but not greater than 5
METs results in dyspnea, fatigue, angina, dizziness, or syncope,
or; left ventricular dysfunction with an ejection fraction of 30
to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

7007 Hypertensive heart disease:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

7008 Hyperthyroid heart disease:
Include as part of the overall evaluation for hyperthyroidism under DC 7900. However, when atrial fibrillation is present, hyperthyroidism may be evaluated either under DC 7900 or under DC 7010 (supraventricular arrhythmia), whichever results in a higher evaluation.

7010 Supraventricular arrhythmias:
Paroxysmal atrial fibrillation or other supraventricular tachycardia, with more than four episodes per year documented by ECG or Holter monitor
Permanent atrial fibrillation (lone atrial fibrillation), or; one to four episodes per year of paroxysmal atrial fibrillation or other supraventricular tachycardia documented by ECG or Holter monitor

7011 Ventricular arrhythmias (sustained):
For indefinite period from date of hospital admission for initial evaluation and medical therapy for a sustained ventricular arrhythmia, or; for indefinite period from date of hospital admission for ventricular aneurysmectomy, or; with an automatic implantable Cardioverter-Defibrillator (AICD) in place
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram,
echocardiogram, or X-ray

Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

Note: A rating of 100 percent shall be assigned from the date of hospital admission for initial evaluation and medical therapy for a sustained ventricular arrhythmia or for ventricular aneurysmectomy. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

7015 Atrioventricular block:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication or a pacemaker required

Note: Unusual cases of arrhythmia such as atrioventricular block associated with a supraventricular arrhythmia or pathological bradycardia should be submitted to the Director, Compensation and Pension Service. Simple delayed P-R conduction time, in the absence of other evidence of cardiac disease, is not a disability.

7016 Heart valve replacement (prosthesis):
For indefinite period following date of hospital admission for valve replacement
Thereafter:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray
Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

Note: A rating of 100 percent shall be assigned as of the date of hospital admission for valve replacement. Six months following discharge, the appropriate disability rating shall be determined
by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

7017 Coronary bypass surgery:
For three months following hospital admission for surgery
Thereafter:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent
Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray
Workload greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

7018 Implantable cardiac pacemakers:
For two months following hospital admission for implantation or reimplantation
Thereafter:
Evaluate as supraventricular arrhythmias (DC 7010), ventricular arrhythmias (DC 7011), or atrioventricular block (DC 7015). Minimum
Note: Evaluate implantable Cardioverter-Defibrillators (AICD's) under DC 7011.

7019 Cardiac transplantation:
For an indefinite period from date of hospital admission for cardiac transplantation
Thereafter:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent
Minimum
Note: A rating of 100 percent shall be assigned as of the date of hospital admission for cardiac transplantation. One year following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

7020 Cardiomyopathy:
Chronic congestive heart failure, or; workload of 3 METs or less results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of less than 30 percent
More than one episode of acute congestive heart failure in the past year, or; workload of greater than 3 METs but not greater than 5
METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; left ventricular dysfunction with an ejection fraction of 30 to 50 percent

Workload of greater than 5 METs but not greater than 7 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; evidence of cardiac hypertrophy or dilatation on electrocardiogram, echocardiogram, or X-ray

Workload of greater than 7 METs but not greater than 10 METs results in dyspnea, fatigue, angina, dizziness, or syncope, or; continuous medication required

Diseases of the Arteries and Veins

7101 Hypertensive vascular disease (hypertension)

pressure predominantly 100 or more, or; systolic pressure predominantly 160 or more, or; minimum evaluation for an individual with a history of diastolic pressure predominantly 100 or more who requires continuous medication for control

Note (1): Hypertension or isolated systolic hypertension must be confirmed by readings taken two or more times on at least three different days. For purposes of this section, the term hypertension means that the diastolic blood pressure is predominantly 90mm. or greater, and isolated systolic hypertension means that the systolic blood pressure is predominantly 160mm. or greater with a diastolic blood pressure of less than 90mm.

Note (2): Evaluate hypertension due to aortic insufficiency or hyperthyroidism, which is usually the isolated systolic type, as part of the condition causing it rather than by a separate evaluation.

7110 Aortic aneurysm:

If five centimeters or larger in diameter, or; if symptomatic, or; for indefinite period from date of hospital admission for surgical correction (including any type of graft insertion) precluding exertion

Evaluate residuals of surgical correction according to organ systems affected.

Note: A rating of 100 percent shall be assigned as of the date of admission for surgical correction. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

7111 Aneurysm, any large artery:

If symptomatic, or; for indefinite period from date of hospital admission for surgical correction following surgery:

Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less

Claudication on walking less than 25 yards on a level grade at 2 miles per hour, and; persistent coldness of the extremity, one or more deep ischemic ulcers, or ankle/brachial index of 0.5 or less

Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less

Claudication on walking more than 100 yards, and; diminished
peripheral pulses or ankle/brachial index of 0.9 or less

Note (1): The ankle/brachial index is the ratio of the systolic blood pressure at the ankle (determined by Doppler study) divided by the simultaneous brachial artery systolic blood pressure. The normal index is 1.0 or greater.

Note (2): These evaluations are for involvement of a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor, if applicable.

Note (3): A rating of 100 percent shall be assigned as of the date of hospital admission for surgical correction. Six months following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

7112 Aneurysm, any small artery:
Asymptomatic
0

Note: If symptomatic, evaluate according to body system affected.
Following surgery, evaluate residuals under the body system affected.

7113 Arteriovenous fistula, traumatic:
With high output heart failure
100

Without heart failure but with enlarged heart, wide pulse pressure, and tachycardia
60

Without cardiac involvement but with edema, stasis dermatitis, and either ulceration or cellulitis:

Lower extremity
50

Upper extremity
40

With edema or stasis dermatitis:

Lower extremity
30

Upper extremity
20

7114 Arteriosclerosis obliterans:
Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less
100

Claudication on walking less than 25 yards on a level grade at 2 miles per hour, and; either persistent coldness of the extremity or ankle/brachial index of 0.5 or less
60

Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less
40

Claudication on walking more than 100 yards, and; diminished peripheral pulses or ankle/brachial index of 0.9 or less
20

Note (1): The ankle/brachial index is the ratio of the systolic blood pressure at the ankle (determined by Doppler study) divided by the simultaneous brachial artery systolic blood pressure. The normal index is 1.0 or greater.

Note (2): Evaluate residuals of aortic and large arterial bypass surgery or arterial graft as arteriosclerosis obliterans.

Note (3): These evaluations are for involvement of a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the
7115 Thrombo-angiitis obliterans (Buerger's Disease):
Ischemic limb pain at rest, and; either deep ischemic ulcers or ankle/brachial index of 0.4 or less
Claudication on walking less than 25 yards on a level grade at 2 miles per hour, and; either persistent coldness of the extremity or ankle/brachial index of 0.5 or less
Claudication on walking between 25 and 100 yards on a level grade at 2 miles per hour, and; trophic changes (thin skin, absence of hair, dystrophic nails) or ankle/brachial index of 0.7 or less
Claudication on walking more than 100 yards, and; diminished peripheral pulses or ankle/brachial index of 0.9 or less

Note (1): The ankle/brachial index is the ratio of the systolic blood pressure at the ankle (determined by Doppler study) divided by the simultaneous brachial artery systolic blood pressure. The normal index is 1.0 or greater.

Note (2): These evaluations are for involvement of a single extremity. If more than one extremity is affected, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.

7117 Raynaud's syndrome:
With two or more digital ulcers plus autoamputation of one or more digits and history of characteristic attacks
With two or more digital ulcers and history of characteristic attacks
Characteristic attacks occurring at least daily
Characteristic attacks occurring four to six times a week
Characteristic attacks occurring one to three times a week

Note: For purposes of this section, characteristic attacks consist of sequential color changes of the digits of one or more extremities lasting minutes to hours, sometimes with pain and paresthesias, and precipitated by exposure to cold or by emotional upsets. These evaluations are for the disease as a whole, regardless of the number of extremities involved or whether the nose and ears are involved.

7118 Angioneurotic edema:
Attacks without laryngeal involvement lasting one to seven days or longer and occurring more than eight times a year, or; attacks with laryngeal involvement of any duration occurring more than twice a year
Attacks without laryngeal involvement lasting one to seven days and occurring five to eight times a year, or; attacks with laryngeal involvement of any duration occurring once or twice a year
Attacks without laryngeal involvement lasting two to four times a year

7119 Erythromelalgia:
Characteristic attacks that occur more than once a day, last an average of more than two hours each, respond poorly to treatment, and that restrict most routine daily activities
Characteristic attacks that occur more than once a day, last an average of more than two hours each, and respond poorly to treatment, but that do not restrict most routine daily activities
Characteristic attacks that occur daily or more often but that respond to treatment
Characteristic attacks that occur less than daily but at least three times a week and that respond to treatment
Note: For purposes of this section, a characteristic attack of erythromelalgia consists of burning pain in the hands, feet, or both, usually bilateral and symmetrical, with increased skin temperature and redness, occurring at warm ambient temperatures. These evaluations are for the disease as a whole, regardless of the number of extremities involved.

7120 Varicose veins:
With the following findings attributed to the effects of varicose veins:
- Massive board-like edema with constant pain at rest 100
- Persistent edema or subcutaneous induration, stasis pigmentation or eczema, and persistent ulceration 60
- Persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration 40
- Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema 20
- Intermittent edema of extremity or aching and fatigue in leg after prolonged standing or walking, with symptoms relieved by elevation of extremity or compression hosiery 10
- Asymptomatic palpable or visible varicose veins 0

Note: These evaluations are for involvement of a single extremity. If more than one extremity is involved, evaluate each extremity separately and combine (under § 4.25), using the bilateral factor (§ 4.26), if applicable.

7121 Post-phlebitic syndrome of any etiology:
With the following findings attributed to venous disease:
- Massive board-like edema with constant pain at rest 100
- Persistent edema or subcutaneous induration, stasis pigmentation or eczema, and persistent ulceration 60
- Persistent edema and stasis pigmentation or eczema, with or without intermittent ulceration 40
- Persistent edema, incompletely relieved by elevation of extremity, with or without beginning stasis pigmentation or eczema 20
- Intermittent edema of extremity or aching and fatigue in leg after prolonged standing or walking, with symptoms relieved by elevation of extremity or compression hosiery 10

7122 Cold injury residuals:
With the following in affected parts:
- Arthralgia or other pain, numbness, or cold sensitivity plus two or more of the following: tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, X-ray abnormalities (osteoarthritis, subarticular punched out lesions, or osteoarthritis) 30
- Arthralgia or other pain, numbness, or cold sensitivity plus tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, or X-ray abnormalities (osteoarthritis, subarticular punched out lesions, or osteoarthritis) 20
- Arthralgia or other pain, numbness, or cold sensitivity 10

Note (1): Separately evaluate amputations of fingers or toes, and complications such as squamous cell carcinoma at the site of a cold injury scar or peripheral neuropathy, under other diagnostic codes. Separately evaluate other disabilities that have been diagnosed as the residual effects of cold injury, such as Raynaud's phenomenon, muscle atrophy, etc., unless they are used to support an evaluation under diagnostic code 7122.
Note (2): Evaluate each affected part (e.g., hand, foot, ear, nose) separately and combine the ratings in accordance with §§ 4.25 and 4.26.

7123 Soft tissue sarcoma (of vascular origin) 100

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.


THE DIGESTIVE SYSTEM

§ 4.110 Ulcers.
Experience has shown that the term "peptic ulcer" is not sufficiently specific for rating purposes. Manifest differences in ulcers of the stomach or duodenum in comparison with those at an anastomotic stoma are sufficiently recognized as to warrant two separate graduated descriptions. In evaluating the ulcer, care should be taken that the findings adequately identify the particular location.

§ 4.111 Postgastrectomy syndromes.
There are various postgastrectomy symptoms which may occur following anastomotic operations of the stomach. When present, those occurring during or immediately after eating and known as the "dumping syndrome" are characterized by gastrointestinal complaints and generalized symptoms simulating hypoglycemia; those occurring from 1 to 3 hours after eating usually present definite manifestations of hypoglycemia.

§ 4.112 Weight Loss.
For purposes of evaluating conditions in § 4.114, the term "substantial weight loss" means a loss of greater than 20 percent of the individual's baseline weight, sustained for three months or longer; and the term "minor weight loss" means a weight loss of 10 to 20 percent of the individual's baseline weight, sustained for three months or longer. The term "inability to gain weight" means that there has been substantial weight loss with inability to regain it despite appropriate therapy. "Baseline weight" means the average weight for the two-year-period preceding onset of the disease.

(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 66 FR 29486, 29488, May 31, 2001, revised this section, effective July 2, 2001.]

§ 4.113 Coexisting abdominal conditions.
There are diseases of the digestive system, particularly within the abdomen, which, while differing in the site of pathology, produce a common disability picture characterized in the main by varying degrees of abdominal distress or pain, anemia and disturbances in nutrition. Consequently, certain coexisting diseases in this area, as indicated in the instruction under the title "Diseases of the Digestive System," do not lend themselves to
distinct and separate disability evaluations without violating the fundamental principle relating to pyramiding as outlined in § 4.14.

§ 4.114 Schedule of ratings -- digestive system.

Ratings under diagnostic codes 7301 to 7329, inclusive, 7331, 7342, and 7345 to 7348 inclusive will not be combined with each other. A single evaluation will be assigned under the diagnostic code which reflects the predominant disability picture, with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation.

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<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7200 Mouth, injuries of.</td>
<td>Rate as for disfigurement and impairment of function of mastication.</td>
</tr>
<tr>
<td>7201 Lips, injuries of.</td>
<td>Rate as for disfigurement of face.</td>
</tr>
<tr>
<td>7202 Tongue, loss of whole or part:</td>
<td></td>
</tr>
<tr>
<td>With inability to communicate by speech</td>
<td>100</td>
</tr>
<tr>
<td>One-half or more</td>
<td>60</td>
</tr>
<tr>
<td>With marked speech impairment</td>
<td>30</td>
</tr>
<tr>
<td>7203 Esophagus, stricture of:</td>
<td></td>
</tr>
<tr>
<td>Permitting passage of liquids only, with marked impairment of general health</td>
<td>80</td>
</tr>
<tr>
<td>Severe, permitting liquids only</td>
<td>50</td>
</tr>
<tr>
<td>Moderate</td>
<td>30</td>
</tr>
<tr>
<td>7204 Esophagus, spasm of (cardiospasm).</td>
<td></td>
</tr>
<tr>
<td>If not amenable to dilation, rate as for the degree of obstruction (stricture).</td>
<td></td>
</tr>
<tr>
<td>7205 Esophagus, diverticulum of, acquired.</td>
<td></td>
</tr>
<tr>
<td>Rate as for obstruction (stricture).</td>
<td></td>
</tr>
<tr>
<td>7301 Peritoneum, adhesions of:</td>
<td></td>
</tr>
<tr>
<td>Severe; definite partial obstruction shown by X-ray, with frequent and prolonged episodes of severe colic distension, nausea or vomiting, following severe peritonitis, ruptured appendix, perforated ulcer, or operation with drainage</td>
<td>50</td>
</tr>
<tr>
<td>Moderately severe; partial obstruction manifested by delayed motility of barium meal and less frequent and less prolonged episodes of pain</td>
<td>30</td>
</tr>
</tbody>
</table>
Moderate; pulling pain on attempting work or aggravated by movements of the body, or occasional episodes of colic pain, nausea, constipation (perhaps alternating with diarrhea) or abdominal distension 10

Mild 0

Note: Ratings for adhesions will be considered when there is history of operative or other traumatic or infectious (intraabdominal) process, and at least two of the following: disturbance of motility, actual partial obstruction, reflex disturbances, presence of pain.

7304 Ulcer, gastric.

7305 Ulcer, duodenal:

Severe; pain only partially relieved by standard ulcer therapy, periodic vomiting, recurrent hematemesis or melena, with manifestations of anemia and weight loss productive of definite impairment of health 60

Moderately severe; less than severe but with impairment of health manifested by anemia and weight loss; or recurrent incapacitating episodes averaging 10 days or more in duration at least four or more times a year 40

Moderate; recurring episodes of severe symptoms two or three times a year averaging 10 days in duration; or with continuous moderate manifestations 20

Mild; with recurring symptoms once or twice yearly 10

7306 Ulcer, marginal (gastrojejunal):

Pronounced; periodic or continuous pain unrelieved by standard ulcer therapy with periodic vomiting, recurring melena or hematemesis, and weight loss. Totally incapacitating 100

Severe; same as pronounced with less pronounced and less continuous symptoms with definite impairment of health 60

Moderately severe; intercurrent episodes of abdominal pain at least once a month partially or completely relieved by ulcer therapy, mild and transient episodes of vomiting or melena 40

Moderate; with episodes of recurring symptoms several times a year 20

Mild; with brief episodes of recurring symptoms once or twice yearly 10

7307 Gastritis, hypertrophic (identified by gastroscope):

Chronic; with severe hemorrhages, or large ulcerated or eroded areas 60

Chronic; with multiple small eroded or ulcerated areas, and symptoms 30

Chronic; with small nodular lesions, and symptoms 10

Gastritis, atrophic.

A complication of a number of diseases, including pernicious anemia.
Rate the underlying condition.

7308 Postgastrectomy syndromes:

Severe; associated with nausea, sweating, circulatory disturbance after meals, diarrhea, hypoglycemic symptoms, and weight loss with malnutrition and anemia 60

Moderate; less frequent episodes of epigastric disorders with characteristic mild circulatory symptoms after meals but with diarrhea and weight loss 40

Mild; infrequent episodes of epigastric distress with characteristic mild circulatory symptoms or continuous mild manifestations 20

7309 Stomach, stenosis of.

Rate as for gastric ulcer.

7310 Stomach, injury of, residuals.

Rate as peritoneal adhesions.

7311 Residuals of injury of the liver:

Depending on the specific residuals, separately evaluate as adhesions of peritoneum (diagnostic code 7301), cirrhosis of liver (diagnostic code 7312), and chronic liver disease without cirrhosis (diagnostic code 7345)

7312 Cirrhosis of the liver, primary biliary cirrhosis, or cirrhotic phase of sclerosing cholangitis:

Generalized weakness, substantial weight loss, and persistent jaundice, or; with one of the following refractory to treatment: ascites, hepatic encephalopathy, hemorrhage from varices or portal gastropathy (erosive gastritis) 100

History of two or more episodes of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis), but with periods of remission between attacks 70

History of one episode of ascites, hepatic encephalopathy, or hemorrhage from varices or portal gastropathy (erosive gastritis) 50

Portal hypertension and splenomegaly, with weakness, anorexia, abdominal pain, malaise, and at least minor weight loss 30

Symptoms such as weakness, anorexia, abdominal pain, and malaise 10

Note: For evaluation under diagnostic code 7312, documentation of cirrhosis (by biopsy or imaging) and abnormal liver function tests must be present.

7314 Cholecystitis, chronic:

Severe; frequent attacks of gall bladder colic 30
Moderate; gall bladder dyspepsia, confirmed by X-ray technique, and with infrequent attacks (not over two or three a year) of gall bladder colic, with or without jaundice 10

Mild 0

7315 Cholelithiasis, chronic.
Rate as for chronic cholecystitis.

7316 Cholangitis, chronic.
Rate as for chronic cholecystitis.

7317 Gall bladder, injury of.
Rate as for peritoneal adhesions.

7318 Gall bladder, removal of:
With severe symptoms 30
With mild symptoms 10
Non symptomatic 0

Spleen, disease or injury of.
See Hemic and Lymphatic Systems.

7319 Irritable colon syndrome (spastic colitis, mucous colitis, etc.):
Severe; diarrhea, or alternating diarrhea and constipation, with more or less constant abdominal distress 30
Moderate; frequent episodes of bowel disturbance with abdominal distress 10
Mild; disturbances of bowel function with occasional episodes of abdominal distress 0

7321 Amebiasis:
Mild gastrointestinal disturbances, lower abdominal cramps, nausea, gaseous distention, chronic constipation interrupted by diarrhea 10
Asymptomatic 0

Note: Amebiasis with or without liver abscess is parallel in symptomatology with ulcerative colitis and should be rated on the scale provided for the latter. Similarly, lung abscess due to amebiasis will be rated under the respiratory system schedule, diagnostic code 6809.

7322 Dysentery, bacillary.
Rate as for ulcerative colitis.

7323 Colitis, ulcerative:
Pronounced; resulting in marked malnutrition, anemia, and general debility, or with serious complication as liver abscess 100

Severe; with numerous attacks a year and malnutrition, the health only fair during remissions 60

Moderately severe; with frequent exacerbations 30

Moderate; with infrequent exacerbations 10

7324 Distomiasis, intestinal or hepatic:
Severe symptoms 30
Moderate symptoms 10
Mild or no symptoms 0

7325 Enteritis, chronic.
Rate as for irritable colon syndrome.

7326 Enterocolitis, chronic.
Rate as for irritable colon syndrome.

7327 Diverticulitis.
Rate as for irritable colon syndrome, peritoneal adhesions, or colitis, ulcerative, depending upon the predominant disability picture.

7328 Intestine, small, resection of:
With marked interference with absorption and nutrition, manifested by severe impairment of health objectively supported by examination findings including material weight loss 60

With definite interference with absorption and nutrition, manifested by impairment of health objectively supported by examination findings including definite weight loss 40

Symptomatic with diarrhea, anemia and inability to gain weight 20

Note: Where residual adhesions constitute the predominant disability, rate under diagnostic code 7301.

7329 Intestine, large, resection of:
With severe symptoms, objectively supported by examination findings 40

With moderate symptoms 20

With slight symptoms 10

Note: Where residual adhesions constitute the predominant disability, rate under diagnostic code 7301.
7330 Intestine, fistula of, persistent, or after attempt at operative closure:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copious and frequent, fecal discharge</td>
<td>100</td>
</tr>
<tr>
<td>Constant or frequent, fecal discharge</td>
<td>60</td>
</tr>
<tr>
<td>Slight infrequent, fecal discharge</td>
<td>30</td>
</tr>
<tr>
<td>Healed; rate for peritoneal adhesions.</td>
<td></td>
</tr>
</tbody>
</table>

7331 Peritonitis, tuberculous, active or inactive:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active</td>
<td>100</td>
</tr>
<tr>
<td>Inactive: See §§ 4.88b and 4.89.</td>
<td></td>
</tr>
</tbody>
</table>

7332 Rectum and anus, impairment of sphincter control:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complete loss of sphincter control</td>
<td>100</td>
</tr>
<tr>
<td>Extensive leakage and fairly frequent involuntary bowel movements</td>
<td>60</td>
</tr>
<tr>
<td>Occasional involuntary bowel movements, necessitating wearing of pad</td>
<td>30</td>
</tr>
<tr>
<td>Constant slight, or occasional moderate leakage</td>
<td>10</td>
</tr>
<tr>
<td>Healed or slight, without leakage</td>
<td>0</td>
</tr>
</tbody>
</table>

7333 Rectum and anus, stricture of:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requiring colostomy</td>
<td>100</td>
</tr>
<tr>
<td>Great reduction of lumen, or extensive leakage</td>
<td>50</td>
</tr>
<tr>
<td>Moderate reduction of lumen, or moderate constant leakage</td>
<td>30</td>
</tr>
</tbody>
</table>

7334 Rectum, prolapse of:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe (or complete), persistent</td>
<td>50</td>
</tr>
<tr>
<td>Moderate, persistent or frequently recurring</td>
<td>30</td>
</tr>
<tr>
<td>Mild with constant slight or occasional moderate leakage</td>
<td>10</td>
</tr>
</tbody>
</table>

7335 Ano, fistula in.

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate as for impairment of sphincter control.</td>
<td></td>
</tr>
</tbody>
</table>

7336 Hemorrhoids, external or internal:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>With persistent bleeding and with secondary anemia, or with fissures</td>
<td>20</td>
</tr>
<tr>
<td>Large or thrombotic, irreducible, with excessive redundant tissue, evidencing frequent recurrences</td>
<td>10</td>
</tr>
<tr>
<td>Mild or moderate</td>
<td>0</td>
</tr>
</tbody>
</table>

7337 Pruritus ani.

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate for the underlying condition.</td>
<td></td>
</tr>
</tbody>
</table>

7338 Hernia, inguinal:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
</table>

© 2006 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.
Large, postoperative, recurrent, not well supported under ordinary conditions and not readily reducible, when considered inoperable 60

Small, postoperative recurrent, or unoperated irremediable, not well supported by truss, or not readily reducible 30

Postoperative recurrent, readily reducible and well supported by truss or belt 10

Not operated, but remediable 0

Small, reducible, or without true hernia protrusion 0

Note: Add 10 percent for bilateral involvement, provided the second hernia is compensable. This means that the more severely disabling hernia is to be evaluated, and 10 percent, only, added for the second hernia, if the latter is of compensable degree.

7339 Hernia, ventral, postoperative:

Massive, persistent, severe diastasis of recti muscles or extensive diffuse destruction or weakening of muscular and fascial support of abdominal wall so as to be inoperable 100

Large, not well supported by belt under ordinary conditions 40

Small, not well supported by belt under ordinary conditions, or healed ventral hernia or post-operative wounds with weakening of abdominal wall and indication for a supporting belt 20

Wounds, postoperative, healed, no disability, belt not indicated 0

7340 Hernia, femoral.

Rate as for inguinal hernia.

7342 Visceroptosis, symptomatic, marked 10

7343 Malignant neoplasms of the digestive system, exclusive of skin growths 100

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7344 Benign neoplasms, exclusive of skin growths:

Evaluate under an appropriate diagnostic code, depending on the predominant disability or the specific residuals after treatment.

7345 Chronic liver disease without cirrhosis (including hepatitis B, chronic active hepatitis, autoimmune hepatitis, hemochromatosis, drug-induced hepatitis, etc.,
but excluding bile duct disorders and hepatitis C):

**Near-constant debilitating symptoms (such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain):**

- Daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12-month period, but not occurring constantly

- Daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least four weeks, but less than six weeks, during the past 12-month period

- Daily fatigue, malaise, and anorexia (without weight loss or hepatomegaly), requiring dietary restriction or continuous medication, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least two weeks, but less than four weeks, during the past 12-month period

- Intermittent fatigue, malaise, and anorexia, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least one week, but less than two weeks, during the past 12-month period

**Nonsymptomatic**

0

**Note (1):** Evaluate sequelae, such as cirrhosis or malignancy of the liver, under an appropriate diagnostic code, but do not use the same signs and symptoms as the basis for evaluation under DC 7354 and under a diagnostic code for sequelae. (See § 4.14.).

**Note (2):** For purposes of evaluating conditions under diagnostic code 7345, "incapacitating episode" means a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician.

**Note (3):** Hepatitis B infection must be confirmed by serologic testing in order to evaluate it under diagnostic code 7345.

**7346 Hernia hiatal:**

**Symptoms of pain, vomiting, material weight loss and hematemesis or melena with moderate anemia; or other symptom combinations productive of severe impairment of health**

- Persistently recurrent epigastric distress with dysphagia, pyrosis, and regurgitation, accompanied by substernal or arm or shoulder pain, productive of considerable impairment of health

60

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With two or more of the symptoms for the 30 percent evaluation of

less severity 10

7347 Pancreatitis:

With frequently recurrent disabling attacks of abdominal pain with few pain free intermissions and with steatorrhea, malabsorption, diarrhea and severe malnutrition 100

With frequent attacks of abdominal pain, loss of normal body weight and other findings showing continuing pancreatic insufficiency between acute attacks 60

Moderately severe; with at least 4-7 typical attacks of abdominal pain per year with good remission between attacks 30

With at least one recurring attack of typical severe abdominal pain in the past year 10

Note 1: Abdominal pain in this condition must be confirmed as resulting from pancreatitis by appropriate laboratory and clinical studies.

Note 2: Following total or partial pancreatectomy, rate under above, symptoms, minimum rating 30 percent.

7348 Vagotomy with pyloroplasty or gastroenterostomy:

Followed by demonstrably confirmative postoperative complications of stricture or continuing gastric retention 40

With symptoms and confirmed diagnosis of alkaline gastritis, or of confirmed persisting diarrhea 30

Recurrent ulcer with incomplete vagotomy 20

Note: Rate recurrent ulcer following complete vagotomy under diagnostic code 7305, minimum rating 20 percent; and rate dumping syndrome under diagnostic code 7308.

7351 Liver transplant:

For an indefinite period from the date of hospital admission for transplant surgery 100

Minimum 30

Note: A rating of 100 percent shall be assigned as of the date of hospital admission for transplant surgery and shall continue. One year following discharge, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

7354 Hepatitis C (or non-A, non-B hepatitis):

With serologic evidence of hepatitis C infection and the following signs and symptoms due to hepatitis C infection:

Near-constant debilitating symptoms (such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right
Daily fatigue, malaise, and anorexia, with substantial weight loss (or other indication of malnutrition), and hepatomegaly, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least six weeks during the past 12-month period, but not occurring constantly

Daily fatigue, malaise, and anorexia, with minor weight loss and hepatomegaly, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least four weeks, but less than six weeks, during the past 12-month period

Daily fatigue, malaise, and anorexia (without weight loss or hepatomegaly), requiring dietary restriction or continuous medication, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least two weeks, but less than four weeks, during the past 12-month period

Intermittent fatigue, malaise, and anorexia, or; incapacitating episodes (with symptoms such as fatigue, malaise, nausea, vomiting, anorexia, arthralgia, and right upper quadrant pain) having a total duration of at least one week, but less than two weeks, during the past 12-month period

Nonsymptomatic

Note (1): Evaluate sequelae, such as cirrhosis or malignancy of the liver, under an appropriate diagnostic code, but do not use the same signs and symptoms as the basis for evaluation under DC 7354 and under a diagnostic code for sequelae. (See § 4.14.).

Note (2): For purposes of evaluating conditions under diagnostic code 7354, "incapacitating episode" means a period of acute signs and symptoms severe enough to require bed rest and treatment by a physician.


(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 66 FR 29486, 29488, May 31, 2001, amended this section, effective July 2, 2001.]
THE GENITOURINARY SYSTEM

§ 4.115 Nephritis.
§ 4.115a Ratings of the genitourinary system -- dysfunctions.
§ 4.115b Ratings of the genitourinary system -- diagnoses.

§ 4.115 Nephritis.
Albuminuria alone is not nephritis, nor will the presence of transient albumin and casts following acute febrile illness be taken as nephritis. The glomerular type of nephritis is usually preceded by or associated with severe infectious disease; the onset is sudden, and the course marked by red blood cells, salt retention, and edema; it may clear up entirely or progress to a chronic condition. The nephrosclerotic type, originating in hypertension or arteriosclerosis, develops slowly, with minimum laboratory findings, and is associated with natural progress. Separate ratings are not to be assigned for disability from disease of the heart and any form of nephritis, on account of the close interrelationships of cardiovascular disabilities. If, however, absence of a kidney is the sole renal disability, even if removal was required because of nephritis, the absent kidney and any hypertension or heart disease will be separately rated. Also, in the event that chronic renal disease has progressed to the point where regular dialysis is required, any coexisting hypertension or heart disease will be separately rated.

§ 4.115a Ratings of the genitourinary system -- dysfunctions.
Diseases of the genitourinary system generally result in disabilities related to renal or voiding dysfunctions, infections, or a combination of these. The following section provides descriptions of various levels of disability in each of these symptom areas. Where diagnostic codes refer the decisionmaker to these specific areas dysfunction, only the predominant area of dysfunction shall be considered for rating purposes. Since the areas of dysfunction described below do not cover all symptoms resulting from genitourinary diseases, specific diagnoses may include a description of symptoms assigned to that diagnosis.

Renal dysfunction:

<table>
<thead>
<tr>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requiring regular dialysis, or precluding more than 100 sedentary activity from one of the following:</td>
</tr>
<tr>
<td>persistent edema and albuminuria; or, BUN more than 80mg%; or, creatinine more than 8mg%; or, markedly decreased function of kidney or other organ systems, especially cardiovascular</td>
</tr>
<tr>
<td>Persistent edema and albuminuria with BUN 40 to 80mg%; or, creatinine 4 to 8mg%; or, generalized poor health characterized by lethargy, weakness, anorexia, weight loss, or limitation of exertion</td>
</tr>
<tr>
<td>Constant albuminuria with some edema; or, definite decrease in kidney function; or, hypertension at least 40 percent disabling under diagnostic code 7101</td>
</tr>
<tr>
<td>Albumin constant or recurring with hyaline and 30</td>
</tr>
</tbody>
</table>

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granular casts or red blood cells; or, transient or slight edema or hypertension at least 10 percent disabling under diagnostic code 7101
Albumin and casts with history of acute nephritis; or, hypertension non-compensable under diagnostic code 7101
Voiding dysfunction:
Rate particular condition as urine leakage, frequency, or obstructed voiding
Continual Urine Leakage, Post Surgical Urinary Diversion, Urinary Incontinence, or Stress Incontinence:
Requiring the use of an appliance or the wearing of absorbent materials which must be changed more than 6 times per day
Requiring the wearing of absorbent materials which must be changed 2 to 4 times per day
Requiring the wearing of absorbent materials which must be changed less than 2 times per day
Urinary frequency:
Daytime voiding interval less than one hour, or; awakening to void five or more times per night
Daytime voiding interval between one and two hours, or; awakening to void three to four times per night
Daytime voiding interval between two and three hours, or; awakening to void two times per night
Obstructed voiding:
Urinary retention requiring intermittent or continuous catheterization
Marked obstructive symptomatology (hesitancy, slow or weak stream, decreased force of stream) with any one or combination of the following:
1. Post void residuals greater than 150 cc.
2. Uroflowmetry; markedly diminished peak flow rate (less than 10 cc/sec).
3. Recurrent urinary tract infections secondary to obstruction.
4. Stricture disease requiring periodic dilatation every 2 to 3 months
Obstructive symptomatology with or without stricture disease requiring dilatation 1 to 2 times per year
Urinary tract infection:
Poor renal function: Rate as renal dysfunction.
Recurrent symptomatic infection requiring drainage/frequent hospitalization (greater than two times/year), and/r requiring continuous intensive management
Long-term drug therapy, 1-2 hospitalizations per year and/r requiring intermittent intensive management

[59 FR 2527, Jan. 6, 1994, as corrected at 59 FR 10676, Mar. 7, 1994]

§ 4.115b Ratings of the genitourinary system -- diagnoses.

Note: When evaluating any claim involving loss or loss of use of one or more creative organs, refer to § 3.350 of this
chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate conditions which potentially establish entitlement to special monthly compensation; however, there are other conditions in this section which under certain circumstances also establish entitlement to special monthly compensation.

Rating

7500 Kidney, removal of one:
  Minimum evaluation. 30
  Or rate as renal dysfunction if there is nephritis, infection, or pathology of the other.
7501 Kidney, abscess of:
  Rate as urinary tract infection.
7502 Nephritis, chronic:
  Rate as renal dysfunction.
7504 Pyelonephritis, chronic:
  Rate as renal dysfunction or urinary tract infection, whichever is predominant.
7505 Kidney, tuberculosis of:
  Rate in accordance with Secs. 4.88b or 4.89, whichever is appropriate.
7507 Nephrosclerosis, arteriolar:
  Rate according to predominant symptoms as renal dysfunction, hypertension or heart disease. If rated under the cardiovascular schedule, however, the percentage rating which would otherwise be assigned will be elevated to the next higher evaluation.
7508 Nephrolithiasis:
  Rate as hydrenephrosis, except for recurrent stone formation requiring one or more of the following:
  1. diet therapy.
  2. drug therapy.
  3. invasive or non-invasive procedures more than two times/year. 30
7509 Hydrenephrosis:
  Severe; Rate as renal dysfunction.
  Frequent attacks of colic with infection (pyonephrosis), kidney function impaired. 30
  Frequent attacks of colic, requiring catheter drainage. 20
  Only an occasional attack of colic, not infected and not requiring catheter drainage. 10
7510 Ureterolithiasis:
  Rate as hydrenephrosis, except for recurrent stone formation requiring one or more of the following:
  1. diet therapy.
  2. drug therapy.
  3. invasive or non-invasive procedures more than two times/year. 30
7511 Ureter, stricture of:
  Rate as hydrenephrosis, except for recurrent stone formation requiring one or more of the following:
  1. diet therapy.
  2. drug therapy.
  3. invasive or non-invasive procedures more than two times/year. 30
7512 Cystitis, chronic, includes interstitial and all etiologies, infectious and non-infectious:
  Rate as voiding dysfunction.
7515 Bladder, calculus in, with symptoms interfering with function:
  Rate as voiding dysfunction.
7516 Bladder, fistula of:
Rate as voiding dysfunction or urinary tract infection whichever is predominant.

7517 Bladder, injury of: 100
Postoperative, suprapubic cystotomy.

7518 Urethra, stricture of: Rate as voiding dysfunction.

7519 Urethra, fistual of:
Rate as voiding dysfunction.
Multiple urethroperineal fistulae. 100

7520 Penis, removal of half or more. 30
Or rate as voiding dysfunction.

7521 Penis, removal of glans. 20
Or rate as voiding dysfunction.

7522 Penis, deformity, with loss of erectile power. 20 n1

7523 Testis, atrophy complete:
Both. 20 n1
One. 0 n1

7524 Testis, removal:
Both. 30 n1
One. 0 n1

Note -- In cases of the removal of one testis as the result of a service-incurred injury or disease, other than an descended or congenitally undeveloped testis, with the absence or nonfunctioning of the other testis unrelated to service, an evaluation of 30 percent will be assigned for the service-connected testicular loss. Testis, undescended, or congenitally undeveloped is not a ratable disability.

7525 Epididymo-orchitis, chronic only:
Rate as urinary tract infection.
For tubercular infections: Rate in accordance with Secs. 4.88b or 4.89, whichever is appropriate.

7527 Prostate gland injuries, infections, hypertrophy, postoperative residuals:
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.

7528 Malignant neoplasms of the genitourinary system. 100
Note -- Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of Sec. 3.105(e) of this chapter. If there has been no local reoccurrence or metastasis, rate on residuals as voiding dysfunction or renal dysfunction, whichever is predominant.

7529 Benign neoplasms of the genitourinary system:
Rate as voiding dysfunction or renal dysfunction, whichever is predominant.

7530 Chronic renal disease requiring regular dialysis: 
   Rate as renal dysfunction.

7531 Kidney transplant: 
   Following transplant surgery. 
   Thereafter: Rate on residuals as renal dysfunction, minimum rating. 

   Note -- The 100 percent evaluation shall be assigned as of the date of hospital admission for transplant surgery and shall continue with a mandatory VA examination one year following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of Sec. 3.105(e) of this chapter.

7532 Renal tubular disorders (such as renal glycosurias, aminoacidurias, renal tubular acidosis Fanconi's syndrome, Bartter's syndrome, related disorders of Henle's loop and proximal or distal nephron function, etc.): 
   Minimum rating for symptomatic condition. 20 
   Or rate as renal dysfunction.

7533 Cystic diseases of the kidneys (polycystic disease, uremic medullary cystic disease, Medullary sponge kidney, and similar conditions): 
   Rate as renal dysfunction.

7534 Atherosclerotic renal disease (renal artery stenosis or atheroembolic renal disease): 
   Rate as renal dysfunction.

7535 Toxic nephropathy (antibiotics, radiocontrast agents, nonsteroidal anti-inflammatory agents, heavy metals, and similar agents): 
   Rate as renal dysfunction.

7536 Glomerulonephritis: 
   Rate as renal dysfunction.

7537 Interstitial nephritis: 
   Rate as renal dysfunction.

7538 Papillary necrosis: 
   Rate as renal dysfunction.

7539 Renal amyloid disease: 
   Rate as renal dysfunction.

7540 Disseminated intravascular coagulation with renal cortical necrosis: 
   Rate as renal dysfunction.

7541 Renal involvement in diabetes mellitus, sickle cell anemia, systemic lupus erythematosus, vasculitis, or other systemic disease processes. 
   Rate as renal dysfunction.

7542 Neurogenic bladder: 
   Rate as voiding dysfunction.

1 Review for entitlement to special monthly compensation under § 3.350 of this chapter.


(72 Stat. 1125; 38 U.S.C. 1155)
§ 4.116 Rating gynecological conditions.


In rating disability from gynecological conditions the following will not be considered as ratable conditions: (a) the natural menopause, (b) amenorrhea, when this is based upon developmental defect or abnormality, and (c) pregnancy and childbirth and their incidents, except surgical complications under certain circumstances. The surgical complications of pregnancy will not be held the result of service except when additional disability resulted from treatment therein or they are otherwise directly attributable to unusual circumstances of service. Congenital malformations are not ratable conditions. New growths are to be rated in accordance with the effect upon parts or organs involved whose function is impaired or whose resection or excision is indicated. The excision of uterus, ovaries, etc., prior to the natural menopause is considered disabling.

[41 FR 34258, Aug. 13, 1976]


Note 1: Natural menopause, primary amenorrhea, and pregnancy and childbirth are not disabilities for rating purposes. Chronic residuals of medical or surgical complications of pregnancy may be disabilities for rating purposes.

Note 2: When evaluating any claim involving loss or loss of use of one or more creative organs or anatomical loss of one or both breasts, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate conditions which potentially establish entitlement to special monthly compensation; however, almost any condition in this section might, under certain circumstances, establish entitlement to special monthly compensation.

7610 Vulva, disease or injury of (including vulvovaginitis).
7611 Vagina, disease or injury of.
7612 Cervix, disease or injury of.
7613 Uterus, disease, injury, or adhesions of.
7614 Fallopian tube, disease, injury, or adhesions of (including pelvic inflammatory disease (PID)).
7615 Ovary, disease, injury, or adhesions of.

General Rating Formula for Disease, Injury, or Adhesions of Female Reproductive Organs (diagnostic codes 7610 through 7615):

Symptoms not controlled by continuous treatment 30
Symptoms that require continuous treatment 10
Symptoms that do not require continuous treatment 0
7617 Uterus and both ovaries, removal of,
For three months after removal
Thereafter

7618 Uterus, removal of, including corpus:
For three months after removal
Thereafter

7619 Ovary, removal of:
For three months after removal
Thereafter:
Complete removal of both ovaries
Removal of one with or without partial removal of the other

7620 Ovaries, atrophy of both, complete

7621 Uterus, prolapse:
Complete, through vagina and introitus
Incomplete

7622 Uterus, displacement of:
With marked displacement and frequent or continuous menstrual disturbances
With adhesions and irregular menstruation

7623 Pregnancy, surgical complications of:
With rectocele or cystocele
With relaxation of perineum

7624 Fistula, rectovaginal:
Vaginal fecal leakage at least once a day requiring wearing of pad
Vaginal fecal leakage four or more times per week, but less than daily, requiring wearing of pad
Vaginal fecal leakage one to three times per week requiring wearing of pad
Vaginal fecal leakage less than once a week Without leakage

7625 Fistula, urethrovaginal:
Multiple urethrovaginal fistulae
Requiring the use of an appliance or the wearing of absorbent materials which must be changed more than four times per day
Requiring the wearing of absorbent materials which must be changed two to four times per day
Requiring the wearing of absorbent materials which must be changed less than two times per day

7626 Breast, surgery of:
Following radical mastectomy:
Both
One
Following modified radical mastectomy:
Both
One
Following simple mastectomy or wide local excision with significant alteration of size or form:
Both
One
Following wide local excision without significant alteration of size or form:
Both or one

Note: For VA purposes:
(1) Radical mastectomy means removal of the entire breast, underlying pectoral muscles, and regional lymph nodes up to the coracoclavicular ligament.
(2) Modified radical mastectomy means removal of the entire breast and axillary lymph nodes (in
continuity with the breast). Pectoral muscles are left intact.

(3) Simple (or total) mastectomy means removal of all of the breast tissue, nipple, and a small portion of the overlying skin, but lymph nodes and muscles are left intact.

(4) Wide local excision (including partial mastectomy, lumpectomy, tylectomy, segmentectomy, and quadrantectomy) means removal of a portion of the breast tissue.

7627 Malignant neoplasms of gynecological system or breast

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7628 Benign neoplasms of the gynecological system or breast. Rate according to impairment in function of the urinary or gynecological systems, or skin.

7629 Endometriosis:

Lesions involving bowel or bladder confirmed by laparoscopy, pelvic pain or heavy or irregular bleeding not controlled by treatment, and bowel or bladder symptoms

Pelvic pain or heavy or irregular bleeding not controlled by treatment

Pelvic pain or heavy or irregular bleeding requiring continuous treatment for control

Note: Diagnosis of endometriosis must be substantiated by laparoscopy.

fn1 Review for entitlement to special monthly compensation under § 3.350 of this chapter.


THE HEMIC AND LYMPHATIC SYSTEMS

§ 4.117 Schedule of ratings -- hemic and lymphatic systems.

Rating

<table>
<thead>
<tr>
<th>Rating</th>
<th>7700 Anemia, hypochromic-microcytic and megaloblastic, such as iron-deficiency and pernicious anemia:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Hemoglobin 5gm/100ml or less, with findings such as high output congestive heart failure or dyspnea at rest 100</td>
</tr>
<tr>
<td></td>
<td>Hemoglobin 7gm/100ml or less, with findings such as dyspnea on mild exertion, cardiomegaly, tachycardia (100 to 120 beats per minute) or syncope (three episodes in the last six months) 70</td>
</tr>
<tr>
<td></td>
<td>Hemoglobin 8gm/100ml or less, with findings such as weakness, easy fatigability, headaches, lightheadedness, or shortness of breath 30</td>
</tr>
<tr>
<td></td>
<td>Hemoglobin 10gm/100ml or less, with findings such as weakness, easy fatigability or headaches 10</td>
</tr>
<tr>
<td></td>
<td>Hemoglobin 10gm/100ml or less, asymptomatic 0</td>
</tr>
<tr>
<td>Note:</td>
<td>Evaluate complications of pernicious anemia, such as dementia or peripheral neuropathy, separately.</td>
</tr>
<tr>
<td>7702 Agranulocytosis, acute:</td>
<td>Requiring bone marrow transplant, or; requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks 100</td>
</tr>
<tr>
<td></td>
<td>Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months 60</td>
</tr>
<tr>
<td></td>
<td>Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or; infections recurring at least once per year but less 30</td>
</tr>
</tbody>
</table>

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than once every three months
Requiring continuous medication for control
Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

7703 Leukemia:
With active disease or during a treatment phase
Otherwise rate as anemia (code 7700) or aplastic anemia (code 7716), whichever would result in the greater benefit.
Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no recurrence, rate on residuals.

7704 Polycythemia vera:
During periods of treatment with myelosuppressants and for three months following cessation of myelosuppressant therapy
Requiring phlebotomy
Stable, with or without continuous medication
Note: Rate complications such as hypertension, gout, stroke or thrombotic disease separately.

7705 Thrombocytopenia, primary, idiopathic or immune:
Platelet count of less than 20,000, with active bleeding, requiring treatment with medication and transfusions
Platelet count between 20,000
and 70,000, not requiring treatment, without bleeding.

Stable platelet count between 70,000 and 100,000, without bleeding.

Stable platelet count of 100,000 or more, without bleeding.

7706 Splenectomy 20

Note: Rate complications such as systemic infections with encapsulated bacteria separately.

7707 Spleen, injury of, healed.

Rate for any residuals.

7709 Hodgkin's disease:

With active disease or during a treatment phase

Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7710 Adenitis, tuberculous, active or inactive.

Rate under §§ 4.88c or 4.89 of this part, whichever is appropriate.

7714 Sickle cell anemia:

With repeated painful crises, occurring in skin, joints, bones or any major organs caused by hemolysis and sickling of red blood cells, with anemia, thrombosis and infarction, with symptoms precluding even light manual labor

With painful crises several times a year or with symptoms precluding other than light manual labor

Following repeated hemolytic sickling crises with continuing impairment of health

Asymptomatic, established case in remission, but with
identifiable organ impairment
Note: Sickle cell trait alone, without a history of directly attributable pathological findings, is not a ratable disability. Cases of symptomatic sickle cell trait will be forwarded to the Director, Compensation and Pension Service, for consideration under § 3.321(b)(1) of this chapter.

7715 Non-Hodgkin's lymphoma:
With active disease or during a treatment phase
Note: The 100 percent rating shall continue beyond the cessation of any surgical, radiation, antineoplastic chemotherapy or other therapeutic procedures. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7716 Aplastic anemia:
Requiring bone marrow transplant, or; requiring transfusion of platelets or red cells at least once every six weeks, or; infections recurring at least once every six weeks
Requiring transfusion of platelets or red cells at least once every three months, or; infections recurring at least once every three months
Requiring transfusion of platelets or red cells at least once per year but less than once every three months, or; infections recurring at least once per year but less than once every three months
Requiring continuous medication for control
Note: The 100 percent rating for bone marrow transplant shall be assigned as of the date of hospital admission and shall continue with a mandatory VA examination six

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months following hospital discharge. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.


[EFFECTIVE DATE NOTE: 60 FR 49225, 49227, Sept. 22, 1995, which revised this section, became effective Oct. 23, 1995.]
§ 4.118 Schedule of ratings -- skin.

**Rating**

<table>
<thead>
<tr>
<th>7800 Disfigurement of the head, face, or neck:</th>
<th>80</th>
</tr>
</thead>
<tbody>
<tr>
<td>With visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with six or more characteristics of disfigurement</td>
<td>50</td>
</tr>
<tr>
<td>With visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with four or five characteristics of disfigurement</td>
<td>30</td>
</tr>
<tr>
<td>With visible or palpable tissue loss and either gross distortion or asymmetry of one feature or paired set of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with two or three characteristics of disfigurement</td>
<td>10</td>
</tr>
<tr>
<td>With one characteristic of disfigurement</td>
<td></td>
</tr>
</tbody>
</table>

**Note (1):** The 8 characteristics of disfigurement, for purposes of evaluation under § 4.118, are:
- Scar 5 or more inches (13 or more cm.) in length.
- Scar at least one-quarter inch (0.6 cm.) wide at widest part.
- Surface contour of scar elevated or depressed on palpation.
- Scar adherent to underlying tissue.
- Skin hypo-or hyper-pigmented in an area exceeding six square inches (39 sq. cm.).
- Skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.).
- Underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.).
- Skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.).

**Note (2):** Rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate.

**Note (3):** Take into consideration unretouched color photographs when evaluating under these criteria.

| 7801 Scars, other than head, face, or neck, that are deep or that cause limited motion: |
|-----------------------------------------------|----|
| Area or areas exceeding 144 square inches (929 sq.cm.) | 40 |
| Area or areas exceeding 72 square inches (465 sq. cm.) | 30 |
| Area or areas exceeding 12 square inches (77 sq. cm.) | 20 |
| Area or areas exceeding 6 square inches (39 sq. cm.) | 10 |

**Note (1):** Scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and
combined in accordance with § 4.25 of this part.

Note (2): A deep scar is one associated with underlying soft tissue damage.

7802 Scars, other than head, face, or neck, that are superficial and that do not cause limited motion:
Area or areas of 144 square inches (929 sq. cm.) or greater

Note (1): Scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with § 4.25 of this part.

Note (2): A superficial scar is one not associated with underlying soft tissue damage.

7803 Scars, superficial, unstable

Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar.

Note (2): A superficial scar is one not associated with underlying soft tissue damage.

7804 Scars, superficial, painful on examination

Note (1): A superficial scar is one not associated with underlying soft tissue damage.

Note (2): In this case, a 10-percent evaluation will be assigned for a scar on the tip of a finger or toe even though amputation of the part would not warrant a compensable evaluation.

(See § 4.68 of this part on the amputation rule.)

7805 Scars, other; Rate on limitation of function of affected part.

7806 Dermatitis or eczema.

More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period

20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period

At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period

Less than 5 percent of the entire body or less than 5 percent of exposed areas affected, and; no more than topical therapy required during the past 12-month period

Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.

7807 American (New World) leishmaniasis (mucocutaneous, espundia):

Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or
dermatitis (DC 7806), depending upon the predominant
disability.
Note: Evaluate non-cutaneous (visceral) leishmaniasis
under DC 6301 (visceral leishmaniasis).

7808 Old World leishmaniasis (cutaneous, Oriental sore):
Rate as disfigurement of the head, face, or neck (DC
7800), scars (DC's, 7801, 7802, 7803, 7804, or 7805), or
dermatitis (DC 7806), depending upon the predominant
disability.
Note: Evaluate non-cutaneous (visceral) leishmaniasis
under DC 6301 (visceral leishmaniasis).

7809 Discoid lupus erythematosus or subacute cutaneous
lupus erythematosus:
Rate as disfigurement of the head, face, or neck (DC
7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or
dermatitis (DC 7806), depending upon the predominant
disability. Do not combine with ratings under DC 6350.

7811 Tuberculosis luposa (lupus vulgaris), active or
inactive:
Rate under §§ 4.88c or 4.89, whichever is appropriate.

7813 Dermatophytosis (ringworm: of body, tinea corporis;
of head, tinea capitis; of feet, tinea pedis; of beard
area, tinea barbae; of nails, tinea unguium; of inguinal
area (jock itch), tinea cruris):
Rate as disfigurement of the head, face, or neck (DC
7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or
dermatitis (DC 7806), depending upon the predominant
disability.

7815 Bullous disorders (including pemphigus vulgaris,
pemphigus foliaceous, bullous pemphigoid, dermatitis
herpetiformis, epidermolysis bullosa acquisita, benign
chronic familial pemphigus (Hailey-Hailey), and porphyria
cutanea tarda):
More than 40 percent of the entire body or more than 40
percent of exposed areas affected, or; constant or near-
constant systemic therapy such as corticosteroids or
other immunosuppressive drugs required during the past
12-month period
20 to 40 percent of the entire body or 20 to 40 percent
of exposed areas affected, or; systemic therapy such as
corticosteroids or other immunosuppressive drugs required
for a total duration of six weeks or more, but not
constantly, during the past 12-month period
At least 5 percent, but less than 20 percent, of the entire
body, or at least 5 percent, but less than 20
percent, of exposed areas affected, or; intermittent
systemic therapy such as corticosteroids or other
immunosuppressive drugs required for a total duration of
less than six weeks during the past 12-month period
Less than 5 percent of the entire body or exposed areas
affected, and; no more than topical therapy required
during the past 12-month period
Or rate as disfigurement of the head, face, or neck (DC
7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805),
depending upon the predominant disability.
7816 Psoriasis:
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.

7817 Exfoliative dermatitis (erythroderma):
Generalized involvement of the skin, plus systemic manifestations (such as fever, weight loss, and hypoproteinemia), and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period
Generalized involvement of the skin without systemic manifestations, and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of six weeks or more, but not constantly, during the past 12-month period
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of less than six weeks during the past 12-month period
Any extent of involvement of the skin, and; no more than topical therapy required during the past 12-month period

7818 Malignant skin neoplasms (other than malignant melanoma):
Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or
impairment of function

Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.

7819 Benign skin neoplasms:
Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or impairment of function

7820 Infections of the skin not listed elsewhere (including bacterial, fungal, viral, treponemal and parasitic diseases):
Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability

7821 Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis, and dermatomyositis):
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.

7822 Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP)):
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, and; constant or near-constant systemic medications or intensive light therapy
required during the past 12-month period
20 to 40 percent of the entire body or 20 to 40 percent
of exposed areas affected, or; systemic therapy or
intensive light therapy required for a total duration of
six weeks or more, but not constantly, during the past
12-month period
At least 5 percent, but less than 20 percent, of the
entire body, or at least 5 percent, but less than 20
percent, of exposed areas affected, or; systemic therapy
or intensive light therapy required for a total duration
of less than six weeks during the past 12-month period
Less than 5 percent of the entire body or exposed areas
affected, and; no more than topical therapy required
during the past 12-month period
Or rate as disfigurement of the head, face, or neck (DC
7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805),
depending upon the predominant disability.

7823 Vitiligo:
With exposed areas affected 10
With no exposed areas affected 0

7824 Diseases of keratinization (including ichthyoses,
Darier's disease, and palmoplantar keratoderma):
With either generalized cutaneous involvement or systemic
manifestations, and; constant or near-constant systemic
medication, such as immunosuppressive retinoids, required
during the past 12-month period
With either generalized cutaneous involvement or systemic
manifestations, and; intermittent systemic medication,
such as immunosuppressive retinoids, required for a total
duration of six weeks or more, but not constantly, during
the past 12-month period
With localized or episodic cutaneous involvement and
intermittent systemic medication, such as
immunosuppressive retinoids, required for a total
duration of less than six weeks during the past 12-month period
No more than topical therapy required during the past 12-
month period 0

7825 Urticaria:
Recurrent debilitating episodes occurring at least four
times during the past 12-month period despite continuous
immunosuppressive therapy 60
Recurrent debilitating episodes occurring at least four
times during the past 12-month period, and; requiring
intermittent systemic immunosuppressive therapy for
control 30
Recurrent episodes occurring at least four times during
the past 12-month period, and; responding to treatment
with antihistamines or sympathomimetics 10

7826 Vasculitis, primary cutaneous:
Recurrent debilitating episodes occurring at least four
times during the past 12-month period despite continuous
immunosuppressive therapy 60
Recurrent debilitating episodes occurring at least four
times during the past 12-month period, and; requiring
intermittent systemic immunosuppressive therapy for
control 30
Recurrent episodes occurring one to three times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control.

Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.

7827 Erythema multiforme; Toxic epidermal necrolysis:
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite ongoing immunosuppressive therapy.
Recurrent episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy.
Recurrent episodes occurring during the past 12-month period that respond to treatment with antihistamines or sympathomimetics, or; one to three episodes occurring during the past 12-month period requiring intermittent systemic immunosuppressive therapy.

Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.

7828 Acne:
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck.
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck.
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent.
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.

7829 Chloracne:
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck.
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck.
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent.
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.

7830 Scarring alopecia:
Affecting more than 40 percent of the scalp.
Affecting 20 to 40 percent of the scalp.
Affecting less than 20 percent of the scalp.

7831 Alopecia areata:
With loss of all body hair.
With loss of hair limited to scalp and face.

7832 Hyperhidrosis:
Unable to handle paper or tools because of moisture, and unresponsive to therapy.
Able to handle paper or tools after therapy.
7833 Malignant melanoma:
Rate as scars (DC's 7801, 7802, 7803, 7804, or 7805),
disfigurement of the head, face, or neck (DC 7800), or
impairment of function (under the appropriate body system)
Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e). If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.


(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 67 FR 49590, 49596, July 31, 2002, revised this section, effective Aug. 30, 2002.]
THE ENDOCRINE SYSTEM

§ 4.119 Schedule of ratings -- endocrine system.

§ 4.119 Schedule of ratings -- endocrine system.

TABLE

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7900</td>
<td>Hyperthyroidism</td>
</tr>
<tr>
<td></td>
<td>Thyroid enlargement, tachycardia</td>
</tr>
<tr>
<td></td>
<td>(more than 100 beats per minute),</td>
</tr>
<tr>
<td></td>
<td>eye involvement, muscular</td>
</tr>
<tr>
<td></td>
<td>weakness, loss of weight, and</td>
</tr>
<tr>
<td></td>
<td>sympathetic nervous system,</td>
</tr>
<tr>
<td></td>
<td>cardiovascular, or gastrointestinal symptoms</td>
</tr>
<tr>
<td></td>
<td>Emotional instability,</td>
</tr>
<tr>
<td></td>
<td>tachycardia, fatigability, and</td>
</tr>
<tr>
<td></td>
<td>increased pulse pressure or blood pressure</td>
</tr>
<tr>
<td></td>
<td>Tachycardia, tremor, and increased pulse pressure or blood pressure</td>
</tr>
<tr>
<td></td>
<td>Tachycardia, which may be intermittent, and tremor, or;</td>
</tr>
<tr>
<td></td>
<td>continuous medication required for control</td>
</tr>
<tr>
<td></td>
<td>Note (1): If disease of the heart is the predominant finding, evaluate as hyperthyroid heart disease (DC 7008) if doing so would result in a higher evaluation than using the criteria above.</td>
</tr>
<tr>
<td></td>
<td>Note (2): If ophthalmopathy is the sole finding, evaluate as field vision, impairment of (DC 6080); diplopia (DC 6090); or impairment of central visual acuity (DC 6061-6079).</td>
</tr>
<tr>
<td>7901</td>
<td>Thyroid gland, toxic adenoma</td>
</tr>
<tr>
<td></td>
<td>Thyroid enlargement, tachycardia</td>
</tr>
<tr>
<td></td>
<td>(more than 100 beats per minute),</td>
</tr>
<tr>
<td></td>
<td>eye involvement, muscular</td>
</tr>
<tr>
<td></td>
<td>weakness, loss of weight, and</td>
</tr>
<tr>
<td></td>
<td>sympathetic nervous system,</td>
</tr>
<tr>
<td></td>
<td>cardiovascular, or gastrointestinal symptoms</td>
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<tr>
<td></td>
<td>Emotional instability,</td>
</tr>
<tr>
<td></td>
<td>tachycardia, fatigability, and</td>
</tr>
<tr>
<td></td>
<td>increased pulse pressure or blood pressure</td>
</tr>
<tr>
<td></td>
<td>Tachycardia, tremor, and increased pulse pressure or blood pressure</td>
</tr>
<tr>
<td></td>
<td>Tachycardia, which may be intermittent, and tremor, or;</td>
</tr>
<tr>
<td></td>
<td>continuous medication required for control</td>
</tr>
</tbody>
</table>

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Note (1): If disease of the heart is the predominant finding, evaluate as hyperthyroid heart disease (DC 7008) if doing so would result in a higher evaluation than using the criteria above.

Note (2): If ophthalmopathy is the sole finding, evaluate as field vision, impairment of (DC 6080); diplopia (DC 6090); or impairment of central visual acuity (DC 6061-6079).

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7902</td>
<td>Thyroid gland, nontoxic adenoma of</td>
</tr>
<tr>
<td></td>
<td>With disfigurement of the head or neck</td>
</tr>
<tr>
<td></td>
<td>Without disfigurement of the head or neck</td>
</tr>
<tr>
<td>7903</td>
<td>Hypothyroidism</td>
</tr>
<tr>
<td></td>
<td>Cold intolerance, muscular weakness, cardiovascular involvement, mental disturbance, mental disturbance, and sleepiness</td>
</tr>
<tr>
<td></td>
<td>Muscular weakness, mental disturbance, and weight gain</td>
</tr>
<tr>
<td></td>
<td>Fatigability, constipation, and mental sluggishness</td>
</tr>
<tr>
<td></td>
<td>Fatigability, or; continuous medication required for control</td>
</tr>
<tr>
<td>7904</td>
<td>Hyperparathyroidism</td>
</tr>
<tr>
<td></td>
<td>Generalized decalcification of bones, kidney stones, gastrointestinal symptoms (nausea, vomiting, anorexia, constipation, weight loss, or peptic ulcer), and weakness</td>
</tr>
<tr>
<td></td>
<td>Gastrointestinal symptoms and weakness</td>
</tr>
<tr>
<td></td>
<td>Continuous medication required for control</td>
</tr>
<tr>
<td>7905</td>
<td>Hypoparathyroidism</td>
</tr>
<tr>
<td></td>
<td>Marked neuromuscular excitability (such as convulsions, muscular spasms (tetany), or laryngeal stridor) plus either cataract or evidence of increased intracranial</td>
</tr>
</tbody>
</table>

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pressure (such as papilledema)
Marked neuromuscular excitability, or; paresthesias (of arms, legs, or circumoral area) plus either cataract or evidence of increased intracranial pressure
Continuous medication required for control
7907 Cushing's syndrome
As active, progressive disease including loss of muscle strength, areas of osteoporosis, hypertension, weakness, and enlargement of pituitary or adrenal gland
Loss of muscle strength and enlargement of pituitary or adrenal gland
With striae, obesity, moon face, glucose intolerance, and vascular fragility
Note: With recovery or control, evaluate as residuals of adrenal insufficiency or cardiovascular, psychiatric, skin, or skeletal complications under appropriate diagnostic code.
7908 Acromegaly
Evidence of increased intracranial pressure (such as visual field defect), arthropathy, glucose intolerance, and either hypertension or cardiomegaly
Arthropathy, glucose intolerance, and hypertension
Enlargement of acral parts or overgrowth of long bones, and enlarged sella turcica
7909 Diabetes insipidus
Polyuria with near-continuous thirst, and more than two documented episodes of dehydration requiring parenteral hydration in the past year
Polyuria with near-continuous thirst, and one or two documented episodes of dehydration requiring parenteral hydration in the past year
Polyuria with near-continuous thirst, and one or more episodes of dehydration in the past year not requiring parenteral hydration
Polyuria with near-continuous thirst
7911 Addison's disease (Adrenal Cortical Hypofunction)
Four or more crises during the past year
Three crises during the past year, or; five or more episodes during the past year
One or two crises during the past year
year, or; two to four episodes
during the past year, or; weakness
and fatigability, or;
corticosteroid therapy required
for control
Note (1): An Addisonian "crisis"
consists of the rapid onset of
peripheral vascular collapse (with
acute hypotension and shock), with
findings that may include:
anorexia; nausea; vomiting;
dehydration; profound weakness;
pain in abdomen, legs, and back;
fever; apathy, and depressed
mentation with possible
progression to coma, renal
shutdown, and death.
Note (2): An Addisonian "episode,"
for VA purposes, is a less acute
and less severe event than an
Addisonian crisis and may consist
of anorexia, nausea, vomiting,
diarrhea, dehydration, weakness,
malaise, orthostatic hypotension,
or hypoglycemia, but no peripheral
vascular collapse.
Note (3): Tuberculous Addison's
disease will be evaluated as
active or inactive tuberculosis.
If inactive, these evaluations are
not to be combined with the
graduated ratings of 50 percent or
30 percent for non-pulmonary
tuberculosis specified under
§ 4.88b. Assign the higher
rating.
7912 Pluriglandular syndrome
Evaluate according to major
manifestations.
7913 Diabetes mellitus
Requiring more than one daily
injection of insulin, restricted
diet, and regulation of activities
(avoidance of strenuous
occupational and recreational
activities) with episodes of
ketoacidosis or hypoglycemic
reactions requiring at least three
hospitalizations per year or
weekly visits to a diabetic care
provider, plus either progressive
loss of weight and strength or
complications that would be
compensable if separately
evaluated
Requiring insulin, restricted
diet, and regulation of activities
with episodes of ketoacidosis or
hypoglycemic reactions requiring
one or two hospitalizations per
year or twice a month visits to a
diabetic care provider,
plus complications that would not be compensable if separately evaluated

Requiring insulin, restricted diet, and regulation of activities 40
Requiring insulin and restricted diet, or; oral hypoglycemic agent and restricted diet 20
Manageable by restricted diet only 10

Note (1): Evaluate compensable complications of diabetes separately unless they are part of the criteria used to support a 100 percent evaluation. Noncompensable complications are considered part of the diabetic process under diagnostic code 7913.

Note (2): When diabetes mellitus has been conclusively diagnosed, do not request a glucose tolerance test solely for rating purposes.

7914 Neoplasm, malignant, any specified part of the endocrine system 100

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

7915 Neoplasm, benign, any specified part of the endocrine system rate as residuals of endocrine dysfunction.

7916 Hyperpituitarism (prolactin secreting pituitary dysfunction)
7917 Hyeraldosteronism (benign or malignant)
7918 Pheochromocytoma (benign or malignant)

Note: Evaluate diagnostic codes 7916, 7917, and 7918 as malignant or benign neoplasm as appropriate.

7919 C-cell hyperplasia of the thyroid 100

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of
such treatment, the appropriate
disability rating shall be
determined by mandatory VA
examination. Any change in
evaluation based upon that or any
subsequent examination shall be
subject to the provisions of
§ 3.105(e) of this chapter. If
there has been no local recurrence
or metastasis, rate on residuals.


(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 61 FR 20440, 20446, May 7, 1996, which revised this
section, became effective May 7, 1996.]
NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS

§ 4.120 Evaluations by comparison.
§ 4.121 Identification of epilepsy.
§ 4.122 Psychomotor epilepsy.
§ 4.123 Neuritis, cranial or peripheral.
§ 4.124 Neuralgia, cranial or peripheral.
§ 4.124a Schedule of ratings -- neurological conditions and convulsive disorders.

§ 4.120 Evaluations by comparison.
Disability in this field is ordinarily to be rated in proportion to the impairment of motor, sensory or mental function. Consider especially psychotic manifestations, complete or partial loss of use of one or more extremities, speech disturbances, impairment of vision, disturbances of gait, tremors, visceral manifestations, injury to the skull, etc. In rating disability from the conditions in the preceding sentence refer to the appropriate schedule. In rating peripheral nerve injuries and their residuals, attention should be given to the site and character of the injury, the relative impairment in motor function, trophic changes, or sensory disturbances.

§ 4.121 Identification of epilepsy.
When there is doubt as to the true nature of epileptiform attacks, neurological observation in a hospital adequate to make such a study is necessary. To warrant a rating for epilepsy, the seizures must be witnessed or verified at some time by a physician. As to frequency, competent, consistent lay testimony emphasizing convulsive and immediate post-convulsive characteristics may be accepted. The frequency of seizures should be ascertained under the ordinary conditions of life (while not hospitalized).

§ 4.122 Psychomotor epilepsy.
The term psychomotor epilepsy refers to a condition that is characterized by seizures and not uncommonly by a chronic psychiatric disturbance as well.
(a) Psychomotor seizures consist of episodic alterations in conscious control that may be associated with automatic states, generalized convulsions, random motor movements (chewing, lip smacking, fumbling), hallucinatory phenomena (involving taste, smell, sound, vision), perceptual illusions (deja vu, feelings of loneliness, strangeness, macropsia, micropsia, dreamy states), alterations in thinking (not open to reason), alterations in memory, abnormalities of mood or affect (fear, alarm, terror, anger, dread, well-being), and autonomic disturbances (sweating, pallor, flushing of the face, visceral phenomena such as nausea, vomiting, defecation, a rising feeling of warmth in the abdomen). Automatic states or automatisms are characterized by episodes of irrational, irrelevant, disjointed, unconventional, asocial, purposeless though seemingly coordinated and purposeful, confused or inappropriate activity of one to several minutes (or, infrequently, hours) duration with subsequent amnesia for the seizure. Examples: A
person of high social standing remained seated, muttered angrily, and rubbed the arms of his chair while the National Anthem was being played; an apparently normal person suddenly disrobed in public; a man traded an expensive automobile for an antiquated automobile in poor mechanical condition and after regaining conscious control, discovered that he had signed an agreement to pay an additional sum of money in the trade. The seizure manifestations of psychomotor epilepsy vary from patient to patient and in the same patient from seizure to seizure. (b) A chronic mental disorder is not uncommon as an interseizure manifestation of psychomotor epilepsy and may include psychiatric disturbances extending from minimal anxiety to severe personality disorder (as distinguished from developmental) or almost complete personality disintegration (psychosis). The manifestations of a chronic mental disorder associated with psychomotor epilepsy, like those of the seizures, are protean in character.


§ 4.123 Neuritis, cranial or peripheral.
Neuritis, cranial or peripheral, characterized by loss of reflexes, muscle atrophy, sensory disturbances, and constant pain, at times excruciating, is to be rated on the scale provided for injury of the nerve involved, with a maximum equal to severe, incomplete, paralysis. See nerve involved for diagnostic code number and rating. The maximum rating which may be assigned for neuritis not characterized by organic changes referred to in this section will be that for moderate, or with sciatic nerve involvement, for moderately severe, incomplete paralysis.


§ 4.124 Neuralgia, cranial or peripheral.
Neuralgia, cranial or peripheral, characterized usually by a dull and intermittent pain, of typical distribution so as to identify the nerve, is to be rated on the same scale, with a maximum equal to moderate incomplete paralysis. See nerve involved for diagnostic code number and rating. Tic douloureux, or trifacial neuralgia, may be rated up to complete paralysis of the affected nerve.


§ 4.124a Schedule of ratings -- neurological conditions and convulsive disorders.
[With the exceptions noted, disability from the following diseases and their residuals may be rated from 10 percent to 100 percent in proportion to the impairment of motor, sensory, or mental function. Consider especially psychotic manifestations, complete or partial loss of use of one or more extremities, speech disturbances, impairment of vision, disturbances of gait, tremors, visceral manifestations, etc., referring to the appropriate bodily system of the schedule. With partial loss of use of one or more extremities from neurological lesions, rate by comparison with the mild, moderate, severe, or complete paralysis of peripheral nerves]
Organic Diseases of the Central Nervous System

Rating

8000 Encephalitis, epidemic, chronic:

As active febrile disease 100
Rate residuals, minimum 10

Brain, new growth of:

8002 Malignant 100

Note: The rating in code 8002 will be continued for 2 years following cessation of surgical, chemotherapeutic or other treatment modality. At this point, if the residuals have stabilized, the rating will be made on neurological residuals according to symptomatology.

Minimum rating 30

8003 Benign, minimum 60
Rate residuals, minimum 10

8004 Paralysis agitans:

Minimum rating 30

8005 Bulbar palsy 100

8007 Brain, vessels, embolism of.
8008 Brain, vessels, thrombosis of.
8009 Brain, vessels, hemorrhage from:

Rate the vascular conditions under Codes 8007 through 8009, for 6 months 100
Rate residuals, thereafter, minimum 10

8010 Myelitis:

Minimum rating 10

8011 Poliomyelitis, anterior:

As active febrile disease 100
Rate residuals, minimum 10

8012 Hematomyelia:

For 6 months 100
Rate residuals, minimum 10

8013 Syphilis, cerebrospinal.
8014 Syphilis, meningovascular.
8015 Tabes dorsalis.
Note: Rate upon the severity of convulsions, paralysis, visual impairment or psychotic involvement, etc.

8017 Amyotrophic lateral sclerosis:
Minimum rating 30

8018 Multiple sclerosis:
Minimum rating 30

8019 Meningitis, cerebrospinal, epidemic:
As active febrile disease 100
Rate residuals, minimum 10

8020 Brain, abscess of:
As active disease 100
Rate residuals, minimum 10

Spinal cord, new growths of:

8021 Malignant 100
Note: The rating in code 8021 will be continued for 2 years following cessation of surgical, chemotherapeutic or other treatment modality. At this point, if the residuals have stabilized, the rating will be made on neurological residuals according to symptomatology.
Minimum rating 30

8022 Benign, minimum rating 60
Rate residuals, minimum 10

8023 Progressive muscular atrophy:
Minimum rating 30

8024 Syringomyelia:
Minimum rating 30

8025 Myasthenia gravis:
Minimum rating 30

Note: It is required for the minimum ratings for residuals under diagnostic codes 8000-8025, that there be ascertainable residuals. Determinations as to the presence of residuals not capable of objective verification, i.e., headaches, dizziness, fatigability, must be approached on the basis of the diagnosis recorded; subjective residuals will be accepted when consistent with the disease and not more likely attributable to other disease or no disease. It is of exceptional importance that when ratings in excess of the prescribed minimum ratings are assigned, the diagnostic codes utilized as bases of evaluation be cited, in addition to the codes identifying the diagnoses.
8045 Brain disease due to trauma:
Purely neurological disabilities, such as hemiplegia, epileptiform seizures, facial nerve paralysis, etc., following trauma to the brain, will be rated under the diagnostic codes specifically dealing with such disabilities, with citation of a hyphenated diagnostic code (e.g., 8045-8207).
Purely subjective complaints such as headache, dizziness, insomnia, etc., recognized as symptomatic of brain trauma, will be rated 10 percent and no more under diagnostic code 9304. This 10 percent rating will not be combined with any other rating for a disability due to brain trauma. Ratings in excess of 10 percent for brain disease due to trauma under diagnostic code 9304 are not assignable in the absence of a diagnosis of multi-infarct dementia associated with brain trauma.

8046 Cerebral arteriosclerosis:
Purely neurological disabilities, such as hemiplegia, cranial nerve paralysis, etc., due to cerebral arteriosclerosis will be rated under the diagnostic codes dealing with such specific disabilities, with citation of a hyphenated diagnostic code (e.g., 8046-8207).
Purely subjective complaints such as headache, dizziness, tinnitus, insomnia and irritability, recognized as symptomatic of a properly diagnosed cerebral arteriosclerosis, will be rated 10 percent and no more under diagnostic code 9305. This 10 percent rating will not be combined with any other rating for a disability due to cerebral or generalized arteriosclerosis. Ratings in excess of 10 percent for cerebral arteriosclerosis under diagnostic code 9305 are not assignable in the absence of a diagnosis of multi-infarct dementia with cerebral arteriosclerosis.
Note: The ratings under code 8046 apply only when the diagnosis of cerebral arteriosclerosis is substantiated by the entire clinical picture and not solely on findings of retinal arteriosclerosis.

Miscellaneous Diseases

8100 Migraine:
With very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability 50
With characteristic prostrating attacks occurring on an average once a month over last several months 30
With characteristic prostrating attacks averaging one in 2 months over last several months 10
With less frequent attacks 0

8103 Tic, convulsive:
Severe 30
Moderate 10
Mild 0
Note: Depending upon frequency, severity, muscle groups involved.

8104 Paramyoclonus multiplex (convulsive state, myoclonic type):
Rate as tic; convulsive; severe cases 60

8105 Chorea, Sydenham's:
Pronounced, progressive grave types 100
Severe 80
Moderately severe 50
Moderate 30
Mild 10
Note: Consider rheumatic etiology and complications.

8106 Chorea, Huntington's.
Rate as Sydenham's chorea. This, though a familial disease, has its onset in late adult life, and is considered a ratable disability.

8107 Athetosis, acquired.
Rate as chorea.

8108 Narcolepsy.
Rate as for epilepsy, petit mal.

Diseases of the Cranial Nerves

Disability from lesions of peripheral portions of first, second, third, fourth, sixth, and eighth nerves will be rated under the Organs of Special Sense. The ratings for the cranial nerves are for unilateral involvement; when bilateral, combine but without the bilateral factor.

Fifth (trigeminal) cranial nerve

8205 Paralysis of:

<table>
<thead>
<tr>
<th>Complete</th>
<th>50</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incomplete, severe</td>
<td>30</td>
</tr>
<tr>
<td>Incomplete, moderate</td>
<td>10</td>
</tr>
</tbody>
</table>

Note: Dependent upon relative degree of sensory manifestation or motor loss.

8305 Neuritis.
8405 Neuralgia.

Note: Tic douloureux may be rated in accordance with severity, up to complete paralysis.

Seventh (facial) cranial nerve

8207 Paralysis of:

Complete 30
Incomplete, severe 20
Incomplete, moderate 10

Note: Dependent upon relative loss of innervation of facial muscles.

8307 Neuritis.

8407 Neuralgia.

Ninth (glossopharyngeal) cranial nerve

8209 Paralysis of:

Complete 30
Incomplete, severe 20
Incomplete, moderate 10

Note: Dependent upon relative loss of ordinary sensation in mucous membrane of the pharynx, fauces, and tonsils.

8309 Neuritis.

8409 Neuralgia.

Tenth (pneumogastric, vagus) cranial nerve

8210 Paralysis of:

Complete 50
Incomplete, severe 30
Incomplete, moderate 10

Note: Dependent upon extent of sensory and motor loss to organs of voice, respiration, pharynx, stomach and heart.

8310 Neuritis.

8410 Neuralgia.

Eleventh (spinal accessory, external branch) cranial nerve.

8211 Paralysis of:

Complete 30
Incomplete, severe 20
Incomplete, moderate 10

Note: Dependent upon loss of motor function of sternomastoid and trapezius muscles.

8311 Neuritis.
8411 Neuralgia.

Twelfth (hypoglossal) cranial nerve.
8212 Paralysis of:
Complete 50
Incomplete, severe 30
Incomplete, moderate 10

Note: Dependent upon loss of motor function of tongue.
8312 Neuritis.
8412 Neuralgia.

Diseases of the Peripheral Nerves

Schedule of ratings Rating

<table>
<thead>
<tr>
<th>Major</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>60</td>
</tr>
</tbody>
</table>

The term "incomplete paralysis," with this and other peripheral nerve injuries, indicates a degree of lost or impaired function substantially less than the type picture for complete paralysis given with each nerve, whether due to varied level of the nerve lesion or to partial regeneration. When the involvement is wholly sensory, the rating should be for the mild, or at most, the moderate degree. The ratings for the peripheral nerves are for unilateral involvement; when bilateral, combine with application of the bilateral factor.

Upper radicular group (fifth and sixth cervicals)
8510 Paralysis of:
Complete; all shoulder and elbow movements lost or severely affected, hand and wrist movements not affected 70 60

Incomplete:
Severe 50 40
Moderate 40 30
Mild 20 20

8610 Neuritis.
8710 Neuralgia.
Middle radicular group

8511 Paralysis of:

Complete; adduction, abduction and rotation of arm, flexion of elbow, and extension of wrist lost or severely affected 70 60

Incomplete:

Severe 50 40
Moderate 40 30
Mild 20 20

8611 Neuritis.

8711 Neuralgia.

Lower radicular group

8512 Paralysis of:

Complete; all intrinsic muscles of hand, and some or all of flexors of wrist and fingers, paralyzed (substantial loss of use of hand) 70 60

Incomplete:

Severe 50 40
Moderate 40 30
Mild 20 20

8612 Neuritis.

8712 Neuralgia.

All radicular groups

8513 Paralysis of:

Complete 90 80

Incomplete:

Severe 70 60
Moderate 40 30
Mild 20 20

8613 Neuritis.

8713 Neuralgia.

The musculospiral nerve (radial nerve)
8514 Paralysis of:

Complete; drop of hand and fingers, wrist and fingers perpetually flexed, the thumb adducted falling within the line of the outer border of the index finger; can not extend hand at wrist, extend proximal phalanges of fingers, extend thumb, or make lateral movement of wrist; supination of hand, extension and flexion of elbow weakened, the loss of synergic motion of extensors impairs the hand grip seriously; total paralysis of the triceps occurs only as the greatest rarity

Incomplete:

- Severe: 50
- Moderate: 30
- Mild: 20

8614 Neuritis.

8714 Neuralgia.

Note: Lesions involving only "dissociation of extensor communis digitorum" and "paralysis below the extensor communis digitorum," will not exceed the moderate rating under code 8514.

The median nerve

8515 Paralysis of:

Complete; the hand inclined to the ulnar side, the index and middle fingers more extended than normally, considerable atrophy of the muscles of the thenar eminence, the thumb in the plane of the hand (ape hand); pronation incomplete and defective, absence of flexion of index finger and feeble flexion of middle finger, cannot make a fist, index and middle fingers remain extended; cannot flex distal phalanx of thumb, defective opposition and abduction of the thumb, at right angles to palm; flexion of wrist weakened; pain with trophic disturbances

Incomplete:

- Severe: 50
- Moderate: 30
- Mild: 10

8615 Neuritis.

8715 Neuralgia.

The ulnar nerve
8516 Paralysis of:

Complete; the "griffin claw" deformity, due to flexor contraction of ring and little fingers, atrophy very marked in dorsal interspace and thenar and hypothenar eminences; loss of extension of ring and little fingers cannot spread the fingers (or reverse), cannot adduct the thumb; flexion of wrist weakened 60 50

Incomplete:

Severe 40 30
Moderate 30 20
Mild 10 10

8616 Neuritis.
8716 Neuralgia.

Musculocutaneous nerve

8517 Paralysis of:

Complete; weakness but not loss of flexion of elbow and supination of forearm 30 20

Incomplete:

Severe 20 20
Moderate 10 10
Mild 0 0

8617 Neuritis.
8717 Neuralgia.

Circumflex nerve

8518 Paralysis of:

Complete; abduction of arm is impossible, outward rotation is weakened; muscles supplied are deltoid and teres minor 50 40

Incomplete:

Severe 30 20
Moderate 10 10
Mild 0 0

8618 Neuritis.
8718 Neuralgia.

Long thoracic nerve
8519 Paralysis of:

Complete; inability to raise arm above shoulder level, winged scapula deformity

Incomplete:

  Severe  20  20
  Moderate 10  10
  Mild 0  0

Note: Not to be combined with lost motion above shoulder level.

8619 Neuritis.

8719 Neuralgia.

Note: Combined nerve injuries should be rated by reference to the major involvement, or if sufficient in extent, consider radicular group ratings.

8520 Paralysis of:

Complete; the foot dangles and drops, no active movement possible of muscles below the knee, flexion of knee weakened or (very rarely) lost 80

Incomplete:

  Severe, with marked muscular atrophy 60
  Moderately severe 40
  Moderate 20
  Mild 10

8620 Neuritis.

8720 Neuralgia.

External popliteal nerve (common peroneal)

8521 Paralysis of:

Complete; foot drop and slight droop of first phalanges of all toes, cannot dorsiflex the foot, extension (dorsal flexion) of proximal phalanges of toes lost; abduction of foot lost, adduction weakened; anesthesia covers entire dorsum of foot and toes 40
Incomplete:

Severe 30
Moderate 20
Mild 10

8621 Neuritis.

8721 Neuralgia.

Musculocutaneous nerve (superficial peroneal)

8522 Paralysis of:

Complete; eversion of foot weakened 30

Incomplete:

Severe 20
Moderate 10
Mild 0

8622 Neuritis.

8722 Neuralgia.

Anterior tibial nerve (deep peroneal)

8523 Paralysis of:

Complete; dorsal flexion of foot lost 30

Incomplete:

Severe 20
Moderate 10
Mild 0

8623 Neuritis.

8723 Neuralgia.

Internal popliteal nerve (tibial)

8524 Paralysis of:

Complete; plantar flexion lost, frank adduction of foot impossible, flexion and separation of toes abolished; no muscle in sole can move; in lesions of the nerve high in popliteal fossa, plantar flexion of foot is lost 40

Incomplete:

Severe 30
Moderate 20
Mild

8624 Neuritis.

8724 Neuralgia.

Posterior tibial nerve

8525 Paralysis of:

Complete; paralysis of all muscles of sole of foot, frequently with painful paralysis of a causalgic nature; toes cannot be flexed; adduction is weakened; plantar flexion is impaired

Incomplete:

Severe

Moderate

Mild

8625 Neuritis.

8725 Neuralgia.

Anterior crural nerve (femoral)

8526 Paralysis of:

Complete; paralysis of quadriceps extensor muscles

Incomplete:

Severe

Moderate

tonic-clonic convulsion with unconsciousness.

Note (2): A minor seizure consists of a brief interruption in consciousness or conscious control associated with staring or rhythmic blinking of the eyes or nodding of the head ("pure" petit mal), or sudden jerking movements of the arms, trunk, or head (myoclonic type) or sudden loss of postural control (akinetic type).

General Rating Formula for Major and Minor Epileptic Seizures:

Averaging at least 1 major seizure per month over the last year

Averaging at least 1 major seizure in 3 months over the last year; or more than 10 minor seizures weekly

Averaging at least 1 major seizure in 4 months over the last year; or 9-10 minor seizures per week

At least 1 major seizure in the last 6 months or 2 in the last year; or averaging at least 5 to 8 minor seizures weekly

At least 1 major seizure in the last 2 years; or at least 2 minor seizures in the last 6 months

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A confirmed diagnosis of epilepsy with a history of seizures

Note (1): When continuous medication is shown necessary for the control of epilepsy, the minimum evaluation will be 10 percent. This rating will not be combined with any other rating for epilepsy.

Note (2): In the presence of major and minor seizures, rate the predominating type.

Note (3): There will be no distinction between diurnal and nocturnal major seizures.

8912 Epilepsy, Jacksonian and focal motor or sensory.

8913 Epilepsy, diencephalic.

Rate as minor seizures, except in the presence of major and minor seizures, rate the predominating type.

8914 Epilepsy, psychomotor.

Major seizures:

Psychomotor seizures will be rated as major seizures under the general rating formula when characterized by automatic states and/or generalized convulsions with unconsciousness.

Minor seizures:

Psychomotor seizures will be rated as minor seizures under the general rating formula when characterized by brief transient episodes of random motor movements, hallucinations, perceptual illusions, abnormalities of thinking, memory or mood, or autonomic disturbances.

Mental Disorders in Epilepsies: A nonpsychotic organic brain syndrome will be rated separately under the appropriate diagnostic code (e.g., 9304 or 9326). In the absence of a diagnosis of non-psychotic organic psychiatric disturbance (psychotic, psychoneurotic or personality disorder) if diagnosed and shown to be secondary to or directly associated with epilepsy will be rated separately. The psychotic or psychoneurotic disorder will be rated under the appropriate diagnostic code. The personality disorder will be rated as a dementia (e.g., diagnostic code 9304 or 9326).

Epilepsy and Unemployability: (1) Rating specialists must bear in mind that the epileptic, although his or her seizures are controlled, may find employment and rehabilitation difficult of attainment due to employer reluctance to the hiring of the epileptic.

(2) Where a case is encountered with a definite history of unemployment, full and complete development should be undertaken to ascertain whether the epilepsy is the determining factor in his or her inability to obtain employment.

(3) The assent of the claimant should first be obtained for permission to conduct this economic and social survey. The purpose of this survey is to secure all the relevant facts and data necessary to permit of a true judgment as to the reason for his or her unemployment and should include information as to:

(a) Education;
(b) Occupations prior and subsequent to service;

c) Places of employment and reasons for termination;

d) Wages received;

e) Number of seizures.

4) Upon completion of this survey and current examination, the case should have rating board consideration. Where in the judgment of the rating board the veteran's unemployability is due to epilepsy and jurisdiction is not vested in that body by reason of schedular evaluations, the case should be submitted to the Director, Compensation and Pension Service.


(38 U.S.C. 1155)

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MENTAL DISORDERS

§ 4.125 Diagnosis of mental disorders.
§ 4.126 Evaluation of disability from mental disorders.
§ 4.127 Mental retardation and personality disorders.
§ 4.128 Convalescence ratings following extended hospitalization.
§ 4.129 Mental disorders due to traumatic stress.
§ 4.130 Schedule of ratings -- mental disorders.

§ 4.125 Diagnosis of mental disorders.

(a) If the diagnosis of a mental disorder does not conform to DSM-IV or is not supported by the findings on the examination report, the rating agency shall return the report to the examiner to substantiate the diagnosis.

(b) If the diagnosis of a mental disorder is changed, the rating agency shall determine whether the new diagnosis represents progression of the prior diagnosis, correction of an error in the prior diagnosis, or development of a new and separate condition. If it is not clear from the available records what the change of diagnosis represents, the rating agency shall return the report to the examiner for a determination.


(38 U.S.C. 1155)

[EFFECTIVE DATE NOTE: 61 FR 52695, 52700, Oct. 8, 1996, which revised this section, became effective Nov. 7, 1996.]

§ 4.126 Evaluation of disability from mental disorders.

(a) When evaluating a mental disorder, the rating agency shall consider the frequency, severity, and duration of psychiatric symptoms, the length of remissions, and the veteran's capacity for adjustment during periods of remission. The rating agency shall assign an evaluation based on all the evidence of record that bears on occupational and social impairment rather than solely on the examiner's assessment of the level of disability at the moment of the examination.

(b) When evaluating the level of disability from a mental disorder, the rating agency will consider the extent of social impairment, but shall not assign an evaluation solely on the basis of social impairment.

(c) Delirium, dementia, and amnestic and other cognitive disorders shall be evaluated under the general rating formula for mental disorders; neurologic deficits or other impairments stemming from the same etiology (e.g., a head injury) shall be evaluated separately and combined with the evaluation for delirium, dementia, or amnestic or other cognitive disorder (see § 4.25).

(d) When a single disability has been diagnosed both as a physical condition and as a mental disorder, the rating agency shall evaluate it using a diagnostic code which represents the dominant (more disabling) aspect of the condition (see § 4.14).

[53 FR 22, Jan. 4, 1988; 61 FR 52695, 52700, Oct. 8, 1996]
§ 4.127 Mental retardation and personality disorders.
Mental retardation and personality disorders are not diseases or injuries for compensation purposes, and, except as provided in § 3.310(a) of this chapter, disability resulting from them may not be service-connected. However, disability resulting from a mental disorder that is superimposed upon mental retardation or a personality disorder may be service-connected.

(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 61 FR 52695, 52700, Oct. 8, 1996, which revised this section, became effective Nov. 7, 1996.]

§ 4.128 Convalescence ratings following extended hospitalization.
If a mental disorder has been assigned a total evaluation due to a continuous period of hospitalization lasting six months or more, the rating agency shall continue the total evaluation indefinitely and schedule a mandatory examination six months after the veteran is discharged or released to nonbed care. A change in evaluation based on that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter.

(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 61 FR 52695, 52700, Oct. 8, 1996, which revised this section, became effective Nov. 7, 1996.]

§ 4.129 Mental disorders due to traumatic stress.
When a mental disorder that develops in service as a result of a highly stressful event is severe enough to bring about the veteran's release from active military service, the rating agency shall assign an evaluation of not less than 50 percent and schedule an examination within the six month period following the veteran's discharge to determine whether a change in evaluation is warranted.

(38 U.S.C. 1155)
[EFFECTIVE DATE NOTE: 61 FR 52695, 52700, Oct. 8, 1996, which revised this section, became effective Nov. 7, 1996.]

§ 4.130 Schedule of ratings -- mental disorders.
The nomenclature employed in this portion of the rating schedule is based upon the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, of the American Psychiatric Association (DSM-IV). Rating agencies must be thoroughly familiar with this

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manual to properly implement the directives in § 4.125 through § 4.129 and to apply the
general rating formula for mental disorders in § 4.130. The schedule for rating for mental
disorders is set forth as follows:

<table>
<thead>
<tr>
<th>Rating</th>
<th>Schizophrenia and Other Psychotic Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>9201</td>
<td>Schizophrenia, disorganized type</td>
</tr>
<tr>
<td>9202</td>
<td>Schizophrenia, catatonic type</td>
</tr>
<tr>
<td>9203</td>
<td>Schizophrenia, paranoid type</td>
</tr>
<tr>
<td>9204</td>
<td>Schizophrenia, undifferentiated type</td>
</tr>
<tr>
<td>9205</td>
<td>Schizophrenia, residual type; other and unspecified types</td>
</tr>
<tr>
<td>9208</td>
<td>Delusional disorder</td>
</tr>
<tr>
<td>9210</td>
<td>Psychotic disorder, not otherwise specified (atypical psychosis)</td>
</tr>
<tr>
<td>9211</td>
<td>Schizoaffective disorder</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
<th>Delirium, Dementia, and Amnestic and Other Cognitive Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>9300</td>
<td>Delirium</td>
</tr>
<tr>
<td>9301</td>
<td>Dementia due to infection (HIV infection, syphilis, or other systemic or intracranial infections)</td>
</tr>
<tr>
<td>9304</td>
<td>Dementia due to head trauma</td>
</tr>
<tr>
<td>9305</td>
<td>Vascular dementia</td>
</tr>
<tr>
<td>9310</td>
<td>Dementia of unknown etiology</td>
</tr>
<tr>
<td>9312</td>
<td>Dementia of the Alzheimer's type</td>
</tr>
<tr>
<td>9326</td>
<td>Dementia due to other neurologic or general medical conditions (endocrine disorders, metabolic disorders, Pick's disease, brain tumors, etc.) or that are substance-induced (drugs, alcohol, poisons)</td>
</tr>
<tr>
<td>9327</td>
<td>Organic mental disorder, other (including personality change due to a general medical condition)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
<th>Anxiety Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>9400</td>
<td>Generalized anxiety disorder</td>
</tr>
<tr>
<td>9403</td>
<td>Specific (simple) phobia; social phobia</td>
</tr>
<tr>
<td>9404</td>
<td>Obsessive compulsive disorder</td>
</tr>
<tr>
<td>9410</td>
<td>Other and unspecified neurosis</td>
</tr>
<tr>
<td>9411</td>
<td>Post-traumatic stress disorder</td>
</tr>
<tr>
<td>9412</td>
<td>Panic disorder and/r agoraphobia</td>
</tr>
<tr>
<td>9413</td>
<td>Anxiety disorder, not otherwise specified</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
<th>Dissociative Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>9416</td>
<td>Dissociative amnesia; dissociative fugue; dissociative identity disorder (multiple personality disorder)</td>
</tr>
<tr>
<td>9417</td>
<td>Depersonalization disorder</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
<th>Somatoform Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>9421</td>
<td>Somatization disorder</td>
</tr>
<tr>
<td>9422</td>
<td>Pain disorder</td>
</tr>
<tr>
<td>9423</td>
<td>Undifferentiated somatoform disorder</td>
</tr>
<tr>
<td>9424</td>
<td>Conversion disorder</td>
</tr>
<tr>
<td>9425</td>
<td>Hypochondriasis</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rating</th>
<th>Mood Disorders</th>
</tr>
</thead>
<tbody>
<tr>
<td>9431</td>
<td>Cyclothymic disorder</td>
</tr>
<tr>
<td>9432</td>
<td>Bipolar disorder</td>
</tr>
<tr>
<td>9433</td>
<td>Dysthymic disorder</td>
</tr>
</tbody>
</table>
9434 Major depressive disorder
9435 Mood disorder, not otherwise specified

Chronic Adjustment Disorder

9440 Chronic adjustment disorder
General Rating Formula for Mental Disorders:
Total occupational and social impairment, due to such symptoms as:
gross impairment in thought processes or communication; persistent
delusions or hallucinations; grossly inappropriate behavior;
persistent danger of hurting self or others; intermittent inability
to perform activities of daily living (including maintenance of
minimal personal hygiene); disorientation to time or place; memory
loss for names of close relatives, own occupation, or own name
Occupational and social impairment, with deficiencies in most areas,
such as work, school, family relations, judgment, thinking, or mood,
due to such symptoms as: suicidal ideation; obsessional rituals
which interfere with routine activities; speech intermittently illogical,
obscure, or irrelevant; near-continuous panic or depression
affecting the ability to function independently, appropriately and
effectively;
impaired impulse control (such as unprovoked irritability with
periods of violence); spatial disorientation; neglect of personal
appearance and hygiene; difficulty in adapting to stressful
circumstances (including work or a worklike setting); inability to
establish and maintain effective relationships
Occupational and social impairment with reduced reliability and
productivity due to such symptoms as: flattened affect;
circumstantial, circumlocutory, or stereotyped speech; panic attacks
more than once a week; difficulty in understanding complex commands;
impairment of short- and long-term memory (e.g., retention of only
highly learned material, forgetting to complete tasks); impaired
judgment; impaired abstract thinking; disturbances of motivation and
mood; difficulty in establishing and maintaining effective work and
social relationships
Occupational and social impairment with occasional decrease in work
efficiency and intermittent periods of inability to perform
occupational tasks (although generally functioning satisfactorily,
with routine behavior, self-care, and conversation normal), due to
such symptoms as: depressed mood, anxiety, suspiciousness, panic
attacks (weekly or less often), chronic sleep impairment, mild
memory loss (such as forgetting names, directions, recent events)
Occupational and social impairment due to mild or transient symptoms
which decrease work efficiency and ability to perform occupational
tasks only during periods of significant stress, or; symptoms
controlled by continuous medication
A mental condition has been formally diagnosed, but symptoms are not
severe enough either to interfere with occupational and social
functioning or to require continuous medication

Eating Disorders

9520 Anorexia nervosa
9521 Bulimia nervosa
Rating Formula for Eating Disorders:
Self-induced weight loss to less than 80 percent of expected minimum
weight, with incapacitating episodes of at least six weeks total
duration per year, and requiring hospitalization more than twice a
year for parenteral nutrition or tube feeding
Self-induced weight loss to less than 85 percent of expected minimum

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
Self-induced weight loss to less than 85 percent of expected minimum weight with incapacitating episodes of more than two but less than six weeks total duration per year

Binge eating followed by self-induced vomiting or other measures to prevent weight gain, or resistance to weight gain even when below expected minimum weight, with diagnosis of an eating disorder and incapacitating episodes of up to two weeks total duration per year

Binge eating followed by self-induced vomiting or other measures to prevent weight gain, or resistance to weight gain even when below expected minimum weight, with diagnosis of an eating disorder but without incapacitating episodes

Note: An incapacitating episode is a period during which bed rest and treatment by a physician are required.

[53 FR 23, Jan. 4, 1988; redesignated and revised at 61 FR 52675, 52700, Oct. 8, 1996]

(38 U.S.C. 1155)

[EFFECTIVE DATE NOTE: 61 FR 52675, 52700, Oct. 8, 1996, which redesignated and revised this section, became effective Nov. 7, 1996.]

[CROSS REFERENCE: This section was formerly § 4.132.]
DENTAL AND ORAL CONDITIONS

§ 4.149 [Reserved]
§ 4.150 Schedule of ratings -- dental and oral conditions.

APPENDIX A TO PART 4 -- TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946
APPENDIX B TO PART 4 -- NUMERICAL INDEX OF DISABILITIES
APPENDIX C TO PART 4 -- ALPHABETICAL INDEX OF DISABILITIES

§ 4.149 [Reserved]
§ 4.150 Schedule of ratings -- dental and oral conditions.

<table>
<thead>
<tr>
<th>Rating</th>
<th>Maxilla or mandible, chronic osteomyelitis or osteoradionecrosis of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>9900</td>
<td>Rate as osteomyelitis, chronic under diagnostic code 5000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate</th>
<th>as osteomyelitis, chronic under diagnostic code 5000</th>
</tr>
</thead>
<tbody>
<tr>
<td>9901</td>
<td>Mandible, loss of, complete, between angles</td>
</tr>
<tr>
<td>9902</td>
<td>Mandible, loss of approximately one-half:</td>
</tr>
<tr>
<td></td>
<td>Involving temporomandibular articulation</td>
</tr>
<tr>
<td>9903</td>
<td>Mandible, nonunion of:</td>
</tr>
<tr>
<td></td>
<td>Severe</td>
</tr>
<tr>
<td></td>
<td>Moderate</td>
</tr>
<tr>
<td></td>
<td>Note -- Dependent upon degree of motion and relative loss of masticatory function</td>
</tr>
<tr>
<td>9904</td>
<td>Mandible, malunion of:</td>
</tr>
<tr>
<td></td>
<td>Severe displacement</td>
</tr>
<tr>
<td></td>
<td>Moderate displacement</td>
</tr>
<tr>
<td></td>
<td>Slight displacement</td>
</tr>
<tr>
<td></td>
<td>Note -- Dependent upon degree of motion and relative loss of masticatory function</td>
</tr>
</tbody>
</table>

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### 9905 Temporomandibular articulation, limited

- **Inter-incisal range:**
  - 0 to 10 mm: 40
  - 11 to 20 mm: 30
  - 21 to 30 mm: 20
  - 31 to 40 mm: 10

- **Range of lateral excursion:**
  - 0 to 4 mm: 10

Note -- Ratings for limited inter-incisal movement shall not be combined with ratings for limited lateral excursion.

### 9906 Ramus, loss of whole or part of:

- **Involving loss of temporomandibular articulation:**
  - Bilateral: 50
  - Unilateral: 30

- **Not involving loss of temporomandibular articulation:**
  - Bilateral: 30
  - Unilateral: 20

### 9907 Ramus, loss of less than one-half the substance of, not involving loss of continuity:

- Bilateral: 20
- Unilateral: 10

### 9908 Condyloid process, loss of, one or both sides: 30

### 9909 Coronoid process, loss of:

- Bilateral: 20
- Unilateral: 10

### 9911 Hard palate, loss of half or more:

- Not replaceable by prosthesis: 30
- Replaceable by prosthesis: 0

### 9912 Hard palate, loss of less than half of:

- Not replaceable by prosthesis: 20
- Replaceable by prosthesis: 0

### 9913 Teeth, loss of, due to loss of substance of body of maxilla or mandible without loss of continuity:

Where the lost masticatory surface cannot be restored by suitable prosthesis:

- Loss of all teeth: 40
- Loss of all upper teeth: 30
- Loss of all lower teeth: 30
- All upper and lower posterior teeth missing: 20
- All upper and lower anterior teeth missing: 20
- All upper anterior teeth missing: 10
- All lower anterior teeth missing: 10
- All upper and lower teeth on one side missing: 10

Where the loss of masticatory surface can be restored by suitable prosthesis:

Note -- These ratings apply only to bone loss through trauma or disease such as osteomyelitis, and not to the loss of the alveolar process as a result of periodontal disease, since such loss is not considered disabling.

### 9914 Maxilla, loss of more than half:

- Not replaceable by prosthesis: 100
- Replaceable by prosthesis: 50

### 9915 Maxilla, loss of half or less:

- **Loss of 25 to 50 percent:**
  - Not replaceable by prosthesis: 40
  - Replaceable by prosthesis: 30

- **Loss of less than 25 percent:**
  - Not replaceable by prosthesis: 20
<table>
<thead>
<tr>
<th>Replaceable by prosthesis</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>9916 Maxilla, malunion or nonunion of:</td>
<td></td>
</tr>
<tr>
<td>Severe displacement</td>
<td>30</td>
</tr>
<tr>
<td>Moderate displacement</td>
<td>10</td>
</tr>
<tr>
<td>Slight displacement</td>
<td>0</td>
</tr>
</tbody>
</table>

APPENDIX A TO PART 4 -- TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

Appendix A to Part 4 -- Table of Amendments and Effective Dates Since 1946

Sec. 4.16    Last sentence; March 1, 1963.

4.17    October 7, 1948.

4.17a    March 1, 1963.

4.29    Introductory portion preceding paragraph (a); March 1, 1963.

Paragraph (a) "first day of continuous hospitalization"; April 8, 1959.

Paragraph (a) "terminated last day of month"; December 1, 1962.

Paragraph (a) penultimate sentence; November 13, 1970.

Paragraph (b); April 8, 1959.

Paragraph (c); August 16, 1948.

Paragraph (d); August 16, 1948.

Paragraph (e); March 1, 1963.

Paragraph (f); August 9, 1976.

Note: Application of this section to psychoneurotic and psychophysiological disorders effective October 1, 1961.

4.30    Introductory portion of paragraph (a) preceding subparagraph (1); July 6, 1950.

Paragraph (a)(1); June 9, 1952.

Paragraph (a)(2); June 9, 1952.

Paragraph (a)(3); June 9, 1952. Effective as to outpatient treatment March 10, 1976.

Paragraph (b)(1); March 1, 1963.

Paragraph (b)(2); August 9, 1976.

4.55    Paragraph (b) first sentence; March 1, 1963.

4.63    June 17, 1948.

4.64    October 1, 1956.

4.71a    Diagnostic Code 5000 -- 60 percent; February 1, 1962.
Diagnostic Code 5000 Note (2):
First three sentences; July 10, 1956.
Last sentence; July 6, 1950.
Diagnostic Code 5002 -- 100 percent, 60 percent, 40 percent, 20 percent; March 1, 1963.
Diagnostic Code 5003; July 6, 1950.
Diagnostic Code 5012 -- Note; March 10, 1976.
In sentence following DC 5024: "except gout which will be rated under 5002"; March 1, 1963.
Diagnostic Code 5051;
Diagnostic Code 5052;
Diagnostic Code 5053;
Diagnostic Code 5054; September 9, 1975.
Diagnostic Code 5055; September 9, 1975.
Diagnostic Code 5056;
Diagnostic Code 5164 -- 60 percent; June 9, 1952.
Diagnostic Code 5172; July 6, 1950.
Diagnostic Code 5173; June 9, 1952.
Diagnostic Code 5255 "or hip"; July 6, 1950.
Diagnostic Code 5297 -- (Removal of one rib) "or resection of 2 or more"; August 23, 1948.
Diagnostic Code 5297 -- Note (2): Reference to lobectomy; pneumonectomy and graduated ratings; February 1, 1962.
Diagnostic Code 5298; August 23, 1948.

4.73 Diagnostic Code 5324; February 1, 1962.
Diagnostic Code 5327; March 10, 1976.
Diagnostic Code 5328; March 10, 1976.

4.78 Last sentence; December 1, 1963.

4.84a Diagnostic Code 6029 -- Note; August 23, 1948.
Diagnostic Code 6035; September 9, 1975.
Diagnostic Code 6076 -- 60%: Vision 1 eye 15/200 and other eye 20/100; August 23, 1948.
Diagnostic Code 6080 -- Note -- "as to 38 U.S.C. 1114(L)"; July 6, 1950.
Diagnostic Code 6081 -- Words "unilateral", "minimal" and all of Note; March 10, 1976.

4.84b Removed-December 18, 1987 (text redesignated § 4.871, December 18, 1987)


4.87 Tables VI and VII replaced by new Tables VI VIa and VII December 18, 1987.

4.87a Diagnostic Codes 6277 through 6297; March 23, 1956; removed December 18, 1987. (Text from § 4.84b redesignated § 4.87a, December 18, 1987).

4.88a Diagnostic Code 6304 -- Notes (1) and (2); August 23, 1948.

Diagnostic Code 6309; March 1, 1963.

Diagnostic Code 6350; 80% Evaluation and Criterion for 60% and 30% Evaluations; March 10, 1976. Other Evaluations and Note; March 1, 1963.

4.89 Ratings for nonpulmonary TB; December 1, 1949.

4.97 Diagnostic Code 6600 -- 100% Evaluations and Criteria for 60%; September 9, 1975.

Diagnostic Code 6602 -- Criteria for all Evaluations and Note; September 9, 1975.

Diagnostic Code 6603; September 9, 1975.

Second note following Diagnostic Code 6724; December 1, 1949.


Diagnostic Code 6819 -- Note; March 10, 1976.

Diagnostic Code 6821 -- Evaluations and Note; August 23, 1948.

4.104 Diagnostic Code 7000 -- 30 percent; July 6, 1950.

Diagnostic Code 7000 -- 100 percent inactive "with signs of congestive failure upon any exertion beyond rest in bed" revoked;

Diagnostic Code 7005 -- 80 percent revoked;

Diagnostic Code 7007 -- 80 percent revoked;

Diagnostic Code 7015 -- 100 percent Evaluation. Criteria for All Evaluations and Notes (1) and (2); September 9, 1975.

Diagnostic Code 7016; September 9, 1975.

Diagnostic Code 7017;
Diagnostic Code 7100 -- 20 percent; July 6, 1950.
Diagnostic Code 7101 "or more"; September 1, 1960.
Diagnostic Code 7101 -- Note (2); September 9, 1975.
Diagnostic Code 7110 -- Criteria for 100 percent, Note and 60 percent and 20 percent Evaluations; September 9, 1975.
Diagnostic Code 7111 -- Note; September 9, 1975.
Diagnostic Codes 7114, 7115, 7116, and Note; June 9, 1952.
Diagnostic Code 7117 and Note; June 9, 1952.
Note following Diagnostic Code 7120; July 6, 1950.
Diagnostic Code 7121 -- 100 percent Criterion and Evaluation and 60 percent Criterion; March 10, 1976. Criteria for 30 percent and 10 percent and Note; July 6, 1950.
Last sentence of Note following Diagnostic Code 7122; July 6, 1950.
4.114 Diagnostic Codes 7304 and 7305 -- Evaluations; November 1, 1962.
Diagnostic Code 7308 -- Evaluations; April 8, 1959.
Diagnostic Code 7312 -- 70% Evaluation and 50% Evaluation and Criterion; March 10, 1976.
Diagnostic Code 7313 -- 20% Evaluation; March 10, 1976.
Diagnostic Code 7319 -- Evaluations; November 1, 1962.
Diagnostic Code 7321 -- Evaluations and Note; July 6, 1950.
Diagnostic Code 7328 -- Evaluations and Note; November 1, 1962.
Diagnostic Code 7329 -- Evaluations and Note; November 1, 1962.
Diagnostic Code 7330 -- 60% Evaluation; November 1, 1962.
Diagnostic Code 7332 -- 60% Evaluation; November 1, 1962.
Diagnostic Code 7334 -- 50% and 30% Evaluations; July 6, 1950.
Diagnostic Code 7334 -- 10% Evaluation; November 1, 1962.
Diagnostic Code 7339 -- Criterion for 20% Evaluation; March 10, 1976.
Diagnostic Code 7343 -- Note; March 10, 1976.
Diagnostic Code 7345 -- 100%, 60% and 30% Evaluations; August 23, 1948.
Diagnostic Code 7345 -- 10% Evaluation; February 17, 1955.
Diagnostic Code 7345 -- 10% Eva Evaluations; March 10, 1976.
Diagnostic Code 7524 -- Note; July 6, 1950.
Diagnostic Code 7528 -- Note; March 10, 1976.
Diagnostic Code 7530; September 9, 1975.
Diagnostic Code 7531; September 9, 1975.

4.116a Diagnostic Code 7627 -- Note; March 10, 1976.

Diagnostic Code 7714; September 9, 1975.

4.118 Diagnostic Code 7801 -- Note (2); July 6, 1950.
Diagnostic Code 7804 -- Note; July 6, 1950.

4.119 Diagnostic Code 7900 -- 10% Evaluation; and Notes (2) and (3); August 13, 1981.
Diagnostic Code 7902 -- 20% Evaluation; August 13, 1981.
Diagnostic Code 7903 -- 10% Evaluation; August 13, 1981.
Diagnostic Code 7905 -- 10% Evaluation; August 13, 1981.
Diagnostic Code 7907 -- 60% Evaluation; August 13, 1981.
Diagnostic Code 7909 -- 40% and 20% Evaluation; August 13, 1981.
Diagnostic Code 7911 -- Evaluations and Note; March 1, 1963; 40% and 20% Evaluations; August 13, 1981.
Diagnostic Code 7913 -- Note; September 9, 1975.
Diagnostic Code 7914 -- Note; March 10, 1976.

4.122 October 1, 1961.

4.124a Diagnostic Code 8002, Note;
Diagnostic Code 8021, Note;
Diagnostic Code 8045; October 1, 1961.
Diagnostic Code 8046; October 1, 1961.
Diagnostic Code 8100 -- Evaluations; June 9, 1953.
Diagnostic Codes 8910 through 8914; October 1, 1961.
Diagnostic Codes 8910 through 8914 General Rating Formula -- Criteria and Evaluations; September 9, 1975.

4.125- All Diagnostic Codes under Mental Disorders; October 1, 1961, except
4.132 as to evaluation for Diagnostic Codes 9500 through 9511; September 9, 1975.

## APPENDIX B TO PART 4 -- NUMERICAL INDEX OF DISABILITIES

Appendix B to Part 4 -- Numerical Index of Disabilities

<table>
<thead>
<tr>
<th>Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5000</td>
<td>Osteomyelitis, acute, subacute, or chronic.</td>
</tr>
<tr>
<td>5001</td>
<td>Bones and Joints, tuberculosis of.</td>
</tr>
<tr>
<td>5002</td>
<td>Arthritis, rheumatoid (atrophic).</td>
</tr>
<tr>
<td>5003</td>
<td>Arthritis, degenerative, hypertrophic, or osteoarthritis.</td>
</tr>
<tr>
<td>5004</td>
<td>Arthritis, gonorrheal.</td>
</tr>
<tr>
<td>5005</td>
<td>Arthritis, pneumococcic.</td>
</tr>
<tr>
<td>5006</td>
<td>Arthritis, typhoid.</td>
</tr>
<tr>
<td>5007</td>
<td>Arthritis, syphilitic.</td>
</tr>
<tr>
<td>5008</td>
<td>Arthritis, streptococcic.</td>
</tr>
<tr>
<td>5009</td>
<td>Arthritis, other types.</td>
</tr>
<tr>
<td>5010</td>
<td>Arthritis, due to trauma.</td>
</tr>
<tr>
<td>5011</td>
<td>Bones, caisson disease of.</td>
</tr>
<tr>
<td>5012</td>
<td>Bones, new growths of, malignant.</td>
</tr>
<tr>
<td>5013</td>
<td>Osteoporosis, with joint manifestations.</td>
</tr>
<tr>
<td>5014</td>
<td>Osteomalacia.</td>
</tr>
<tr>
<td>5015</td>
<td>Bones, new growths of, benign.</td>
</tr>
<tr>
<td>5016</td>
<td>Osteitis deformans.</td>
</tr>
<tr>
<td>5017</td>
<td>Gout.</td>
</tr>
<tr>
<td>5018</td>
<td>Hydrarthrosis, intermittent.</td>
</tr>
<tr>
<td>5019</td>
<td>Bursitis.</td>
</tr>
<tr>
<td>5020</td>
<td>Synovitis.</td>
</tr>
<tr>
<td>5021</td>
<td>Myositis.</td>
</tr>
<tr>
<td>5022</td>
<td>Periostitis.</td>
</tr>
<tr>
<td>5023</td>
<td>Myositis ossificans.</td>
</tr>
</tbody>
</table>
5024  Tenosynovitis.

COMBINATIONS OF DISABILITIES

5100  Anatomical loss of both hands and both feet.
5101  Loss of use of both hands and both feet.
5102  Anatomical loss of both hands and one foot.
5103  Anatomical loss of both feet and one hand.
5104  Loss of use of both hands and one foot.
5105  Loss of use of both feet and one hand.
5106  Anatomical loss of both hands.
5107  Anatomical loss of both feet.
5108  Anatomical loss of one hand and one foot.
5109  Loss of use of both hands.
5110  Loss of use of both feet.
5111  Loss of use of one hand and one foot.

AMPUTATIONS; UPPER EXTREMITY

Arm, amputation of:
5120  Disarticulation.
5121  Above insertion of deltoid.
5122  Below insertion of deltoid.

Forearm, amputation of:
5123  Above insertion of pronator teres.
5124  Below insertion of pronator teres.
5125  Hand, loss of use of.
5126  Five digits of one hand, amputation of:

Four digits of one hand, amputation of:
Thumb, index, middle and ring.
Thumb, index, middle and little.
Thumb, index, ring and little.
Thumb, middle, ring and little.
Index, middle, ring and little.

Three digits of one hand, amputation of:

Thumb, index and middle.
Thumb, index and ring.
Thumb, index and little.
Thumb, middle and ring.
Thumb, middle and little.
Thumb, ring and little.
Index, middle and ring.
Index, middle and little.
Index, ring and little.
Middle, ring and little.

Two digits of one hand, amputation of:

Thumb and index.
Thumb and middle.
Thumb and ring.
Thumb and little.
Index and middle.
Index and ring.
Index and little.
Middle and ring.
Middle and little.
Ring and little.
Thumb, amputation of.
Index finger, amputation of.
Middle finger, amputation of.
Ring finger, amputation of.
Little finger, amputation of.

---

**AMPUTATIONS: LOWER EXTREMITY**

---

Thigh, amputation of:

5160 Disarticulation.
5161 Upper third.
5162 Middle or lower thirds.

Leg, amputation of:

5163 With defective stump.
5164 With loss of natural knee action.
5165 At a lower level.
5166 Forefoot, amputation proximal to metatarsal bones.
5167 Foot, loss of use of.
5170 Toes, all, amputation of, without metatarsal loss.
5171 Toe, great, amputation of.
5172 Toe, other, amputation of.
5173 Toes, three or more, amputation of, not including great toe.

---

**THE SHOULDER AND ARM**

---

5200 Scapulohumeral articulation, ankylosis of.
5201 Arm, limitation of motion of.
5202 Humerus, other impairment of.
5203 Clavicle or scapula, impairment of.

---

**THE ELBOW AND FOREARM**

---

5205 Elbow, ankylosis of.
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5206</td>
<td>Forearm, limitation of flexion of.</td>
</tr>
<tr>
<td>5207</td>
<td>Forearm, limitation of extension of</td>
</tr>
<tr>
<td>5208</td>
<td>Forearm, flexion limited to 100[degrees- and extension to 45[degrees-.</td>
</tr>
<tr>
<td>5209</td>
<td>Elbow, other impairment of.</td>
</tr>
<tr>
<td>5210</td>
<td>Radius and ulna, nonunion of, with flail false joint.</td>
</tr>
<tr>
<td>5211</td>
<td>Ulna, impairment of.</td>
</tr>
<tr>
<td>5212</td>
<td>Radius, impairment of.</td>
</tr>
<tr>
<td>5213</td>
<td>Supination and pronation, impairment of.</td>
</tr>
<tr>
<td></td>
<td>-----------------------------------------------</td>
</tr>
</tbody>
</table>

THE WRIST AND HAND

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5214</td>
<td>Wrist, ankylosis.</td>
</tr>
<tr>
<td>5215</td>
<td>Wrist, limitation of motion of.</td>
</tr>
<tr>
<td>5216</td>
<td>Five digits of one hand, unfavorable ankylosis of.</td>
</tr>
<tr>
<td>5217</td>
<td>Four digits of one hand, unfavorable ankylosis of.</td>
</tr>
<tr>
<td>5218</td>
<td>Three digits of one hand, unfavorable ankylosis of.</td>
</tr>
<tr>
<td>5219</td>
<td>Two digits of one hand, unfavorable ankylosis of.</td>
</tr>
<tr>
<td>5220</td>
<td>of.</td>
</tr>
<tr>
<td>5262</td>
<td>Tibia and fibula, impairment of.</td>
</tr>
<tr>
<td>5263</td>
<td>Genu recurvatum.</td>
</tr>
</tbody>
</table>

THE ANKLE

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5270</td>
<td>Ankle, ankylosis of.</td>
</tr>
<tr>
<td>5271</td>
<td>Ankle, limited motion of.</td>
</tr>
<tr>
<td>5272</td>
<td>Subastragalar or tarsal joint, ankylosis of.</td>
</tr>
<tr>
<td>5273</td>
<td>Os calcis or astragalus, malunion of.</td>
</tr>
<tr>
<td>5274</td>
<td>Astragalectomy.</td>
</tr>
</tbody>
</table>
SHORTENING OF THE LOWER EXTREMITY

5275 Bones, of the lower extremity, shortening of.

THE FOOT

5276 Flatfoot, acquired.
5277 Weak foot, bilateral.
5278 Claw foot (pes cavus), acquired.
5279 Metatarsalgia, anterior (Morton's disease).
5280 Hallux valgus.
5281 Hallux rigidus.
5282 Hammer toe.
5283 Tarsal, or metatarsal bones, malunion of, or nonunion of.
5284 Foot injuries, other.

THE SPINE

5285 Vertebra, fracture of, residuals.
5286 Spine, complete bony fixation (ankylosis) of.
5287 Spine, ankylosis of, cervical.
5288 Spine, ankylosis of, dorsal.
5289 Spine, ankylosis of, lumbar.
5290 Spine, limitation of motion of, cervical.
5291 Spine, limitation of motion of, dorsal.
5292 Spine, limitation of motion of, lumbar.
5293 Intervertebral disc syndrome.
Sacroiliac injury and weakness.

Lumbosacral strain.

---

THE SKULL

---

Skull, loss of part of, both inner and outer tables.

---

THE RIBS

---

Ribs, removal of.

---

THE COCCYX

---

Coccyx, removal of.

---

MUSCLE INJURIES

---

Group I -- Extrinsic muscles of shoulder girdle.

Group II -- Extrinsic muscles of shoulder girdle.

Group III -- Intrinsic muscles of shoulder girdle.

Group IV -- Intrinsic muscles of shoulder girdle.

Group V -- Flexor muscles of the elbow.

Group VI -- Extensor muscles of the elbow.

Group VII -- Muscles arising from internal condyle of humerus.

Group VIII -- Muscles arising mainly from external condyle of humerus.

Group IX -- Intrinsic muscles of the hand.

Group X -- Intrinsic muscles of the foot.
5311  Group XI -- Posterior and lateral muscles of the leg.
5312  Group XII -- Anterior muscles of the leg.
5313  Group XIII -- Posterior thigh group.
5314  Group XIV -- Anterior thigh group.
5315  Group XV -- Mesial thigh group.
5316  Group XVI -- Pelvic girdle group 1.
5317  Group XVII -- Pelvic girdle group 2.
5318  Group XVIII -- Pelvic girdle group 3.

5319  Group XIX -- Muscles of the abdominal wall.
5320  Group XX -- Spinal muscles.
5321  Group XXI -- Muscles of respiration.
5322  Group XXII -- Lateral, supra and infrahyoid group.
5323  Group XXIII -- Lateral and posterior muscles of the neck.
5324  Diaphragm, rupture of.
5325  Muscle injury, facial muscles.
5326  Muscle hernia.

-----  --------------------------------------------------------
DISEASES OF THE EYE

6000  Uveitis.
6001  Keratitis.

Scleritis.

6002

6003  Iritis.
6004  Cyclitis.
6005  C horoiditis.
6006  Retinitis.
6007  Hemorrhage, intra-ocular, recent.
6008  Retina, detachment of.
6009  Eye, injury of, unhealed.
6010  Eye, tuberculosis of.
6011  Retina, localized scars.
6012  Glaucoma, congestive or inflammatory.
6013  Glaucoma, simple, primary, noncongestive.
6014  New growths, malignant, eyeball.
6015  New growths, benign, eyeball and adnexa.
6016  Nystagmus, central.
6017  Conjunctivitis, trachomatous, chronic.
6018  Conjunctivitis, other, chronic.
6019  Ptosis, eyelids.
6020  Ectropion.
6021  Entropion.
6022  Lagophthalmos.
6023  Eyebrows, loss of.
6024  Eyelashes, loss of.
6025  Epiphora.
6026  Neuritis, optic.
6027  Cataract, traumatic.
6028  Cataract, senile, and others.
6029  Aphakia.
6030  Accommodation, paralysis of.
6031  Dacryocystitis.
6032  Eyelids, loss of portion of.
6033  Lens, crystalline, dislocation of.
6034  Pterygium.
COMBINATIONS OF DISABILITIES

6050  Blindness in both eyes having only light perception and anatomical loss of both hands and both feet.

6051  Blindness in both eyes having only light perception and loss of use of both hands and both feet.

6052  Blindness in both eyes having only light perception and anatomical loss of both hands.

6053  Blindness in both eyes having only light perception and anatomical loss of both feet.

6054  Blindness in both eyes having only light perception and anatomical loss of one hand and one foot.

6055  Blindness in both eyes having only light perception and loss of use of both hands.

6056  Blindness in both eyes having only light perception and loss of use of both feet.

6057  Blindness in both eyes having only light perception and loss of use of one hand and one foot.

6058  Blindness in both eyes having only light perception and anatomical loss of one hand.

6059  Blindness in both eyes having only light perception and anatomical loss of one foot.

6060  Blindness in both eyes having only light perception and loss of use of one hand.

6061  Blindness in both eyes having only light perception and loss of use of one foot.

6062  Blindness in both eyes having only light perception.

IMPAIRMENT OF CENTRAL VISUAL ACUITY

6063  Other blind (5/200 or less).
Other impaired (20/200 or less).
Other impaired.
Other normal.

Blindness, light perception only one eye:
Other blind (5/200 or less).
Other impaired (20/200 or less).
Other impaired.
Other normal.

Blindness, total (5/200 or less):
Both eyes.

Blindness, total one eye (5/200 or less):
Other impaired (20/200 or less).
Other impaired.
Other normal.

Blindness, partial (20/200 or less):
Both eyes.
One eye:
Other impaired.
Other normal.

Blindness, partial:
Both eyes.
One eye only.
Field vision, impairment of.
Scotoma, pathological.
Muscle function, ocular, impairment of.
Symblepharon.
Diplopia, due to limited muscle function.

---  -----------------------------------------
---------------------------
IMPAIRMENT OF AUDITORY ACUITY
---  -----------------------------------------
---------------------------
0% evaluation based on Table VII
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6101</td>
<td>10% evaluation based on Table VII</td>
</tr>
<tr>
<td>6102</td>
<td>20% evaluation based on Table VII</td>
</tr>
<tr>
<td>6103</td>
<td>30% evaluation based on Table VII</td>
</tr>
<tr>
<td>6104</td>
<td>40% evaluation based on Table VII</td>
</tr>
<tr>
<td>6105</td>
<td>50% evaluation based on Table VII</td>
</tr>
<tr>
<td>6106</td>
<td>60% evaluation based on Table VII</td>
</tr>
<tr>
<td>6107</td>
<td>70% evaluation based on Table VII</td>
</tr>
<tr>
<td>6108</td>
<td>80% evaluation based on Table VII</td>
</tr>
<tr>
<td>6109</td>
<td>90% evaluation based on Table VII</td>
</tr>
<tr>
<td>6110</td>
<td>100% evaluation based on Table VII.</td>
</tr>
</tbody>
</table>

DISEASES OF THE EAR

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6512</td>
<td>Sinusitis, frontal, chronic.</td>
</tr>
<tr>
<td>6513</td>
<td>Sinusitis, maxillary, chronic.</td>
</tr>
<tr>
<td>6514</td>
<td>Sinusitis, sphenoid, chronic.</td>
</tr>
<tr>
<td>6515</td>
<td>Laryngitis, tuberculous.</td>
</tr>
<tr>
<td>6516</td>
<td>Laryngitis, chronic.</td>
</tr>
<tr>
<td>6517</td>
<td>Larynx, injuries of, healed.</td>
</tr>
<tr>
<td>6518</td>
<td>Laryngectomy.</td>
</tr>
<tr>
<td>6519</td>
<td>Aphonia, organic.</td>
</tr>
<tr>
<td>6520</td>
<td>Larynx, stenosis of.</td>
</tr>
</tbody>
</table>

THE TRACHEA AND BRONCHI

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6600</td>
<td>Bronchitis, chronic.</td>
</tr>
<tr>
<td>6601</td>
<td>Bronchiectasis.</td>
</tr>
<tr>
<td>6602</td>
<td>Asthma, bronchial.</td>
</tr>
</tbody>
</table>
### THE LUNGS AND PLEURA

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6701</td>
<td>Tuberculosis, pulmonary, chronic, far advanced, active.</td>
</tr>
<tr>
<td>6702</td>
<td>Tuberculosis, pulmonary, chronic, moderately advanced, active.</td>
</tr>
<tr>
<td>6703</td>
<td>Tuberculosis, pulmonary, chronic, minimal, active.</td>
</tr>
<tr>
<td>6704</td>
<td>Tuberculosis, pulmonary, chronic, active, advancement unspecified.</td>
</tr>
<tr>
<td>6707</td>
<td>Tuberculosis, pulmonary, chronic, far advanced, active.</td>
</tr>
<tr>
<td>6708</td>
<td>Tuberculosis, pulmonary, chronic, moderately advanced, active.</td>
</tr>
<tr>
<td>6709</td>
<td>Tuberculosis, pulmonary, chronic, minimal, active.</td>
</tr>
<tr>
<td>6710</td>
<td>Tuberculosis, pulmonary, chronic, active, advancement unspecified.</td>
</tr>
<tr>
<td>6721</td>
<td>Tuberculosis, pulmonary, chronic, far advanced, inactive.</td>
</tr>
<tr>
<td>6722</td>
<td>Tuberculosis, pulmonary, chronic, moderately advanced, inactive.</td>
</tr>
<tr>
<td>6723</td>
<td>Tuberculosis, pulmonary, chronic, minimal, inactive.</td>
</tr>
<tr>
<td>6724</td>
<td>Tuberculosis, pulmonary, chronic, inactive, advancement unspecified.</td>
</tr>
<tr>
<td>6725</td>
<td>Tuberculosis, pulmonary, chronic, far advanced, inactive.</td>
</tr>
<tr>
<td>6726</td>
<td>Tuberculosis, pulmonary, chronic, moderately advanced, inactive.</td>
</tr>
<tr>
<td>6727</td>
<td>Tuberculosis, pulmonary, chronic, minimal, inactive.</td>
</tr>
<tr>
<td>6728</td>
<td>Tuberculosis, pulmonary, chronic, inactive, advancement unspecified.</td>
</tr>
<tr>
<td>6732</td>
<td>Pleurisy, tuberculous.</td>
</tr>
<tr>
<td>6800</td>
<td>Anthracosis.</td>
</tr>
<tr>
<td>6801</td>
<td>Silicosis.</td>
</tr>
<tr>
<td>6802</td>
<td>Pneumoconiosis, unspecified.</td>
</tr>
<tr>
<td>6803</td>
<td>Actinomycosis of lung.</td>
</tr>
<tr>
<td>6804</td>
<td>Streptotrichosis of lung.</td>
</tr>
<tr>
<td>6805</td>
<td>Blastomycosis of lung.</td>
</tr>
<tr>
<td>6806</td>
<td>Sporotrichosis of lung.</td>
</tr>
<tr>
<td>6807</td>
<td>Aspergillosis of lung.</td>
</tr>
<tr>
<td>6808</td>
<td>Mycosis of lung, unspecified.</td>
</tr>
</tbody>
</table>
6809 Lung, abscess of.
6810 Pleurisy, serofibrinous.
6811 Pleurisy, purulent (empyema).
6812 Fistula, bronchocutaneous, or bronchopleural.
6813 Lung, permanent collapse of.
6814 Pneumothorax, spontaneous.
6815 Pneumonectomy.
6816 Lobectomy.
6817 Lung, chronic passive congestion of.
6818 Pleural cavity, injuries, residuals of, including gunshot wounds.
6819 New growths, malignant, any specified part of respiratory system.
6820 New growths, benign, any specified part of respiratory system.
6821 Coccidioidomycosis.

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THE CARDIOVASCULAR SYSTEM

---

THE HEART

---

7000 Rheumatic heart disease.
7001 Endocarditis, bacterial, subacute.
7002 Pericarditis, bacterial or rheumatic, acute.
7003 Adhesions, pericardial.
7004 Syphilitic heart disease.
7005 Arteriosclerotic heart disease.
7006 Myocardium, infarction of, due to thrombosis or embolism.
7007 Hypertensive heart disease.
7008 Hyperthyroid heart disease.
7010 Auricular flutter, paroxysmal.
7011 Auricular fibrillation, paroxysmal.
7012       Auricular fibrillation, permanent.
7013       Tachycardia, paroxysmal.
7014       Sinus tachycardia.
7015       Auriculoventricular block.

THE ARTERIES AND VEINS

7100       Arteriosclerosis, general.
7101       Hypertensive vascular disease (essential arterial hypertension).
7110       Aorta or branches, aneurysm of.
7111       Artery, any large artery, aneurysm of.
7112       Artery, small aneurysmal dilatation.
7113       Arteriovenous aneurysm, traumatic.
7114       Arteriosclerosis obliterans.
7115       Thrombo-angiitis obliterans (Buerger's disease).
7116       Claudication, intermittent.
7117       Raynaud's disease.
7118       Angioneurotic edema.
7119       Erythromelalgia.
7120       Varicose veins.
7121       Phlebitis.
7122       Frozen feet, residuals of (Immersion foot).

THE DIGESTIVE SYSTEM

7200       Mouth, injuries of.
7201       Lips, injuries of.
7202       Tongue, loss of, whole or part.
7203       Esophagus, stricture of.
7204       Esophagus, spasm of (cardiospasm).
7205       Esophagus, diverticulum of, acquired.
7301       Peritoneum, adhesions of.
7304       Ulcer, gastric.
7305       Ulcer, duodenal.
7306       Ulcer, marginal (gastrojejunal).
7307       Gastritis, hypertrophic.
7308       Postgastrectomy syndromes.
7309       Stomach, stenosis of.
7310       Stomach, injury of, residuals.
7311       Liver, injury of.
7312       Liver, cirrhosis of.
7313       Liver, abscess of, residuals.
7314       Cholecystitis, chronic.
7315       Cholelithiasis, chronic.
7316       Cholangitis, chronic.
7317       Gall bladder, injury of.
7318       Gall bladder, removal of.
7319       Irritable colon syndrome (spastic colitis, mucous colitis, etc.).
7321       Amebiasis.
7322       Dysentery, bacillary.
7323       Colitis, ulcerative.
7324       Distomiasis, intestinal or hepatic.
7325       Enteritis, chronic.
7326       Enterocolitis, chronic.
7327       Diverticulitis.
7328       Intestine, small, resection of.
7329       Intestine, large, resection of.
7330       Intestine, fistula of.
7331       Peritonitis, tuberculous, active.
7332       Rectum and anus, impairment of sphincter control.
7333  Rectum and anus, stricture of.
7334  Rectum, persistent prolapse of.
7335  Ano, fistula in.
7336  Hemorrhoids, external or internal.
7337  Pruritus ani.
7338  Hernia, inguinal.
7339  Hernia, ventral.
7340  Hernia, femoral.
7341  Wounds, incised, healed, abdominal wall.
7342  Visceroptosis.
7343  New growths, malignant, any specified part of digestive system.
7344  New growths, benign, any specified part of digestive system.
7345  Hepatitis, infectious.
7346  Hernia, hiatal.

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---  -------------------------
THE GENITOURINARY SYSTEM
---  -------------------------------------------
---  -------------------------
7500  Kidney, removal of.
7501  Kidney, abscess of.
7502  Nephritis, chronic.
7503  Pyelitis.
7504  Pyelonephritis, chronic.
7505  Kidney, tuberculosis of, active.
7507  Nephrosclerosis, arteriolar.
7508  Nephrolithiasis.
7509  Hydronephrosis.$  Q
7510  Ureterolithiasis.
7511  Ureter, stricture of.
7512  Cystitis, chronic.
7513  Cystitis, interstitial (Hunner), submucous or elusive ulcer.
7514  Bladder, tuberculosis of.
7515  Bladder, calculus in.
7516  Bladder, fistula of.
7517  Bladder, injury of.
7518  Urethra, stricture of.
7519  Urethra, fistula of.
7520  Penis, removal of half or more.
7521  Penis, removal of glans.
7522  Penis, deformity, with loss of erectile power.
7523  Testis, atrophy, complete.
7524  Testis, removal of.
7525  Epididymo-orchitis (tuberculous).
7526  Prostate gland, resection or removal.
7527  Prostate gland injuries, infectious hypertrophy, postoperative residuals.
7528  New growths, malignant, any specified part of genitourinary system.
7529  New growths, benign, any specified part of genitourinary system.

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GYNECOLOGICAL CONDITIONS

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7610  Vulvovaginitis.
7611  Vaginitis.
7612  Cervicitis.
7613  Metritis.
7614  Sal pingitis.
7615  Oophoritis.
7617  Uterus and ovaries, removal of, complete.
7618  Uterus, removal of, including corpus.
7619  Ovaries, removal of.
7620  Ovaries, atrophy of both.
| 7621 | Uterus, prolapse. |
| 7622 | Uterus, displacement of. |
| 7623 | Pregnancy, surgical complications of. |
| 7624 | Fistula, rectovaginal. |
| 7625 | Fistula, urethrovaginal. |
| 7626 | Mammary glands, removal of. |
| 7627 | New growth, malignant, gynecological system, or mammary glands. |

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THE HEMIC AND LYMPHATIC SYSTEMS

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| 7700 | Anemia, pernicious. |
| 7701 | Anemia, secondary. |
| 7702 | Agranulocytosis, acute. |
| 7703 | Leukemia. |
| 7704 | Polycythemia, primary. |
| 7705 | Purpura hemorrhagica. |
| 7706 | Splenectomy. |
| 7707 | Spleen, injury of, healed. |
| 7709 | Lymphogranulomatosis (Hodgkin's disease). |
| 7710 | Adenitis, cervical, tuberculous. |
| 7711 | Adenitis, axillary, tuberculous. |
| 7712 | Adenitis, inguinal, tubercu |

| 7909 | Hypopituitarism (diabetes insipidus). |
| 7910 | Hyperadrenia (adrenogenital syndrome). |
| 7911 | Addison's disease. |
| 7912 | Pluriglandular syndromes. |
| 7913 | Diabetes mellitus. |
| 7914 | New growths, malignant, endocrine system. |
| 7914 | New growths, benign, endocrine system. |

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NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS

8000 Encephalitis, epidemic, chronic.

8002 Malignant.

8003 Benign.

8004 Paralysis agitans.

8005 Bulbar palsy.

8007 Brain, vessels, embolism of.

8008 Brain, vessels, thrombosis of.

8009 Brain, vessels, hemorrhage from.

8010 Myelitis.

8011 Poliomyelitis, anterior.

8012 Hematomyelia.

8013 Syphilis, cerebrospinal.

8014 Syphilis, meningovascular.

8015 Tabes dorsalis.

8017 Amyotrophic lateral sclerosis.

8018 Multiple sclerosis.

8019 Meningitis, cerebrospinal, epidemic.

8020 Brain, abscess of. Spinal cord, new growths:

8021 Malignant.

8022 Benign.

8023 Progressive muscular atrophy.

8024 Syringomyelia.

8025 Myasthenia gravis.

8045 Brain disease due to trauma.

8046 Cerebral arteriosclerosis.

8100 Migraine.

8103 Tic, convulsive.

8104 Paramyoclonus multiplex (convulsive state, myoclonic type).

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<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>8105</td>
<td>Chorea, Sydenham's.</td>
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<tr>
<td>8106</td>
<td>Chorea, Huntington's.</td>
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<tr>
<td>8107</td>
<td>Athetosis, acquired.</td>
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<tr>
<td>8108</td>
<td>Narcolepsy.</td>
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<td>THE CRANIAL NERVES</td>
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<tr>
<td>8205</td>
<td>Fifth (trigeminal) cranial nerve, paralysis of.</td>
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<tr>
<td>8207</td>
<td>Seventh (facial) cranial nerve, paralysis of.</td>
</tr>
<tr>
<td>8209</td>
<td>Ninth (glossopharyngeal) cranial nerve, paralysis of.</td>
</tr>
<tr>
<td>8210</td>
<td>Tenth (pneumogastric, vagus) cranial nerve, paralysis of.</td>
</tr>
<tr>
<td>8211</td>
<td>Eleventh (spinal accessory, external branch) cranial nerve, paralysis of.</td>
</tr>
<tr>
<td>8212</td>
<td>Twelfth (hypoglossal) cranial nerve, paralysis of.</td>
</tr>
<tr>
<td>8305</td>
<td>Fifth (trigeminal) cranial nerve, neuritis.</td>
</tr>
<tr>
<td>8307</td>
<td>Seventh (facial) cranial nerve, neuritis.</td>
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<td>8309</td>
<td>Ninth (glossopharyngeal) cranial nerve, neuritis.</td>
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<tr>
<td>8310</td>
<td>Tenth (pneumogastric, vagus) cranial nerve, neuritis.</td>
</tr>
<tr>
<td>8311</td>
<td>Eleventh (spinal accessory, external branch) cranial nerve, neuritis.</td>
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<tr>
<td>8312</td>
<td>Twelfth (hypoglossal) cranial nerve, neuritis.</td>
</tr>
<tr>
<td>8407</td>
<td>Seventh (facial) cranial nerve, neuralgia.</td>
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<tr>
<td>8409</td>
<td>Ninth (glossopharyngeal) cranial nerve, neuralgia.</td>
</tr>
<tr>
<td>8410</td>
<td>Tenth (pneumogastric, vagus) cranial nerve, neuralgia.</td>
</tr>
<tr>
<td>8411</td>
<td>Eleventh (spinal accessory, external branch) cranial nerve, neuralgia.</td>
</tr>
<tr>
<td>8412</td>
<td>Twelfth (hypoglossal) cranial nerve, neuralgia.</td>
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<td>PERIPHERAL NERVES; PARALYSIS</td>
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</tr>
<tr>
<td>8510</td>
<td>Upper radicular group (fifth and sixth cervicals), paralysis of.</td>
</tr>
</tbody>
</table>
8511 Middle radicular group, paralysis of.
8512 Lower radicular group, paralysis of.
8513 All radicular groups, paralysis of.
8514 The musculospiral nerve (radial nerve), paralysis of.
8515 The median nerve, paralysis of.
8516 The ulnar nerve, paralysis of.
8517 Musculocutaneous nerve, paralysis of.
8518 Circumflex nerve, paralysis of.
8519

Long thoracic nerve, paralysis of.

8520 The sciatic nerve, paralysis of.
8521 External popliteal nerve (common peroneal), paralysis of.
8522 Musculocutaneous nerve (superficial peroneal), paralysis of.
8523 Anterior tibial nerve (deep peroneal), paralysis of.
8524 Internal popliteal nerve (tibial), paralysis of.
8525 Posterior tibial nerve, paralysis of.
8526 Anterior crural nerve (femoral), paralysis of.
8527 Internal saphenous nerve, paralysis of.
8528 Obturator nerve, paralysis of.
8529 External cutaneous nerve of thigh, paralysis of.
8530 Ilio-inguinal nerve, paralysis of.

PERIPHERAL NERVES; NEURITIS

8610 Upper radicular group (fifth and sixth cervicals), neuritis.
8611 Middle radicular group, neuritis.
8612 Lower radicular group, neuritis.
8613 All radicular groups, neuritis.
The musculospiral nerve (radial nerve), neuritis.
The median nerve, neuritis.
The ulnar nerve, neuritis.
Musculocutaneous nerve, neuritis.
Circumflex nerve, neuritis.
Long thoracic nerve, neuritis.
The sciatic nerve, neuritis.
External popliteal nerve (common peroneal), neuritis.
Musculocutaneous nerve (superficial peroneal), neuritis.
Anterior tibial nerve (deep peroneal), neuritis.
Internal popliteal nerve (tibial) neuritis.
Posterior tibial nerve, neuritis.
Anterior crural nerve (femoral), neuritis.
Internal saphenous nerve, neuritis.
Obturator nerve, neuritis.
External cutaneous nerve of thigh, neuritis.
Ilio-inguinal nerve, neuritis.

PERIPHERAL NERVES; NEURALGIA

Upper radicular group (fifth and sixth cervicals), neuralgia.
Middle radicular group, neuralgia.
Lower radicular group, neuralgia.
All radicular groups, neuralgia.
The musculospiral nerve (radial nerve), neuralgia.
The median nerve, neuralgia.
The ulnar nerve, neuralgia.
Musculocutaneous nerve, neuralgia.
Circumflex nerve, neuralgia.
Long thoracic nerve, neuralgia.
The sciatic nerve, neuralgia.

External popliteal nerve (common peroneal), neuralgia.

Musculocutaneous nerve (superficial peroneal), neuralgia.

Anterior tibial nerve (deep peroneal), neuralgia.

Internal popliteal nerve (tibial), neuralgia.

Posterior tibial nerve, neuralgia.

Anterior crural nerve (femoral), neuralgia.

Internal saphenous nerve, neuralgia.

Obturator nerve, neuralgia.

External cutaneous nerve of thigh neuralgia.

Ilio-inguinal nerve, neuralgia.

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THE EPILEPSIES

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Epilepsy, grand mal.

Epilepsy, petit mal.

Jacksonian type.

Epilepsy, diencephalic.

Epilepsy, psychomotor.

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PSYCHOTIC DISORDERS

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Schizophrenic reaction, simple type.

Schizophrenic reaction, hebephrenic type.

Schizophrenic reaction, catatonic type.

Schizophrenic reaction, paranoid type.

Schizophrenic reaction, chronic undifferentiated type.

Schizophrenic reaction, other.

Manic depressive reaction.

Psychotic depressive reaction.
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9208</td>
<td>Paranoid reaction (specify).</td>
</tr>
<tr>
<td>9209</td>
<td>Involutional psychotic reaction.</td>
</tr>
<tr>
<td>9210</td>
<td>Psychotic reaction, other.</td>
</tr>
</tbody>
</table>

**ORGANIC BRAIN DISORDERS**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9300</td>
<td>Acute brain syndrome (associated with infection, trauma, circulatory disturbance, etc.).</td>
</tr>
<tr>
<td>9301</td>
<td>Chronic brain syndrome associated with central nervous system syphilis (all forms).</td>
</tr>
<tr>
<td>9302</td>
<td>Chronic brain syndrome associated with intracranial infections other than syphilis.</td>
</tr>
<tr>
<td>9303</td>
<td>Chronic brain syndrome associated with intoxication.</td>
</tr>
<tr>
<td>9304</td>
<td>Chronic brain syndrome associated with brain trauma.</td>
</tr>
<tr>
<td>9305</td>
<td>Chronic brain syndrome associated with cerebral arteriosclerosis.</td>
</tr>
<tr>
<td>9306</td>
<td>Chronic brain syndrome associated with circulatory disturbance other than cerebral arteriosclerosis.</td>
</tr>
<tr>
<td>9307</td>
<td>Chronic brain syndrome associated with convulsive disorder (idiopathic epilepsy).</td>
</tr>
<tr>
<td>9308</td>
<td>Chronic brain syndrome associated with disturbance of metabolism, growth or nutrition.</td>
</tr>
<tr>
<td>9309</td>
<td>Chronic brain syndrome associated with intracranial neoplasm.</td>
</tr>
<tr>
<td>9310</td>
<td>Chronic brain syndrome associated with diseases of unknown or uncertain cause.</td>
</tr>
<tr>
<td>9311</td>
<td>Chronic brain syndrome of unknown cause.</td>
</tr>
</tbody>
</table>

**PSYCHONEUROTIC DISORDERS**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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<tbody>
<tr>
<td>9400</td>
<td>Anxiety reaction.</td>
</tr>
<tr>
<td>9401</td>
<td>Dissociative reaction.</td>
</tr>
<tr>
<td>9402</td>
<td>Conversion reaction.</td>
</tr>
<tr>
<td>9403</td>
<td>Phobic reaction.</td>
</tr>
<tr>
<td>9404</td>
<td>Obsessive compulsive reaction.</td>
</tr>
</tbody>
</table>
9405       Depressive reaction.
9406       Psychoneurotic reaction, other.

PSYCHOPHYSIOLOGIC DISORDERS

9500       Psychophysiologic skin reaction.
9501       Psychophysiologic cardiovascular reaction.
9502       Psychophysiologic gastrointestinal reaction.

9913       Teeth, loss of, due to loss of substance of body of maxilla or
            mandible.
            [29 FR 6718, May 22, 1964, as amended at 34 FR 5064, May 11, 1969, 52FR 44122,
            Nov. 18, 1987; 53 FR 24938, July 1, 1988]
APPENDIX C TO PART 4 -- ALPHABETICAL INDEX OF DISABILITIES

Appendix C to Part 4 -- Alphabetical Index of Disabilities

<table>
<thead>
<tr>
<th>Diagnostic Code No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8020</td>
<td>Abscess: Brain</td>
</tr>
<tr>
<td>7501</td>
<td>Abscess: Kidney</td>
</tr>
<tr>
<td>7313</td>
<td>Abscess: Liver</td>
</tr>
<tr>
<td>6809</td>
<td>Abscess: Lung</td>
</tr>
<tr>
<td>6803</td>
<td>Actinomycosis, lung</td>
</tr>
<tr>
<td>7911</td>
<td>Addison's disease</td>
</tr>
<tr>
<td>7713</td>
<td>Adenitis, secondary</td>
</tr>
<tr>
<td>7902</td>
<td>Adenoma, thyroid: Nontoxic</td>
</tr>
<tr>
<td>7901</td>
<td>Adenoma, thyroid: Toxic</td>
</tr>
<tr>
<td>7003</td>
<td>Adhesions: Peri</td>
</tr>
<tr>
<td>7301</td>
<td>Agranulocytosis</td>
</tr>
<tr>
<td>7702</td>
<td>Amebiasis</td>
</tr>
<tr>
<td>7321</td>
<td>Amputation: Arm: Disarticulation</td>
</tr>
<tr>
<td>5120</td>
<td>Amputation: Arm: Above deltoid</td>
</tr>
<tr>
<td>5121</td>
<td>Amputation: Arm: Below deltoid</td>
</tr>
<tr>
<td>5103</td>
<td>Amputation: Feet, both, and hand, one</td>
</tr>
<tr>
<td>5107</td>
<td>Amputation: Feet, both</td>
</tr>
<tr>
<td></td>
<td>Finger (digit) individual:</td>
</tr>
</tbody>
</table>

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Fingers (digits) of one hand:

Five 5126
Four, thumb, index, middle, ring 5127
Four, thumb, index, middle, little 5128
Four, thumb, index, ring, little 5129
Four, thumb, middle, ring, little 5130
Four, index, middle, ring, little 5131
Three, thumb, index, middle 5132
Three, thumb, index, ring 5133
Three, thumb, index, little 5134
Three, thumb, middle, ring 5135
Three, thumb, middle, little 5136
Three, thumb, ring, little 5137
Three, index, middle, ring 5138
Three, index, middle, little 5139
Three, index, ring, little 5140
Three, middle, ring, little 5141
Two, thumb, index 5142
Two, thumb, middle 5143
Two, thumb, ring 5144
Two, thumb, little 5145
Two, index, middle 5146
Two, index, ring 5147
Two, index, little 5148
Two, middle, ring 5149

Convulsive disorder (idiopathic epilepsy)
Disturbance of metabolism, growth or nutrition

Intracranial neoplasm

Diseases of unknown or uncertain cause

Unknown cause

Psychoneurotic disorders:

Anxiety reaction

Dissociative reaction

Conversion reaction

Phobic reaction

Obsessive compulsive reaction

Depressive reaction

Psychoneurotic reaction, other

Psychophysiologic disorders:

Psychophysiologic skin reaction

Psychophysiologic cardiovascular reaction

Psychophysiologic gastrointestinal reaction

Psychophysiologic nervous system reaction

Psychophysiologic reaction, other

Psychotic disorders:

Schizophrenic reaction:

Simple type

Hebephrenic type

Catatonic type

Paranoid type

Chronic undifferentiated type

Other

Manic depressive reaction

Psychotic depressive reaction

Paranoid reaction

Involutional psychotic reaction

Psychotic reaction, other
Distomiasis, intestinal 7324
Diverticulitis, intestinal 7327
Diverticulum of esophagus 7205
Dupuytren's contracture -- see Ankylosis, fingers.
Dysentery, bacillary 7322
Ectropion 6020
Eczema 7806
Edema, angioneurotic 7118
Emboli sm, brain 8007
Emphysema (No DC; follows DC 6602).
Encephalitis 8000
Endocarditis, bacterial, subacute 7001
Enteritis 7325
Enterocolitis 7326
E n t ropion 6021
Enucleation, eye, see Blindness.
Epilepsy:
Grand mal 8910
Petit mal 8911
Jacksonian 8912
Diencephalic 8913
Psychomotor 8914
Epiphora (lacrymal duct) 6025
Erythromelalgia 7119
Eyelids, loss of portion of 6032
Immersion foot 7122
Impairment:
Auditory acuity, see Deafness.
Clavicle 5203
Elbow 5209
Eye (field vision) 6080
<table>
<thead>
<tr>
<th>Term</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eye (muscle function)</td>
<td>6090</td>
</tr>
<tr>
<td>Femur</td>
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<td>Humerus</td>
<td>5202</td>
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<tr>
<td>Knee</td>
<td>5257</td>
</tr>
<tr>
<td>Radius</td>
<td>5212</td>
</tr>
<tr>
<td>Sphincter control</td>
<td>7332</td>
</tr>
<tr>
<td>Supination and pronation</td>
<td>5213</td>
</tr>
<tr>
<td>Thigh, motion</td>
<td>5253</td>
</tr>
<tr>
<td>Tibia and fibula</td>
<td>5262</td>
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<tr>
<td>Ulna</td>
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<tr>
<td>Visual acuity, see Blindness.</td>
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<tr>
<td>Infarction of myocardium</td>
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<td>Injury:</td>
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<td>Bladder</td>
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<td>Gall bladder</td>
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<td>Eye, unhealed</td>
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<td>Foot</td>
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<td>Larynx</td>
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<td>Mouth</td>
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<td>Muscle:</td>
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<td>IX</td>
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<td>5320</td>
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<td>5322</td>
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<td>5323</td>
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<td>Pleural cavity</td>
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<td>8530</td>
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<td>Paramyoclonus multiplex</td>
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<td>Pemphigus</td>
<td>7815</td>
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<td>Penis, deformity of</td>
<td>7522</td>
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<tr>
<td>Perforation: Tympanic membrane</td>
<td>6211</td>
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<tr>
<td>Pericarditis</td>
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<td>Pes cavus</td>
<td>5278</td>
</tr>
</tbody>
</table>
Pes planus  5276
Phlebitis  7121
Pinta  7810
Plague  6307$  Q
Pleurisy:
Purulent (empyema)  6811
Sero fibrinous  6810
Pluriglandular syndrome  7912
Pneumo coniosis  6802
Pneu monectomy  6815
Pneu mothorax, spontane  6814
Poliomy elitis, anterior  8011
Polycy themia  7704
Pregnancy, surgical complications of  7623
Prolapse:
Rectum  7334
Uterus  7621
Prona tion, limitation of  5213
Pruritis, ani  7337
Psoriasis  7816
Psychiatric disorders, see Disorders, mental.
Pterygium  6034
Ptosis, eyelid  6019
Purpura, hemorrhagica  7705
Pyelitis  7503
Pyelonephritis, chronic  7504
Raynaud's disease  7117
Removal:
Auricle or deformity  6207
Cartilage, semilunar  5259
Coccyx  5298
Gall bladder  7318
Kidney 7500
Mammary glands 7626
Ovaries, both 7619
Penis, half or more 7520
Penis, glans 7521
Prostate, or resection 7526
Ribs 5297
Testis 7524
Uterus 7618
Uterus and ovaries 7617
Others, see Amputation, loss, etc.
Resection:
Intestine:
  Large 7329
  Small
Ureterolithiasis 7510
Uveitis 6000
Vaginitis 7611
$ QVaricose veins 7120
Verruga peruana 7812
Vertebra, fracture 5285
Visceroptosis 7342
Vision, impairment of, see Blindness.
Vulvovaginitis 7610
Weak foot 5277
Wound, incised, abdominal wall 7341
PART 6 -- UNITED STATES GOVERNMENT LIFE INSURANCE

AGE
PREMIUMS
POLICIES
BENEFICIARY OF UNITED STATES GOVERNMENT LIFE INSURANCE
OPTIONAL SETTLEMENT
DIVIDENDS
LOANS
CASH VALUE
INDEBTEDNESS
TOTAL PERMANENT DISABILITY BENEFITS
DEATH BENEFITS
DETERMINATION OF LIABILITY UNDER SECTIONS 302 AND 313, WORLD WAR VETERANS' ACT, 1924, SECTIONS 607 AND 602(V)(2), NATIONAL SERVICE LIFE INSURANCE ACT, 1940, AS AMENDED, AND SECTIONS 1921 AND 1957 OF TITLE 38, UNITED STATES CODE
APPEALS
AGE

§ 6.1 Misstatement of age.

§ 6.1 Misstatement of age.
If the age of the insured under a United States Government life insurance policy has been understated, the amount of the insurance payable under the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Department of Veterans Affairs at any time upon satisfactory proof.
[13 FR 7089, Nov. 27, 1948; redesignated at 61 FR 29024, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.12.]
PREMIUMS

§ 6.2 Premium rate.

§ 6.2 Premium rate.
Effective January 1, 1983, United States Government Life Insurance policies, and total disability income provisions, on a premium paying status are paid-up and no premiums are required to maintain such policies and provisions in force.

[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.13.]
§ 6.3 Incontestability of United States Government life insurance.

§ 6.3 Incontestability of United States Government life insurance.
Discharge or release of an insured from military or naval service for the reason of fraudulent enlistment shall not invalidate United States Government life insurance issued on the basis of such service unless the Secretary determines that the insured was mentally or legally incapable of entering into a contract of enlistment. In such case the United States Government life insurance so issued will be canceled as of the effective date of such insurance.


[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.45.]
BENEFICIARY OF UNITED STATES GOVERNMENT LIFE INSURANCE

§ 6.4 Proof of age, relationship and marriage.
§ 6.5 Conditional designation of beneficiary.
§ 6.6 Change of beneficiary.
§ 6.7 Claims of creditors, taxation.

§ 6.4 Proof of age, relationship and marriage.
Whenever it is necessary for a claimant to prove age, relationship or marriage, the provisions of 38 U.S.C. 103(c) and Part 3 of this chapter will be followed.

[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.55.]

§ 6.5 Conditional designation of beneficiary.
If the insured by notice in writing to the Department of Veterans Affairs during his or her lifetime has provided that a designated beneficiary shall be entitled to the proceeds of United States Government life insurance only if such beneficiary shall survive him or her for such period (not more than 30 days), as specified by the insured, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary fails to survive the specified period, payment of the proceeds of United States Government life insurance will be made as if the beneficiary had predeceased the insured.

[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.58.]

§ 6.6 Change of beneficiary.
The insured under United States Government life insurance shall have the right at any time and from time to time and without the consent or knowledge of the beneficiary to change the beneficiary. A change of beneficiary must be made by written notice to the Department of Veterans Affairs over the signature of the insured and shall not be binding on the United States unless received by the Department of Veterans Affairs. A change of beneficiary must be forwarded to the Department of Veterans Affairs by the insured or his or her agent and must contain sufficient information to identify the insured. Whenever practicable, such notices shall be given on forms prescribed by the Department of Veterans Affairs. Upon receipt by the Department of Veterans Affairs, a change of beneficiary shall be deemed effective as of the date the insured signed the written notice. The United States shall be protected in all payments made to the beneficiary last of record and before receipt of notice of a change of beneficiary, and no payments so made shall be paid again to the changed beneficiary. The insured may exercise any right or
privilege given under the provisions of a United States Government life insurance policy without the consent of the beneficiary. An original designation of a beneficiary may be made by the last will and testament, but no change of beneficiary may be made by the last will and testament. The provisions of the "beneficiary" clause in United States Government life insurance policies are hereby amended accordingly.


[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]

[CROSS REFERENCE: This section was formerly § 6.60.]

§ 6.7 Claims of creditors, taxation.
(a) Effective January 1, 1958, payments of insurance to a beneficiary under a United States Government life insurance policy shall be subject to levy for taxes due the United States by such beneficiary.

(Authority: 38 U.S.C. 5301)

(b) The provisions of 38 U.S.C. 5301(b) which entitle the United States to collect by setoff out of benefits payable to any beneficiary under a United States Government life insurance policy do not apply to dividends being held to the credit of the insured for the payment of premiums under the provisions of section 1946 of title 38 U.S.C.

(c) [Removed. See 61 FR 29024, 29025, June 7, 1996.]

(d) [Redesignated as paragraph (a). See 61 FR 29024, 29025, June 7, 1996.]


[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]

[CROSS REFERENCE: This section was formerly § 6.62.]
OPTIONAL SETTLEMENT

§ 6.8 Selection, revocation and election.
§ 6.9 Election of optional settlement by beneficiary.
§ 6.10 Options.

§ 6.8 Selection, revocation and election.
The insured under a United States Government Life Insurance policy may, upon written notice, select an optional settlement. Such optional settlement may be revoked by written notice. If the insured does not select one of the optional settlements, as set out under the provisions of the policy, the insurance shall be payable in 240 monthly installments unless the beneficiary elects in writing a different option.
[48 FR 8069, Feb. 25, 1983; redesignated and revised at 61 FR 29024, 29025, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and revised this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.64.]

§ 6.9 Election of optional settlement by beneficiary.
If the insured has selected an optional settlement then at the death of the insured the designated beneficiary may elect to receive the proceeds of insurance in installments spread over a greater period of time than that selected by the insured and in accordance with the following provisions.
(Authority: 38 U.S.C. 1952)
(a) If the insured has selected Option 1, the beneficiary may elect to receive payment under Option 2, 3, or 4.
(b) If the insured has selected Option 2 with monthly installments not in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under Option 2, or may elect to receive payment under Option 3 or 4.
(c) If the insured has selected Option 2 with monthly installments in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under Option 2, or may elect to receive payment under Option 3.
(d) If the insured has selected Option 3, and named no contingent beneficiary, the beneficiary may elect to receive payment under Option 4.
(e) If the insured has selected Option 4, the beneficiary may elect to receive payment under Option 3.
If the insured has selected settlement under Option 1, a beneficiary who has elected to receive payment under Option 2, 3, or 4 may elect to receive the commuted value of any remaining unpaid installments certain (240 less the number paid in case of Option 3, or 120 less the number paid in the case of Option 4): Provided, That where the commutation is elected under Option 3 or 4 after payment under such option has commenced, and the beneficiary survives the period certain, such beneficiary shall be entitled to the resumption of monthly installments payable for life in accordance with the monthly income option previously selected by such beneficiary. The entitlement to the resumption of monthly installments will be effective as of the monthly payment date next following.
the expiration of the period certain. Settlement under any one of the options or payment to the beneficiary of said commuted value under Option 2 or payment of said commuted value under Options 3 and 4 to the beneficiary who does not survive the period certain shall be in full and complete discharge of all liability under the contract. Any other change in the mode of settlement may, within the limitations set forth in paragraphs (a) through (e) of this section, be made by a beneficiary after payment has commenced, provided the change is made within 1 year of the original election and in those instances where Option 3 is changed to Option 1 or 2; or Option 4 is changed to Option 1, 2, or 3, satisfactory proof is submitted to establish that the beneficiary's state of health is the same as it was at time of original election. The effective date of the original election for this purpose will be the date it was delivered to the Department of Veterans Affairs. If such election was forwarded by mail, properly addressed to the Department of Veterans Affairs, the postmark date will be taken as the date of delivery. Such change will be made on the premise that the new election was made initially, and the account will be adjusted accordingly. A condition precedent to any such change will be the repayment of any amount received by the beneficiary in excess of that which would have been due had the new election been made initially.


[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]  
[CROSS REFERENCE: This section was formerly § 6.65.]

§ 6.10 Options.
Insurance will be payable in one sum only when selected by the insured during his or her lifetime or by his or her last will and testament.


[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and revised this section, became effective June 7, 1996.]  
[CROSS REFERENCE: This section was formerly § 6.68.]
DIVIDENDS

§ 6.11 How dividends are paid.
§ 6.12 Special dividends.

§ 6.11 How dividends are paid.
(a) Regular annual dividends becoming payable on or after December 31, 1958, shall be payable on the date preceding the anniversary of the policy unless the Secretary shall declare them payable on some other date.
(b) If the insured has a National Service Life Insurance policy or policies in force, dividends used to pay premiums in advance will be held to the credit of the insured, unless otherwise directed by the insured.
(c) In the event premiums on more than one policy having the same premium due date are unpaid and the dividend credit of the insured for application to payment of premiums is not sufficient to keep all policies in force, in the absence of instructions to the contrary by the insured, such dividend credit will be applied to pay premiums in such manner as will provide the maximum amount of insurance protection.
(d) Dividend credit of the insured held for payment of premiums as provided in section 1946 of title 38 U.S.C., may not be used to satisfy any indebtedness due the United States without the insured's consent. If the insured requests payment of such dividend credit, or any unused portion thereof, in cash, or requests that such credit be left to accumulate on deposit, then any indebtedness due the United States, such as described in § 6.7 will be recovered therefrom.
(e) Dividend credit of the insured held for payment of premiums or dividends left to accumulate on deposit may be applied to the payment of premiums in advance on any National Service Life Insurance policy upon written request of the insured made before default in payment of premium. Upon maturity of the policy, any unpaid dividend will be paid to the person(s) currently entitled to receive payments under the policy.
(f) [Redesignated as paragraph (e). See 61 FR 29024, 29025, June 7, 1996.]

(38 U.S.C. 1944)
[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.95.]

§ 6.12 Special dividends.
Any special U.S. Government Life Insurance dividend that may be declared shall be paid in cash. Such special dividends shall not be accepted to accumulate on deposit or as a dividend credit.

(38 U.S.C. 1944)
[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.96.]
§ 6.13 Policy loans.

§ 6.13 Policy loans.
At any time after the first policy year and upon the execution of a loan agreement satisfactory to the Secretary the United States will lend to the insured on the sole security of his/her United States Government Life Insurance policy any amount which shall not exceed 94 percent of the cash value, and any indebtedness shall be deducted from the amount advanced on such loan. The loan shall bear interest at a rate not to exceed 5 percent per annum, payable annually, and the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not void the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value, the policy shall cease and become void.


(38 U.S.C. 1944)

[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]

[CROSS REFERENCE: This section was formerly § 6.100.]
CASH VALUE

§ 6.14 Cash value; other than special endowment at age 96 plan policy.
§ 6.15 Cash value; special endowment at age 96 plan policy.
§ 6.16 Payment of cash value in monthly installments.

§ 6.14 Cash value; other than special endowment at age 96 plan policy.
Provisions for cash value shall become effective at the completion of the first policy year on any plan of United States Government Life Insurance other than the special endowment at age 96 plan policy; all values, reserves, and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3 1/2 percent per annum. The cash value shall be the reserve together with any dividend accumulations. For each month after the first policy year the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder made by the insured the United States will pay to the insured the cash value of the policy less any indebtedness. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery.

(38 U.S.C. 1944)
[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.115.]

§ 6.15 Cash value; special endowment at age 96 plan policy.
Provisions for cash value shall become effective at the completion of the first policy year; all values and net single premiums are as prescribed by the Secretary and published in VA Pamphlet 90-2A. The cash value at the end of the first policy year and at the end of any policy year thereafter shall be the reserve as set forth in the policy together with any dividend accumulations. For each month after the first policy year the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder made by the insured, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is
forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery. 

(38 U.S.C. 1944) 
[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.117.]

§ 6.16 Payment of cash value in monthly installments. 
Effective January 1, 1971, in lieu of payment of cash value in one sum, the insured may elect to receive payment in monthly installments under option 2 as set forth in the insurance contract or as a refund life income option. If the insured dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable to the designated beneficiary in one sum, unless the insured or such beneficiary has elected to continue the installments under the option selected by the insured. If no designated beneficiary survives, the present value of any remaining unpaid installments shall be paid to the estate of the insured, provided such payment would not escheat. 
[36 FR 4383, Mar. 5, 1971; redesignated and revised at 61 FR 29024, 29025, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and revised this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.117a.]
INDEBTEDNESS

§ 6.17 Collection of any indebtedness.

§ 6.17 Collection of any indebtedness.
At the maturity of a United States Government life insurance policy by total permanent disability or death, any indebtedness, unless paid off in cash, shall be liquidated by reducing the amount of each monthly installment in the proportion which the indebtedness bears to the commuted value of monthly installments as may then be payable under the policy, excluding dividend accumulations. If the policy is payable in one sum at death, any indebtedness shall be deducted from the amount payable under the policy.
[13 FR 7096, Nov. 27, 1948; redesignated at 61 FR 29024, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.119.]
TOTAL PERMANENT DISABILITY BENEFITS

§ 6.18 Other disabilities deemed to be total and permanent.
At the maturity of a United States Government life insurance policy by total permanent disability or death, any indebtedness, unless paid off in cash, shall be liquidated by reducing the amount of each monthly installment in the proportion which the indebtedness bears to the commuted value of monthly installments as may then be payable under the policy, excluding dividend accumulations. If the policy is payable in one sum at death, any indebtedness shall be deducted from the amount payable under the policy.
[13 FR 7096, Nov. 27, 1948; redesignated at 61 FR 29024, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.119.]

§ 6.18 Other disabilities deemed to be total and permanent.
(a) In addition to the conditions specified in 38 U.S.C. 1958, the following also will be deemed to be total and permanent disabilities: Organic loss of speech; permanently helpless or permanently bedridden.
(b) Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded.
[27 FR 9603, Sept. 28, 1962; redesignated and revised at 61 FR 29024, 29025, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and revised this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.122.]
DEATH BENEFITS

§ 6.19 Evidence to establish death of the insured.

§ 6.19 Evidence to establish death of the insured.
Whenever a claim is filed on account of the death of a person insured under yearly renewable term insurance or United States Government life insurance, the proof of death shall be established in accordance with the provisions of Part 3 of this chapter.

[EFFECTIVE DATE NOTE: 61 FR 29024, 29025, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.127.]
§ 6.20 Jurisdiction.

§ 6.20 Jurisdiction.
The Insurance Claims Sections are vested with exclusive jurisdiction in determining the liability of the United States and the United States Government Life Insurance Fund for waiver of payment of premiums, payment of total, total permanent disability, and death insurance benefits under United States Government life insurance and to determine the liability of the United States and the National Service Life Insurance Fund for waiver of payment of premiums due to total disability, payment of total disability insurance benefits, and death insurance benefits under National Service life insurance.

(38 U.S.C. 1944)
[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 6.191.]
§ 6.21 Guardian: definition and authority.

§ 6.21 Guardian: definition and authority.
(a) Definition. For the purpose of this section, the term guardian includes any fiduciary certified by the appropriate Veterans Service Center Manager under § 13.55 of this title to receive benefits in a fiduciary capacity for an insured or beneficiary.
(b) Authority. For the purpose of this part, a guardian of an insured or beneficiary shall have authority to: Apply for conversion of a policy or change of plan; reinstate a policy; withdraw dividends held on deposit or credit; select or change a dividend option; obtain a policy loan; cash surrender a policy; authorize a deduction from benefits or allotment from military retired pay to pay premiums; apply for and receive payment of the proceeds on a matured policy; select or change the premium payment option; apply for waiver of premiums; select or change the settlement option for beneficiaries; assign a beneficiary's interest as provided under section 1953 of title 38 U.S.C.

(38 U.S.C. 1944)

[EFFECTIVE DATE NOTE: 61 FR 29024, June 7, 1996, which redesignated this section, became effective June 7, 1996.]

[CROSS REFERENCE: This section was formerly § 6.211.]
PART 7 -- SOLDIERS' AND SAILORS' CIVIL RELIEF

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1942
SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENTS OF 1942
SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1942

§ 7.2 Certification of military service.
§ 7.3 The policy.
§ 7.4 The premium.
§ 7.5 Application.
§ 7.6 Benefits.
§ 7.7 Maturity.
§ 7.8 Beneficiary or assignee.

§ 7.2 Certification of military service.
(a) A statement over the signature of the Commanding Officer or a commissioned officer of equal or higher rank than the insured, on the insured's application, may be accepted as a certification that the insured is a person in the military service.
(b) If the insured is unavailable because of service, the application may be certified by the person who has custody of the insured's service record.
(c) If an application is submitted by a person designated by the insured or by the insured's beneficiary, the Department of Veterans Affairs will obtain from the service department evidence that the insured is a person in the military service.
[26 FR 11802, Dec. 8, 1961; redesignated and revised at 61 FR 29025, 29026, June 7, 1996]

(50 U.S.C. app. 547)
[EFFECTIVE DATE NOTE: 61 FR 29025, 29026, June 7, 1996, which redesignated and revised this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 7.20.]

§ 7.3 The policy.
(a) Any provision in a policy that may limit or eliminate a benefit other than the primary death benefit will not, because of such provision, place the policy outside the protection of the Act if it is otherwise eligible for protection.
(b) An annuity contract, if it provides payment of a substantial death benefit in the nature of life insurance, may be included within the provisions of the Act if otherwise eligible. Group insurance will not be included unless an individual and separate contract of insurance is completely released to the insured and thereafter comes within the provisions of the Act as a policy.
(c) The phrase Face amount of insurance as used in the regulations in this part will mean the amount of insurance payable as a death benefit; Provided, That any indebtedness, or any accruals (such as paid-up additions, dividend accumulations, etc.) that may be added to or taken from the amount payable as the death benefits will not be used in calculating the face amount of a policy.
(d) [Redesignated as paragraph (c). See 61 FR 29025, 29026, June 7, 1996.]
§ 7.4 The premium.
The term premium as defined under 50 U.S.C. app. 540(b) shall include membership dues and assessments in an association.
(a) The premium on a policy will be calculated on an annual basis, and if the annual premium is not stated on the policy, the insurer will make a calculation of the premiums for payment in advance and discounted at not less than 3 1/2 percent, subject to approval by the Department of Veterans Affairs.
(b) Premiums will not be guaranteed for benefits additional to the primary death benefit if, when combined with the amount of the primary death benefit, the total benefit would result in a payment in excess of $10,000 or if liability for such benefits is excluded or restricted by military service or any activity which the insured may be called upon to perform in connection with military service. In the event that premiums for the primary and additional benefits are not separable under the terms of the policy the entire policy will be guaranteed, if the policy is otherwise eligible for protection under the law.
(c) [Removed. See 61 FR 29025, 29026, June 7, 1996.]

§ 7.5 Application.
(a) The benefits of the Act are not available except upon application. The insured may designate any person, firm, or corporation to submit an application on his or her behalf. The designation must be in writing, signed by the insured and attached to the application.
(b) When an application for benefits is received by an insurer, a report thereof will be made within 30 days to the Department of Veterans Affairs Regional Office and Insurance Center at Philadelphia, Pennsylvania. The insurer may submit with the report a statement setting forth any additional information deemed necessary to the adjudication of the application, and any facts and reasoning as to why the policy should or should not be protected under the Act.
(c) [Redesignated as paragraph (b). See 61 FR 29025, 29026, June 7, 1996.]
(d) [Removed. See 61 FR 29025, 29026, June 7, 1996.]
[13 FR 7103, Nov. 27, 1948; redesignated and amended at 61 FR 29025, 29026, June 7, 1996]

§ 7.6 Benefits.
Any policy found to be entitled to protection under the provisions of the Act will not lapse or otherwise terminate or be forfeited for the nonpayment of a premium or the
nonpayment of any indebtedness or interest during the period of military service of the insured and two years after the expiration of such service. If the insured reenters military service during the two-year period following separation from such service and the policy is under the protection of the Act on the date of reentry, such reentrance shall be deemed to be a continuation of the previous military service. In such case, in the absence of written instruction from the insured to the contrary, the protection under the Act will continue during the period of military service of the insured and two years after the expiration of such service, but the guarantee will not extend for more than two years after the date when the Act ceases to be in force.

(a) For the period during which a policy is protected by the provisions of the Act, any dividends, return of premiums, or other such monetary benefits arising out of the contract or by reason thereof, will be held subject to disposal or to be applied as may be approved by the Department of Veterans Affairs.

(b) A policy will not be removed from the protection of the Act by reason of a payment made to the insurer by or on behalf of the insured, but any tender of a premium (in whole or in part) shall be applied on the indebtedness established under authority of the Act against the policy: Provided, That nothing herein shall prevent an insured from continuing payment to the insurer of premiums to cover any additional benefits (such as double indemnity, waiver of premium, etc.) where such premiums may not be included in the amount guaranteed by the Government.


[EFFECTIVE DATE NOTE: 61 FR 29025, 29026, June 7, 1996, which redesignated and amended this section, became effective June 7, 1996.]
[CROSS REFERENCE: This section was formerly § 7.27.]

§ 7.7 Maturity.

(a) The phrase maturity of a policy as a death claim or otherwise (SSCRA, as amended), will not include a termination or maturity of a policy as a disability claim, and the policy will continue under the provisions of the Act as if there had been no maturity, but the Government shall not be liable for any premiums that the insured would have been relieved of paying under any provisions for payment of premiums in the policy.

(b) Upon the expiration of the period of protection, the insurer will submit to the Department of Veterans Affairs a complete statement of the account on each policy, which will show the amount of indebtedness by reason of the premiums with interest and the credits, if any, then available and will be subject to audit and approval by the Department of Veterans Affairs. The statement of account will include the rate of interest charged on all indebtedness, the date of debit and credit entries, and such other information as may be deemed necessary in making an audit of the account.

(c) [Removed. See 61 FR 29025, 29026, June 7, 1996.]

(d) [Redesignated as paragraph (b). See 61 FR 29025, 29026, June 7, 1996.]

(e) [Removed. See 61 FR 29025, 29026, June 7, 1996.]

§ 7.8 Beneficiary or assignee.
The consent of a beneficiary, assignee, or any other person who may have a right or interest in the proceeds of the policy is not a prerequisite for placing a policy under the protection of the Act.

[13 FR 7103, Nov. 27, 1948; redesignated and revised at 61 FR 29025, 29026, June 7, 1996]
PART 8 -- NATIONAL SERVICE LIFE INSURANCE

APPLICATIONS
EFFECTIVE DATE
PREMIUMS
CALCULATION OF TIME PERIOD
REINSTATEMENT
DIVIDENDS
CASH VALUE AND POLICY LOAN
EXTENDED TERM AND PAID-UP INSURANCE
CHANGE IN PLAN
PREMIUM WAIVERS AND TOTAL DISABILITY
BENEFICIARIES
PROOF OF DEATH, AGE, OR RELATIONSHIP
AGE
EXAMINATIONS
OPTIONAL SETTLEMENTS
RENEWAL OF TERM INSURANCE
SETTLEMENT OF INSURANCE MATURING ON OR AFTER AUGUST 1, 1946
NATIONAL SERVICE LIFE INSURANCE POLICY
APPEALS
TOTAL DISABILITY FOR TWENTY YEARS OR MORE
APPLICATIONS

§ 8.0 Definitions of terms used in connection with title 38 CFR, part 8, National Service Life Insurance.

(a) What does the term "good health" mean? The term good health means that the applicant is, from clinical or other evidence, free from any condition that would tend to:
(1) Weaken normal physical or mental functions; or
(2) Shorten life.
Note to Paragraph (a): Conditions that would affect "good health" are diseases or injuries or residuals of diseases or injuries. A "residual" is a disability that remains following the original disease or injury.

(b) What does the term "good health criteria" mean? The term good health criteria means the underwriting standards that determine whether a person is in good health. "Good health criteria" are based whenever possible, as far as practicable, on general insurance usage. "Underwriting" is the process that sets the terms, conditions, and prices for an insurance policy, by rating an applicant's mortality risk.

(c) What does the term "organic loss of speech" mean? The term organic loss of speech means the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if the loss is caused by physical changes in such organs. The fact that some speech can be produced through the use of artificial appliance or other organs of the body will not impact this definition.

(d) What does the term "disease or injury traceable to the extra hazards of the military service" mean? The term disease or injury traceable to the extra hazards of the military service means a disease or injury that was either caused by or can be traced back to the performance of duty in the active military, naval, or air service.

(e) What does the term "guardian" mean? The term guardian means any representative certified by the appropriate Veterans Service Center Manager, under § 13.55 of this chapter, to receive benefits in a fiduciary capacity on behalf of the insured or the beneficiary, or to take the actions listed in § 8.32.


§ 8.1 Effective date for an insurance policy issued under section 1922(a) of title 38 U.S.C. (Service-Disabled Veterans' Insurance).

(a) What is the effective date of the policy? The effective date is the date policy coverage begins. Benefits due under the policy are payable any time after the effective date.

(b) How is the effective date established? The effective date is the date you deliver both of the following to VA:

1. A valid application.
2. A premium payment.

Note 1 to Paragraph (b): If your valid application and premium are mailed to VA, the postmark date will be the date of delivery.

Note 2 to Paragraph (b): If a postmark date is not available, the date of delivery will be the date your valid application and premium are received by VA.

(c) Can you have a different effective date? Yes, if you would like an effective date other than the date of delivery as described in paragraph (b) of this section, you may choose one of the following three options as an effective date:

1. The first day of the month in which you deliver your valid application and premium payment to VA. For example, if VA receives your application and premium payment on August 15, you may request an effective date of August 1.
2. The first day of the month following the month in which you deliver your valid application and premium payment. For example, if VA receives your application and premium payment on August 15, you may request an effective date of September 1.
3. The first day of any month up to six months prior to the month in which you deliver your valid application and premium payment. For example, if VA receives your application and premium payment on August 15, you may request an effective date of February 1 or the first day of any month following up to August 1. However, you must pay the following:
   i. The insurance reserve amount for the time period for each month starting with the requested effective date up to the first day of the month prior to the month in which you delivered your application to VA; and
   ii. The premium for the month in which you delivered your application to VA.

Note to Paragraph (c): For example, if your postmark date is August 15 and you request an effective date of February 1, you must pay the insurance reserve amount for February 1 through July 31, and also pay the August premium.


PREMIUMS

§ 8.2 Payment of premiums.
§ 8.3 Revival of insurance.
§ 8.4 Deduction of insurance premiums from compensation, retirement pay, or pension.
§ 8.5 Authorization for deduction of premiums from compensation, retirement pay, or pension.

§ 8.2 Payment of premiums.
(a) What is a premium? A premium is a payment that a policyholder is required to make for an insurance policy.
(b) How can policyholders pay premiums? Premiums can be paid by:
(1) Cash, check, or money order directly to VA.
(2) Allotment from service or retirement pay.
(3) Automatic deduction from VA benefits (pension, compensation or insurance dividends (see § 8.4)).
(4) Pre-authorized debit from a checking account.
(c) When should policyholders pay premiums? (1) Unless premiums are paid in advance, policyholders must pay premiums on the effective date shown on the policy and on the same date of each following month. This is called the "due date."
(2) Policyholders may pay premiums quarterly, semi-annually, or annually in advance.
(d) What happens if a policyholder does not pay a premium on time? (1) When a policyholder pays a premium within 31 days from the "due date," the policy remains in force. This 31-day period is called a "grace period." If the insured dies within the 31-day grace period, VA deducts the unpaid premium from the amount of insurance payable.
(2) If a policyholder pays a premium after the 31-day grace period, VA will not accept the payment and the policy lapses effective the date the premium was due; Except that VA will accept a premium paid after the 31-day grace period as a timely payment if:
(i) The policyholder pays the premium within 61 days of the due date; and
(ii) The policyholder is alive at the time the payment is mailed.
(3) When a policyholder pays the premium by mail, the postmark date is the date of payment.
(4) When a policyholder pays a premium by check or money order which is not honored and it is shown by satisfactory evidence that:

The bank did not pay the check or money order because of:
An error by the bank The policyholder has an additional 31 days
(from the date stamped on VA's notification letter) to pay the premium and any other premiums due through the current month.
An error in the check or money order (same as above).
Lack of funds The premium is considered not paid.
§ 8.3 Revival of insurance.

(a) If the sole reason death or total disability benefits under a policy of National Service life insurance cannot be granted is that the policy had lapsed, the insurance will be considered in force under premium-paying conditions on the date of death or the date of commencement of total disability if,

(1) On the date of lapse there were accrued dividends, not then payable, resulting from premiums paid since the last anniversary date of the policy and such dividends were equal to or greater in amount than the total of the monthly premiums which have become due from and including the date of lapse to the date of death or date of commencement of total disability, and/or

(2) At the end of the grace period for the unpaid premium causing lapse there were due and payable to the policyholder unpaid dividends, refundable premiums, pure insurance risk credits, other refundable credits or total disability benefit payments arising from the policyholder's U.S. Government or National Service life insurance which are equal to or greater in amount than the total of the monthly premiums which have become due from and including the date of lapse to the date of death or date of commencement of total disability.

(3) For purposes of this section amounts under paragraphs (a)(1) and (2) of this section may be combined. In that case, the amount, if any, of dividend accrued under paragraph (a)(1) of this section will first be determined and the amount available under paragraph (a)(2) of this section, if any, will be added thereto for the purpose of determining if the total amount thus available is equal to or greater than the total of monthly premiums which have become due.

(4) In determining the amount of monthly premiums which have become due under paragraphs (a)(1) and (2) of this section a shortage of 10 percent per monthly premium may be allowed for a period not to exceed 3 months.

(5) In determining the monthly premiums which have become due for adjustment purposes under paragraphs (a)(1) and (2) of this section, the premium for the monthly due date immediately preceding the date of death or date of commencement of total disability may be omitted because of the coverage provided by the allowable grace period (§ 8.2(d)) and if the conditions of paragraph (b) of this section are met, the premium for the second due date immediately preceding the date of death or date of commencement of total disability may be omitted.

(6) When a policy is deemed in force under premium-paying conditions by operation of this section, the amount of any shortage included in the calculation and the premium for any monthly due date omitted in the calculation will become a lien against the policy.

(7) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§ 8.14) and a policy loan was outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.
(8) If accrued dividends under paragraph (a)(1) of this section and/or amounts due and payable under paragraph (a)(2) of this section exist in connection with more than one policy of the same veteran and one or more policies lapsed prior to the date of death or date of commencement of total disability, the amounts available will be related first to the policy or policies on which they arose if such policy or policies are lapsed. Any amount available under paragraphs (a)(1) and (2) of this section which is not required to place in force the policy upon which it arose or which is insufficient to place in force the policy upon which it arose, may be combined with similar amounts available on any other policy whenever the total of such amounts is sufficient to place another policy in force.

(9) Where more than one policy is involved and credits are not needed or are insufficient to revive the policy on which the credits arose, the credits will be used insofar as they are sufficient to revive the policy or policies under which the most insurance is payable.

(10) No total disability income provision will be considered in force under this section unless it lapsed at the same time as the life insurance contract and both the life insurance and total disability income provision can be considered in force through the same date and benefits are payable under the total disability income provision. An exception will be a paid-in-full limited pay contract on which total disability income provision premiums are due and payable to age 65.

(11) When a total disability income provision lapsed at the same time as the life insurance, the premium for the provision will be considered separately in determining if the amounts available are equal to or in excess of the monthly premiums which have become due. In such a case if the amounts available are sufficient, both the life insurance and the provision will be revived. If the amounts are insufficient for that purpose, they will be applied to revive the policy or policies with the greatest amount payable in death cases or the policy or policies providing the greatest life insurance and total disability benefit in total disability cases.

(12) Accrued dividends and/or credits on any policy of National Service or U.S. Government life insurance held by the policyholder may be considered for the purpose of this section.

(b) If the sole reason death or total disability benefits under a policy of National Service life insurance cannot be granted is that the policy had lapsed, the insurance will be considered in force on the date of death or date of commencement of total disability if,

(1) The policyholder died or became totally disabled within 61 days of the due date of the unpaid premiums, and

(2) The policy prior to the lapse had been in force for 5 years or more. In determining in-force status under this subparagraph if the original effective date of the insurance (when necessary, include predecessor contracts involving renewal, conversion or replacement/reinstatement under 38 U.S.C. 1981) is 5 years or more earlier than the date of death or date of total disability and during the 5 years immediately preceding the date of lapse the insurance has not been lapsed at any one time in excess of 6 months, the requirement will be satisfied. When insurance is considered in force under this section the amount of the monthly premium due on the date of lapse and the following monthly premium(s) will become a lien against the policy.

(3) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§ 8.14) and a policy loan was
outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.


[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000; 65 FR 19658, Apr. 12, 2000, amended paragraphs (a)(5), (a)(7) and (b)(3), effective Apr. 12, 2000.]
[CROSS REFERENCE: This section was formerly § 8.5.]

§ 8.4 Deduction of insurance premiums from compensation, retirement pay, or pension.
The insured under a National Service life insurance policy which is not lapsed may authorize the monthly deduction of premiums from disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension that may be due and payable to him under any laws administered by the Department of Veterans Affairs in accordance with the following provisions.

(a) The authorization may be made by an insured or the insured's legal representative. If the authorization is made by the insured's legal representative, it must be in writing over the signature of the representative and forwarded to the Department of Veterans Affairs along with a copy of the document which evidences the individual's authority to act on behalf of the insured. If an insured is incompetent and has no legal representative and has a spouse to whom benefits are being paid pursuant to Part 13 of this chapter, the spouse may authorize payment of insurance premiums through the deduction system. If an insured is incompetent and has no legal representative and an institutional award has been made in his or her behalf, the authorization may be executed by the Director of the field facility in which the insured is hospitalized or receiving domiciliary care, and in appropriate cases by the chief officers of State hospitals or other institutions to whom similar awards may have been approved.

(b) The monthly disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension so due and payable must be equal to, or in excess of, the amount of the insurance premium figured on a monthly basis.

(c) The authorization may be cancelled by the insured at any time. Such cancellation will be effective on the first day of the month following the month in which it is received by the Department of Veterans Affairs.

(d) If the benefits payable to the insured are apportioned under the regulations of the Department of Veterans Affairs now in effect or hereafter issued, the deduction authorized by the insured shall be from that portion awarded to the insured under such regulations.

(e) The deduction authorized by a policyholder issued insurance under 38 U.S.C. 1925 will be automatically adjusted by the Department of Veterans Affairs to take cognizance of any premium adjustment made by the Secretary on such insurance provided the benefit payments due and payable to the insured are of an amount sufficient to pay the monthly insurance premium.

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§ 8.5 Authorization for deduction of premiums from compensation, retirement pay, or pension.

Deductions from benefits for the payment of premiums shall be effective on the month the authorization for such deduction is received by the Department of Veterans Affairs or on any successive month specified by the insured. Such deduction shall be applied to the premium due in the succeeding calendar month and shall continue monthly so long as the benefit payments are due and payable to the insured and the amount is sufficient to pay the premium or until such authorization is revoked by the veteran or otherwise terminated. When premium deductions are authorized by the insured, the premium will be treated as paid for purposes of preventing lapse of the insurance, so long as there is due and payable to the insured a benefit amount sufficient to provide the premium payment. If authorization was executed by the Director of a VA hospital or domiciliary or chief officer of a State hospital or other institution to make deductions from an institutional award, the authorization will cease and terminate at the termination of the institutional award and the insurance shall lapse unless another authorization for deduction from monthly benefit payments is executed by the insured. The insured will be notified by letter directed to the last address of record of the termination of the authorization to deduct premiums, but failure to give such notice shall not prevent lapse.

[54 FR 46232, Nov. 2, 1989; redesignated and revised at 61 FR 29289, 29290, 29291, June 10, 1996; redesignated at 65 FR 7436, 7437, Feb. 15, 2000]

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]
[CROSS REFERENCE: This section was formerly § 8.6.]
§ 8.6 Calculation of time period.

§ 8.6 Calculation of time period.
If the last day of a time period specified in §§ 8.2 or 8.3 or allowed for filing an application for National Service life insurance or for applying for reinstatement thereof, or paying premiums due thereon, falls on a Saturday, Sunday, or legal holiday, the time period will be extended to include the following workday.

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000; 65 FR 19658, 19659, Apr. 12, 2000, substituted "§§ 8.2 or 8.3" for "§§ 8.3, 8.4 or 8.5," effective Apr. 12, 2000.]
[CROSS REFERENCE: This section was formerly § 8.8.]
§ 8.7 Reinstatement of National Service Life Insurance except insurance issued pursuant to section 1925 of title 38 U.S.C.
§ 8.8 Health requirements.
§ 8.9 Application and medical evidence.

§ 8.7 Reinstatement of National Service Life Insurance except insurance issued pursuant to section 1925 of title 38 U.S.C.
(a) Any policy which lapses and which is not surrendered for a cash value or for paid-up insurance, may be reinstated upon written application signed by the applicant, payment of all premiums in arrears, and evidence of good health as required under § 8.8 (a) or (b), whichever is applicable. If a policy is not reinstated within 6 months from the due date of the premium in default, interest must be paid in addition to premiums for all months in arrears from their respective due dates at the rate of 5 percent per annum, compounded annually. The payment or reinstatement of any indebtedness against a policy must be made upon application for reinstatement, and any excess of indebtedness and interest over the reserve of the policy must be paid at that time. A lapsed National Service Life Insurance policy which is in force under extended term insurance may be reinstated within 5 years from the date extended insurance would expire upon application and payment of all premiums in arrears with the required interest. In any case in which the extended insurance under an endowment policy provides protection to the end of the endowment period, the policy may be reinstated at any time before maturity upon application and payment of the premiums with the required interest. A policy on the level term premium plan may be reinstated within 5 years of the date of lapse upon written application signed by the insured, evidence of insurability and payment of two monthly premiums, one for the month of the lapse, the other for the month of reinstatement.
(b) Reinstatement of insurance issued under section 1925, title 38 U.S.C. Any policy of insurance issued under 38 U.S.C. 1925 which has been lapsed for not more than 5 years shall be reinstated under the same provisions of paragraph (a) of this section.
(c) Effective date of reinstatements. Reinstatement is effected on the date an acceptable application and the required monetary payments are delivered to the Department of Veterans Affairs. If application for reinstatement is submitted by mail, properly addressed to the Department of Veterans Affairs, the postmark date shall be the date of delivery. The effective date of reinstatement of the insurance shall be the last monthly premium due date prior to the delivery or postmark date of the application for reinstatement, except where reinstatement is effected on the due date of a premium, then in such case that date shall be the reinstatement date.
(d) Inquiry during the grace period. When the insured makes inquiry prior to the expiration of the grace period disclosing a clear intent to continue insurance protection, such as a request for information concerning premium rates or conversion privileges, etc., an additional reasonable period not exceeding 60 days may be granted for payment of premiums due; but the premiums in any such case must be paid during the lifetime of the insured.
§ 8.8 Health requirements.
National Service life insurance on any plan may be reinstated if application and tender of premiums are made:
(a) Within 6 premium months including the premium month for which the unpaid premium was due, provided the applicant be in as good health on the date of application and tender of premiums as he or she was on the last day of the grace period of the premium in default and furnishes satisfactory evidence thereof.
(b) After expiration of the 6-month period mentioned in paragraph (a) of this section, provided applicant is in good health (§ 8.0) on the date of application and tender of premiums and furnishes satisfactory evidence. If the insurance to be reinstated was issued under 38 U.S.C. 1922(a), 1925(b), or 1925(c) and application is made within 1 year of the date of lapse, any service-connected disability existing at the time the insurance was issued will be waived for the purpose of reinstatement (including natural progression of the condition since time of issuance). If the insurance to be reinstated was issued under 38 U.S.C. 1925(a) and application is made within 1 year of the date of lapse, any nonservice-connected disability, or service-connected disability which combined with a non-service-connected disability rendered the insured uninsurable as of October 13, 1964, will be waived for the purpose of reinstatement (including natural progression).

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb 15, 2000; 65 FR 19658, 19659, Apr. 12, 2000, substituted "§ 8.8" for "§ 8.11" in paragraph (a), effective Apr. 12, 2000.]
[CROSS REFERENCE: This section was formerly § 8.10.]

§ 8.9 Application and medical evidence.
The applicant for reinstatement of National Service Life Insurance, during his or her lifetime, and within 5 years after the date of lapse if the insurance was issued under 38 U.S.C. 1925, must submit a written application signed by him or her and furnish satisfactory evidence of health as required in § 8.8 at the time of application. Applicant's own statement of comparative health may be accepted as proof of insurability for the purpose of reinstatement under § 8.8(a), but, whenever deemed necessary in any such case, report of physical examination may be required. Applications for reinstatement submitted after expiration of the applicable period mentioned in § 8.8(a) must be accompanied by satisfactory evidence of good health. If the insurance becomes a claim after the tender of the amount necessary to meet reinstatement requirements but before full compliance with the requirements of this section, and the applicant was in a required state of health at the date that he or she made the tender of the amount necessary to meet
reinstatement requirements, and that there is satisfactory reason for his or her noncompliance, the Assistant Director for Insurance, VA Center, Philadelphia, Pennsylvania may, if the applicant be dead, waive any or all requirements of this section (except payment of the necessary premiums) or, if the applicant be living, allow compliance with this section as of the date the required amount necessary to reinstate was received by the Department of Veterans Affairs.

[47 FR 11657, Mar. 18, 1982; redesignated and amended at 61 FR 29289, 29290, 29292, June 10, 1996; redesignated at 65 FR 7436, 7437, Feb. 15, 2000; 65 FR 19658, 19659, Apr. 12, 2000]

(38 U.S.C. 1925)

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000; 65 FR 19658, 19659, Apr. 12, 2000, substituted "§ 8.8" for "§ 8.11" and "§ 8.8(a)" for "§ 8.11(a)," effective Apr. 12, 2000.]

[CROSS REFERENCE: This section was formerly § 8.12.]
DIVIDENDS

§ 8.10 How paid.

(a) Except as hereinafter provided in this paragraph, a National Service Life Insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Secretary of Veterans Affairs. Dividends becoming payable after January 1, 1952, shall be payable on the date preceding the anniversary of the policy unless the Secretary shall declare them payable on some other date. Dividends are not payable on insurance:

1. Issued or reinstated under the provisions of section 602(c)(2) of the National Service Life Insurance Act, as amended, where the requirements of good health were waived at the time of such issue or reinstatement;
2. Issued under sections 620 and 621 of the National Service Life Insurance Act, as amended;
3. Issued under sections 1904(c) and 1922(a) of title 38 U.S.C.;
   (Authority: 38 U.S.C. 1923(b) and 725)
4. Issued on the ordinary life plan under section 1904(d) of title 38 U.S.C., to replace the amount of insurance reduced under a modified life plan policy issued under 38 U.S.C. 1904(c); and
5. On which premiums are waived, in whole or in part, under the provisions of section 622 of the National Service Life Insurance Act, as amended, and 38 U.S.C. 1924 for the period during which such premium waiver is in effect.
(b) Unless and until VA receives a written request from the insured that National Service Life Insurance dividends be paid in cash, or that they be used to pay an insurance indebtedness, or that they be placed on deposit or be used to pay premiums in advance, or that they be used to pay the premiums on a particular policy or policies, or that they be used to purchase paid-up additions, any such dividends shall be held to the credit of the insured to be applied to pay monthly premiums becoming due and unpaid after the date such dividends are payable on any National Service or United States Government Life Insurance policy or policies held by the insured: Provided, That such dividend credits will be applied as of the due date of any unpaid premium. Dividend credits will earn interest at such rate and in such manner as the Secretary may determine.
   (Authority: 38 U.S.C. 1907(a))
(c) In the event premiums on more than one policy having the same premium due date are unpaid and the dividend credit of the insured for application to payment of premiums is not sufficient to keep all policies in force, in the absence of instructions to the contrary by the insured, such dividend credit will be applied to pay premiums in such manner as will provide the maximum amount of insurance protection.
(d) At the expiration of any term period, dividend credit of the insured held for payment of premiums will be applied to pay the required premium for renewal of term insurance unless the insured requests otherwise in writing prior to the expiration of the term period.
(e) A request for payment of dividends in cash or for other disposition will be effective as of the date the request is delivered to the Department of Veterans Affairs: If forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery: If
forwarded through military channels by the insured while in military service, the date the request is placed in military channels will be accepted as the date of delivery. Unless otherwise stipulated by the insured, such request will remain in force until revoked in writing signed by the insured and delivered to the Department of Veterans Affairs.

(f) Dividend credit of the insured held for payment of premiums may not be used to satisfy any indebtedness due the United States without the insured's consent. If the insured requests payment of such dividend credit, or any unused portion thereof, in cash, or requests that such credit be left to accumulate on deposit, as provided in paragraph (g) of this section, then any indebtedness due the United States, such as described in § 5301 of title 38 U.S.C. will be recovered therefrom.

(g) At the written request of the insured, National Service life insurance dividends may be left to accumulate on deposit at interest which will be credited in such manner and at such rate as the Secretary may determine: Provided, That the policy is in force on a basis other than extended term insurance or level premium term insurance. Dividend credit of the insured held for payment of premiums or dividends left to accumulate on deposit as provided in this paragraph may be applied to the payment of premiums in advance upon written request of the insured made before default in payment of a premium. Dividends on deposit under the provisions of this paragraph will be used in addition to the reserve on the policy for the purpose of computing the period of extended term insurance or the amount of paid-up insurance as provided in §§ 8.14 and 8.15, respectively. Any dividend credit of a person who no longer has insurance in force by payment or waiver of premiums will be paid in cash to such person. If a person has a dividend credit option on a lapsed level premium term policy or a permanent plan policy on which extended term insurance has expired and such person has another policy in force by payment or waiver of premiums, any dividend credit or unpaid dividends on the lapsed policy, in the absence of instructions from the insured to the contrary, will be transferred to the policy which is in force and will be held on such policy as a dividend credit. Such dividend credit will be deemed to have accrued on the policy which is in force. Upon maturity of the policy, any dividend on deposit, any unpaid dividend payable in cash, and any dividend credit accruing from such policy which cannot be used to pay premiums will be paid to the person currently entitled to receive payments under the policy. If the policy is not in force at death, any such unpaid dividends and dividend credits will be paid to the insured's estate.

(h) Any insured receiving an annual dividend in cash may return such dividend check or an equivalent amount of money in order to have the dividend retained under the deposit or credit option. The return of such dividend must be made during the lifetime of the insured and before the end of the calendar year during which the dividend was paid. Dividends returned under this provision are not available for the payment of premiums, receipt of interest, or calculation of cash value prior to the postmark date of the returned check.

§ 8.11 Cash value and policy loan.
§ 8.12 Payment of the cash value of National Service Life Insurance in monthly installments under section 1917(e) of title 38 U.S.C.
§ 8.13 Policy loans.

§ 8.11 Cash value and policy loan.
(a) Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 8.14(b), shall become effective at the completion of the first policy year on any plan of National Service Life Insurance other than the 5-year level premium term plan. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve with any dividend accumulations, where applicable.
(b) Upon written request and upon complete surrender of the insurance and all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least 1 year. Paid-up additions do not have to be in force for 1 year before they have cash values. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.
(c) All values, reserves and net single premiums on participating National Service Life Insurance, other than as provided in paragraph (e) of this section, shall be based on the American Experience Table of Mortality, with interest at the rate of 3 percent per annum. For each month after the first policy year for which month a premium has been paid or waived, the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year.
(Authority: 38 U.S.C. 1902, 1906)
(d) All values on insurance, reserves, and net single premiums issued under the provisions of section 1922(a) of title 38 U.S.C., and on modified life and ordinary life plans of insurance issued under section 1904(c), (d), and (e), respectively, shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality with interest at the rate of 2 1/4 percent per annum. Values between policy years shall be proportionally adjusted.
(Authority: 38 U.S.C. 1904, 1906)
(e) All values on insurance, reserves, and net single premiums issued under the provisions of section 1923(b) of title 38 U.S.C., and on modified life and ordinary life plans of such insurance issued under section 1904 (c), (d), and (e), respectively, shall be based on table X-18 (1950-54 Intercompany Table of Mortality) with interest at the rate of 2 1/2 percent per annum. Values between policy years shall be proportionally adjusted.
(Authority: 38 U.S.C. 1904, 1923)
(f) All values, reserves, and net single premiums on nonparticipating insurance on which the requirements of good health were waived under the provisions of section 602(c)(2) of
the National Service Life Insurance Act, as amended ("H" Insurance), and on the modified life and ordinary life plans of such "H" insurance issued under section 1904 (c), (d), and (e), respectively, of title 38 U.S.C. shall be based on the American Experience Table of Mortality, with interest at the rate of 3 percent per annum. Values between policy years shall be proportionally adjusted. The provisions of the "Net Cash Value" clause in National Service Life Insurance policies are hereby amended accordingly.

(g) All values, reserves, and net single premiums on participating modified life and ordinary life plan insurance issued under section 1904 (b), (d), and (e), respectively, of title 38 U.S.C. shall be based on the 1958 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 3 percent per annum. Values between policy years shall be proportionally adjusted.

(h) All values, reserves, and net single premiums on insurance issued under the provisions of section 1925(b) of title 38 U.S.C, and on modified life and ordinary life plans of such insurance issued under section 1904 (b), (d), and (e), respectively, shall be based on the 1958 Commissioners Standard Ordinary Basic Mortality Table and interest at the rate of 3 1/2 percent per annum. Values between policy years shall be proportionally adjusted.

(i) All values, reserves, and net single premiums on insurance issued under the provisions of section 1925(c) of title 38 U.S.C., and on modified life, ordinary life, 20-payment life and 30-payment life plans, where appropriate, of such insurance issued under section 1904 (c), (d), and (e), respectively, shall be based on the American Experience Table of Mortality and interest at the rate of 3 1/2 percent per annum. Values between policy years shall be proportionally adjusted.

(Authority: 38 U.S.C. 1906)


[CROSS REFERENCE: This section was formerly § 8.14.]

§ 8.12 Payment of the cash value of National Service Life Insurance in monthly installments under section 1917(e) of title 38 U.S.C.

(a) Effective January 1, 1971, in lieu of payment of the cash surrender value in one sum the insured may elect to receive payment in monthly installments under option 2 or as a refund life income. If the insured dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in title 38 U.S.C. 1917. Unless otherwise requested by the insured, a surrender under this section will be deemed completed as of the premium month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of the first check released thereunder, whichever is later.

(b) [Reserved]

§ 8.13 Policy loans.

(a) At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Secretary, the United States will lend to the insured on the security of his or her National Service Life Insurance policy, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. At any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not make the policy voidable unless the total indebtedness shall equal or exceed the cash value. When the amount of the indebtedness equals or exceeds the cash value, the policy shall become voidable. On loans applied for before the effective date of this regulation (November 2, 1987) and not exchanged pursuant to paragraph (b) of this section, the policy loan interest rate in effect when the loan was applied for shall not be increased for the term of the loan.

(b) Loans applied for or exchanged on and after the effective date of this regulation (November 2, 1987) shall bear interest at a rate which may be varied during the term of the loan, not more frequently than once a year, as provided by paragraphs (c) and (d) of this section. After October 1, 1988, the policy loan rate shall not be varied more frequently than once a year. Notification of the initial rate of interest on new loans will be forwarded at the time the loan is made. Policyholders with existing variable rate loans will be forwarded reasonable advance notice of any increase in the rate. Reasonable advance notice of any change in the variable loan rate will be published in the Federal Register. A notice pertaining to variable loans which is sent to the policyholder's last address of record will constitute sufficient evidence of notice.

(c) Subject to the provisions of paragraph (d) of this section, loan rates established pursuant to paragraph (b) of this section shall equal the yield on the Ten-Year Constant Maturities Index for U.S. Treasury Securities for the month of June of the year of calculation rounded down to the next whole percentage. Such loan rate shall be effective on the date on or after the first day of October on which the rate change is made in the insurance automatic data processing system, and shall remain in effect for not less than one year after the date of establishment. The prevailing variable loan rate shall apply to all loans granted under paragraph (b) of this section.

(d) Notwithstanding any other provisions of this section, the variable loan rate shall not exceed 12 percent or be lower than 5 percent per annum.

EXTENDED TERM AND PAID-UP INSURANCE

§ 8.14 Provision for extended term insurance -- other than 5-year level premium term or limited convertible 5-year level premium term policies.
§ 8.15 Provision for paid-up insurance; other than 5-year level premium term or limited convertible 5-year level premium term policies.

§ 8.14 Provision for extended term insurance -- other than 5-year level premium term or limited convertible 5-year level premium term policies.
(a) After the expiration of the first policy year and upon default in the payment of a premium within the grace period, if a permanent plan National Service Life Insurance policy other than the modified life plan has not been surrendered for cash or for paid-up insurance, the policy shall be extended automatically as term insurance. The extended term insurance shall be for an amount of the insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the cash value less any indebtedness and a charge for administrative cost for insurance issued under 38 U.S.C. 1925, will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the extended term insurance becomes effective. The extended term insurance shall not have a loan value, but shall have a cash value.
(b) Upon default in payment of a premium within the grace period on any permanent plan of National Service Life Insurance other than the modified life plan and any plan of insurance issued under 38 U.S.C. 1925, if the policy has been in force by payment or waiver of premiums for not less than 3 months nor more than 11 months, the policy shall be extended automatically as term insurance. The extended term insurance shall be for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the reserve of the policy less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of months from that date to the date extended term insurance becomes effective. Extended term insurance under this provision shall not have a cash or loan value. This paragraph shall be effective from and after August 2, 1948.
(c) Upon default in payment of a premium within the grace period, if a modified life plan of National Service Life Insurance has not been surrendered for cash or paid-up insurance and if the policy has been in force by payment or waiver of premiums for not less than 3 months, or for not less than 1 year for insurance issued under 38 U.S.C. 1925, the policy shall be extended automatically as of insurance equal to (1) the Initial Face Amount of Insurance (face amount of policy in force prior to insured's 65th birthday) less any indebtedness, for lapses which occur prior to the insured's 65th birthday, or (2) the Ultimate Face Amount of Insurance (face amount of policy in force on or after insured's 65th birthday) less any indebtedness, for lapses which occur on or after the insured's 65th birthday. The extended term insurance shall be for an amount of insurance equal to:
(i) The initial face amount of insurance (face amount of policy in force prior to the insured's 65th or 70th birthday, depending on the plan of insurance), less any
indebtedness, for lapses which occur prior to the insured's 65th or 70th birthday, depending on the plan of insurance, or
(ii) The ultimate face amount of insurance (face amount of policy in force on or after insured's 65th or 70th birthday, depending on the plan of insurance) less any indebtedness, for lapses which occur on or after the insured's 65th or 70th birthday, depending on the plan of insurance. If a modified life plan policy is on extended term insurance at the end of the day preceding the insured's 65th or 70th birthday, depending on the plan of insurance, the amount of extended term insurance in effect under such policy shall be automatically reduced by one-half thereof. If the policy lapsed prior to the end of the first policy year, the extended term insurance shall not have a cash or loan value. If the policy lapsed after the first policy year, the extended term insurance shall not have a loan value, but shall have a cash value.


(38 U.S.C. 1906)

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]

[CROSS REFERENCE: This section was formerly § 8.17.]

§ 8.15 Provision for paid-up insurance; other than 5-year level premium term or limited convertible 5-year level premium term policies.
If a National Service Life Insurance policy on any plan other than 5-year level premium term or limited convertible 5-year level premium term plan has not been surrendered for cash, upon written request of the insured and complete surrender of the insurance with all claims thereunder, after the expiration of the first policy year and while the policy is in force under premium-paying conditions, the United States will issue paid-up insurance for such amount as the cash value less any indebtedness, and a charge for administrative cost for insurance issued under 38 U.S.C. 1925, will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the paid-up insurance becomes effective. Such paid-up insurance will be effective as of the expiration of the period for which premiums have been paid and earned; and, any premiums paid in advance for months subsequent to that in which the application for paid-up insurance is made shall be refunded to the insured. The paid-up insurance, if eligible to participate in and to receive dividends, shall be with the right to dividends. The insured may at any time surrender the paid-up policy for its cash value or obtain a loan on such paid-up insurance.


[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]

[CROSS REFERENCE: This section was formerly § 8.18.]
CHANGE IN PLAN

§ 8.16 Conversion of a 5-year level premium term policy as provided for under § 1904 of title 38 U.S.C.

§ 8.16 Conversion of a 5-year level premium term policy as provided for under § 1904 of title 38 U.S.C.

National Service Life Insurance on the level premium term plan which is in force may be exchanged for a permanent plan policy upon written application by the insured and the payment of the current monthly premium at the attained age for the plan of insurance selected (except where premium waiver under 38 U.S.C. 1912 is effective). The reserve (if any) on the policy will be allowed as a credit on the current monthly premium except where premium waiver is effective. Conversion to an endowment plan may not be made while the insured is totally disabled. The conversion will be made without medical examination, except when deemed necessary to determine whether an applicant for conversion to an endowment plan is totally disabled, and upon complete surrender of the term insurance while in force by payment or waiver of premium.


(38 U.S.C. 1904)

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]

[CROSS REFERENCE: This section was formerly § 8.19.]
§ 8.17 Discontinuance of premium waiver.
§ 8.18 Total disability -- speech.

§ 8.17 Discontinuance of premium waiver.
(a) The Secretary may require proof of continuance of total disability at any time the Secretary may deem same necessary. In the event it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding, and the insurance may be continued by payment of premiums, the due date of the first premium payable being the next regular monthly due date of the premium under the policy. The insurance shall not lapse prior to the date of expiration of the grace period allowed for the payment of such premium or prior to the expiration of 31 days after date of notice to the insured of the termination of the premium waiver, whichever is the later date. Such notice shall be sent by registered mail or by certified mail and sufficient notice will be deemed to have been given when such letter has been placed in the mails by the Department of Veterans Affairs: Provided, That the Secretary may grant an additional period of not more than 31 days for payment of the premiums in any case in which it is shown that the failure to make payment within 31 days after notice as defined in this paragraph was due to circumstances beyond the insured's control; but the premiums in any such case must be paid during the lifetime of the insured. The failure of the insured to furnish a correct current address at which mail will reach him or her promptly shall not be grounds for a further extension of time for payment of premiums under this section.
(b) In the event a finding that insured is no longer totally disabled is made at the same time a finding is made of total disability entitling the insured to a waiver of premiums while so disabled, the waiver of premiums shall cease as of the date on which total disability ceased and continuance of the insurance in such cases shall be subject to the timely payment of the premiums as they become or have become due and payable. The due date of the first premium payable subsequent to the date total disability ceased is the next regular due date of the premium under the policy, and if such premium was not paid within 31 days after the due date, the insurance lapsed.
(c) If the insured shall fail to cooperate with the Secretary in securing any evidence he may require to determine whether total disability has continued, the premium waiver shall cease effective as of the date finding is made of such failure to cooperate, and the insurance may be continued by payment of the premiums within 31 days after notice of termination as provided in paragraph (a) of this section.

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]
[CROSS REFERENCE: This section was formerly § 8.20.]

§ 8.18 Total disability -- speech.
The organic loss of speech shall be deemed to be total disability under National Service Life Insurance.

§ 8.19 Beneficiary and optional settlement changes.

The insured shall have the right at any time, and from time to time, and without the knowledge or consent of the beneficiary to cancel or change a beneficiary and/or optional settlement designation. A change of beneficiary or optional settlement to be effective must be made by notice in writing signed by the insured and forwarded to the Department of Veterans Affairs by the insured or designated agent, and must contain sufficient information to identify the insured. A beneficiary designation and an optional settlement selection, but not a change of beneficiary, may be made by last will and testament duly probated. Upon receipt by the Department of Veterans Affairs, a valid designation or change of beneficiary or option shall be deemed to be effective as of the date of execution. Any payment made before proper notice of designation or change of beneficiary has been received in the Department of Veterans Affairs shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments.


[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]

[CROSS REFERENCE: This section was formerly § 8.22.]
§ 8.20 Proof of death, age, relationship and marriage.

§ 8.20 Proof of death, age, relationship and marriage.
Whenever it is necessary for a claimant to prove death, age, relationship or marriage, the provisions found in Part 3 of this chapter will be followed.

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]
[CROSS REFERENCE: This section was formerly § 8.23.]
AGE

§ 8.21 Misstatement of age.

§ 8.21 Misstatement of age.
If the age of the insured under a National Service life insurance policy has been understated, the amount of the insurance payable under the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Department of Veterans Affairs at any time upon satisfactory proof.
[13 FR 7115, Nov. 27, 1948; redesignated at 61 FR 29289, 29290, June 10, 1996; redesignated at 65 FR 7436, 7437, Feb. 15, 2000]

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]
[CROSS REFERENCE: This section was formerly § 8.24.]
EXAMINATIONS

§ 8.22 Examination of applicants for insurance or reinstatement.
§ 8.23 Examination in connection with total disability benefits.
§ 8.24 Expenses incident to examinations for insurance purposes.

§ 8.22 Examination of applicants for insurance or reinstatement.
Where physical or mental examination is required of an applicant for National Service Life Insurance or of an applicant for reinstatement of National Service Life Insurance, such examination may be made by a medical officer of the United States Army, Navy, Air Force, or Public Health Service, or may be made free of charge to him or her by a full-time or part-time salaried physician or a physician's assistant at a regional office or medical facility of the Department of Veterans Affairs. Such examination may also be made, at the applicant's own expense, by a physician duly licensed for the practice of medicine by a State, possession of the United States, Commonwealth of Puerto Rico, or the District of Columbia, or by a duly licensed osteopathic physician who is a graduate of a recognized and approved college of osteopathy and who is listed in the current directory of the American Osteopathic Association. Such examination may be made by a physician or osteopath who is not related to the applicant by blood or marriage, associated with him or her in business, or pecuniarily interested in the insurance or reinstatement of the policy. Examinations made in a foreign country by a physician duly licensed for the practice of medicine and otherwise acceptable may be accepted if submitted through the American consul. The Secretary of Veterans Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the applicant at the time of the application.
(Authority: 38 U.S.C. 1904 and 1905)

[EFFECTIVE DATE NOTE: 65 FR 7436, 7437, Feb. 15, 2000, redesignated this section, effective Feb. 15, 2000.]
[CROSS REFERENCE: This section was formerly § 8.25.]

§ 8.23 Examination in connection with total disability benefits.
Physical examination in connection with claim for total disability benefits may be made by a medical officer of the United States Army, Navy, Air Force, or Public Health Service, or may be made at Government expense by a full-time or part-time salaried physician or physician's assistant at a regional office or medical facility of the Department of Veterans Affairs. If an insured is unable to travel, because of physical or mental condition, the Director of a regional office or of a medical facility may, on his or her own initiative or at the request of the Insurance activity concerned, authorize at Government expense examination at the residence of the insured. The Secretary of Veterans Affairs may require such further medical examination or such additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the insured.
§ 8.24 Expenses incident to examinations for insurance purposes.
Except as provided in § 8.22, necessary transportation expenses incident to physical or mental examinations for insurance purposes at regional offices or medical facilities shall be furnished when the insured is ordered to report for examination at the specific request of the insurance activity concerned, or the Director of a regional office or of a medical facility. Such expenses will be borne by the United States and will be paid from the applicable appropriation of the Veterans Health Services and Research Administration. Transportation, meal and lodging requests in connection with reporting to and returning from the place of examination may be furnished the applicant, or the applicant may travel at his or her own expense and claim reimbursement for such travel on a mileage basis, provided prior authority has been given for the travel. Travel incident to such an examination by salaried employees of the Department of Veterans Affairs will be in accordance with the Federal Travel Regulations. If such an examination is made by a medical examiner on a fee basis, payment will be made at a fee not in excess of the schedule of fees in effect and approved by the Department of Veterans Affairs for medical and professional services in the State in which the examination is made. Where no approved State fee schedule is in effect or where a fee for the type of examination authorized is not listed in the approved State fee schedule in effect, such examinations will be furnished at a fee not in excess of that listed in the "Guide for Charges for Medical and Ancillary Services" of the Veterans Health Services and Research Administration in effect at the time the examination is authorized. If the particular examination is not covered by a schedule in effect and/or the said guide, a fee not in excess of what is reasonable and customarily charged in the community concerned may be allowed.


[CROSS REFERENCE: This section was formerly § 8.27.]
OPTIONAL SETTLEMENTS

§ 8.25 Options.

§ 8.25 Options.
Insurance will be paid in a lump sum only when selected by the insured during his or her lifetime or by his or her last will and testament.

[CROSS REFERENCE: This section was formerly § 8.26.]
§ 8.26 Renewal of National Service Life Insurance on the 5-year level premium term plan.

§ 8.26 Renewal of National Service Life Insurance on the 5-year level premium term plan.
(a) Effective July 23, 1953, all or any part of National Service Life Insurance on the 5-year level premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the applicable level premium term rate for the then attained age of the insured: Provided, That on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate, or that on or after (the date the regulation is published as final), Veterans Special Life Insurance "RS" five-year level premium term rates shall not exceed the renewal age 70 "RS" term premium rate: Provided further, That in any case in which the insured is shown by satisfactory evidence to be totally disabled at the expiration of the term period of his or her insurance under conditions which would entitle the insured to continued insurance protection but for such expiration, such insurance, if subject to renewal under this paragraph shall be automatically renewed for an additional period of 5 years at the applicable premium rate. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be the applicable level premium term rate on that day: Provided further, That no insurance is subject to renewal if the policyholder has exercised the insured's right to change to another plan of insurance.
(Authority: 38 U.S.C. 1905, 1906)
(b) Effective June 25, 1970, a 5-year level premium term policy which lapsed for nonpayment of the premium due and subsequently expired may be renewed subsequently to the expiration of the old term period provided the insured within 5 years of the date of lapse:
(1) Submits written application for reinstatement of the insurance.
(2) Tenders two monthly premiums, one for the month of lapse at the rate for the expired term and the other for the month of reinstatement at the rate for the new term.
(3)(i) If application for reinstatement is submitted and the premiums tendered within 6 premium months after lapse, including the premium month for which the unpaid premium was due, insurance will be reinstated provided the applicant be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default and furnishes satisfactory evidence thereof.
(ii) If application for reinstatement is submitted and the premiums tendered after expiration of the 6-month period mentioned in subdivision (i) of this subparagraph, insurance will be reinstated provided applicant is in good health (§ 8.0) on the date of application and tender of premiums and furnishes satisfactory evidence thereof.
June 10, 1996; redesignated at 65 FR 7436, 7437, Feb. 15, 2000; redesignated at 67 FR 54737, 54739, Aug. 26, 2002]

[CROSS REFERENCE: This section was formerly § 8.27.]
§ 8.27 Conditional designation of beneficiary.

§ 8.28 Application for reinstatement of total disability income provision.

§ 8.27 Conditional designation of beneficiary.
If the insured by notice in writing to the Department of Veterans Affairs during his lifetime has provided that a designated beneficiary shall be entitled to the proceeds of National Service life insurance only if such beneficiary shall survive him for such period (not more than 30 days), as specified by the insured, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary fails to survive the specified period, payment of the proceeds of National Service life insurance will be made as if the beneficiary had predeceased the insured.

[CROSS REFERENCE: This section was formerly § 8.28.]

§ 8.28 Application for reinstatement of total disability income provision.
A total disability income provision which is lapsed may be reinstated if the insured meets the same requirements as those for reinstatement of the policy to which the total disability income provision is attached; except that in no event shall the requirement of a health statement or other medical evidence be waived in connection with the reinstatement of the total disability income provision.

[CROSS REFERENCE: This section was formerly § 8.29.]
§ 8.29 Policy provisions.

§ 8.29 Policy provisions.
Contracts of insurance authorized to be made in accordance with the terms and conditions set forth in the forms and policy plans are subject in all respects to the applicable provisions of title 38 U.S.C., amendments and supplements thereto, and applicable Department of Veterans Affairs regulations promulgated pursuant thereto, all of which together with the insured's application, required evidence of health, including physical examination, if required, and tender of premium shall constitute the contract.


[CROSS REFERENCE: This section was formerly § 8.30.]
§ 8.30 Appeal to Board of Veterans Appeals.
(a) The provisions of Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals involving questions pertaining to the denial of applications for insurance, total disability income provision, or reinstatement; disallowance of claims for insurance benefits; and decisions holding fraud or imposing forfeiture. Notice to the applicant or claimant and his representative, if any, of the right to appeal will be sent by the insurance activity having jurisdiction over the case, at time action of denial, disallowance, or forfeiture is taken.
(b) When an appeal to the Board of Veterans Appeals is initiated by a notice of disagreement, any unpaid premiums, normally due under the policy from effective date of issue or reinstatement (as appropriate), will become an interest-bearing lien, enforceable as a legal debt due the United States and subject to all available collection procedures in the event of favorable action by the Board.
(c) Where the adverse action from which appeal is taken involves a change in or addition to insurance currently in force, premium payments must be continued on the existing contract.

§ 8.31 Total disability for twenty years or more.
Where the Disability Insurance Claims activity has made a finding of total disability for insurance purposes and it is found that such disability remained continuously in effect for 20 or more years, the finding will not be discontinued thereafter, except upon a showing that such a determination was based on fraud. The 20-year period will be computed from the date the continuous total disability commenced, as determined by the Disability Insurance Claims activity.

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§ 8.32 Authority of the Guardian.

What actions does a guardian have the authority to take for insurance purposes? The guardian of an insured or beneficiary has the authority to take the following actions:

(a) Apply for insurance or for conversion of a policy or change of plan;
(b) Reinstate a policy;
(c) Withdraw dividends held on deposit or credit;
(d) Select or change a dividend option;
(e) Obtain a policy loan;
(f) Cash surrender a policy;
(g) Authorize a deduction from benefits or allotment from military retired pay to pay premiums;
(h) Apply for and receive payment of proceeds on a matured policy;
(i) Select or change the premium payment option;
(j) Apply for waiver of premiums and total disability income benefits;
(k) Select or change settlement options for beneficiaries; and
(l) Assign a beneficiary's interest as provided under section 1918 of title 38 U.S.C.

(Authority: 38 U.S.C. 1906)


[CROSS REFERENCE: This section was formerly § 8.33.]

§ 8.33 Cash value for term-capped policies.

(a) What is a term-capped policy? A term-capped policy is a National Service Life Insurance policy prefixed with "V" or Veterans Special Life Insurance policy prefixed with "RS," issued on a 5-year level premium term plan in which premiums have been capped (frozen) at the renewal age 70 rate.
(b) How can a term-capped policy accrue cash value? Normally, a policy issued on a 5-year level premium term plan does not accrue cash value (see section 8.14). However, notwithstanding any other provisions of this part, reserves have been established to provide for cash value for term-capped policies.
(c) On what basis have the reserve values been established? Reserve values have been established based upon the 1980 Commissioners Standard Ordinary Basic Table and interest at five per centum per annum in accordance with accepted actuarial practices.
(d) How much cash value does a term-capped policy have? The cash value for each policy will depend on the age of the insured, the type of policy, and the amount of coverage in force and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of cash values based upon a $10,000 policy at various attained ages for an NSLI "V" policy and a VSLI "RS" policy:

<table>
<thead>
<tr>
<th>Age</th>
<th>Cash value &quot;V&quot;</th>
<th>Cash value &quot;RS&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>75</td>
<td>$1,494</td>
<td>$1,716</td>
</tr>
<tr>
<td>80</td>
<td>3,212</td>
<td>3,358</td>
</tr>
<tr>
<td>85</td>
<td>4,786</td>
<td>4,818</td>
</tr>
</tbody>
</table>

© 2006 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(e) What can be done with this cash value? Upon cancellation or lapse of the policy, a policyholder may receive the cash value in a lump sum or may use the cash value to purchase paid-up insurance. If a term-capped policy is kept in force, cash values will continue to grow.

(f) How much paid-up insurance can be obtained for the cash value? The amount of paid-up insurance that can be purchased will depend on the amount of cash value that the policy has accrued and will be calculated in accordance with accepted actuarial practices. For illustrative purposes, below are some examples of paid-up insurance that could be purchased by the cash value of a "V" and an "RS" $10,000 policy at various attained ages:

<table>
<thead>
<tr>
<th>Age</th>
<th>Paid-up &quot;V&quot;</th>
<th>Paid-up &quot;RS&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>75</td>
<td>$2,284</td>
<td>$2,625</td>
</tr>
<tr>
<td>80</td>
<td>4,452</td>
<td>4,654</td>
</tr>
<tr>
<td>85</td>
<td>6,109</td>
<td>6,149</td>
</tr>
<tr>
<td>90</td>
<td>7,421</td>
<td>7,115</td>
</tr>
<tr>
<td>95</td>
<td>9,331</td>
<td>7,650</td>
</tr>
</tbody>
</table>

(g) If the policy lapses due to non-payment of the premium, does the policyholder nonetheless have a choice of receiving the cash value or paid-up insurance? Yes, the policyholder will have that choice, along with the option to reinstate the policy (see section 8.10 for reinstatement of a policy). However, if a policyholder does not make a selection, VA will apply the cash value to purchase paid-up insurance. Paid-up insurance may be surrendered for cash at any time.

(h) If a policyholder elects to receive either the cash surrender or paid-up insurance due to lapse or voluntary cancellation of a term-capped policy, may the original term-capped policy be reinstated? Yes, the term-capped policy may be reinstated but the policyholder, in addition to meeting the reinstatement requirements of term policies, must also pay the current reserve value of the reinstated policy.

[65 FR 54798, 54799, Sept. 11, 2000; redesignated at 67 FR 54737, 54739, Aug. 26, 2002]


[CROSS REFERENCE: This section was formerly § 8.37.]
TOTAL DISABILITY FOR TWENTY YEARS OR MORE
PART 8A – VETERANS MORTGAGE LIFE INSURANCE

§ 8a.1 Definitions.
§ 8a.2 Maximum amount of insurance.
§ 8a.3 Effective date.
§ 8a.4 Coverage.


§ 8a.1 Definitions.
(a) The term housing unit means a family dwelling or unit, together with the necessary land therefor, that has been or will be purchased, constructed, or remodeled with a grant to meet the needs of an eligible veteran and of his or her family, and is or will be owned and occupied by the eligible veteran as his or her home, or a family dwelling or unit, including the necessary land therefor, acquired by an eligible veteran to be used as his or her residence after selling or otherwise disposing of title to the housing unit for which his or her grant was made.
(b) The term Veterans Mortgage Life Insurance (VMLI) means the mortgage protection life insurance authorized for veterans under 38 U.S.C. 2106.
(c) The term initial amount of insurance means the amount of insurance corresponding in amount to the unpaid principal of a mortgage loan outstanding on a housing unit owned or to be acquired by an eligible veteran on August 11, 1971, or on the date of approval of his or her grant made under chapter 21 of title 38 U.S.C., whichever is the later date.
(d) The term mortgage loan means any loan, lien, or other indebtedness incurred by an eligible veteran to buy, build, remodel, or enlarge a housing unit, the payment of which loan, lien, or indebtedness is secured by a mortgage lien, or other equivalent security of record, on the housing unit in the usual legal form employed in the community in which the property is situated. The term also includes refinancing of such an indebtedness to avoid a default, to consolidate liens, to renew or extend the time for payment of the indebtedness, and in cases where the housing unit is being bought, built, remodeled, or enlarged by increasing the amount of such an indebtedness.
(e) The term owned means the eligible veteran has or will acquire an interest in the housing unit which is:
(1) A fee simple estate, or
(2) A leasehold estate, the unexpired term of which, including renewals at the option of the lessee, is not less than 50 years, or
(3) An interest in a residential unit in a cooperative or a condominium type development which in the judgment of the Under Secretary for Benefits or the Director, Loan Guaranty Service, provides a right of occupancy for a period of not less than 50 years: Provided, The title to such estate or interest is or shall be such as is acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community.
(f) [Redesignated as paragraph (d). See 61 FR 29027, June 7, 1996.]
(g) [Redesignated as paragraph (e). See 61 FR 29027, June 7, 1996.]
§ 8a.2 Maximum amount of insurance.

(a) Each eligible veteran is authorized up to a maximum of $90,000 in VMLI to insure his or her life during periods he or she is obligated under a mortgage loan, except that, as to an individual housing unit, whenever there is a reduction in the actual amount of insurance in force as provided for in § 8a.4(a) the amount of VMLI, thereafter available to insure the life of the same veteran on the same housing unit is permanently reduced by a like amount.

(b) The maximum amount of insurance in force on any one life at one time shall not exceed the lesser of the following amounts:

1. $90,000.
2. For insurance issued prior to December 24, 1987, the reduced maximum amount of insurance then available to an eligible veteran.
3. The amount of the unpaid principal of the mortgage loan outstanding on the date of approval of the grant on a housing unit then owned and occupied by the eligible veteran, or on a housing unit being or to be constructed or remodeled for the eligible veteran, and such initial amount of insurance may be adjusted upward, subject to the maximum insurance available to the eligible veteran, or downward, depending upon the amount of the mortgage loans outstanding on the date of full disbursement of the grant, or on the date of final settlement of the purchase, construction, or remodeling agreement, whichever date is the later date.
4. Where an eligible veteran ceases to own the housing unit which was subject to a mortgage loan that resulted in his or her life being insured under VMLI, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the amount of the unpaid principal outstanding on the mortgage loan on the newly acquired housing unit on the date insurance hereunder is placed in effect.
5. Where an eligible veteran incurs or refinances a mortgage loan, subject to the provisions of paragraph (a) of this section, the amount of the incurred or refinanced mortgage loan.
6. If title to an undivided interest in a housing unit is or will be vested in a person other than the spouse of an eligible veteran, the amount of VMLI or his or her life shall be computed to be such part of the total of the unpaid principal of the loan outstanding on the housing unit as is proportionate to the undivided interest of the veteran in the entire property.
7. All claims, arising out of the deaths of insured veterans occurring prior to October 1, 1976, shall be subject to the $30,000 lifetime maximum amount of insurance then in effect. All claims, arising out of the deaths of insured veterans occurring on or after October 1, 1976, but prior to December 1, 1992, shall be subject to the $40,000 lifetime maximum amount of insurance then in effect.
8. All claims, arising out of the deaths of insured veterans occurring prior to (date of final publication), shall be subject to the provisions of paragraph (a) of this section then in effect which limited the amount of VMLI coverage to a lifetime maximum per eligible veteran.
(c) Any eligible veteran who prior to October 1, 1976, was covered by $30,000 VMLI and who on that date became eligible to have his or her coverage increased may elect to retain the lesser amount of coverage he or she had in effect prior to that date.


(38 U.S.C. 501, 2106)

[EFFECTIVE DATE NOTE: 61 FR 29027, June 7, 1996, which amended this section, became effective June 7, 1996.]

§ 8a.3 Effective date.

(a) Where the grant was approved prior to August 11, 1971, VMLI shall be effective August 11, 1971, if on that date, the eligible veteran was obligated under a mortgage loan, and any such eligible veteran is automatically insured, unless he or she elects in writing not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(b) Where the grant is approved on or after August 11, 1971, VMLI shall be effective on the date of approval of the grant, if on that date the eligible veteran is obligated under a mortgage loan, and any such eligible veteran is automatically insured, unless he or she elects in writing not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(c) In any case in which a veteran would have been eligible for VMLI on August 11, 1971, or on the date of approval of his or her grant, whichever date is the later date, but such insurance did not become effective because he or she was not obligated under a mortgage loan on that date, or because he or she elected in writing not to be insured, or failed to timely respond to a request for information on which his or her premium could be based, the insurance will be effective on a date agreed upon by the veteran and the Secretary, but only if the veteran files an application in writing with the Department of Veterans Affairs for such insurance, submits evidence that he or she meets the health requirements of the Secretary, together with information on which his or her premiums can be based, and is or becomes obligated under a mortgage loan upon the date agreed upon as the effective date of his or her insurance.

(d) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date requested by the veteran and agreed to by the Secretary, but only if the eligible veteran files an application for such insurance, submits evidence that he or she meets the health requirements of the Secretary, furnishes information on which his or her premium can be based, and is or becomes obligated under a mortgage loan on the date the insurance is to become effective.

(e) In any case where an eligible veteran insured under VMLI, refinances the mortgage loan which is the basis for such insurance on his or her life, any increase in the amount of insurance or any delay in the rate of reduction of insurance will be effective only if the eligible veteran files an application for insurance, submits evidence that he or she meets
the health requirements of the Secretary, and furnishes information on which his or her premium can be based.
[42 FR 43835, Aug. 31, 1977; 61 FR 29027, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29027, June 7, 1996, which substituted "VMLI" for "Veterans Mortgage Life Insurance" in paragraphs (a), (b), (c) and (e), became effective June 7, 1996.]

§ 8a.4 Coverage.
(a) The amount of VMLI in force on his or her life at any one time shall be reduced simultaneously (1) with the reduction in the principal of the mortgage loan, whether or not the mortgage loan is amortized, and (2) in addition, if the mortgage loan is amortized, according to the schedule for the reduction of the principal of the mortgage loan whether or not the schedule payments are timely made.
(b) If the amount of the mortgage loan exceeds $90,000, or the reduced maximum amount of insurance available to an eligible veteran, whichever amount is the lesser, the amount of insurance in force on the life of the veteran shall remain at a constant level until the principal amount of the mortgage loan which is basis for establishing the amount of insurance is reduced to $90,000, or to the amount of the reduced maximum amount of insurance available to the veteran, at which time the amount of insurance in force on his or her life shall be reduced in accordance with the schedule for the reduction of the principal of the mortgage loan, and whether or not the scheduled payments are timely made.
(c) Subject to the $90,000 maximum amount of insurance, and to the reduced maximum amount of insurance available to the eligible veteran, he or she is entitled to be insured under VMLI or to apply for such insurance as often as he or she becomes obligated under a mortgage loan or a refinanced mortgage loan on a housing unit or a successor housing unit owned and occupied by the eligible veteran. Where a veteran who is not automatically insured under VMLI applies for such insurance, he or she shall be required to meet the health standards and other conditions established by the Secretary for such insureds.
(d) [Redesignated as paragraph (c). See 61 FR 29027, June 7, 1996.]

(38 U.S.C. 501, 2106)
[EFFECTIVE DATE NOTE: 61 FR 29027, June 7, 1996, which amended this section, became effective June 7, 1996.]
PART 9 -- SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

§ 9.1 Definitions.
§ 9.2 Effective date; Applications.
§ 9.3 Waiver or reduction of coverage.
§ 9.4 Beneficiaries and options.
§ 9.5 Payment of proceeds.
§ 9.6 Assignments.
§ 9.7 Administrative decisions.
§ 9.8 Termination of coverage.
§ 9.9 Conversion privilege.
§ 9.10 Health standards.
§ 9.11 Criteria for reinsurers and converters.
§ 9.12 Reinsurance formula.
§ 9.13 Actions on the policy.


§ 9.1 Definitions.
The following definitions are in addition to those definitions in 38 U.S.C. 101 and 1965:
(a) The term policy means Group Policy No. G-32000, which was effective September 29, 1965, purchased from the insurer pursuant to 38 U.S.C. 1966, executed and attested on December 30, 1965, and amended thereafter.
(b) The term administrative office means the Office of Servicemembers' Group Life Insurance located at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.
(c) The term insurer means the commercial life insurance company or companies selected under 38 U.S.C. 1966 to provide insurance coverage specified in the policy.
(d) The term reinsurer means any life insurance company meeting all the criteria set forth in § 9.10 which reinsures a portion of the total amount of insurance covered by the policy and issues individual life insurance policies to members under the provisions of 38 U.S.C. 1968(b) and 1977(e).
(e) The term converter means any life insurance company meeting all the criteria set forth in § 9.10 which issues individual life insurance policies to members under the provisions of 38 U.S.C. 1968(b) and 1977(e).
(f) The term coverage means Servicemembers' Group Life Insurance or Veterans' Group Life Insurance payable while the member is insured under the policy.
(g) The term termination of duty means (1) In the case of active duty or active duty for training being performed under a call or order that does not specify a period of less than 31 days—discharge, release or separation from such duty.
(2) In the case of other duty -- the member's release from his or her obligation to perform any duty in his or her uniformed service (active duty, or active duty for training or inactive duty training) whether arising from limitations included in a contract of enlistment or similar form of obligation or arising from resignation, retirement or other voluntary action by which the obligation to perform such duty ceases.
(h) The term break in service means the situation(s) in which: (1) A member terminates duty or obligation to perform duty in one service and enters on duty or assumes the obligation to perform duty in another uniformed service, regardless of the length of time intervening.

(2) A member reenters on duty or resumes an obligation to perform duty as a Reserve in the same uniformed service and 1 calendar day or more has elapsed following termination of the prior period of duty or obligation to perform duty.

(i) The term disability means any type of injury or disease whether mental or physical.

(j) The term total disability means any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech shall be deemed to be total disability. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded.

(k) The term inability to carry out activities of daily living means the inability to independently perform at least two of the six following functions:

(1) Bathing.

(2) Continence.

(3) Dressing.

(4) Eating.

(5) Toileting.

(6) Transferring in or out of a bed or chair with or without equipment.

(l) The term pyogenic infection means a pus-producing infection.

(m) The term contaminated substance means food or water made unfit for consumption by humans because of the presence of chemicals, radioactive elements, bacteria, or organisms.

(n) The term chemical weapon means chemical substances intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(o) The term biological weapon means biological agents or microorganisms intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(p) The term radiological weapon means radioactive materials or radiation-producing devices intended to kill, seriously injure, or incapacitate humans through their physiological effects.

(q) The term attending medical professional means a licensed physician, optometrist, nurse practitioner, registered nurse, or physician assistant.

(Authority: 38 U.S.C. 501(a), 1980A)

§ 9.2 Effective date; Applications.

(a) The effective date of Servicemembers' Group Life Insurance will be in accordance with provisions set forth in 38 U.S.C. 1967.

(b) The effective date of Veterans' Group Life Insurance will be as follows:

(1) For members whose Servicemembers' Group Life Insurance coverage ceases under 38 U.S.C. 1968(a)(1)(A) and 38 U.S.C. 1968(a)(4), the effective date shall be the 121st day after termination of duty. An application and the initial premium must be received by the administrative office within 120 days following termination of duty or separation or release from such assignment.

(2) For members whose Servicemembers' Group Life Insurance coverage was extended because of total disability, the effective date shall be the day following the end of the 1-year period of extended coverage or the day following the end of the total disability, whichever is the earlier date, but in no event before the 121st day following termination of duty. An application and the initial premium must be received by the administrative office within 1 year following termination of duty.

(3) For members who qualify for coverage under 38 U.S.C. 1967(b), the effective date shall be the 121st day after termination of duty. An application, the initial premium, and proof of disability must be received by the administrative office within 120 days following termination of duty.

(4) For members of the Individual Ready Reserve or the Inactive National Guard, the effective date shall be the date an application and the initial premium are received by the administrative office. The application and initial premium must be received by the administrative office within 120 days of becoming a member of either organization.

(Authority: 38 U.S.C. 1977(e))

(c) If either an application or the initial premium has not been received by the administrative office within the time limits set forth above, Servicemembers' Group Life Insurance or Veterans' Group Life Insurance coverage may still be granted if an application, the initial premium, and evidence of insurability are received by the administrative office within 1 year and 120 days following termination of duty.

(d) The effective date for Servicemembers' Group Life Insurance or Veterans' Group Life Insurance in any case not otherwise covered under this section or under 38 U.S.C. 1967(a) shall be the date an application and the initial premium are received by the administrative office.

(e) For purposes of this section, an application, an initial premium, and any evidence necessary to effect Servicemembers' Group Life Insurance or Veterans' Group Life Insurance coverage will be considered to have been received by the administrative office if:

(1) They are properly addressed to the administrative office, and

(2) The proper postage is affixed, and

(3) They are legibly postmarked within the time limit required for receipt by the administrative office.

§ 9.3 Waiver or reduction of coverage.

(a) Full-time coverage which is in effect will terminate or be reduced at midnight of the last day of the month a member's written notice requesting such termination or reduction is received by his or her uniformed service. In the case of a member paying premiums directly to the administrative office, full-time coverage will terminate or be reduced as of the last day of the month for which the last full premium was paid. Termination or reduction of coverage is effective for the entire remaining period of active duty unless the member reinstates his or her coverage under the provisions of 38 U.S.C. 1967(c). If, following termination of duty, a member reenters duty (in the same or another uniformed service), a waiver or reduction for the previous period of duty will not apply to the subsequent period of duty.

(b) Part-time coverage will terminate or be reduced at the end of the last day of the period of duty then being performed if the member is on active duty or active duty for training when the waiver or reduction is filed; at the end of the period of inactive duty training then being performed if the member is on inactive duty training when the waiver or reduction is filed; or on the date the waiver or reduction is received by his or her uniformed service if the member is not on active duty, active duty for training; or inactive duty training on the date the waiver or reduction is filed.

(1) When a member insured under part-time coverage waives his or her right to group coverage or elects a reduced amount of insurance, such waiver or election, unless changed, is effective throughout the period of the member's continuous reserve obligation in the same uniformed service. If, following termination of duty, the member reenters duty or resumes the obligation to perform duty (in the same or another uniformed service), the waiver or reduction will not apply to the subsequent period of duty or obligation.

(2) If a reservist insured under part-time coverage is called or ordered to active duty or active duty for training under a call or order that does not specify a period of less than 31 days and is separated or released from such duty and then resumes his or her reserve obligation, any waiver or election of reduced coverage made while eligible for part-time coverage, unless changed, shall be effective throughout the entire period of part-time coverage, the active duty or active duty for training period and 120 days thereafter and the period of immediately resumed reserve obligation.

(3) If a member, other than a member referred to in paragraph (b)(2) of this section, upon termination of duty qualifying him or her for full-time coverage assumes an obligation to perform duty as a reservist, any waiver or election previously made by the member shall not apply to coverage arising from his or her reservist obligation. Furthermore, during the 120 days following termination of such duty the full-time coverage shall not be reduced by any waiver or election made by a member as a reservist.

§ 9.4 Beneficiaries and options.
(a) Any designation of beneficiary or election of optional settlement made by any member insured under Servicemen's Group Life Insurance for full-time coverage or part-time coverage will remain in effect, until properly changed by the member or automatically canceled, under the following rules:
(1) If the insurance terminates following separation or release from all duty in a uniformed service.
(2) If the member enters on duty in another uniformed service.
(3) If the member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.
(b) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.
(c) Until and unless otherwise changed, a beneficiary designation and settlement option election of record on the date a statutory increase in coverage takes effect shall be considered to be a beneficiary and optional settlement election for the increased amount as well, and any beneficiary named therein shall be entitled to the same percentage (%) share of the new total coverage amount as that beneficiary was entitled to prior to the statutory increase in coverage.

(Authority: 38 U.S.C. 501)


§ 9.5 Payment of proceeds.
Proceeds shall be paid in accordance with provisions set forth in 38 U.S.C. 1970 and the following provisions:
(a) If proceeds are to be paid in installments, the first installment will be payable as of the date of death. The amount of each installment will be computed so as to include interest on the unpaid balance at the then effective rate.
(b) If, following the death of an insured member who has designated both principal and contingent beneficiaries and elected to have payment made in 36 equal monthly installments, the principal beneficiary dies before all 36 installments have been paid, the remaining installments will be paid as they fall due to the contingent beneficiary. At the death of such a contingent beneficiary, and in other instances of a beneficiary's death, where there is no contingent beneficiary, the value of any unpaid installments, discounted to the date of his or her death at the same rate used for inclusion of interest in the
computation of installments will be paid, without further accrual of interest, in one sum to
the estate of the beneficiary or continent beneficiary last receiving payment.
(c) In instances where payment in installments is made at the election of the beneficiary,
upon his or her request, the value of such installments as remain unpaid will be
discounted to the date of payment at the same rate used for inclusion of interest in the
computation of installments and paid to him or her in one sum.
(d) If a member whose coverage is extended due to total disability converts the group
insurance to an individual policy which is effective before he or she ceases to be totally
disabled or before the end of 1 year following termination of duty, whichever is earlier,
and dies while group insurance would be in effect, except for such conversion, the group
insurance will be payable, provided the individual policy is surrendered for a return of
premiums and without further claim. When there is no such surrender, any amount of
group insurance in excess of the amount of the individual policy will be payable.
(Authority: 38 U.S.C. 501)
(e) [Removed. See 61 FR 20134, 20136, May 6, 1996.]
(f) [Redesignated as paragraph (a). See 61 FR 20134, 20136, May 6, 1996.]
(g) [Redesignated as paragraph (b). See 61 FR 20134, 20136, May 6, 1996.]
(h) [Redesignated as paragraph (c). See 61 FR 20134, 20136, May 6, 1996.]
[40 FR 4135, Jan. 28, 1975, as amended at 50 FR 12252, Mar. 28, 1985; redesignated and
amended at 61 FR 20134, 20135, 20136, May 6, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20134, 20135, 20136, May 6, 1996, which
redesignated and amended this section, became effective May 6, 1996.]
[CROSS REFERENCE: This section was formerly § 9.18.]

§ 9.6 Assignments.
Servicemembers' Group Life Insurance, Veterans' Group Life Insurance and benefits
thereunder are not assignable.
[40 FR 4135, Jan. 28, 1975; redesignated at 61 FR 20134, 20135, May 6, 1996; 62 FR
35969, 35970, July 3, 1997; as corrected at 62 FR 47532, 47533, Sept. 9, 1997]

[EFFECTIVE DATE NOTE: 61 FR 20134, 20135, May 6, 1996, redesignated this
section, effective May 6, 1996; 62 FR 35969, 35970, July 3, 1997, substituted
"Servicemembers'" for "Servicemen's" in this section, effective July 3, 1997.]
[CROSS REFERENCE: This section was formerly § 9.20.]

§ 9.7 Administrative decisions.
(a) Determinations of the Department of Veterans Affairs are conclusive under the policy
with respect to the following:
(1) The status of any person being within the term member and whether or not he or she
is covered at any point of time under the policy including traveltime under 38 U.S.C.
1967(b) and death within 120 days thereafter from a disability incurred or aggravated
while on duty.
(2) The fact and date of a member's termination of active duty, or active duty for training,
and the fact, date and hours of a member's performance of inactive duty training.
(3) The fact and dates with respect to a member's absence without leave, confinement by
civilian authorities under a sentence adjudged by a civil court, or confinement by military
authorities under a court-martial sentence involving total forfeiture of pay and allowances.

(4) The operation of the forfeiture provision provided in 38 U.S.C. 1973 with respect to any member.

(5) The existence of total disability or insurability at standard premium rates under 38 U.S.C. 1968.

(b) When determination is required on a claim that a member who waived coverage, or whose coverage was forfeited for one of the offenses listed under 38 U.S.C. 1973 was in fact insured, or that a member who elected to be insured was insured for an amount greater than the amount shown in the record, and there is no record of an application to be insured or to increase the amount of insurance as required under 38 U.S.C. 1967(c):

(1) The person making the claim will be required to submit all evidence available concerning the member's actions and intentions with respect to Servicemembers' Group Life Insurance or Veterans' Group Life Insurance.

(2) Request will be made to the member's uniformed service and any other likely source of information considered necessary, for whatever evidence in the form of copies of payroll or personnel records, statements of persons having knowledge of the facts, etc., is essential to a decision in the matter.

Based on the evidence obtained, a formal determination will be made as to whether the member involved is deemed to have applied to be insured, or to be insured for an amount other than the amount shown in the record. The determination will include a finding as to the member's health status for insurance purposes based on the evidence available.

(Authority: 38 U.S.C. 1967)

(c) In making the determination required under paragraph (b) of this section, the following will be considered:

(1) The possibility that due to widespread geographic distribution, inadequate means of communication and the nature of the group insurance program, members may not be adequately and accurately informed, especially in time of war or military emergency, about the detailed requirements for obtaining insurance protection.

(2) Payroll deductions made without objection by a member, following waiver or termination of coverage, representing premiums for insurance or additional insurance, may, by virtue of continuity or the circumstances surrounding their initiation, be indicative that the member did apply. Such deductions without a formal application of record may be considered as evidence that the member's application was not in proper form or misplaced. They may also be considered as evidence that an application was not made solely because of erroneous or incomplete counseling or absence of counseling on the part of the responsible personnel of the uniformed service.

(d) Questions for determination under this section as well as those involving coverage of groups and classes of members and other questions are properly referable to the Assistant Director for Insurance. Authority to make any determinations required under this section is delegated to the Under Secretary for Benefits and Assistant Director for Insurance.

§ 9.8 Termination of coverage.
Termination of coverage will be in accordance with the provisions of 38 U.S.C. 1968 and § 9.3 of this part and the following provisions:
(a) In the case of a member whose coverage is forfeited under 38 U.S.C. 1973, coverage terminates at the end of the day preceding the day on which the act or omission forming the basis for such forfeiture occurred.
(b) In the event of discontinuance of the group policy, coverage terminates at the end of the day preceding the date of the discontinuance of the policy except for those members who are insured under Veterans' Group Life Insurance in which event coverage terminates at the expiration of the day preceding the anniversary of the effective date of such insurance which first occurs, 90 days or more after the discontinuance of the group policy.

§ 9.9 Conversion privilege.
(a) With respect to a member on active duty or active duty for training under a call or order to duty that specifies a period of less than 31 days, and a member insured during inactive duty training scheduled in advance by competent authority there shall be no right of conversion unless the insurance is continued in force under 38 U.S.C. 1967(b) or 1968(a) for 120 days following a period of such duty, as the result of a disability incurred or aggravated during such a period of duty.
(b) The individual policy of life insurance to which an insured may convert under 38 U.S.C. 1968(b) or 1977(e) shall not have disability or other supplementary benefits and shall not be term insurance or any policy which does not provide for cash values. Term riders providing level or decreasing insurance for which an additional premium is charged may be attached to an eligible basic conversion policy, but the rider will be excluded from the conversion pool agreement under the policy.
(c) The insurer will establish a conversion pool in cooperation with the reinsurers and converters in accordance with the terms of the policy. Its purpose will be to provide for the determination and maintenance of appropriate charges arising from excess mortality under individual conversion policies issued in accordance with this section and provide for the appropriate distribution of the risk of loss due to such excess mortality among the reinsurers and converters.
§ 9.10 Health standards.

(a) For the purpose of determining if a member who incurred a disability or aggravated a preexisting disability during a period of active duty or active duty for training under a call to duty specifying a period of less than 31 days or during a period of inactive duty was rendered uninsurable at standard premium rates, the underwriting criteria used by the insurer in determining good health for persons applying to it for life insurance in amounts not exceeding the maximum amount of coverage then available under 38 U.S.C. 1967 will be used.

(Authority: 38 U.S.C. 1967)

(b) For all other purposes of determining if a member meets the necessary health requirements except paragraph (a) of this section, the underwriting criteria used by the insurer in determining good health for group life insurance purposes will be used.

[40 FR 4135, Jan. 28, 1975, as amended at 53 FR 17699, May 18, 1988; redesignated at 61 FR 20134, 20135, May 6, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20134, 20135, May 6, 1996, which redesignated this section, became effective May 6, 1996.]

[CROSS REFERENCE: This section was formerly § 9.26.]

§ 9.11 Criteria for reinsurers and converters.

The following criteria will control eligibility for reinsuring and converting companies:

(a) The company must be a legal reserve life insurance company as classified by the insurance supervisory authorities of the State of domicile. Qualified fraternal organizations are included.

(b) The company must have been in the life insurance business for a continuous period of 5 years prior to October 1, 1965, or the December 31 preceding any redeterminations of the allocations. In the event of a merger, the 5-year requirement may be satisfied by either the surviving company or by one of the absorbed companies. Upon joint application by a subsidiary of a participating company, together with the parent company, the 5-year requirement may be waived provided such parent company owns more than 50 percent of the outstanding stock of the subsidiary and has been a legal reserve life insurance company for a period of 10 years or more.

(c) The company must be licensed to engage in life insurance in at least one State of the United States or the District of Columbia.

(d) The company will not be one: (1) Certified by the Department of Defense as being under suspension for cause for purpose of allotment or on-base solicitation privileges. (2) That solicits life insurance applications as conversion or other replacement of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance coverage in jurisdictions in which it is not licensed.
(3) That fails to take effective action to correct an improper practice followed by it or its agents within 30 days after written receipt of notice issued by the insurer or the Assistant Director for Insurance. Improper practice includes:
(i) The use for solicitation purposes of lists of names and addresses of former members without obtaining reasonable assurance that such lists have not been obtained contrary to regulations of the Department of Defense or other uniformed service;
(ii) Failure to reveal sources and copies of mailing lists upon proper request or to otherwise cooperate in an authorized investigation of a reported improper practice;
(iii) The use of written or oral representations which may mislead the person addressed as to the true role of the company or its representatives as one of the participating companies;
(iv) The use of written or oral representations which may mislead the person addressed as to rights, privileges, coverage, premiums, or similar matters under Servicemembers' Group Life Insurance, Veterans' Group Life Insurance, or any policy issued or proposed to be issued as a conversion or other replacement coverage;
(v) Violation of regulations of a uniformed service concerning solicitation of life insurance; and
(vi) The use of written or oral references to Servicemembers' Group Life Insurance, Veterans' Group Life Insurance or conversions of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance in connection with the attempted sale of an insurance policy which would not be, in fact, a conversion policy or a policy issued in lieu of a conversion, if those references might lead a person addressed to believe there is a connection between the policy being sold and coverage under Servicemembers' Group Life Insurance, Veterans' Group Life Insurance or a conversion of it.
(e) Each reinsuring and converting company must agree to issue conversion policies to any qualified applicant regardless of race, color, religion, sex, or national origin, under terms and conditions established by the primary insurer.


[CROSS REFERENCE: This section was formerly § 9.28.]

§ 9.12 Reinsurance formula.
The allocation of insurance to the insurer and each reinsurer will be based upon the following:
(a) An amount of the total life insurance in force under the policy in proportion to the company's total life insurance in force in the United States, where:
The first $ 100 million in force is counted in full,
The second $ 100 million in force is counted at 75 percent,
The third $ 100 million in force is counted at 50 percent,
The fourth $ 100 million in force is counted at 25 percent,
And any amount above $ 400 million in force is counted at 5 percent.
(b) The allocation will be redetermined at the beginning of each policy year for the primary insurer and the companies then reinsuring, with the portion as set forth in paragraph (a) of this section based upon the corresponding in force (excluding the Servicemembers' Group Life Insurance in force) as of the preceding December 31.

c) Any life insurance company, which is not initially participating in reinsurance or conversions, but satisfies the criteria set forth in § 9.11, may subsequently apply to the primary insurer to reinsure and convert, or to convert only. The participation of such company will be effective as of the beginning of the policy year following the date on which application is approved by the insurer.


[CROSS REFERENCE: This section was formerly § 9.30.]

§ 9.13 Actions on the policy.
The Assistant Director for Insurance will furnish the name and address of the insuring company upon written request of a member of the uniformed services or his or her beneficiary. Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligation undertaken by the United States, should be brought against the insurer.

[40 FR 4135, Jan. 28, 1975; redesignated and amended at 61 FR 20134, 20135, 20136, May 6, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20134, 20135, 20136, May 6, 1996, which redesignated and amended this section, became effective May 6, 1996.]

[CROSS REFERENCE: This section was formerly § 9.32.]


(a) What is an Accelerated Benefit? An Accelerated Benefit is a payment of a portion of your Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to you before you die.

(b) Who is eligible to receive an Accelerated Benefit? You are eligible to receive an Accelerated Benefit if you have a valid written medical prognosis from a physician of 9 months or less to live, and otherwise comply with the provisions of this section.

(c) Who can apply for an Accelerated Benefit? Only you, the insured member, can apply for an Accelerated Benefit. No one can apply on your behalf.

(d) How much can you request as an Accelerated Benefit? (1) You can request as an Accelerated Benefit an amount up to a maximum of 50% of the face value of your insurance coverage.

(2) Your request for an Accelerated Benefit must be $ 5,000 or a multiple of $ 5000 (for example, $ 10,000, $ 15,000).
(e) How much can you receive as an Accelerated Benefit? You can receive as an Accelerated Benefit the amount you request up to a maximum of 50% of the face value of your insurance coverage, minus the interest reduction. The interest reduction is the amount the Office of Servicemembers' Group Life Insurance actuarially determines to be the amount of interest that would be lost because of the early payment of part of your insurance coverage. This means that if you have $100,000 in coverage and you request the maximum amount that you are eligible to request as an Accelerated Benefit, you will be paid $50,000 minus the interest reduction.

(f) How do you apply for an Accelerated Benefit? (1) You can obtain an application form entitled "Claim for Accelerated Benefits" by writing the Office of Servicemembers' Group Life Insurance, 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039; calling the Office of Servicemembers' Group Life Insurance toll-free at 1-800-219-1473; or downloading the form from the Internet at www.insurance.va.gov. You must submit the completed application form to the Office of Servicemembers' Group Life Insurance, 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

(2) As stated on the application form, you will be required to complete part of the application form and your physician will be required to complete part of the application form. If you are an active duty servicemember, your branch of service will also be required to complete part of the form.

To Be Completed by Insured
Claim for Accelerated Benefits
Your name:---------------------------------
Social Security Number:---------------------------
Your home address:------------------------------
Date of birth:----------------------------------
Branch of Service (if covered under SGLI):-------
Your mailing address (if different from above):----
Amount of SGLI coverage:-----------------------
Amount of claim (can be no more than one-half of coverage in increments of $5,000);-----------------
Type of coverage (check one):
SGLI (circle one of the following): Active Duty Ready Reserve Army or Air National Guard Separated or Discharged
VGLI
Note: If you checked SGLI, you must also have your military unit complete the attached form.
I acknowledge that I have read all of the attached information about the accelerated benefit. I understand that I can get this benefit only once during my lifetime and that I can use it for any purpose I choose. I further understand that the face amount of my coverage will reduce by the amount of accelerated benefit I choose to receive now.
Your signature:-----------------------------
Date:--------------------------------------
Authorization To Release Medical Records
To all physicians, hospitals, medical service providers, pharmacists, employers, other insurance companies, and all other agencies and organizations:
You are authorized to release a copy of all my medical records, including examinations, treatments, history, and prescriptions, to the Office of Servicemembers' Group Life Insurance (OSGLI) or its representatives.

Printed name:------------------------------------------------------
Signature:----------------------------------------------------------
Date:----------------------------------------------------------------

A photocopy of this authorization will be considered as effective and valid as the original.
Valid for one year from date signed.
----------------------------------------------------------------

To Be Completed by Physician
Attending Physician's Certification

Patient's name:----------------------------------------------------------
Patient's Social Security Number:---------------------------------------
Diagnosis:---------------------------------------------------------
ICD-9-CM Disease Code *:----------------------------------------
Description of present medical condition (please attach results of x-rays, E.K.G or other tests):-----------------------------
Is the patient capable of handling his/her own affairs?-------- Yes-- No--
The patient applied for an accelerated benefit under his/her government life insurance coverage. To qualify, the patient must have a life expectancy of nine (9) months or less.
Does your patient meet this requirement?-------- Yes-- No--
Attending Physician's name (please print):--------------------------
State in which you are licensed to practice:------------------------
Specialty:---------------------------------------------------------
Mailing address:-----------------------------------------------------
Telephone number:-----------------------------------------------------
Fax Number:---------------------------------------------------------
Signature:----------------------------------------------------------
Date:----------------------------------------------------------------

*ICD-9-CM is an acronym for International Classification of Diseases, 9th revision, Clinical Modification.
----------------------------------------------------------------

To Be Completed by Personnel Office of Servicemember's Unit
(Complete this form only if the applicant for Accelerated Benefits is covered under SGLI.)

Branch of Service Statement

Servicemember's name:--------------------------------------------
Social Security Number:------------------------------------------
Branch of Service:----------------------------------------------
Amount of SGLI coverage:-----------------------------------------
Monthly premium amount:------------------------------------------
Name of person completing this form:-----------------------------
Telephone Number:---------------------------------------------------
§ 9.20 Traumatic Injury Protection.
(a) What is traumatic injury protection? Traumatic injury protection provides for the payment of a specified benefit amount to a member insured by Servicemembers' Group Life Insurance who sustains a traumatic injury directly resulting in a scheduled loss.
(b) What is a traumatic event?
(1) A traumatic event is the application of external force, violence, chemical, biological, or radiological weapons, or accidental ingestion of a contaminated substance causing damage to a living being occurring --
(i) On or after December 1, 2005, or
(ii) On or after October 7, 2001, and through and including November 30, 2005, if the
scheduled loss is a direct result of a traumatic injury incurred in Operation Enduring
Freedom or Operation Iraqi Freedom.
(2)(i) The term incurred in Operation Enduring Freedom means a service member was
deployed outside of the United States on orders in support of Operation Enduring
Freedom or served in a geographic location that qualified the service member for the
Combat Zone Tax Exclusion under 26 U.S.C. 211.
(ii) The term incurred in Operation Iraqi Freedom means a service member was deployed
outside of the United States on orders in support of Operation Iraqi Freedom or served in
a geographic location that qualified the service member for the Combat Zone Tax
Exclusion under 26 U.S.C. 211.
(3) A traumatic event does not include a surgical procedure in and of itself.
(c) What is a traumatic injury?
(1) A traumatic injury is physical damage to a living body that is caused by a traumatic
event as defined in paragraph (b) of this section.
(2) For purposes of this section, the term "traumatic injury" does not include damage to a
living body caused by --
(i) A mental disorder; or
(ii) A mental or physical illness or disease, except if the physical illness or disease is
caused by a pyogenic infection, biological, chemical, or radiological weapons, or
accidental ingestion of a contaminated substance.
(3) For purposes of this section, all traumatic injuries will be considered to have occurred
at the same time as the traumatic event.
(d) What are the eligibility requirements for payment of traumatic injury protection
benefits? You must meet all of the following requirements in order to be eligible for
traumatic injury protection benefits.
(1) You must be a member of the uniformed services who is insured by Servicemembers' 
Group Life Insurance under section 1967(a)(1)(A)(i), (B) or (C)(i) of title 38, United
States Code, on the date you sustained a traumatic injury. (For this purpose, you will be
considered a member of the uniformed services until midnight on the date of your
separation from service.)
(2) You must suffer a scheduled loss that is a direct result of a traumatic injury and no
other cause.
(3) You must survive for a period not less than seven full days from the date of the
traumatic injury. The seven day period begins on the date and Zulu (Greenwich Meridean)
time of the traumatic injury and ends 168 full hours later.
(4) You must suffer a scheduled loss under paragraph (e)(7) of this section within 365
days of the traumatic injury.
(e) What is a scheduled loss and what amount will be paid because of that loss? (1) The
term "scheduled loss" means a condition listed in the schedule in paragraph (e)(7) of this
section if directly caused by a traumatic injury. A scheduled loss is payable at the amount
specified in the schedule.
(2) The maximum amount payable under the schedule for all losses resulting from
traumatic events occurring within a seven-day period is $100,000. We will calculate the
seven-day period beginning with the day on which the first traumatic event occurs.
(3) A benefit will not be paid if a scheduled loss is due to a traumatic injury --
   (i) Caused by --
      (A) The member's attempted suicide, while sane or insane;
      (B) An intentionally self-inflicted injury or an attempt to inflict such injury;
      (C) Medical or surgical treatment of an illness or disease;
      (D) Willful use of an illegal or controlled substance, unless administered or consumed on
          the advice of a medical doctor; or
   (ii) Sustained while a member was committing or attempting to commit a felony.
(4) A benefit will not be paid for a scheduled loss resulting from --
   (i) A physical or mental illness or disease, whether or not caused by a traumatic injury,
       other than a pyogenic infection or physical illness or disease caused by biological,
       chemical, or radiological weapons or accidental ingestion of a contaminated substance; or
   (ii) A mental disorder whether or not caused by a traumatic injury.
(5) Amount Payable under the Schedule of Losses.
   (i) The maximum amount payable for all scheduled losses resulting from a single
       traumatic event is limited to $100,000. For example, if a traumatic event on April 1,
       2006, results in the immediate total and permanent loss of sight in both eyes, and the loss
       of one foot on May 1, 2006, as a direct result of the same traumatic event, the member
       will be paid $100,000.
   (ii) If a member suffers more than one scheduled loss as a result of a single traumatic
       event, payment will be made for the scheduled loss with the highest benefit amount.
   (iii) If a member suffers more than one scheduled loss from separate traumatic events
       occurring more than seven full days apart, the scheduled losses will be considered
       separately and a benefit will be paid for each loss up to the maximum amount according
       to the schedule. For example, if a member suffers the loss of one foot at or above the
       ankle on May 1, 2006, from one event, the member will be paid $50,000. If the same
       member suffers loss of sight in both eyes from an event that occurred on November 1,
       2006, the member will be paid an additional $100,000.
(6) Definitions. For purposes of this paragraph (e)(6) --
   (i) Quadriplegia means the complete and irreversible paralysis of all four limbs;
   (ii) Paraplegia means the complete and irreversible paralysis of both lower limbs; and
   (iii) Hemiplegia means the complete and irreversible paralysis of the upper and lower
       limbs on one side of the body.
(7) Schedule of Losses.

If the loss is -- paid  is --
   (i) Total and permanent loss of $100,000.  sight in both eyes
   (ii) Total and permanent loss of $100,000.  hearing in both ears
   (iii) Loss of both hands at or above $100,000.  wrist
   (iv) Loss of both feet at or above $100,000.  ankle
   (v) Quadriplegia  $100,000.
   (vi) Hemiplegia  $100,000.
(vii) Paraplegia $ 100,000.

(viii) 3rd degree or worse burns, covering 30% of the body or 30% of the face $ 100,000.

(ix) Loss of one hand at or above wrist and one foot at or above ankle $ 100,000.

(x) Loss of one hand at or above wrist and total and permanent loss of sight in one eye $ 100,000.

(xi) Loss of one foot at or above ankle and total and permanent loss of sight in one eye $ 100,000.

(xii) Total and permanent loss of speech and total and permanent loss of hearing in one ear $ 75,000.

(xiii) Loss of one hand at or above wrist and total and permanent loss of speech $ 100,000.

(xiv) Loss of one hand at or above wrist and total and permanent loss of hearing in one ear $ 75,000.

(xv) Loss of one hand at or above wrist and loss of thumb and index finger of other hand $ 100,000.

(xvi) Loss of one foot at or above ankle and total and permanent loss of speech $ 100,000.

(xvii) Loss of one foot at or above ankle and total and permanent loss of hearing in one ear $ 100,000.

(xviii) Loss of one foot at or above ankle and loss of thumb and index finger of same hand $ 100,000.

(xix) Total and permanent loss of sight in one eye and total and permanent loss of speech $ 100,000.

(xx) Total and permanent loss of sight in one eye and total and permanent loss of hearing in one ear $ 75,000.

(xxi) Total and permanent loss of sight in one eye and loss of thumb and index finger of same hand $ 100,000.

(xxii) Total and permanent loss of thumb of both hands, regardless of the loss of any other digits $ 100,000.

(xxiii) Total and permanent loss of speech and loss of thumb and index finger of same hand $ 100,000.

(xxiv) Total and permanent loss of hearing in one ear and loss of thumb and index finger of same hand $ 75,000.
(xxv) Loss of one hand at or above wrist and coma $ 50,000 for loss of hand plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxvi) Loss of one foot at or above ankle and coma $ 50,000 for loss of foot plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxvii) Total and permanent loss of speech and coma $ 50,000 for total and permanent loss of speech plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxviii) Total and permanent loss of sight in one eye and coma $ 50,000 for total and permanent loss of sight in one eye plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxix) Total and permanent loss of hearing in one ear and coma $ 25,000 for total and permanent loss of hearing in one ear plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxx) Loss of thumb and index finger of same hand and coma $ 50,000 for loss of thumb and index finger of the same hand plus the amount paid for coma as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxxi) Total and permanent loss of sight in one eye and inability to carry out activities of daily living due to traumatic brain injury $ 50,000 for loss of sight in one eye plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxxii) Loss of one hand at or above wrist and inability to carry out activities of daily living due to traumatic brain injury $ 50,000 for loss of hand plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxxiii) Loss of one foot at or above ankle and inability to carry out activities of daily living due to traumatic brain injury $ 50,000 for loss of foot plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxxiv) Loss of thumb and index finger of same hand and inability to carry out activities of daily living due to traumatic brain injury $ 50,000 for loss of thumb and index finger plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $ 100,000.

(xxxv) Total and permanent loss of hearing in one ear and inability to carry out activities of daily living due to traumatic brain injury $ 25,000 for total and
permanent loss of hearing in one ear plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.

(36) Total and permanent loss of speech and inability to carry out activities of daily living due to traumatic brain injury $ 50,000 for total and permanent loss of speech plus the amount paid for the inability to carry out activities of daily living due to traumatic brain injury as noted in Item 37 of this schedule up to a combined maximum of $100,000.

(37) Coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury At 15th consecutive day in a coma, and/or the inability to carry out activities of daily living -- $ 25,000.

Note 1: Benefits will not be paid under this schedule for concurrent conditions of coma and traumatic brain injury. At 30th consecutive day in a coma, and/or the inability to carry out activities of daily living -- Additional $25,000.

Note 2: Duration of coma includes the day of onset of the coma and the day when the member recovers from coma. At 60th consecutive day in a coma, and/or the inability to carry out activities of daily living -- Additional $25,000.

Note 3: Duration of the inability to carry out activities of daily living due to traumatic brain injury includes the day of the onset of the inability to carry out activities of daily living and the day the member once again can carry out activities of daily living. At 90th consecutive day in a coma, and/or the inability to carry out activities of daily living -- Additional $25,000.

(Benefits can be paid for both conditions only if experienced consecutively, not concurrently.)

(38) Loss of one hand at or above wrist $ 50,000.
(39) Loss of one foot at or above ankle $ 50,000.
(40) Total and permanent loss of sight in one eye $ 50,000.
(41) Loss of thumb and index finger of same hand $ 50,000.
(42) Total and permanent loss of hearing in one ear $ 25,000.

(43) The inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain At 30th consecutive day of the inability to carry out activities of daily living -- $ 25,000.

Note: Duration of the inability to carry out activities of daily living includes the day of onset of the inability to carry out activities of daily living and the day when the member can once again carry out activities of daily living. At 60th consecutive day of the inability to carry out activities of daily living -- Additional $25,000.
At 90th consecutive day of the inability to carry out activities of daily living -- Additional $25,000.

At 120th consecutive day of the inability to carry out activities of daily living -- Additional $25,000.

(f) Who will determine eligibility for traumatic injury protection benefits? Each uniformed service will certify the eligibility of its own members for traumatic injury protection benefits based upon section 1032 of Public Law 109-13 and this section.

(g) How does a member make a claim for traumatic injury protection benefits?

(1)(i) A member who believes he or she qualifies for traumatic injury protection benefits must complete Part A of the Certification of Traumatic Injury Protection Form and sign the form.

(ii) If a member is unable to do so, anyone acting on the member's behalf may request a Certification of Traumatic Injury Protection Form from the uniformed service. However, the Certification of Traumatic Injury Protection Form must be signed by the member, the member's guardian, or the member's attorney-in-fact.

(iii) If a member suffered a scheduled loss as a direct result of the traumatic injury, survived seven full days from the date of the traumatic event, and then died before the maximum benefit for which the service member qualifies is paid the beneficiary or beneficiaries of the member's Servicemembers' Group Life Insurance policy should complete a Certification of Traumatic Injury Protection Form.

(2) If a member seeks traumatic injury protection benefits for a scheduled loss occurring after submission of a completed Certification of Traumatic Injury Protection Form for a different scheduled loss, the member must submit a completed Certification of Traumatic Injury Protection Form for the new scheduled loss and for each scheduled loss that occurs thereafter. For example, if a member seeks traumatic injury protection benefits for a scheduled loss due to coma from traumatic injury and/or the inability to carry out activities of daily living due to traumatic brain injury (§ 9.20(e)(7)(xxxviii)), or the inability to carry out activities of daily living due to loss directly resulting from a traumatic injury other than an injury to the brain (§ 9.20(e)(7)(xliv)), a completed Certification of Traumatic Injury Protection Form must be submitted for each increment of time for which TSGLI is payable. Also, for example, if a service member suffers a scheduled loss due to a coma, a completed Certification of Traumatic Injury Protection Form should be filed after the 15th consecutive day that the member is in the coma, for which $25,000 is payable. If the member remains in a coma for another 15 days, another completed Certification of Traumatic Injury Protection Form should be submitted and another $25,000 will be paid.

(h) How does a member or beneficiary appeal an adverse eligibility determination?

(1) Notice of a decision regarding a member's eligibility for traumatic injury protection benefits will include an explanation of the procedure for obtaining review of the decision. An appeal of an eligibility determination, such as whether the loss occurred within 365 days of the traumatic injury, whether the injury was self-inflicted or whether a loss of hearing was total and permanent, must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative, within one year of the date of a denial of eligibility, to the office of the
uniformed service identified in the decision regarding the member's eligibility for the benefit.

(2) An appeal regarding whether a member was insured under Servicemembers' Group Life Insurance when the traumatic injury was sustained must be in writing. An appeal must be submitted by a member or a member's legal representative or by the beneficiary or the beneficiary's legal representative within one year of the date of a denial of eligibility to the Office of Servicemembers' Group Life Insurance.


(i) Who will be paid the traumatic injury protection benefit? The injured member who suffered a scheduled loss will be paid the traumatic injury protection benefit in accordance with title 38 U.S.C. 1980A except under the following circumstances:

(1) If a member is legally incapacitated, the member's guardian or attorney-in-fact will be paid the benefit on behalf of the member.

(2) If a member dies before payment is made, the beneficiary or beneficiaries who will be paid the benefit will be determined in accordance with 38 U.S.C. 1970(a).

[70 FR 75940, 75949, Dec. 22, 2005]

(38 U.S.C. 501(a) and 1980A)

[EFFECTIVE DATE NOTE: 70 FR 75940, 75949, Dec. 22, 2005, added this section, effective Dec. 20, 2005.]
PART 10 -- ADJUSTED COMPENSATION

ADJUSTED COMPENSATION; GENERAL PAYMENTS
ADJUSTED COMPENSATION; GENERAL

§ 10.0 Adjusted service pay entitlements.
§ 10.1 Issuance of duplicate adjusted service certificate without bond.
§ 10.2 Evidence required of loss, destruction or mutilation of adjusted service certificate.
§ 10.3 Issuance of duplicate adjusted service certificate with bond.
§ 10.4 Loss, destruction, or mutilation of adjusted service certificate while in possession of Department of Veterans Affairs.
§ 10.15 Designation of more than one beneficiary under an adjusted service certificate.
§ 10.16 Conditions requisite for change in designation of beneficiary.
§ 10.17 Designation of beneficiary subsequent to cancellation of previous designation.
§ 10.18 Approval of application for change of beneficiary heretofore made.
§ 10.20 'Demand for payment' certification.
§ 10.22 Payment to estate of decedent.
§ 10.24 Payment of death claim on lost, destroyed or mutilated adjusted service certificate with bond.
§ 10.25 Payment of death claim on adjusted service certificate without bond.
§ 10.27 Definitions.
§ 10.28 Proof of death evidence.
§ 10.29 Claims for benefits because of elimination of preferred dependent.
§ 10.30 Proof of remarriage.
§ 10.31 Dependency of mother or father.
§ 10.32 Evidence of dependency.
§ 10.33 Determination of dependency.
§ 10.34 Proof of age of dependent mother or father.
§ 10.35 Claim of mother entitled by reason of unmarried status.
§ 10.36 Proof of marital cohabitation under section 602 or section 312 of the Act.
§ 10.37 Claim of widow not living with veteran at time of veteran's death.
§ 10.38 Proof of age of veteran's child.
§ 10.39 Mental or physical defect of child.
§ 10.40 Payment on account of minor child.
§ 10.41 Definition of 'child'.
§ 10.42 Claim of child other than legitimate child.
§ 10.43 Claim by guardian of child of veteran.
§ 10.44 Evidence required to support claim of mother or father.
§ 10.45 Definition of 'widow'.
§ 10.46 Authentication of statements supporting claims.
§ 10.47 Use of prescribed forms.

§ 10.0 Adjusted service pay entitlements.
A veteran entitled to adjusted service pay is one whose adjusted service credit does not amount to more than $50 as distinguished from a veteran whose adjusted service credit exceeds $50 and who therefore is entitled to an adjusted service certificate.

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§ 10.1 Issuance of duplicate adjusted service certificate without bond.
If the veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, without bad faith, has not received such certificate, or if prior to receipt by the veteran such certificate was destroyed wholly or in part or was so defaced as to impair its value, or, if after delivery it was partially destroyed or defaced so as to impair its value but can be identified to the satisfaction of the Secretary, a duplicate adjusted service certificate will be issued upon application and a bond of indemnity will not be required: Provided, That if the adjusted service certificate was destroyed in part or so defaced as to impair its value, the veteran or person entitled to payment thereon will be required to surrender to the Department of Veterans Affairs the original certificate or so much thereof as may remain.

§ 10.2 Evidence required of loss, destruction or mutilation of adjusted service certificate.
The veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, or the person entitled to payment thereon will be required to furnish evidence of the nonreceipt of the adjusted service certificate, or of its receipt in a mutilated or defaced condition, or of the loss or destruction in whole or in part of defacement of the certificate after its receipt, as the case may be. The evidence must be sufficient to establish to the satisfaction of the Secretary that neither the veteran nor the person entitled to payment thereon, or any person for or on their behalf, received the adjusted service certificate, or that at the time of its receipt it was mutilated or defaced to such an extent as to impair its value, or that after receipt of the certificate it was lost or destroyed in whole or in part or defaced, but without bad faith on the part of the veteran, and that every effort has been made to recover the lost certificate. Unless determination is otherwise made by the Secretary the evidence must be in the form of a written statement sworn to by the veteran or person entitled to payment thereon and witnessed by at least two persons who shall state, under oath that they personally know the affiant, that they have read his or her statement and that it is true to the best of their knowledge and belief. These statements should be supplemented by affidavits of any persons having personal knowledge of additional facts and circumstances concerning the matter, and the Secretary may require any additional evidence deemed necessary.

§ 10.3 Issuance of duplicate adjusted service certificate with bond.
An indemnity bond will be required as a prerequisite to the issuance of a duplicate adjusted service certificate in all cases where the certificate was lost after receipt by the veteran, or after receipt by the veteran was defaced or mutilated and cannot be identified to the satisfaction of the Secretary, provided the loss, defacement, or mutilation was without bad faith on the part of the veteran or the person entitled to payment thereon. The bond must be in the manner and form prescribed by the Department of Veterans Affairs and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Secretary, with condition to indemnify and save harmless the United States from any claim on account of such certificate. If the certificate was defaced or mutilated the veteran or person entitled to payment thereon will be required to surrender to the Department of Veterans Affairs the certificate or so much thereof as may remain.
13 FR 7122, Nov. 27, 1948.


§ 10.4 Loss, destruction, or mutilation of adjusted service certificate while in possession of Department of Veterans Affairs.
A new adjusted service certificate will be issued without bond in lieu of the certificate which has been lost or destroyed, or has been mutilated, defaced or damaged so as to impair its value, while in possession of the Department of Veterans Affairs.
13 FR 7122, Nov. 27, 1948.


§ 10.15 Designation of more than one beneficiary under an adjusted service certificate.
A veteran to whom an adjusted service certificate has been issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act may name more than one beneficiary to receive the proceeds of his adjusted service certificate, and may from time to time with the approval of the Secretary change such beneficiaries. The designated beneficiaries shall share equally unless otherwise specified by the veteran. Wherever the word beneficiary appears in the law and Department of Veterans Affairs regulations it shall be interpreted to include beneficiaries.
13 FR 7122, Nov. 27, 1948.


§ 10.16 Conditions requisite for change in designation of beneficiary.
A change of beneficiary of an adjusted service certificate to be valid must be made: (a) By notice signed by the veteran or his duly authorized agent, and delivered or properly mailed to the Department of Veterans Affairs during the lifetime of the veteran. Such change shall not take effect until approved by the Secretary and after such approval the change shall be deemed to have been made as of the date the veteran signed said
written notice and change, whether the veteran be living at the time of said approval or not.

(b) Or by last will and testament of the veteran, duly probated. Such change shall not be effective until received by the Department of Veterans Affairs and approved by the Secretary and after such approval the change shall be deemed to have been made as of the date of death of the veteran: Provided, That a change of beneficiary signed subsequent to the date upon which the will was executed and delivered in accordance with paragraph (a) of this section shall if approved in accordance with regulations take precedence over the designation by will.

Provided, however, That any payment made to a beneficiary of record, before notice of change of beneficiary has been received in the Department of Veterans Affairs and approved by the Secretary, shall not be made again to the changed beneficiary.

13 FR 7122, Nov. 27, 1948.


§ 10.17 Designation of beneficiary subsequent to cancellation of previous designation.
The designation of a beneficiary made subsequent to the cancellation of a previous designation of beneficiary, shall be considered as a change in beneficiary, and shall be subject to the approval of the Secretary and subject to the conditions and requirements respecting change in beneficiary as outlined in § 10.16.

13 FR 7122, Nov. 27, 1948.


§ 10.18 Approval of application for change of beneficiary heretofore made.
Any application for a change of beneficiary heretofore made may be approved if it meets the requirements set out in §§ 10.16 and 10.17.

13 FR 7122, Nov. 27, 1948.


§ 10.20 'Demand for payment' certification.
Certification to the execution of demand for payment forms appearing on the reverse side of adjusted service certificates issued pursuant to the World War Adjusted Compensation Act, as amended, is required in accordance with instructions printed on said forms. Such certification if made in the United States or possessions will be accepted if made by and bearing the official seal of a United States postmaster, an executive officer of an incorporated bank or trust company, notary public, or any person who is legally authorized to administer oaths in a State, Territory, District of Columbia or in a Federal judicial district of the United States. If the demand for payment be executed in a foreign country, the same shall be certified by an American consul, a recognized representative of an American embassy or legation or by a person authorized to administer oaths under the laws of the place where execution of demand is made, provided there be attached to
the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that the officer certifying to the execution of the demand for payment was authorized to administer oaths in the place where certification was made.
13 FR 7122, Nov. 27, 1948.


§ 10.22 Payment to estate of decedent.
Wherever the face value of an adjusted service certificate, issued pursuant to the World War Adjusted Compensation Act, as amended, becomes payable to the estate of any decedent and the amount thereof is not over $500 and an administrator has not been or is not to be appointed, such amount will be paid to such person or persons as would, under the laws of the State of residence of the decedent, be entitled to his personal property in case of intestacy.
13 FR 7122, Nov. 27, 1948.

§ 10.24 Payment of death claim on lost, destroyed or mutilated adjusted service certificate with bond.
If the veteran named in an adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, is deceased, and if, after receipt by the veteran, the adjusted service certificate was lost, destroyed, or so defaced as to impair its value and cannot be identified to the satisfaction of the Secretary of Veterans Affairs, the person entitled to payment thereon will be required to furnish an indemnity bond in the manner and form prescribed by the Department of Veterans Affairs and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Secretary of Veterans Affairs with condition to indemnify and save harmless the United States from any claim on account of such certificate, before payment will be made of the proceeds of the certificate and a duplicate adjusted service certificate will not be issued.
13 FR 7122, Nov. 27, 1948.

§ 10.25 Payment of death claim on adjusted service certificate without bond.
If the veteran named in the adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, is deceased, and if the certificate was lost or destroyed wholly or in part or was so defaced as to impair its value prior to receipt by the veteran, or was partially destroyed or defaced after receipt by the veteran, but can be identified to the satisfaction of the Secretary of Veterans Affairs, payment will be made of the proceeds of the certificate, a bond of indemnity will not be required, and a duplicate adjusted service certificate will not be issued: Provided, The
person entitled to payment thereon surrenders the defaced or mutilated certificate or so much thereof as may remain.
13 FR 7122, Nov. 27, 1948.


§ 10.27 Definitions.
For the purpose of §§ 10.28 to 10.47, the word Act as used herein refers to the World War Adjusted Compensation Act, as amended; the word Veteran refers to that term as defined in section 2 of title I of said Act; the word Director refers to the Secretary of Veterans Affairs.
13 FR 7122, Nov. 27, 1948.


§ 10.28 Proof of death evidence.
Evidence required in establishing proof of death under the act, as amended, shall conform with the requirements set forth in the regulations of the Department of Veterans Affairs.
13 FR 7122, Nov. 27, 1948.


§ 10.29 Claims for benefits because of elimination of preferred dependent.
A dependent, in subsequent position in the order of preference as defined in section 601 of title VI of the Act, as amended, who makes claim for the benefits of the Act in consequence of the death of a dependent who made application and who stood in preferential position as defined in section 601 of the act, as amended, shall be required to furnish, in support of such claim, proof of death of said dependent. Proof of death of said dependent shall be in accordance with the requirements for proof of death as outlined in the regulations of Department of Veterans Affairs. A dependent who makes claim for the benefits of the act because of remarriage of a widow who did not make and file application before remarriage shall be required to furnish in support of such claim proof of remarriage of said widow. Proof of remarriage of said widow shall be in accordance with the requirements for proof of marriage as outlined in regulations of the Department of Veterans Affairs.
13 FR 7122, Nov. 27, 1948.


§ 10.30 Proof of remarriage.
A dependent who is receiving payments under section 601 of title VI of the Act, as amended, and who remarries after making and filing application, shall be required to furnish proof of remarriage in accordance with the requirements for proof of remarriage as outlined in regulations of the Department of Veterans Affairs.
§ 10.31 Dependency of mother or father.
Claims of a mother or father for the benefits to which either may be entitled under the World War Adjusted Compensation Act, as amended, shall be supported by a statement of fact of dependency made under oath by the claimant and witnessed by two persons. 13 FR 7122, Nov. 27, 1948.

§ 10.32 Evidence of dependency.
Evidence of a whole or entire dependency shall not be required. The mother or father shall be considered dependent for the purposes of the act when it is established as a fact that the mother or father of a deceased veteran did not have sufficient means from all sources for a reasonable livelihood at the time of the death of the veteran or at any time thereafter and on or before January 2, 1935. In those cases where because of continued and unexplained absence for seven years the veteran is declared deceased under section 312(a) of the Act as amended May 29, 1928, the mother or father shall be considered dependent when it is established that the mother or father did not have sufficient means from all sources for a reasonable livelihood at the beginning of such 7-year period or at any time thereafter and before the expiration of such period. 13 FR 7122, Nov. 27, 1948.

§ 10.33 Determination of dependency.
A determination of the existence of the alleged dependency will be made upon consideration of all facts relating to dependency, and upon such investigation of such facts as may be warranted. The following facts as existing at the time of the death of the veteran, or at any time thereafter and on or before January 2, 1935, or where it is established that the veteran is deceased as provided in section 312(a) of the Act as amended May 29, 1928, at the beginning of such 7-year period or at any time thereafter and before the expiration of such period, shall be taken into consideration in determining dependency in a given case:
(a) Claimant's age.
(b) Amount contributed to claimant by deceased veteran.
(c) Value of all real and personal property owned by claimant.
(d) Total monthly expenses of the claimant and total monthly income.
(e) The fact that claimant did or did not receive an allotment of pay or allowance during the veteran's military or naval service.
(f) Incapability of self-support by reason of mental or physical defect.
(g) Any other fact or facts pertinent to the determination of dependency. 13 FR 7122, Nov. 27, 1948.
§ 10.34 Proof of age of dependent mother or father.
The mother or father of a veteran to be entitled to the presumption of dependency within the meaning of section 602(c) or section 312(c) of the Act, as amended, shall be required to submit proof of age in accordance with the requirements as set forth in regulations of the Department of Veterans Affairs.
13 FR 7122, Nov. 27, 1948.

§ 10.35 Claim of mother entitled by reason of unmarried status.
Claim of a mother for the benefits to which she may be entitled by reason of her unmarried status as outlined in section 202(c) or section 312(c) of the Act, as amended, shall be supported by a statement of fact, under oath, of such status, together with one of the following:
(a) Certified copy of public record of death of the husband.
(b) Certified copy of court record of divorce decree.
13 FR 7122, Nov. 27, 1948.

§ 10.36 Proof of marital cohabitation under section 602 or section 312 of the Act.
In order to prove marital cohabitation within the meaning of that term as used in section 602(a) or section 312(c) of the Act, as amended, claimant shall be required to establish:
(a) A valid marriage, such marriage to be shown by the best evidence obtainable in accordance with the provisions of regulations of the Department of Veterans Affairs.
(b) The fact of living together as man and wife, with such fact to be established by:
(1) Statement of the widow or widower showing that he or she and the veteran lived together as man and wife and also showing the place or places of residence during such marital cohabitation and the approximate time of such residence; or
(2) Statement of two competent persons showing that they personally knew the claimant and veteran and that they had personal knowledge that said claimant and veteran lived together as man and wife and were recognized as such.
(c) The fact that the marital status existed at the time of the death of the veteran or where it is established that the veteran is deceased, as provided in section 312(a) of the Act, as amended, at the beginning of such 7-year period, such fact to be established by:
(1) Statement by claimant that he or she and the veteran had not been divorced and that there had been no annulment of the marriage.
(2) Statement of claimant that he or she was not remarried at the time of making application.
(3) Statement of two competent persons showing that they personally knew the claimant and the veteran; that they personally knew of the marriage relationship between claimant and veteran; that to the best of their knowledge and belief there had been no divorce and
§ 10.37 Claim of widow not living with veteran at time of veteran's death.
If a veteran and widow were not living together at the time of the death of the veteran the widow will be required to establish:
(a) That the living apart was not due to her willful act, and
(b) Actual dependency upon the veteran at the time of his death or at any time thereafter and before January 2, 1935.
(1) A determination of what shall constitute a willful act, as used in section 602(a) of the Act, as amended, will be made upon consideration of all facts relating to such act and upon such investigation of such facts as may be deemed warranted. For the purpose of this section, the fact that a veteran lived apart from the widow because of any act by the widow involving desertion or moral turpitude will be construed as the willful act of the widow. Cause of separation and time and duration of separation at the time of the death of the veteran shall be taken into consideration in determining a willful act.
(2) A determination of the existence of actual dependency will be made under the criteria set forth in §§ 10.32 and 10.33 with respect to dependency of a mother or father.
13 FR 7122, Nov. 27, 1948.

§ 10.38 Proof of age of veteran's child.
A child of a veteran shall be required to submit proof of age in accordance with the requirements set forth in the regulations of the Department of Veterans Affairs.
13 FR 7122, Nov. 27, 1948.

§ 10.39 Mental or physical defect of child.
If claim is made under section 602(b), (2), of title IV of the Act as amended, alleging that a child over 18 years of age was incapable of self-support at the death of the veteran or that he became incapable of self-support subsequent to the death of the veteran but on or before January 2, 1935, or that he was incapable of self-support at the disappearance of the veteran or became incapable of self-support after the disappearance of the veteran and before the expiration of the period of seven years mentioned in section 312(c), (2), of the Act, it will be necessary to furnish evidence as to the mental or physical condition of the child at the time it is alleged he became incapable of self-support.
(a) Where incapability of self-support by reason of the mental defect of the child is alleged, the following evidence will be required:
(1) Certified copy of court order or decree declaring the child to be mentally incompetent; or
(2) A report of a licensed physician setting forth all of the facts as to the child's mental condition; or
(3) The affidavit of the person having custody and control of the child, setting forth all of the available information as to the child's mental condition. The affidavit must be substantiated by two competent disinterested persons who shall state that they personally know the child, that they have read the affidavit made by the person having custody and control of the child, and that the information therein set forth is true to the best of their knowledge and belief.
(b) Where incapability of self-support by reason of physical defect of the child is alleged, the following evidence will be required:
(1) Report of a licensed physician setting forth all of the facts as to the child's physical condition; and
(2) Affidavit of the child regarding his physical condition and the affidavits of two competent disinterested persons, who shall state that they personally know the claimant, that they have read his affidavit and that the same is true to the best of their knowledge and belief.
13 FR 7122, Nov. 27, 1948.

§ 10.40 Payment on account of minor child.
Payments to a minor child shall be made to the legally constituted guardian, curator or conservator, or to the person found by the director to be otherwise legally vested with the care of the child.
13 FR 7122, Nov. 27, 1948.

§ 10.41 Definition of 'child'.
The term child as used in the regulations in this part includes:
(a) A legitimate child;
(b) A child legally adopted;
(c) A stepchild if a member of the veteran's household at the time of the death of the veteran, or
(d) An illegitimate child but as to the father only if acknowledged in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support or has been judicially decreed to be the putative father of such child.
13 FR 7122, Nov. 27, 1948.

§ 10.42 Claim of child other than legitimate child.
A claim of a child legally adopted by the veteran upon whose service the claim is based shall be supported by a certified copy of the court record of such adoption. A claim of a stepchild of a veteran shall be supported by an affidavit of his or her legal guardian,
stating that at the time of the death of the veteran said stepchild was a member of the veteran's household. The fact, as stated in such affidavit, and the signature of the guardian thereto, shall be attested by the court having jurisdiction over the guardian, or by two competent persons to whom the child was personally known at the time of the death of the veteran. A claim of an illegitimate child of a veteran upon whose service claim is based, shall be supported by:
(a) A statement by the veteran in writing acknowledging his parentage of such child; or
(b) Certified copy of order or decree of a court ordering the veteran to contribute to such child's support; or
(c) Certified copy of a decree of a court holding the veteran to be the putative father of such child.
13 FR 7122, Nov. 27, 1948.


§ 10.43 Claim by guardian of child of veteran.
A claim made by a legal guardian on behalf of his or her ward, a child of a veteran, shall be supported by an affidavit of said guardian, in the capacity of guardian, setting forth the names, ages, and addresses of all living children of the deceased veteran, or, if there be no living child other than the claimant child, statement of that fact shall be made. The signature of the guardian to such required affidavit shall be attested by the court having jurisdiction of the guardian and ward, or by two competent persons to whom the child is personally known.
13 FR 7122, Nov. 27, 1948.


§ 10.44 Evidence required to support claim of mother or father.
The term mother and father as referred to in the order of preference as outlined in section 601 of the Act, as amended, includes stepmothers, stepfathers, mothers and fathers through adoption, and persons who, for a period of not less than one year, have stood in the place of a mother or father to the veteran at any time prior to the beginning of his service. In addition to the evidence of dependency required from a natural mother or father, a claim of a stepmother or stepfather shall be supported by evidence of marriage to the natural parent of the veteran. This evidence shall be in accordance with the requirements of proof of marriage as set forth in regulations of the Department of Veterans Affairs. A claim of a mother or father through adoption shall be supported by a certified copy of the court record of such adoption. A claim by a person who claims to have stood in the place of a mother or father shall be supported by evidence of such relationship satisfactory to the Department of Veterans Affairs. Such evidence shall comprise:
(a) An affidavit of the claimant containing a complete detailed statement of the alleged relationship and
§ 10.45 Definition of 'widow'.
The term widow as used in the regulations in this part includes widower.
13 FR 7122, Nov. 27, 1948.


§ 10.46 Authentication of statements supporting claims.
All statements, except those of licensed examining physicians under § 10.39 (a)(2) and (b)(1), required by §§ 10.28 to 10.44 shall be subscribed and sworn to before an officer vested with authority to administer oaths, in the place where such statements are made. Signatures executed in foreign countries or places shall be certified by an American consul, a recognized representative of an American consul, a recognized representative of an American embassy or legation or by a person authorized to administer oaths under the laws of the place where such statements are made, provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that the officer certifying to the execution of the signature was authorized to administer oaths in the place where certification was made.
13 FR 7122, Nov. 27, 1948.


§ 10.47 Use of prescribed forms.
Statements required by the regulations in this part should be submitted on forms provided by the Department of Veterans Affairs, when conveniently available.
13 FR 7122, Nov. 27, 1948.

PAYMENTS

§ 10.50 Section 601 and section 603 payments made on first day of calendar quarter.
§ 10.51 Payments to minor child.
§ 10.52 Duplication of payments prohibited.
§ 10.53 Payment on duplicate certificate.

§ 10.50 Section 601 and section 603 payments made on first day of calendar quarter.
Cash payments and the first installment of installment payments authorized in sections 601 and 603, respectively of title VI of the World War Adjusted Compensation Act, as amended, will be made as of the first day of the calendar quarter following the finding by the director that the applicant is a dependent entitled to the benefits of the act, but in no case shall any such payments be made before March 1, 1925: Provided, however, That payments authorized by section 608 of title VI of the Act, as amended, shall be paid in a lump sum to the preferred dependent without reference to payments under section 603 of title VI of the Act, as amended.
13 FR 7122, Nov. 27, 1948.


§ 10.51 Payments to minor child.
Payments to minor child through legal guardian, natural guardian, or self. (See § 10.40.)
13 FR 7122, Nov. 27, 1948.


§ 10.52 Duplication of payments prohibited.
Duplication of payments shall not be made in case of change of beneficiary. (See § 10.16.)
13 FR 7122, Nov. 27, 1948.


§ 10.53 Payment on duplicate certificate.
Issuance of duplicate adjusted service certificates and payment of claims based upon lost, destroyed, or mutilated, adjusted service certificates. (See §§ 10.1 to 10.4, 10.24 and 10.25, respectively.)
13 FR 7122, Nov. 27, 1948.

PART 11 -- LOANS BY BANKS ON AND PAYMENT OF ADJUSTED SERVICE CERTIFICATES

LOANS BY BANKS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT
DISPOSITION OF NOTES SECURED BY ADJUSTED CERTIFICATES REDEEMED FROM BANKS BY THE DEPARTMENT OF VETERANS AFFAIRS UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED (PUB. L. 120, 68TH CONG.)
DEPARTMENT OF VETERANS AFFAIRS LOANS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED
APPLICATION FOR PAYMENT OF ADJUSTED SERVICE CERTIFICATE UNDER THE ADJUSTED COMPENSATION PAYMENT ACT, 1936 (PUB. L. 425, 74TH CONG.)
APPLICATION FOR PAYMENT OF ADJUSTED SERVICE CERTIFICATE UNDER THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED (PUB. L. 120, 68TH CONG.)
LOANS BY BANKS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT

§ 11.75 Certificates.
§ 11.76 To whom loan may be made.
§ 11.77 By whom loans may be made.
§ 11.80 Sale or discount of note by holding bank.
§ 11.81 Rediscounts with Federal Reserve Banks.
§ 11.83 Additional loans by reason of 50 percent loan value.
§ 11.84 Redemption because of veteran's death.
§ 11.85 Condition requisite for redemption.

§ 11.75 Certificates.
Adjusted service certificates are dated as of the 1st day of the month in which the applications were filed, but no certificates are dated prior to January 1, 1925. Loans on the security of such certificates may be made at any time after the date of the certificate. The fact that a certificate is stamped or marked "duplicate" does not destroy its value as security for a loan.

Sections 11.75 to 11.85 appear at 13 FR 7125, Nov. 27, 1948.


§ 11.76 To whom loan may be made.
Only the veteran named in the certificate can lawfully obtain a loan on his adjusted service certificate and neither the beneficiary nor any other person than the veteran has any rights in this respect. The person to whom the loan is made must be known to the lending bank to be the veteran named in the certificate securing such note. The consent of the beneficiary is not required, the act providing that a loan on the security of the certificate may be made "with or without the consent of the beneficiary thereof." Loans may be made to veterans adjudged incompetent only through the guardians of such veterans and pursuant to specific order of the court having jurisdiction. Certified copy of court order must be submitted if note be presented for redemption by the Department of Veterans Affairs.

Sections 11.75 to 11.85 appear at 13 FR 7125, Nov. 27, 1948.


§ 11.77 By whom loans may be made.
Any national bank or any bank or trust company incorporated under the laws of any State, Territory, possession, or the District of Columbia, hereinafter referred to as any bank, is authorized to loan to any veteran upon his promissory note secured by his Adjusted Service Certificate any amount not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate, but it is provided by amendment to the World War Adjusted
§ 11.80 Sale or discount of note by holding bank.
Any bank holding a note secured by an Adjusted Service Certificate may sell the note to any bank authorized to make a loan to a veteran and deliver the certificate to such bank. In case a note secured by an Adjusted Service Certificate is sold or transferred, the bank selling, discounting or rediscounting the note is required by law to notify the veteran promptly by mail at his last known post office address. No Adjusted Service Certificate is negotiable or assignable, or may serve as security for a loan, except as provided in section 502 of the World War Adjusted Compensation Act, as amended. Any negotiation, assignment or loan made in violation of section 502 of the World War Adjusted Compensation Act is void. In case of sale, discount or rediscount by the bank which made the loan, the note or notes should be accompanied by the affidavit required by § 11.85.
Sections 11.75 to 11.85 appear at 13 FR 7125, Nov. 27, 1948.

§ 11.81 Rediscounts with Federal Reserve Banks.
Upon the endorsement of any bank, which shall be deemed a waiver of demand, notice and protest by such bank as to its own endorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by an Adjusted Service Certificate and held by a bank is made eligible for discount or rediscount by the Federal reserve bank of the Federal reserve district in which such bank is located, whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the endorsement of any other bank: Provided, That at the time of discount or rediscount such note has a maturity not in excess of 9 months, exclusive of days of grace, and complies in all other respects with the provisions of the law, the regulations of the Federal Reserve Board and the regulations in this part.
Sections 11.75 to 11.85 appear at 13 FR 7125, Nov. 27, 1948.

§ 11.83 Additional loans by reason of 50 percent loan value.
(a) It will be the policy of the Department of Veterans Affairs to redeem all loans made in accordance with the law and regulations made pursuant thereto, when such loans are made in good faith to the veteran to whom the certificate was issued. If, while his certificate is held by a bank as security for a loan, the veteran applies for the increased loan value authorized by the amendment to the World War Adjusted Compensation Act dated February 27, 1931, whether or not the loan has matured, the veteran and the bank will be informed fully of the provisions of this section and that the bank may make the loan for the additional amount or, upon request of the veteran, may send the note and certificate to the Secretary of Veterans’ Affairs. The Secretary shall, if the loan was legally made, accept such certificate and note, and pay to the bank in full satisfaction of its claim the amount of the unpaid principal due it and the unpaid interest at the rate authorized by the World War Adjusted Compensation Act, as amended, up to the date of the check issued to the bank. If the veteran has not filed application for final settlement of his adjusted service certificate under the provisions of the Adjusted Compensation Payment Act, 1936, and demand is made upon the bank to present the note and certificate for redemption prior to the maturity date of the loan and during the lifetime of the veteran, interest will be payable up to the date the check is issued to the bank, or, if demanded by the bank, up to the maturity date of the loan.

(b) If, however, an application for final settlement is filed and the bank is notified to present the note and certificate to the Secretary and does so within 15 days after the mailing of such notice interest will be payable to the date the check is issued to the bank. If the bank fails to forward the note and certificate within 15 days after the mailing of the notice, interest shall be paid only up to the fifteenth day after the mailing of such notice.

§ 11.84 Redemption because of veteran's death.
If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, present them to the Secretary, who shall pay to the bank, in full satisfaction of its claim the amount of the unpaid principal and unpaid interest, at the rate authorized by the World War Adjusted Compensation Act, as amended, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the Secretary and fails to present the certificate and note to the Secretary within 15 days after the notice such interest shall be paid only up to the fifteenth day after such notice.

Sections 11.75 to 11.85 appear at 13 FR 7125, Nov. 27, 1948.


§ 11.85 Condition requisite for redemption.
In order to be eligible for redemption by the Department of Veterans Affairs, the note and certificate must be accompanied by an affidavit of a duly authorized officer (the capacity
in which the officer serves must be shown) of the lending bank showing that the said
bank has not charged or collected, or attempted to charge or collect, directly or indirectly,
any fee or other compensation in respect of the loan, or any other loan made by the bank
under the provisions of section 502 of the World War Adjusted Compensation Act,
except the rate of interest specified in the section of the Act cited; that the person who
obtained the loan is known to the lending bank to be the person named in the Adjusted
Service Certificate; and that notice required by § 11.77 was promptly given. In case the
note was sold or discounted by the lending bank, there should be incorporated in the
affidavit a statement that the veteran was notified promptly of the transfer by mail to his
last known address. In case the note was resold or rediscounted by any other bank,
affidavit shall be made by a duly authorized officer of such bank that proper notice of
such resale or rediscount was promptly mailed to the veteran at his last known address.
The proper execution of the appropriate affidavit on Form 6615 or 6615a will be
considered as a compliance with the requirements of this section. A single affidavit
setting forth the full particulars may be accepted to cover any number of veterans’ notes
submitted for redemption at one time. The affidavit must be executed before a judge of
the United States court, a United States commissioner, a United States district attorney, a
United States marshal, a collector of internal revenue, a collector of customs, a United
States postmaster, a clerk of court of record under the seal of the court, an executive
officer of an incorporated bank or trust company, under his official designation and the
seal of the bank or trust company, or a notary public under his seal, or a diplomatic or
consular officer of the United States, under his official seal.
Sections 11.75 to 11.85 appear at 13 FR 7125, Nov. 27, 1948.

72 Stat. 1114; 38 U.S.C. 501. Rights and benefits are continued in effect by sec. 12(b), 72
DISPOSITION OF NOTES SECURED BY ADJUSTED CERTIFICATES REDEEMED FROM BANKS BY THE DEPARTMENT OF VETERANS AFFAIRS UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED (PUB. L. 120, 68TH CONG.)

§ 11.88 Cancellation of note.
§ 11.89 Notification of veteran.
§ 11.91 Repayment of loans.
§ 11.93 Failure to redeem.

§ 11.88 Cancellation of note.
When a veteran's note is redeemed by the Department of Veterans Affairs, the note will be canceled and both the note and certificate will be retained in the files of the Department of Veterans Affairs until such time as settlement is made.
Sections 11.88 to 11.93 appear at 13 FR 7126, Nov. 27, 1948.


§ 11.89 Notification of veteran.
When a note is redeemed notification will be sent to the veteran at his last known address, advising him that the Department of Veterans Affairs holds his note, and outlining the conditions governing repayment.
Sections 11.88 to 11.93 appear at 13 FR 7126, Nov. 27, 1948.


§ 11.91 Repayment of loans.
Should the veteran so desire, he may repay the amount due on his note in full or in installments.
Sections 11.88 to 11.93 appear at 13 FR 7126, Nov. 27, 1948.


§ 11.93 Failure to redeem.
(a) If the veteran fails to redeem his certificate before its maturity there will be deducted from the face value of the certificate the amount of the unpaid principal of the note of the veteran and the unpaid interest thereon through September 30, 1931.
(b) If the veteran failed to redeem his certificate and died prior to January 27, 1936, there will be deducted from the face value of the certificate the amount of the unpaid principal of the veteran's note and the unpaid interest thereon to the date of his death. If the veteran died on or after January 27, 1936, the amount to be deducted when making settlement will be the unpaid principal of the veteran's note and the unpaid interest thereon through September 30, 1931.
Sections 11.88 to 11.93 appear at 13 FR 7126, Nov. 27, 1948.

DEPARTMENT OF VETERANS AFFAIRS LOANS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED

§ 11.96 By whom loans may be made.
§ 11.99 Identification.
§ 11.100 Form of note.
§ 11.102 Term of note.
§ 11.104 Disposition of notes and certificates.

§ 11.96 By whom loans may be made.
Loans will be made by the Department of Veterans Affairs, Washington, DC, to any veteran, upon his promissory note secured by his adjusted service certificate, in any amount in even dollars not less than $10 and not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate but at no time is the loan value less than fifty per centum of the face value.
Sections 11.96 to 11.104 appear at 13 FR 7126, Nov. 27, 1948.


§ 11.99 Identification.
Before a loan is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the certificate offered as security. Such identification will be made in accordance with § 11.114.
[19 FR 5086, Aug. 12, 1954]


§ 11.100 Form of note.
The form of note used in making loans secured by adjusted service certificates shall follow Form 1185.
Sections 11.96 to 11.104 appear at 13 FR 7126, Nov. 27, 1948.


§ 11.102 Term of note.
All loans will be for a period of one year and if not paid will be automatically extended from year to year for periods of one year in the amount of the principal plus interest accrued to the end of the immediately preceding expired loan year, which total amount shall automatically become a new principal each year provided a loan may be paid off at any time by the payment of principal and accrued interest, but in no event will interest accruing after September 30, 1931, be deducted in final settlement of a certificate except as provided in § 11.93(b).
Sections 11.96 to 11.104 appear at 13 FR 7126, Nov. 27, 1948.


§ 11.104 Disposition of notes and certificates.
All notes and certificates shall be held in the custody of the Department of Veterans Affairs, Washington, DC 20420.
[13 FR 7126, Nov. 27, 1948, as amended at 54 FR 34982, Aug. 23, 1989]

APPLICATION FOR PAYMENT OF ADJUSTED SERVICE CERTIFICATE
UNDER THE ADJUSTED COMPENSATION PAYMENT ACT, 1936 (PUB. L. 425, 74TH CONG.)

§ 11.109 Settlement of unmatured adjusted service certificates.
§ 11.110 Who may make application for final settlement.
§ 11.111 Form of application.
§ 11.114 Identification.
§ 11.115 Where to file application.
§ 11.116 Death of veteran before final settlement.
§ 11.117 Missing applications.

§ 11.109 Settlement of unmatured adjusted service certificates.
Where an application for final settlement of an adjusted service certificate is received in the Department of Veterans Affairs prior to the maturity date of the certificate, payment will be made under the terms of the Adjusted Compensation Payment Act, 1936. This act provides for payment of the amount due on the certificate, after deducting any unpaid loans with interest through September 30, 1931, in adjusted service bonds. These bonds will be issued by the Treasury Department in denominations of $50, in the name of the veteran only, and will bear interest at the rate of 3 percent per annum from June 15, 1936, to June 15, 1945. Any excess amount not sufficient to purchase a $50 bond will be paid by check.
[19 FR 5087, Aug. 12, 1954]


§ 11.110 Who may make application for final settlement.
A mentally competent veteran to whom an adjusted service certificate has been issued.
(a) A legally appointed guardian of an incompetent veteran. An application submitted by a legally appointed guardian must be accompanied by letters of guardianship showing the fiduciary relationship, provided such papers are not already on file in the Department of Veterans Affairs.
(b) A representative of a physically incapacitated veteran. Where application is made by a representative of a physically incapacitated veteran, the representative must attach a statement describing the veteran's incapacity. The correctness of such statement must be certified by an officer as designated in §11.114.
(c) A superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under the provision of Pub. L. No. 373, 72d Congress, may make application for an incompetent adult or minor Indian who is a recognized ward of the Government. The application must be accompanied by a certification from the superintendent or other bonded officer showing: (1) That the said beneficiary is a ward of the Government; (2) that no guardian or other fiduciary has been appointed; (3) that the officer making application has been designated by the Secretary of the Interior in accordance with Pub. L. No. 373, 72d Congress; (4) that he is properly bonded; and (5)
that he will receive, handle, and account for such benefits in accordance with existing law and regulations of the Department of Interior.

(d) A manager of a Department of Veterans Affairs hospital, or a manager or superintendent of a contract hospital or State institution where the veteran is a patient may make application as custodian for the veteran. Such application must be made with the approval of the regional chief attorney.

[19 FR 5087, Aug. 12, 1954]


§ 11.111 Form of application.
Application must be made on Department of Veterans Affairs Adjusted Compensation Form 1701.

[13 FR 7127, Nov. 27, 1948]


§ 11.114 Identification.
Before settlement is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the settlement for which an application is made. If made in the United States or possessions, certification will be accepted if made by a United States postmaster or assistant postmaster over an impression of the post office cancellation stamp; a commissioned officer of the regular establishment of the Army, Navy, or Marine Corps; a member of the United States Senate or the House of Representatives; an officer, over his official title, of a post, chapter, or other comparable unit of an organization recognized under Veterans Regulation No. 10 (38 U.S.C. ch. 12A), or an officer over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, possession, District of Columbia, or in a Federal judicial district, of the United States. If identification is made in a foreign country, it will be certified by an American consul, a recognized representative of an American Embassy or Legation, or by a person authorized to administer oaths under the laws of the place where identification is made; provided, there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made. A manager of a Department of Veterans Affairs hospital is authorized to identify patients, members, or employees of the hospital over which he has charge. An employee of the Department of Veterans Affairs who has been specifically designated in writing to do so may identify applicants during official hours and on the premises of the Department of Veterans Affairs using for this purpose, if necessary, the official records of the Department of Veterans Affairs. Field station finance employees may not be designated for this purpose.

(a) Fingerprint impressions shall be required on the application and shall be imprinted thereon in the presence of the persons identifying the veteran. In the case of veterans who are mentally incapacitated and application is being executed by a representative of the veteran, the veterans' fingerprints will be obtained if possible. If this cannot be done, as
also in the case of an individual whose fingers are all missing, a statement of explanation will be required.
[13 FR 7127, Nov. 27, 1948, as amended at 19 FR 5087, Aug. 12, 1954]


§ 11.115 Where to file application.
The application for final settlement, accompanied by the veteran's adjusted service certificate, unless the certificate is being held in the Department of Veterans Affairs as collateral for a loan, must be forwarded to the Manager, Veterans Benefits Office, Washington, DC 20421.
[19 FR 5087, Aug. 12, 1954]


§ 11.116 Death of veteran before final settlement.
If the veteran dies after making application under the Adjusted Compensation Payment Act, 1936, but before it is filed, it may be filed by any person and will be considered valid if found to bear the bona-fide signature of the applicant, discloses an intention to claim benefits under the Act, and is filed before the maturity of the certificate and before payment is made to the beneficiary. An application made by the veteran or his legal representative shall evidence his intention to claim the benefits of this Act; no other evidence shall be acceptable.
(a) If the veteran's death occurs after the application is filed but before payment is received under this Act, or if the application is filed after death occurs but before the maturity of the certificate and before payment is made to the beneficiary under section 501 of the World War Adjusted Compensation Act, as amended, payment under this act shall be made to the estate of the veteran irrespective of any beneficiary designation.
(b) If the veteran dies without filing a valid application under this Act, no payment under this Act shall be made. In such case, payment of the certificate will be made under the World War Adjusted Compensation Act, as amended, in accordance with § 11.128; however, in making any settlement there shall be deducted from the face value of the certificate the amount of any outstanding loans and so much of the unpaid interest as accrued prior to October 1, 1931.
[19 FR 5087, Aug. 12, 1954]


§ 11.117 Missing applications.
Where the records of the Department of Veterans Affairs show that an application, disclosing an intention to claim the benefits of this Act, has been filed and the application cannot be found, such application shall be presumed, in the absence of affirmative evidence to the contrary, to have been valid when originally filed. The determination of the correctness of this assumption shall be made by the Manager, Veterans Benefits Office, Washington, DC, or his designee.
APPLICATION FOR PAYMENT OF ADJUSTED SERVICE CERTIFICATE
UNDER THE WORLD WAR ADJUSTED COMPENSATION ACT, AS
AMENDED (PUB. L. 120, 68TH CONG.)

§ 11.125 Settlement of matured adjusted service certificates.
§ 11.126 Form of application.
§ 11.127 Identification.
§ 11.128 Veteran dies without having filed application for final settlement.
§ 11.129 Form of application for payment of deceased veteran's certificate.
§ 11.130 Where to file applications.

§ 11.125 Settlement of matured adjusted service certificates.
Where an application for final settlement of an adjusted service certificate is received in the Department of Veterans Affairs subsequent to the date of maturity of the certificate, payment will be made under the terms of the World War Adjusted Compensation Act, as amended. This Act provides for payment of the face value of the certificate less any outstanding indebtedness for loans obtained on the certificate; however, interest accrued on the loans subsequent to September 30, 1931, and unpaid will be canceled insofar as the veteran is concerned.


§ 11.126 Form of application.
Either demand for payment (Form 1748) or application (Form 1701) may be used by the veteran or his legal representative in applying for final settlement of a matured certificate. Sections 11.125 to 11.130 appear at 19 FR 5087, Aug. 12, 1954.


§ 11.127 Identification.
Before payment may be made on the adjusted service certificate, the person applying therefor will be identified as the person entitled to payment for which application is made. Such identification will be accepted if made by an authorized person as stated in § 11.114; also, fingerprint impressions shall be placed in the space provided on the application in accordance with § 11.114(a).


§ 11.128 Veteran dies without having filed application for final settlement.
If the veteran dies without having filed application for final settlement under the Adjusted Compensation Payment Act, 1936, and the certificate has not matured, payment will be made to the last designated beneficiary or, if no beneficiary, to his estate. If the certificate
has matured, payment will be made to the veteran's estate regardless of any beneficiary designation. Payment of the amount due on a deceased veteran's certificate will be made only on an approved award based upon receipt in the Department of Veterans Affairs of an application properly executed by the person or persons entitled.


§ 11.129 Form of application for payment of deceased veteran's certificate.
Demand for payment (VA Form 8-582) is the proper form for use in applying for payment of the amount due on a deceased veteran's certificate.


§ 11.130 Where to file applications.
Application for payment of a matured certificate or a deceased veteran's certificate, accompanied by the adjusted service certificate, unless it is held in the Department of Veterans Affairs as collateral for a loan, must be forwarded to the Manager, Veterans Benefits Office, Washington, D.C., 20421.

PART 12 -- DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS

DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS ON FACILITY UPON DEATH, OR DISCHARGE, OR UNAUTHORIZED ABSENCE, AND OF FUNDS AND EFFECTS FOUND ON FACILITY


OPERATION OF LOST AND FOUND SERVICE
DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS ON FACILITY UPON DEATH, OR DISCHARGE, OR UNAUTHORIZED ABSENCE, AND OF FUNDS AND EFFECTS FOUND ON FACILITY

§ 12.0 Definitions.
§ 12.1 Designee cases; competent veterans.
§ 12.2 Designee cases; incompetent veterans.
§ 12.3 Deceased veteran's cases.
§ 12.4 Disposition of effects and funds to designee; exceptions.
§ 12.5 Nondesignee cases.
§ 12.6 Cases of living veterans.
§ 12.7 Cases not applicable to provisions of §§ 12.0 to 12.6.
§ 12.8 Unclaimed effects of veterans.
§ 12.9 Rights of designate; sales instruction; transportation charges.
§ 12.10 Proceeds of sale.
§ 12.12 Miscellaneous provisions.

§ 12.0 Definitions.
(a) As used in respect to the disposition of property of veterans dying at Department of Veterans Affairs medical centers or other field facilities, or who are discharged or who elope, or are absent without leave therefrom, and in respect to property found thereat, the term funds means all types of United States currency and coin, checks payable to the decedent except checks drawn on the Treasurer of the United States which have never been negotiated, and includes deposits to the credit of the veteran in the account "Personal Funds of Patients," and each competent veteran will be so advised. The term effects means and embraces all other property of every description, including insurance policies, certificates of stock, bonds and notes the obligation of the United States or of others, and all other papers of every character except checks drawn on the Treasurer of the United States, as well as clothing, jewelry and other forms of property, or evidences of interest therein. Checks drawn on the Treasurer of the United States which have never been negotiated will be returned to the issuing office for disposition.
(b) Field facilities as used in §§ 12.1 to 12.13 includes hospitals, centers, domiciliary activities, supply depots, and other offices over which the Department of Veterans Affairs has direct and exclusive administrative jurisdiction, and excludes State, county, city, private, and contract hospitals and hospitals or other institutions operated by the United States through agencies other than the Department of Veterans Affairs. At institutions other than field facilities as herein defined funds or effects as defined in paragraph (a) of this section, except for funds derived from gratuitous benefits under laws administered by the Department of Veterans Affairs and deposited by the Department of Veterans Affairs in the account Personal Funds of Patients for incompetent veterans, will be disposed of under the laws governing such institutions. In any case where the veteran died intestate without heirs or next of kin his or her personal property vests in the United States. Disposition of the property will be made in accordance with the provisions of §§ 12.19 to 12.23.
§ 12.1 Designee cases; competent veterans.

(a) Each competent veteran now being cared for or who is hereafter admitted to receive care as such at a Department of Veterans Affairs field facility, unless it be detrimental to his or her health, will be requested and encouraged to designate on the prescribed VA Form 10-P-10, Application for Hospital Treatment or Domiciliary Care, the person to whom he or she desires the Department of Veterans Affairs to deliver his or her funds and effects in event of death. He or she may also designate an alternate to whom delivery will be made if the first designee fails or refuses to accept delivery. It should be clearly understood that the delivery of such funds or effects will constitute only a delivery of possession thereof, and such delivery is not intended to affect in any manner the title to such funds or effects or determine the person ultimately entitled to receive same from the person to whom delivery is made (hereinafter in the regulations in this part termed the designee). The person designated may not be an employee of the Department of Veterans Affairs unless such employee be the wife (or husband), child, grandchild, mother, father, grandmother, grandfather, brother, or sister of the veteran. The veteran may in writing change or revoke such designation at any time. If a veteran becomes incompetent, any designation previously made will become inoperative with respect to those funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs. The guardian may change or revoke the existing designation with respect to personal effects and funds derived from other sources.

(b) Veterans will be encouraged to place in the custody of their relatives articles of little or no utility value to them during their period of care at a Department of Veterans Affairs field facility, and to retain in their possession only such funds and effects as are actually required and necessary for their immediate convenience.

§ 12.2 Designee cases; incompetent veterans.

(a) An incompetent veteran will not be informed concerning the designation of a person to receive funds or effects; but if he or she has a guardian the guardian will be requested to make such designation of himself or herself or another person to receive possession of the funds and effects (other than funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs) upon the incompetent's death. The guardian will sign the letter designating himself or herself or another person with the veteran's name "By --------, guardian of his or her estate".

(b) No effort will be made to obtain a designation by or on behalf of an incompetent veteran who has no guardian.

§ 12.3 Deceased veteran's cases.

(a) Immediately upon the death or the absence without leave of any beneficiary at a field facility, as defined in § 12.0(b), a survey and inventory of the funds and effects of such beneficiary will be taken in the following manner:

(1) If the death or absence without leave occurred during hospitalization, a complete inventory (VA Form 10-2687, Inventory of Funds and Effects) will be made of all personal effects (including those in the custody of the hospital, jewelry being worn by the deceased person, or jewelry and other effects in pockets of clothing he or she may have been wearing) and all funds found and moneys on deposit in Personal Funds of Patients.

In the case of death of incompetent veterans after November 30, 1959, the inventory will be completed to show separately those funds deposited by the Department of Veterans Affairs in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs. For purpose of determining the source of funds, expenditures from the account will be considered as having been made from gratuitous benefits, not to exceed the extent of deposits of such benefits. In the event death occurred during other than official working hours, the officer of the day and/or a representative of Nursing Service will collect and inventory all funds and personal effects on the person of the deceased beneficiary and on the ward, will carefully safeguard such property and, upon completion of the tour of duty, will turn the funds and effects over to the properly designated employees.

(2) If the death or absence without leave occurred while the beneficiary was assigned to a domiciliary section, or while receiving hospitalization and at time of death or absence without leave any effects are in the section, a like inventory will be made by representatives of the Chief, Domiciliary Operations and/or Medical Administration Division.

(3) The inventory report will be executed in triplicate, original and two copies. All will be signed by the employee making the inventory, and disposed of as provided for in pertinent procedural instructions.

(4) Personally owned clothing or other effects (such as tooth brushes, false teeth not containing gold, etc.), which are unserviceable by reason of wear or tear or insanitary condition, and clothing that had been supplied by the Government, will not be included in this inventory; instead, the unserviceable personally owned articles will be listed on a separate list, with their condition briefly described, and their disposition recommended in a separate report to the facility head. The facility head, if approving this recommendation, will order destruction or utilization in occupational therapy, or as wipe rags, etc., of such unserviceable articles and, when they are so destroyed or utilized, will have entered on the papers the date and nature of the disposition. The completed papers will then be placed in the correspondence file of the beneficiary. Clothing that had been supplied by the Government will be reconditioned if possible and returned to stock for issue to other eligible beneficiaries. When Government-owned clothing cannot be reconditioned it will be disposed of.

(5) When the nearest relative requests that the deceased beneficiary be clad for burial in clothing he or she personally owned, instead of burial clothing to be supplied under the contract for mortuary services, such request will be honored. A receipt in such cases will be obtained from the undertaker, specifying the articles of clothing so used. Adjustment of the undertaker's bill in the case will correspondingly be made.
(6) In accomplishing such inventories, detailed description will be given of items of material value or importance, for example:
Watch--Yellow metal (make, movement, and case number, if available without damage to watch).
Ring--Yellow metal (probably gold-plated or stamped 14-K., setting if any).
Discharge certificate.
Adjusted service certificate (number).
Bonds or stocks (name of company, registered or nonregistered, identifying number, recited par value, if any).
Bank books or other asset evidence (name of bank or other obligor, apparent value, identifying numbers, etc.).
Clothing (brief description and statement of condition). Etc.
(b) Upon completion of the survey and inventory, the effects will be turned over to the designated employee for safekeeping. Any funds found in excess of $100 which apparently were the property of the deceased will be turned over to the details clerk and delivered immediately to the agent cashier, who shall deposit same in the account "Personal Funds of Patients". Unendorsed checks other than Treasury checks and funds not in excess of $100 will be considered personal effects and not funds and will be handled accordingly.


§ 12.4 Disposition of effects and funds to designee; exceptions.
(a) Upon authorization by the facility head or his or her designated representative, all funds, as defined in §12.0 (except funds on deposit in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs and deposited by the Department of Veterans Affairs where the veteran was incompetent at time of death), and effects will be delivered or sent to the designee of the deceased veteran if request therefor be made after death and within 90 days following the mailing of notice to such designee (see §12.9(a)), unless:
(1) The executor or administrator of the estate of the deceased veteran shall have notified the facility head or his or her designated representative of his or her desire and readiness to receive such funds or effects, in which event the facility head or his or her designated representative will authorize delivery of all funds and effects to such executor or administrator upon receipt of appropriate documentary evidence of his or her qualifications and in exchange for appropriate receipts, or
(2) An heir capable of inheriting the personal property of the veteran makes claim for the funds and effects prior to delivery to the designee.
(3) Subsequent to the naming of a designee the veteran became incompetent and his or her guardian revoked such designation, in which event the facility head or his or her designated representative will deliver all funds and effects to his guardian in exchange for appropriate receipts subject to the limitation contained in paragraph (d) of this section, or
(4) Designee was the wife (or husband) of the veteran at the time of designation, and information at the disposal of the field facility indicates that she (or he) was thereafter divorced and the veteran was incompetent at or subsequent to the time of divorce, or
(5) Notwithstanding there is a designee, it is probable that title would pass to the United States under the provisions of §§ 12.19 to 12.23 issued pursuant to 38 U.S.C. 5502(e) and 38 U.S.C. 8520(a), or
(6) The facility head or his or her designated representative determines that there is reasonable ground to believe that the transfer of such possession to the designee probably would be contrary to the interests of the person legally entitled to the personal property, or there are any other special circumstances raising a serious doubt as to the propriety of such delivery to the designee.

In any case in which the facility head does not deliver the funds and effects, because of the provisions of paragraphs (a)(3), (4), and (5) of this section, he or she will develop all facts and refer the matter to the Chief Attorney of the regional office having jurisdiction over the area where the hospital is located, for advice as to the disposition which legally should be made of such funds and effects.

(b) When authorized by the facility head or his or her designated representative, the effects will be delivered or shipped to the designee. If shipped at Government expense, the shipment shall be made in the most economical manner but in no case at a cost in excess of $25. If such expenses will exceed $25, the excess amount shall be paid by the consignee to the facility head in advance. There will be no obligation on the Government, initially or otherwise, to pay such expenses in excess of $25.

(c) When possession of funds or effects is transferred to a designee, the attention of the designee will again be directed to the fact that possession only has been transferred to him or her and that such transfer does not of itself affect title thereto and that such designee will be accountable to the owner of said funds and effects under applicable laws.

(d) Upon receipt from the proper Chief Attorney of an appropriate certification that the guardianship was in full force and effect at the time of the veteran's death and that the guardian's bond is adequate, funds (other than funds deposited by the Department of Veterans Affairs in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs) and effects of an incompetent veteran may be immediately delivered or sent to such guardian, inasmuch as the guardian had a right to possession, and he or she will be accountable therefor to the party entitled to receive the decedent's estate. If, however, it appears probable that decedent died without a valid will and left no person surviving entitled to inherit, the funds will not be paid to the former guardian but will be disposed of as provided in §12.19(a). The effects will be sold, used, or destroyed, at the discretion of the facility head or his designated representative.


§ 12.5 Nondesignee cases.

(a) If there exists no designee at the time of death at a hospital, domiciliary, or regional office of a veteran admitted as competent, or the designee fails or refuses to claim the funds and effects as defined in §12.0(a) within 90 days following the mailing of notice to such designee, the facility head will take appropriate action to dispose of the effects to the person or persons legally entitled thereto, i.e., the executor or administrator of the decedent, or, if no notice of such an appointment has been received, to the decedent's
widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister, in
the order named. Subject to the applicable provisions of §§ 12.3 and 12.4, such delivery
may be made at any time before the sale contemplated by § 12.9 to the designee or other
person entitled under the facts of the case. Delivery will be made to the person entitled to
priority as prescribed in this paragraph, unless such person waives right to possession, in
which event delivery will be to the person, if any, in whose favor such prior entitled
person waives right to possession. If the waiver is not in favor of a particular person or
class, delivery will be to the person or persons next in order of priority under this
paragraph. If in any case there be more than one person in the class entitled to priority,
initially or by reason of waiver, delivery will be made only to their joint designated agent
(who may, but need not, be one of the class), or to one of such class in his or her own
behalf upon written waiver of all others of the class entitled thereto. The guardian of a
minor or incompetent may waive his or her ward's prior right to possession.
(b) Except where delivery is made to a designee, executor, or administrator, funds of
veterans who were competent at time of death will be released to the person or persons
who would ultimately be entitled to distribution under the laws of the State of the
decedent's domicile. The person or persons entitled may waive in writing his or her right
to the funds in favor of another heir or next of kin.
(c) Funds of veterans who were incompetent at time of death occurring after November
30, 1959, if derived from sources other than gratuitous benefits deposited by the
Department of Veterans Affairs in Personal Funds of Patients under laws administered by
the Department of Veterans Affairs, will be disposed of in the same manner as for
competent veterans.
(d) Funds deposited by the Department of Veterans Affairs in Personal Funds of Patients,
at any office, for veterans who were incompetent at time of death occurring after
November 30, 1959 and which were derived from gratuitous benefits under laws
administered by the Department of Veterans Affairs, will be paid upon receipt of proper
application to the following persons living at the time of settlement, and in the order
named: the surviving spouse, the children (without regard to age or marital status) in
equal parts, and the dependent parents of such veteran, in equal parts. Any funds derived
from gratuitous benefits not disposed of in accordance with this paragraph shall be
deposited to the credit of the applicable current appropriation; except that there may be
paid only so much of such funds as may be necessary to reimburse a person (other than a
political subdivision of the United States) who bore the expenses of last sickness or burial
of the veteran for such expenses.
(e) No payment shall be made under paragraph (d) of this section unless claim therefor is
filed with the Department of Veterans Affairs within 5 years after the death of the veteran,
except that, if any person so entitled under such regulation is under legal disability at the
time of death of the veteran, such 5-year period of limitation shall run from the
termination or removal of the legal disability.
[18 FR 1854, Apr. 3, 1953 and 25 FR 1614, Feb. 25, 1960, as amended at 29 FR 17904,
Dec. 17, 1964]


§ 12.6 Cases of living veterans.
(a) Except as provided in § 12.8, effects of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the field facility) will be disposed of as follows:
(1) To the owner if competent, or if deceased to his or her administrator or executor or as directed in writing by such owner, or his or her executor or administrator.
(2) To the guardian of the owner if the latter be incompetent, or if deceased to his or her administrator or executor, or as directed in writing by such guardian, executor or administrator.
(3) To the incompetent owner if he or she has no guardian; delivery, however, to the incompetent owner may be withheld and may be made to the person who is caring for such incompetent if, in the judgment of the facility head or his or her designated representative, such delivery is to the incompetent's best interest.
Note: The Government will not pay expense of transportation of effects of competent or incompetent veterans discharged, on trail visit, absent without leave, or who have eloped, except that personal effects of a beneficiary discharged or on trail visit, or of a beneficiary being transferred to another facility at Government expense, which are not available at time of discharge, beginning of trail visit, or transfer of the beneficiary, due to the articles being in custody of the Government, may be shipped at Government expense.
(b) Funds of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the station) will be disposed of in accordance with the provisions of current Department of Veterans Affairs procedures.


§ 12.7 Cases not applicable to provisions of §§ 12.0 to 12.6.
The provisions of §§ 12.0 to 12.6 shall be inapplicable to property known to be that of any person dying in or discharged or absent without leave from a Department of Veterans Affairs field facility other than a veteran admitted as such to such field facility.
[13 FR 7129, Nov. 27, 1948]


§ 12.8 Unclaimed effects of veterans.
(a) In the case of any property of a veteran who was in receipt of hospital or domiciliary care, heretofore or hereafter left at a Department of Veterans Affairs field facility, the owner of which is discharged or absent without leave or who has eloped and is not to be returned to a Department of Veterans Affairs field facility, or has died after departure therefrom, or in case the whereabouts or identity of any owner of any property thereof is unknown, such property, unless it shall be disposed of under the provisions of §§ 12.4 and 12.6 shall be sold, used, destroyed or otherwise disposed of as the manager or his or her designated representative shall determine the circumstances in the case may warrant. Any sale of such property shall be conditioned upon the 90-day notice provided in section 6 of the Act of June 25, 1938 (38 U.S.C. 5-16e).
(b) If the circumstances are such that retention of any property as is mentioned in paragraph (a) of this section, or of any property of unknown ownership found on the premises would endanger the health or life of patients or others on the premises (by reason of contagion, infection, or otherwise) such property shall be forthwith destroyed on order of the manager or his or her designated representative, and proper record of the action taken will be made.

(c) If there be no known claimant of any such property and if it may be used at the field facility for the benefit of the members or patients for such purposes as the General Post Fund is intended to serve, and if the value is inconsequential, the manager or his or her designated representative may authorize the retention and use of such property at the field facility.

(d) Any such property which is not destroyed or used as provided in paragraphs (b) and (c) of this section shall be sold in the manner provided in §§ 12.9 and 12.10, after notice as therein provided unless, prior to sale, claim be made for any such property by someone legally entitled thereto.

[13 FR 7129, Nov. 27, 1948]


§ 12.9 Rights of designate; sales instruction; transportation charges.

(a) Upon death of a veteran admitted as such to a field facility, the Manager or his or her designated representative will cause notice (parts I and V of VA Form 10-1171) to be sent to the designate: Provided, however, That if the Manager or his or her designated representative has information of the death of the primary designate, notice shall be sent to the alternate designate and all of the provisions of the regulations in this part respecting the designate will be deemed to apply to the alternate. If the designate is a minor or a person known to be incompetent, delivery of the funds or effects will be made only to the designate's guardian or custodian upon qualification. The right of the designate to receive possession ceases when he or she refuses to accept delivery or if he or she fails to respond within 90 days after VA Form 10-1171 was mailed. When the right of a designate ceases, VA Form 10-1171 will be forwarded immediately to the alternate designate, whose rights then become identical with those forfeited by the first designate, and the rights of the alternate designate shall terminate at the expiration of 90 days after VA Form 10-1171 was mailed to him or her. Delivery will not be made to a designate until he or she submits a signed statement to the effect that he or she understands that the delivery of such funds and effects constitutes a delivery of possession only and that such delivery is not intended to affect in any manner the title thereto. Such notice shall fully identify the decedent and state the fact that he or she designated the addressee to receive possession of such property; that the right to receive possession thereof does not affect the ownership but that the designate will be responsible for the ultimate disposition thereof to those who, under applicable law, are entitled to the decedent's property; and will request prompt advice as to whether the designate will accept such property and that, if he or she will, he or she furnish shipping instructions, upon receipt of which the property will be shipped at the expense of the Government. However, prior to dispatching such notice, it will be definitely determined that the shipping expense will not exceed $ 25. If such expense will exceed $ 25, the excess cost will be ascertained, and the notice will include a statement of the amount of such excess
shipping cost with request that the amount thereof be remitted at the time shipping instructions are furnished. In estimating the shipping expense, it will be assumed that shipment to the designate will be to the same address as that to which the notice is sent. Each notice, however, shall contain a statement that in no event will the Government pay shipping expense in excess of $25. The notice will include a copy of the inventory of the property which it is proposed to deliver to the designate.

(b) Upon receipt of appropriate shipping instructions the property will be shipped, transportation charges prepaid, by mail, express, or freight as may be appropriate under the circumstances and most economical to the Government. The expense of such shipment, chargeable to the Government, in no case to exceed $25.00, is payable the same as other administrative expenses of the Department of Veterans Affairs.

(c) The living owner of any property left or found at a field facility will be promptly notified thereof. Except as provided in §12.6(a), transportation charges on property shipped to a living veteran will not be paid by the Government. In such cases, shipment shall be made as requested by the owner of the property (or his or her guardian) upon receipt of necessary transportation charges, which will be prepaid, unless the owner requests shipment with charges collect and the carrier will accept such shipment without liability for such charges, contingent or otherwise, upon the Government.

(d) If the designate refuses or, upon the lapse of 90 days, has failed to take possession or request shipment of decedent's property (paragraph (a) of this section), or if 90 days have elapsed after the finding of any property and the owner (known or unknown) has failed to request same, the manager or his or her designated representative will authorize destruction, use or sale.

(e) If sale of the property is authorized the manager will take necessary action to ascertain the names and addresses, of the owners; or, in the event of the owner's decease, of his or her executor or administrator, widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister.

(f) When in possession of the necessary information the manager will cause proper notice of sale (Form 4-1171) to be mailed. Such notice in all cases shall disclose the identity, if known, of the decedent whose property is to be sold and contain a copy of the inventory of such property. A copy of such notice (Form 4-1171), after parts I, IV, and V thereof are completed, shall be mailed to the owner, if known, or if deceased to the decedent's executor or administrator, if known, and also to the widow (or widower), child, grandchild, mother, father, grandmother, grandfather, brother and sister, if known. If more than one relative of the degree named is known, copy will be mailed to each. If the owner is living, parts IV and V only of Form 4-1171 will be completed.

(g) Copy of such notice (Form 4-1171, parts IV and V) will also be posted by a responsible employee more than 21 years of age at:

1. The field facility where the death occurred or property shall have been found,
2. The place where property is situated at the time such notice is posted, and
3. The place where probate notices are posted in the county wherein the sale is to be had.

(h) In addition to showing the name of the owner, if known (alive or deceased), and the inventory of the property to be sold, such notice shall state the hour and day when and the precise place where the sale will occur and that the same will be at public auction for cash upon delivery without warranty, express or implied, and that such sale is pursuant to the act of June 25, 1938 (38 U.S.C. 16-16j); and shall also state that any person legally
entitled to said property may claim the same at any time prior to sale thereof and in the event of such claim by a proper person the property will not be sold but will be delivered to the person lawfully entitled thereto. Said notice shall also contain a statement substantially to the effect that if sold the net proceeds of sale may be claimed by the person who is legally entitled at any time within 5 years after the date of notice; or in case of property the ownership of which was not originally known, within 5 years after its finding; otherwise such proceeds will be retained in the General Post Fund, subject to disbursement for the purposes of such fund.

(i) The person (or persons) posting said notice of sale (Form 4-1171) shall make appropriate affidavit on a copy thereof as to his or her action in that respect and the manager or his or her designated representative will also certify on the same copy as to the persons to whom copies of such notice were mailed and the mailing dates. The copy on which appear the affidavit and certificate as to service of the notice will be retained in the facility file pertaining to the disposition of such property.


§ 12.10 Proceeds of sale.
After proper notice as prescribed, sale of any such property which it is proper to sell, will be made by public auction by the manager (or any employee designated by him or her) at the time and place stated in the notice of sale. The property will be sold to the highest bidder (no employee except member employees of the Department of Veterans Affairs shall purchase any of this property) and forthwith delivered and the amount of the bid collected and deposited to the credit of "General Post Fund, Department of Veterans Affairs." Care will be taken to segregate the property of each owner and separate account will be maintained as to the proceeds of sale thereof. Property not disposed of by public auction will be included in the next sale or will be used or destroyed as the value thereof warrants at the discretion of the manager.

[13 FR 7130, Nov. 27, 1948]


§ 12.12 Miscellaneous provisions.
If it is shown that some person other than the veteran has title to property in a veteran's possession at the time of death, nothing contained in §§ 12.0 to 12.12 shall be construed as prohibiting delivery of such property to the owner. A life insurance policy may be delivered to the beneficiary therein named if the insured is deceased, notwithstanding the veteran has designated a person to whom possession of his or her property at the field facility is to be transferred. In no case will funds or effects be delivered to a minor, or to an incompetent person other than as provided in § 12.9 (a) and (c), but where any such person is entitled to title or possession delivery may be made to his or her guardian.

[13 FR 7130, Nov. 27, 1948]


In order that all persons who bring property on premises of the Department of Veterans Affairs may be advised of the existence of the act of June 25, 1938 (38 U.S.C. 16-16j), and that it affects such property, notice thereof (Form 4-1182), shall be permanently posted in at least one prominent place on the premises of each field facility where persons are likely to see such notice.

[13 FR 7130, Nov. 27, 1948]

DISPOSITION OF PERSONAL FUNDS AND EFFECTS LEFT UPON PREMISES OF THE DEPARTMENT OF VETERANS AFFAIRS BY NON-VETERAN PATIENTS, EMPLOYEES AND OTHER PERSONS, KNOWN OR UNKNOWN

§ 12.15 Inventory of property.
§ 12.16 Action on inventory and funds.
§ 12.17 Unclaimed effects to be sold.
§ 12.18 Disposition of funds and effects left by officers and enlisted men on the active list of the Army, Navy or Marine Corps of the United States.

§ 12.15 Inventory of property.
Immediately upon the death at a Department of Veterans Affairs field facility of a person who was not admitted as a veteran, or immediately after it is ascertained that any such person has absented himself or herself from such field facility, a survey and inventory of the personal funds and effects of such deceased or absent person will be made in the manner prescribed in § 12.3(a).
[13 FR 7130, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

§ 12.16 Action on inventory and funds.
(a) The manager will dispose of the personal funds and effects as promptly as possible. No expense will be incurred by the Government for shipment of the effects.
(b) In making disposition of funds and effects the manager will release the funds to the owner if living and will release the effects to him or her or as directed by him or her, provided that if he or she is incompetent and has a guardian the funds and effects will be released to such guardian. If the owner is deceased, and left a last will and testament probated under the laws of the place of his or her last legal domicile or under the laws of the State, territory, insular possession, or dependency, within which the field facility may be, the personal property of such decedent situated upon such premises will be released to the executor. If such person left on said premises funds or effects not disposed of by a will probated in accordance with the provisions of this paragraph, such property shall be released to the administrator, if one has been appointed.
(c) In those cases where there is neither an administrator nor an executor the funds and effects will be released to the person entitled to inherit the personal property of the decedent under the intestacy laws of the State where the decedent was last domiciled.
(d) Where disposition of the funds and effects cannot be accomplished under the provisions of paragraphs (b) and (c) of this section, the funds, at the expiration of 90 days will be deposited to the General Post Fund and the effects will be disposed of in accordance with the provisions of §§ 12.8, 12.9, and 12.10.
[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

§ 12.17 Unclaimed effects to be sold.
(a) Personal effects of persons referred to in § 12.15 which remain unclaimed for 90 days after the death or departure of the owner shall be sold in the manner provided by § 12.8. The owner, his or her personal representative, or next of kin may reclaim any such property upon request therefor at any time prior to the sale.

(b) Any unclaimed funds and the proceeds of any effects sold as unclaimed will be deposited to the General Post Fund subject to be reclaimed within five years after notice of sale, by or on behalf of any person or persons who, if known, would have been entitled to the property prior to the sale.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]


§ 12.18 Disposition of funds and effects left by officers and enlisted men on the active list of the Army, Navy or Marine Corps of the United States.

(a) The manager will notify the commanding officer of the death or absence of such patient and will deliver to the commanding officer, without expense to the Department of Veterans Affairs, the funds and effects of the deceased or absent officer, or enlisted man procuring a receipt therefor.

(b) If the funds and effects are not delivered to the commanding officer within seven days after the death or absence without leave of an officer, or enlisted man, the funds will be deposited in the Personal Funds of Patients. If not disposed of at the expiration of 90 days after the date of death or absence, the funds will be transferred to the General Post Fund and the effects will be handled in accordance with regulations governing the disposition of unclaimed effects left by veterans. The funds and the proceeds derived from the sale of the personal effects will be paid to the person lawfully entitled thereto, providing claim is made within five years from the date of notice of sale, or in the case of legal disability within five years after termination of legal disability.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]


(a) Whenever any veteran (admitted as a veteran) shall die in any Department of Veterans Affairs hospital, center, or domiciliary activity or in any Federal, State, or private hospital or other institution, while being furnished care or treatment therein by the Department of Veterans Affairs, without leaving a will and without leaving any spouse, heirs, or next of kin entitled to his or her personal property, all such property, except funds on deposit in Personal Funds of Patients to the credit of an incompetent beneficiary, derived from payments of compensation, automatic or term insurance, emergency officers' retirement pay or pension, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, subject to claim as elsewhere provided. Funds to the credit of an incompetent beneficiary derived from payments of compensation, automatic or term insurance, emergency officers' retirement pay or pension will be deposited to the credit of the current appropriations provided for the payment of compensation, insurance or pension.

(b) Personal property as used in this section shall include cash, funds on deposit in Personal Funds of Patients, bank accounts, certificates of stock, bonds, and notes, the obligation of the United States or of others, money orders, checks, insurance policies the proceeds of which are payable to the veteran or his or her estate, postal savings certificates, money and choses in action, and all other papers of every character; also clothing, jewelry, and all other forms of personalty, or evidences of interest therein.

[19 FR 9330, Dec. 30, 1954]


(a) VA Form 10-P-10, Application for Hospital Treatment or Domiciliary Care, includes notice to the applicant that the acceptance of care or treatment by any veteran shall constitute acceptance of the provisions of the act. Similar notice shall be given to each veteran receiving care as of March 26, 1942, by posting notice in a prominent place in each building wherein patients or members are housed. Such notices shall be posted immediately and kept posted.

(b) Since the provisions of the law are applicable to all veterans receiving care at the expense of the Department of Veterans Affairs (whether in contract, Federal, State or private hospital) it shall be the responsibility of the Department of Veterans Affairs officer authorizing admission of a veteran to other than a Department of Veterans Affairs hospital, center or home, to cause the chief officer of such institution to post in a conspicuous place, in all buildings where veterans are housed, the provisions of §
12.19(a), or if he or she declines to post such provisions, notify the patients individually and supply a statement from each acknowledging notice. Such provisions supersede in part the provisions of Form 10-P-10, executed prior to March 26, 1942.
[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 243, Jan. 18, 1949]


§ 12.21 Action upon death of veteran.
Upon the death of a veteran at a Department of Veterans Affairs hospital, center or domiciliary activity while receiving care or treatment therein, and who it is believed leaves no will or heirs or next of kin entitled to his or her personal property, regardless of whether VA Form 10-P-10, executed by the veteran, names a designee, an inventory of the funds and effects, VA Form 10-2687, will be promptly prepared and supplemented by all information or evidence available as to personal property owned by the veteran in addition to that left at the place of death; similar action will be taken when the death of such a veteran hospitalized by the Department of Veterans Affairs occurs at a contract hospital, Army, Navy, Marine or other hospital. Such inventories and information together with any bank books, stocks, bonds, or other valuable paper as enumerated in § 12.19(b), left in the effects of the veteran, will be delivered to the manager of the Department of Veterans Affairs hospital, center, or domiciliary activity having jurisdiction, for disposition in accordance with existing regulations.
[14 FR 243, Jan. 18, 1949]


§ 12.22 Disposition of personal property.
Any assets heretofore or hereafter accruing to the benefit of the General Post Fund, including stocks, bonds, checks, bank deposits, savings certificates, money orders, and similar assets, will be sold or otherwise converted into cash, except that articles of personal adornment which are obviously of sentimental value shall, if unclaimed, be retained for 5 years from the date of death of the veteran, unless for sanitary or other reasons their retention is deemed unsafe. Possession of effects other than those located on the premises of the Department of Veterans Affairs will be obtained, except that if transportation, storage, etc., is involved, determination will be made as to whether expenditure therefor is warranted. Proceeds from the conversion or sale will be deposited to the credit of the General Post Fund. Funds on deposit in Personal Funds of Patients will be transferred to the General Post Fund. Any claims against the estate of the deceased veteran will be adjudicated and paid, if valid.
[33 FR 1073, Jan. 27, 1968]


§ 12.23 Recognition of valid claim against the General Post Fund.
Effective December 26, 1941, the assets of the estate of a veteran theretofore or thereafter deposited to the General Post Fund are subject to the valid claims of creditors presented to the Department of Veterans Affairs within 1 year from the date of death or otherwise as provided by any applicable law. Any heir, next of kin, legatee, or other person found to be legally entitled to the personal property of the veteran may claim same within 5 years
from the date of the veteran's death. If claimant is under any legal disability (as a minor, incompetent, etc.) at the date of the veteran's death, the 5-year period begins upon the termination of removal of legal disability. Such claims are for settlement by the field facility which had originally made the deposit. In the event of doubt as to entitlement or the necessity of legal proceedings to obtain assets for the benefit of the General Post Fund, the case will be referred to the Chief Attorney of jurisdiction for advice and/or appropriate action. Any necessary court costs or expenses will be paid from the appropriation, General Operating Expenses, Department of Veterans Affairs.

[33 FR 1073, Jan. 27, 1968]

§ 12.24 Operation of lost and found service.

§ 12.24 Operation of lost and found service.
Unless maintained by the Public Buildings Service, the lost and found service will be maintained by an employee designated by the Manager to be known as the lost and found custodian. VA Form 3771, Record of Lost or Found Article, will be used for recording articles of any personal property lost or found. Every effort will be made to determine rightful ownership of found articles and to recover items which have been reported lost. Currency, including readily negotiable instruments, found and delivered to the lost and found custodian will not be retained beyond the official closing hour. The currency or negotiable instruments will be delivered to the agent cashier before the close of business. Individuals claiming found articles will furnish complete identification and satisfy the facility authority of rightful ownership. Where more than one individual claims ownership the matter will be referred to the Manager for decision. All articles of personal property remaining unclaimed for 90 days or more will be disposed of in accordance with § 12.8.

[21 FR 3875, June 6, 1956]

PART 13 -- VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

§ 13.1 Authority.
§ 13.2 Field examinations.
§ 13.3 State legislation.
§ 13.55 Veterans Service Center Manager to select and appoint or recommend for appointment the person or legal entity to receive Department of Veterans Affairs benefits in a fiduciary capacity.
§ 13.56 Direct payment.
§ 13.57 Payment to the wife or husband of incompetent veteran.
§ 13.58 Legal custodian.
§ 13.59 Court-appointed fiduciary.
§ 13.61 Payment to the chief officer of institution.
§ 13.62 Payment to bonded officer of Indian reservation.
§ 13.63 Payment to custodian-in-fact.
§ 13.64 Fiduciary commissions.
§ 13.69 Limitation of beneficiaries to individual fiduciary.
§ 13.70 Apportionment of benefits to dependents.
§ 13.71 Payment of cost of veteran's maintenance in institution.
§ 13.72 Release of funds from Personal Funds of Patients.
§ 13.73 Transfer of funds from funds due incompetent beneficiaries.
§ 13.74 [Reserved]
§ 13.75 [Reserved]
§ 13.76 [Reserved]
§ 13.77 [Reserved]
§ 13.100 Supervision of fiduciaries.
§ 13.101 Management and use of estates of minors.
§ 13.102 Accountability of legal custodians.
§ 13.103 Investments by Federal fiduciaries.
§ 13.104 Accounts of court-appointed fiduciaries.
§ 13.105 Surety bonds.
§ 13.106 Investments by court-appointed fiduciaries.
§ 13.107 Accounts of chief officers of public or private institutions.
§ 13.108 [Reserved]
§ 13.109 [Reserved]
§ 13.110 Escheat; post fund.
§ 13.111 Claims of creditors.

[PUBLISHER'S NOTE: Nomenclature changes affecting part 13 appear at 67 FR 46868, July 17, 2002.]

§ 13.1 Authority.
The regulations in this part are issued pursuant to 38 U.S.C. 501 to reflect action under 38 U.S.C. 512 and to implement 38 U.S.C. 5301, 5502, 5503, 5711 and 8520. The duties, the delegations of authority, and all actions required of the Veterans Service Center Manager
set forth in §§ 13.1 through 13.111 inclusive, are to be performed under the direction of, and authority vested in, the Director of the field facility.

[40 FR 54247, Nov. 21, 1975]

§ 13.2 Field examinations.

(a) Authority to conduct; generally. Field personnel in the Veterans Service Center and other employees who are qualified and designated by the field facility Director are authorized, when assigned, to conduct investigations (field examinations) and examine witnesses upon any matter within the jurisdiction of the Department of Veterans Affairs, to take affidavits, to administer oaths and affirmations, to certify copies of public or private documents and to aid claimants in the preparation of claims.

(b) Scope of field examinations; fiduciary activities. Field examinations include but are not limited to the following:

1. Matters involving the administration of estates and the welfare of beneficiaries of the Department of Veterans Affairs who are under legal disability or in need of supervision by the Veterans Service Center Manager.
2. Matters involving the welfare and needs of dependents of incompetent beneficiaries.
3. Recovery of amounts due the Government or General Post Fund under laws administered by the Department of Veterans Affairs.

[40 FR 54247, Nov. 21, 1975; 67 FR 46868, 46869, July 17, 2002]

§ 13.3 State legislation.

Field facility Directors are authorized to cooperate with the affiliated organizations, legislative committees, and through the General Counsel with local and State bar associations, to the end that deficiencies of the State laws relating to Department of Veterans Affairs operations may be removed. No action to commit the Department of Veterans Affairs regarding any proposed legislation relating to fiduciary matters will be taken without the approval of the Under Secretary for Benefits or designee.

[40 FR 54247, Nov. 21, 1975]

§ 13.55 Veterans Service Center Manager to select and appoint or recommend for appointment the person or legal entity to receive Department of Veterans Affairs benefits in a fiduciary capacity.

(a) Authority. The Veterans Service Center Manager is authorized to select and appoint (or in the case of a court-appointed fiduciary, to recommend for appointment) the person or legal entity best suited to receive Department of Veterans Affairs benefits in a fiduciary capacity for a beneficiary who is mentally ill (incompetent) or under legal disability by reason of minority or court action, and beneficiary's dependents.

(b) Payees. Authorized payees include:

1. The beneficiary (§ 13.56(c));
(2) The beneficiary under supervision (supervised direct payment) (§ 13.56 (a) and (b));
(3) The wife or husband of an incompetent veteran (§ 13.57);
(4) The legal custodian of a beneficiary's Department of Veterans Affairs benefits (§
13.58);
(5) A court-appointed fiduciary of a beneficiary (§ 13.59);
(6) The chief officer of the institution in which the veteran is receiving care and treatment
(§ 13.61);
(7) The bonded officer of an Indian reservation (§ 13.62);
(8) A custodian-in-fact of the beneficiary (§ 13.63);
(9) Dependents of the veteran by an apportioned award (§ 13.70).
(c) Certification. The Veterans Service Center Manager's certification is authority to
make payments to the designated payee.
[40 FR 54247, Nov. 21, 1975]


§ 13.56 Direct payment.
(a) Veterans. Department of Veterans Affairs benefits payable to a veteran rated
incompetent may be paid directly to the veteran in such amount as the Veterans Service
Center Manager determines the veteran is able to manage with continuing supervision
by the Veterans Service Center Manager, provided a fiduciary is not otherwise required. If it
is determined that an amount less than the full entitlement is to be paid, such payment
shall be for a limited period of time, generally 6 months, but in no event to exceed 1 year,
after which full payment will be made and any funds withheld as a result of this section
will be released to the veteran, if not otherwise payable to a fiduciary.
(b) Other adults. Department of Veterans Affairs benefits payable to an adult beneficiary
who has been rated or judicially declared incompetent may be paid directly to the
beneficiary in such amounts as the Veterans Service Center Manager determines the
beneficiary is able to manage with continuing supervision by the Veterans Service Center
Manager, provided a fiduciary is not otherwise required. If it is determined that an
amount less than the full entitlement is to be paid, such payment shall be for a limited
period of time, generally 6 months, but in no event to exceed 1 year, after which full
payment will be made and any funds withheld as a result of this section will be released
to the beneficiary, if not otherwise payable to a fiduciary.
(c) Minors. Department of Veterans Affairs benefits payable to a minor:
(1) May be paid direct when:
(i) Arising in connection with a program of education or training under 38 U.S.C. ch. 35.
(ii) The Veterans Service Center Manager determines it would be in the minor's best
interests.
(2) Will be paid direct when:
(i) The beneficiary's only legal disability is minority and he or she is in active military,
naval, or air service, or the widow or widower of a veteran.
(ii) The minor is deemed otherwise emancipated under State law.
[40 FR 54247, Nov. 21, 1975, as amended at 42 FR 34282, July 5, 1977; 67 FR 46868,
46869, July 17, 2002]

§ 13.57 Payment to the wife or husband of incompetent veteran.

Compensation, pension or emergency officers' retirement pay of a veteran rated or judicially declared incompetent, may be paid to the veteran's spouse, provided the spouse is qualified to administer the funds payable and agrees to use the amounts paid for the veteran and the veteran's dependents, if any.

[40 FR 54247, Nov. 21, 1975]


§ 13.58 Legal custodian.

(a) Authority. The Veterans Service Center Manager is authorized to make determinations as to the person or legal entity to be appointed legal custodian to receive Department of Veterans Affairs payments on behalf of a beneficiary who is incompetent or under legal disability by reason of minority or court action. In the absence of special circumstances, the person or legal entity to be appointed legal custodian will be the person or legal entity caring for and/or having custody of the beneficiary or the beneficiary's estate.

(b) Payment to. Department of Veterans Affairs benefits may be paid to a legal custodian subject to the following conditions:

(1) The Veterans Service Center Manager has determined that it would be in the best interests of the beneficiary to appoint a legal custodian.

(2) The proposed legal custodian is qualified to administer the benefits payable and will agree to:

(i) Apply the benefits paid for the best interests of the beneficiary,

(ii) Invest surplus funds as provided by Department of Veterans Affairs regulations,

(iii) Furnish, upon request, evidence of compliance with agreement as to usage and investment of Department of Veterans Affairs benefits, and

(iv) Inform the Veterans Service Center Manager of any change in the beneficiary's estate or any other circumstances that might affect entitlement or the manner in which payments are to be made.

[40 FR 54247, Nov. 21, 1975]


§ 13.59 Court-appointed fiduciary.

(a) Payment to. Any Department of Veterans Affairs benefit may be paid to the fiduciary appointed by a State court for a beneficiary who is a minor, or incompetent or under other legal disability adjudged by a court of competent jurisdiction. Formal or informal accountings may be required from such fiduciaries, with or without judicial proceedings.

(b) Veterans Service Center Manager's responsibility. The Veterans Service Center Manager shall: (1) Determine and recommend to the Regional Counsel the person or legal entity best fitted for appointment as State court fiduciary for the particular beneficiary. Necessary legal action will be taken by the Regional Counsel.
(2) Upon advice from the Regional Counsel that the fiduciary has been appointed, issue appropriate certification thereof so that payment of benefits can be made to such fiduciary.
[40 FR 54247, Nov. 21, 1975; 61 FR 7215, 7216, Feb. 27, 1996]


§ 13.61 Payment to the chief officer of institution.
The Veterans Service Center Manager may authorize the payment of all or part of the pension, compensation or emergency officers' retirement pay payable in behalf of a veteran rated incompetent by the Department of Veterans Affairs to the chief officer of the institution wherein the veteran is being furnished hospital treatment or institutional, nursing or domiciliary care, for the veteran's use and benefit, when the Veterans Service Center Manager has determined such payment (called an institutional award) will adequately provide for the needs of the veteran and obviate need for appointment of another type of fiduciary.
[40 FR 54248, Nov. 21, 1975]


§ 13.62 Payment to bonded officer of Indian reservation.
Any benefits due an incompetent adult or minor Indian, who is a recognized ward of the Government, may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 U.S.C. 14.
[40 FR 54248, Nov. 21, 1975]


§ 13.63 Payment to custodian-in-fact.
All or any part of a benefit due a minor or incompetent adult, payment of which is suspended or withheld because payment may not be properly made to an existing fiduciary, may be paid temporarily to the person having custody and control of the beneficiary.
[36 FR 19023, Sept. 25, 1971]


§ 13.64 Fiduciary commissions.
Generally, a VA appointed fiduciary is to be encouraged to serve without fee.
(a) Authority. The Veterans Service Center Manager is authorized to determine when a commission is necessary in order to obtain the services of a fiduciary, except that the Veterans Service Center Manager may not authorize a commission to a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary. Necessity is established only if the beneficiary's best interest would be served by the appointment of a qualified professional, or, if a qualified professional is not available, the proposed fiduciary is the only qualified person available and is not willing to serve without a fee.
(b) Amount; notice to beneficiary. The Veterans Service Center Manager shall authorize a fiduciary to whom a commission is payable under paragraph (a) of this section to deduct from the beneficiary's estate a reasonable commission for fiduciary services rendered. The commission for any year may not exceed 4 percent of the monetary benefits paid by VA on behalf of the beneficiary to the fiduciary during that year; a year being the normal 12 month period following the anniversary date of appointment. The Veterans Service Center Manager shall furnish appropriate notice to the beneficiary, either directly or through the fiduciary, that a commission is payable.

(c) Persons who may be excluded. Commissions may not be authorized to dependents of the beneficiary or other close relatives acting in a fiduciary capacity on behalf of the beneficiary, except under extraordinary circumstances.

[51 FR 26157, July 21, 1986]

(38 U.S.C. 5502; Pub. L. 98-223)

§ 13.69 Limitation of beneficiaries to individual fiduciary.

For purposes of payment of Department of Veterans Affairs benefits, the number of beneficiaries for whom an individual fiduciary may act will be limited to the number the fiduciary may be reasonably expected to properly serve. When, in the judgment of the Veterans Service Center Manager, a fiduciary has been appointed or is seeking appointment in a case in excess of that number, the Veterans Service Center Manager will initiate action to obtain a suitable substitute fiduciary.


§ 13.70 Apportionment of benefits to dependents.

(a) Incompetent veterans being furnished hospital treatment, institutional or domiciliary care by United States or political subdivision thereof. When compensation, pension or emergency officers' retirement pay is payable in behalf of a veteran who is incompetent or under other legal disability by court action, the Veterans Service Center Manager may recommend such apportionment to or in behalf of the veteran's spouse, child or dependent parent as may be necessary to provide for their needs.

(b) Dependent parents. When the compensation of a veteran paid to his or her fiduciary includes an additional amount for a dependent parent or parents and the fiduciary neglects or refuses to make an equivalent contribution for their support, the Veterans Service Center Manager may recommend the apportionment to the parent or parents of the additional amount.

(c) Payments withheld because of fiduciary's failure to properly administer veteran's estate. When payments of compensation, pension or emergency officers' retirement pay in behalf of a veteran have been stopped because of the fiduciary's failure or inability to properly account or otherwise administer the estate, the Veterans Service Center Manager may recommend the apportionment to the veteran's spouse, child or dependent parent of any benefit not paid under an institutional award or to a custodian-in-fact.


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§ 13.71 Payment of cost of veteran's maintenance in institution.
(a) The payment of part of compensation, pension or emergency officers' retirement pay for the cost of a veteran's hospital treatment, institutional or domiciliary care in an institution operated by a political subdivision of the United States may be authorized as provided in paragraph (b) of this section when:
(1) The veteran is rated incompetent by the Department of Veterans Affairs.
(2) It has been determined the veteran is legally liable for the cost of his or her maintenance, and
(3) The institution's representative has asserted or probably will assert a claim for full maintenance costs.
(b) Subject to these conditions and the further condition that the responsible official of the institution or political subdivision will agree not to assert against Department of Veterans Affairs benefits any further claim for maintenance during the veteran's lifetime, the Veterans Service Center Manager may agree with such official to the payment of the veteran's benefits through an institutional award to be applied to:
(1) A monthly amount determined by the Veterans Service Center Manager to be needed for the veteran's personal use,
(2) An amount to be agreed upon to be accumulated to provide for the veteran's rehabilitation upon release from the institution, and
(3) So much of the amount of the benefit as remains not exceeding the amount the Veterans Service Center Manager determines to be the proper charge as fixed by statute or administrative regulation, to the cost of the veteran's maintenance.
(c) Upon execution of an agreement as provided in paragraph (b) of this section, the Veterans Service Center Manager will certify the total amount to be released to the chief officer of the institution.

§ 13.72 Release of funds from Personal Funds of Patients.
Veterans Service Center Managers may authorize release of funds from Personal Funds of Patients for the needs of veterans and their dependents, including amounts fixed by statute or administrative regulations as the cost of current maintenance of veterans in institutions of the United States or a political subdivision thereof other than Department of Veterans Affairs institutions.
[40 FR 54248, Nov. 21, 1975]

§ 13.73 Transfer of funds from funds due incompetent beneficiaries.
Veterans Service Center Managers may, when required for the benefit of the veteran and/or the veteran's dependents, authorize the transfer of amounts credited to veterans in Funds Due Incompetent Beneficiaries to Department of Veterans Affairs Personal Funds of Patients accounts or to chief officers of non-Department of Veterans Affairs institutions for the accounts of institutionalized veterans.
[40 FR 54248, Nov. 21, 1975]


§ 13.74 [Reserved]

§ 13.75 [Reserved]

§ 13.76 [Reserved]

§ 13.77 [Reserved]

§ 13.100 Supervision of fiduciaries.
(a) Federal fiduciaries. In Federal fiduciary cases, the Veterans Service Center Manager may, when he or she deems it necessary for the protection of the beneficiary's interests:
(1) Require an accounting, formal or informal, of Department of Veterans Affairs benefits paid.
(2) Terminate the appointment of a Federal fiduciary and appoint a successor Federal fiduciary.
(Authority: 38 U.S.C. 5502)
(b) Court-appointed fiduciaries. In court-appointed fiduciary cases, the Veterans Service Center Manager will take such informal action as may be necessary to assure that the needs of the beneficiary are provided for and Department of Veterans Affairs benefits are prudently administered and adequately protected.
(Authority: 38 U.S.C. 501)
(c) Unsatisfactory conditions. In any case where a fiduciary fails to render a satisfactory account or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are illegal or inequitable or in excess of those allowed by law, or has failed to use Department of Veterans Affairs funds for the benefit of the beneficiary or the beneficiary's dependents, or has otherwise failed or neglected to properly execute the duties of his or her trust, and informal efforts by the Veterans Service Center Manager to correct the situation prove unsuccessful, the case will be referred to the Regional Counsel. In such cases the Veterans Service Center Manager may have all Department of Veterans Affairs benefits suspended.
(Authority: 38 U.S.C. 5502)
(d) Misappropriation, embezzlement or violation of Federal statutes. When the evidence indicates a prima facie case of misappropriation, embezzlement or violation of the Federal statutes, the matter will be submitted to the Regional Counsel for review and, if appropriate, the Regional Counsel's referral to the U.S. Attorney.
[40 FR 54249, Nov. 21, 1975; 61 FR 7215, 7216, Feb. 27, 1996]

(38 U.S.C. 6101)
§ 13.101 Management and use of estates of minors.

Department of Veterans Affairs benefits payable in behalf of minors should be used for their benefit. Such funds should be expended only to the extent the person or persons responsible for their needs are unable to provide for them, except those derived from payments under 38 U.S.C. ch. 35.

[28 FR 10751, Oct. 5, 1963]

(38 U.S.C. 501)

§ 13.102 Accountability of legal custodians.

(a) Institutionalized veterans without spouse or child. The legal custodian of VA benefits of an incompetent veteran who has neither spouse nor child and who is being furnished hospital treatment or institutional or domiciliary care by the United States or a political subdivision thereof, will account upon request to VA for funds received from VA for the beneficiary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

(b) All other beneficiaries. Compliance with the agreement as to benefit use and any authorized modifications due to changed need, proof of existence of funds surplus to immediate needs and proper investment thereof, if appropriate, will be established by personal contact.


(38 U.S.C. 501)

§ 13.103 Investments by Federal fiduciaries.

(a) Type authorized. VA benefits paid to a Federally appointed fiduciary other than a spouse payee or an institutional award payee may be invested only in United States savings bonds, or in interest or dividend-paying accounts in State or Federally insured institutions, whichever is to the beneficiary's advantage. Department of Veterans Affairs benefits that are paid on behalf of an incompetent veteran to an institution via an institutional award payment arrangement may not be invested.

(b) Registration. (1) When funds are invested in bonds, the bonds will be registered in this form: (Beneficiary's Name), (Social Security No.), under custodianship by designation of the Department of Veterans Affairs.

(2) When funds are invested in interest or dividend-paying accounts in State or Federally insured institutions, the account will be registered in this form: (Beneficiary's name), by (Fiduciary's Name), Federal fiduciary.

(c) Pre-need burial arrangements. Federally appointed fiduciaries, other than institutional award payees, may use a beneficiary's funds derived from VA benefits to make deposits into, or purchase, a pre-need burial plan or burial insurance on behalf of the beneficiary, if to do so is in the beneficiary's interest.

[53 FR 20619, June 6, 1988]

(38 U.S.C. 501)

§ 13.104 Accounts of court-appointed fiduciaries.
(a) Requirement to account; notices of filings and hearings. Accounts may be required from court-appointed fiduciaries as provided by State law, but in no event less frequently than once every 3 years. Arrangements will be made with the courts whereby notices of filing of all petitions, accounts, etc., and of hearings on same, relative to court-appointed fiduciary cases wherein the Department of Veterans Affairs is an interested party, will be sent to the Veterans Service Center Manager for review, distribution and such action as may be appropriate. Matters which require legal action will be referred to the Regional Counsel, and will include any matter in which the Department of Veterans Affairs has any objections to offer.

(b) Fiduciary and beneficiary in jurisdiction other than a State of the United States. Accounts will not be required, in the discretion of the Veterans Service Center Manager, in cases where the fiduciary and beneficiary permanently reside in a jurisdiction other than a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or the Republic of the Philippines, and the fiduciary appointment was made in said jurisdiction.


§ 13.105 Surety bonds.

(a) Federal fiduciaries. (1) The Veterans Service Center Manager may require a legal custodian, custodian-in-fact or chief officer of a private institution recognized to administer Department of Veterans Affairs benefits on behalf of a beneficiary, to furnish a corporate surety bond in an amount determined to be sufficient to protect the interest of the beneficiary. Such bond shall run to the Secretary of Veterans Affairs for the use and benefit of the beneficiary.

(2) The Veterans Service Center Manager may require a legal custodian to furnish an agreement in lieu of a surety bond or additional surety bond when funds are deposited in an interest or dividend-paying account in a State or federally insured institution. The agreement will provide that the legal custodian and institution agree that all funds received from the Department of Veterans Affairs on behalf of the beneficiary, which have been or will be deposited by the legal custodian in the account, will be withdrawn only with the written consent of the Veterans Service Center Manager or designee.

(b) Substitution of surety; claims against defunct companies. If any surety company is placed in receivership or ceases to do business in the particular State, the Veterans Service Center Manager will take the necessary action to have proper bonds substituted in Federal fiduciary cases and refer the matter to the Regional Counsel for such other action as may be appropriate.

[40 FR 54250, Nov. 21, 1975; 61 FR 7215, 7216, Feb. 27, 1996]

(38 U.S.C. 501)

§ 13.106 Investments by court-appointed fiduciaries.
The Veterans Service Center Manager will review and to the extent possible determine the legality and prudence of investments involving Department of Veterans Affairs income or estate. It is Department of Veterans Affairs policy to invest income or estate derived from Department of Veterans Affairs benefits only in legal investments which
have safety, assured income, stability of principal and ready convertibility for the requirements of the beneficiary and his or her dependents. When notice of a contemplated or actual illegal or imprudent investment comes to the attention of the Veterans Service Center Manager, he or she will take remedial action to protect the beneficiary's estate. Cases in which it becomes necessary to institute court action will be referred to the Regional Counsel.

[40 FR 54250, Nov. 21, 1975; 61 FR 7215, 7216, Feb. 27, 1996]

(38 U.S.C. 501)

§ 13.107 Accounts of chief officers of public or private institutions.
(a) Department of Veterans Affairs benefits. The chief officer of an institution, other than a Federal institution, shall, when requested, render an account to the Department of Veterans Affairs for funds received from the Department of Veterans Affairs on account of an incompetent veteran.
(b) All income and assets. The chief officer of the aforementioned institutions shall, when requested, furnish a statement of all income received in behalf of a Department of Veterans Affairs beneficiary under legal disability and the total assets held for the beneficiary.

[36 FR 19025, Sept. 25, 1971; 68 FR 34539, 34543, June 10, 2003]

(38 U.S.C. 5502)

[EFFECTIVE DATE NOTE: 68 FR 34539, 34543, June 10, 2003, amended this section, effective June 10, 2003.]

§ 13.108 [Reserved]

§ 13.109 [Reserved]

§ 13.110 Escheat; post fund.
(a) Escheat; 38 U.S.C. 5502(e). Upon death of a beneficiary for whom payment of Department of Veterans Affairs benefits was made to a court-appointed fiduciary, legal custodian, custodian-in-fact, or by institutional award, the fiduciary (or the deceased beneficiary's personal representative) shall, upon request, account for and return to the Department of Veterans Affairs any remaining assets derived from Department of Veterans Affairs benefits which would under State law escheat to the State, less legal expenses of any administration necessary to determine that an escheat is in order.
(b) General Post Fund; 38 U.S.C. 5220(a). Upon the death of a veteran intestate while a member or patient in any facility while being furnished care or treatment therein by the Department of Veterans Affairs, who is not survived by a spouse, next of kin, or heirs entitled under the laws of the veteran's domicile, the veteran's fiduciary, if any, or the veteran's personal representative shall account for and turn over to the Department of Veterans Affairs all personal property, including money and choses in action owned by the veteran at the time of his or her death. (See also § 14.514(c) of this chapter.)
(c) Refusal of fiduciary or personal representative to cooperate. If the fiduciary or personal representative, if any, refuses to voluntarily comply with the provisions of paragraph (a) or (b) of this section, the Veterans Service Center Manager will submit a complete report to the Regional Counsel.
§ 13.111 Claims of creditors.
Under 38 U.S.C. 5301(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable. If the fiduciary does not do so, the Veterans Service Center Manager should refer the matter to the Regional Counsel for appropriate action.

PART 14 -- LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

§ 14.500 Functions and responsibilities of General Counsel.
§ 14.501 Functions and responsibilities of Regional Counsels.
§ 14.502 Requests for legal opinions from Central Office.
§ 14.503 Requests for legal advice and assistance in other than domestic relations matters.
§ 14.504 Domestic relations questions, authority and exceptions.
§ 14.505 Submissions.
§ 14.507 Opinions.

LITIGATION (OTHER THAN UNDER THE FEDERAL TORT CLAIMS ACT);
INDEMNIFICATION
PROSECUTION
FEDERAL TORT CLAIMS
ADMINISTRATIVE CLAIMS
LITIGATED CLAIMS
ADMINISTRATIVE SETTLEMENT OF TORT CLAIMS ARISING IN FOREIGN COUNTRIES
CLAIMS FOR DAMAGE TO OR LOSS OF GOVERNMENT PROPERTY
CLAIMS FOR COST OF MEDICAL CARE AND SERVICES
REPRESENTATION OF DEPARTMENT OF VETERANS AFFAIRS CLAIMANTS; RECOGNITION OF ORGANIZATIONS; ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 5901-5905
EXPANDED REMOTE ACCESS TO COMPUTERIZED VETERANS CLAIMS RECORDS BY ACCREDITED REPRESENTATIVES
PERSONNEL CLAIMS
COMMITMENTS -- FIDUCIARIES
TESTIMONY OF DEPARTMENT PERSONNEL AND PRODUCTION OF DEPARTMENT RECORDS IN LEGAL PROCEEDINGS

§ 14.500 Functions and responsibilities of General Counsel.
The General Counsel is responsible to the Secretary for the following:
(a) All litigation arising in, or out of, the activities of the Department of Veterans Affairs or involving any employee thereof in his or her official capacity.
(b) All interpretative legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law.
(c) All legal services, advice and assistance required to implement any law administered by the Department of Veterans Affairs.
(d) All delegations of authority and professional guidance required to meet these responsibilities.
(e) Maintenance of a system of field offices capable of providing legal advice and assistance to all Department of Veterans Affairs field installations and acting for the General Counsel as provided by Department of Veterans Affairs Regulations and instructions, or as directed by the General Counsel in special cases. This includes cooperation with U.S. Attorneys in all civil and criminal cases pertaining to the Department of Veterans Affairs and reporting to the U.S. Attorneys, as authorized, or to the General Counsel, or both, criminal matters coming to the attention of the Regional Counsel.

(f) Other matters assigned.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in paragraph (e), became effective Oct. 1, 1995.]

§ 14.501 Functions and responsibilities of Regional Counsels.

(a) Functions and responsibilities of the Regional Counsels are those set forth in this part and all other matters assigned by the General Counsel.

(b) In any matter within the jurisdiction of the General Counsel, delegated or otherwise assigned, the Regional Counsel and designated staff attorneys are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations and certify copies of public or private documents.

(c) The Regional Counsel is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice and assistance to Department of Veterans Affairs installations within the district assigned. In any area of regulatory, assigned or delegated responsibility, the Regional Counsel may delegate to staff members or other Department of Veterans Affairs attorneys authority to perform, to the extent specified, any legal function under the professional direction of the Regional Counsel. Conversely, the Regional Counsel may modify, suspend, or rescind any authority delegated hereunder.

(d) The Regional Counsel is authorized to cooperate with affiliated organizations, legislative committees, and with local and State bar associations to the end that any State law deficiencies relating to Department of Veterans Affairs operations may be removed. No commitment as to proposed legislation will be made without the approval of the General Counsel.

(e) In any case wherein the Regional Counsel is authorized to take legal action and payment of costs and necessary expenses incident thereto are involved, the administration requesting such action will pay such cost and expenses. Where it is impractical for the Regional Counsel to perform the legal service because of cost, distance, etc., the customary fee for the service rendered by a local attorney employed by the Regional Counsel will be borne by the administration requesting such action.

(f) The jurisdictions and addresses of Regional Counsels are as follows:

(1) Region 1: (JURISDICTION) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island; (ADDRESS) VAMC, 200 Springs Road, Bldg. 61, Bedford, MA 01730.

(2) Region 2: (JURISDICTION) New Jersey, Metropolitan New York City; (ADDRESS) 800 Poly Place, Building 14, Brooklyn, NY 11209.
(3) Region 3: (JURISDICTION) District of Columbia; Fairfax, Virginia; Arlington, Virginia; Alexandria, Virginia; Martinsburg, West Virginia; and Maryland; (ADDRESS) 3900 Loch Raven Blvd., Bldg. 4, Baltimore, MD 21218.

(4) Region 4: (JURISDICTION) Pennsylvania, Delaware; (ADDRESS) University & Woodland Avenues, Philadelphia, PA 19104.

(5) Region 5: (JURISDICTION) Georgia, South Carolina; (ADDRESS) 1700 Clairmont Rd., Decatur, GA 30033-4032.

(6) Region 6: (JURISDICTION) Florida, Puerto Rico; (ADDRESS) P.O. Box 5005, Building 22, Room 333, Bay Pines, FL 33744.

(7) Region 7: (JURISDICTION) Ohio, West Virginia (excluding Martinsburg, West Virginia); (ADDRESS) 10000 Brecksville Rd., Bldg. 1, 5th Floor, Brecksville, OH 44141.

(8) Region 8: (JURISDICTION) Arkansas, Tennessee; (ADDRESS) 110 9th Ave., South Room A-201A, Nashville, TN 37203.

(9) Region 9: (JURISDICTION) Alabama, Mississippi; (ADDRESS) 1500 E. Woodrow Wilson Dr., Jackson, MS 39216.

(10) Region 10: (JURISDICTION) Illinois, Iowa; (ADDRESS) VA Medical Center, Bldg. 1, G Section 1st Floor, P. O. Box 1427, Hines, IL 60141.


(12) Region 12: (JURISDICTION) Kansas, Missouri, Nebraska; (ADDRESS) 1 Jefferson Barracks Drive, St. Louis, MO 63125-4185.

(13) Region 13: (JURISDICTION) Oklahoma, Northern Texas; (ADDRESS) 4800 Memorial Drive, Bldg. 12, Waco, TX 76711.

(14) Region 14: (JURISDICTION) Louisiana, Southern Texas; (ADDRESS) 6900 Almeda Road, Houston, TX 77030.

(15) Region 15: (JURISDICTION) Minnesota, North Dakota, South Dakota; (ADDRESS) VA Medical Center, One Veterans Drive, Bldg. 73, Minneapolis, MN 55417.

(16) Region 16: (JURISDICTION) Colorado, Wyoming, Utah, Montana; (ADDRESS) Box 25126, 155 Van Gordon Street, Denver, CO 80225.

(17) Region 18: (JURISDICTION) California, Hawaii, and Philippine Islands; (ADDRESS) VA Medical Center, 4150 Clement Street, Bldg. 210, San Francisco, CA 94121.

(18) Region 19: (JURISDICTION) Arizona, Nevada, and New Mexico; (ADDRESS) 650 E. Indian School Rd., Bldg. 24, Phoenix AZ 85012.


(20) Region 21: (JURISDICTION) New York (except Metropolitan New York City), Vermont; (ADDRESS) 120 LeBrun, Buffalo, NY 14215.

(21) Region 22: (JURISDICTION) Indiana, Kentucky; (ADDRESS) 575 N. Pennsylvania Street, Room 309, Indianapolis, IN 46204.

(22) Region 23: (JURISDICTION) North Carolina, Virginia (excluding Fairfax, Arlington, and Alexandria); (ADDRESS) Hiram H. Ward Federal Bldg., 251 N. Main Street, Winston-Salem, NC 27155.
§ 14.502 Requests for legal opinions from Central Office.
Requests for formal legal advice, including interpretation of law or regulations, shall be made only by the Secretary, the Deputy Secretary, the Assistant Secretaries, the Deputy Assistant Secretaries, and the administration head or top staff office official having jurisdiction over the particular subject matter, or by a subordinate acting for any such official.
[54 FR 34982, Aug. 23, 1989]

§ 14.503 Requests for legal advice and assistance in other than domestic relations matters.
(a) Requests from administrative officials in the field for legal advice or assistance will be addressed to the appropriate Regional Counsel and will be in writing if requested by the Regional Counsel. Questions regarding insurance activities at St. Paul and Philadelphia should be referred to the Regional Counsel at the respective station. Except as to matters referred to in § 14.504(b), the Regional Counsel's authority to render legal advice and assistance shall extend to the release (unless otherwise instructed by the General Counsel), without prior approval of the General Counsel, of opinions on all legal questions which are either:
(1) Wholly controlled by the interpretation or application of the laws of the State or States in the district office area, or
(2) Covered by Department of Veterans Affairs precedents and opinions of the General Counsel which the Regional Counsel knows to be currently authoritative on the issues involved.
In cases covered by § 14.504(b) and all others not included in paragraph (a)(1) or (2) or paragraph (b) of this section, the Regional Counsel will prepare a tentative opinion (including identification of the benefit sought) and forward it to the General Counsel for review. When it is returned, the Regional Counsel will conform the opinion (if necessary) to the views of the General Counsel, and release it to the requesting official. The Regional Counsel may release any modified opinion as the opinion of the General Counsel.
(b) The Regional Counsel may submit to the General Counsel any legal question, opinion, or question pertinent to legal functions, upon which the views or advice of the General Counsel are desired. This request should set forth the special circumstances, contain a statement of the legal implications involved (including any Department of Veterans Affairs benefits claimed), set forth the facts out of which they arise, and cite any statutes or court decisions readily available, regulations, related opinions of the General Counsel and other matters deemed pertinent, with appropriate discussion. If any administration will be affected, a copy of the reply will be forwarded to that administration head.
§ 14.504 Domestic relations questions, authority and exceptions.
(a) Regional Counsels have the same authority with respect to domestic relations questions as they do with respect to matters covered by § 14.503 except as specifically excluded by the provisions of paragraph (a) of that section.
(b) In the following instances the Regional Counsel, regardless of whether State law is wholly controlling or a Department of Veterans Affairs precedent is available, will prepare a tentative opinion, researched as completely as possible with reasonably available facilities, and forward two copies thereof directly to the General Counsel for review and disposition (as provided in § 14.503 respecting other than domestic relations matters):
(1) Where it is not clear under applicable State law: (i) Whether the marriage of a veteran's child or the remarriage of a veteran's widow was void without decree of annulment, or (ii) whether an annulment decree was rendered by a court with basic authority to render annulment decrees;
(2) When fraud or collusion by either party appears to have influenced the granting of an annulment decree;
(3) Cases in which there are contesting claims;
(4) Unusual situations, such as those involving proxy marriages, the law of two or more jurisdictions or of a foreign country;
(5) Cases involving difference of opinion between Regional Counsels or between a Regional Counsel and the official who submitted the question involved.

§ 14.505 Submissions.
All submissions will set forth the question of law on which the opinion is desired, together with a complete and accurate summary of relevant facts. Files, correspondence, and other original papers will not be submitted unless pertinent portions thereof cannot practicably be summarized or copies made and attached as exhibits.

§ 14.507 Opinions.
(a) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Department of Veterans Affairs shall be conclusive as to all Department officials and employees with respect to the matter at issue, unless there has been a material change in controlling statute or regulation, a superseding written legal opinion by the General Counsel, or the designation on its face as "advisory only" by the General Counsel or the Deputy General Counsel acting as or for the General Counsel. Written legal opinions having conclusive effect under this section and not designated as
precedent opinions pursuant to paragraph (b) of this section shall be considered by the Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(2). Advice, recommendations, or conclusions on matters of Government or Department policy, contained within a written legal opinion, shall not be binding on Department officials and employees merely because of their being contained within a written legal opinion. Written legal opinions will be maintained in the Office of the General Counsel. Written legal opinions involving veterans' benefits under laws administered by the Department of Veterans Affairs, which pertain to a particular benefit matter, in addition to being maintained in the Office of the General Counsel, will be filed in the individual claim folder.

(b) A written legal opinion of the General Counsel involving veterans' benefits under laws administered by the Department of Veterans Affairs which, in the judgment of the General Counsel or the Deputy General Counsel acting as or for the General Counsel, necessitates regulatory change, interprets a statute or regulation as a matter of first impression, clarifies or modifies a prior opinion, or is otherwise of significance beyond the matter at issue, may be designated a "precedent opinion" for purposes of such benefits. Written legal opinions designated as precedent opinions under this section shall be considered by Department of Veterans Affairs to be subject to the provisions of 5 U.S.C. 552(a)(1). An opinion designated as a precedent opinion is binding on Department officials and employees in subsequent matters involving a legal issue decided in the precedent opinion, unless there has been a material change in a controlling statute or regulation or the opinion has been overruled or modified by a subsequent precedent opinion or judicial decision.

(c) For purposes of this section, the term written legal opinion of the General Counsel means a typed or printed memorandum or letter signed by the General Counsel or by the Deputy General Counsel acting as or for the General Counsel, addressed to an official or officials of the Department of Veterans Affairs stating a conclusion on a legal issue pertaining to Department of Veterans Affairs activities.

[54 FR 5613, Feb. 6, 1989; 61 FR 68665, 68666, Dec. 30, 1996]

(38 U.S.C. 501)

§ 14.514 Suits by or against United States or Department of Veterans Affairs officials; indemnification of Department of Veterans Affairs employees.
§ 14.515 Suits involving loan guaranty matters.
§ 14.516 Escheat and post fund cases.
§ 14.517 Cases affecting the Department of Veterans Affairs generally.
§ 14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.

§ 14.514 Suits by or against United States or Department of Veterans Affairs officials; indemnification of Department of Veterans Affairs employees.
(a) Suits against United States or Department of Veterans Affairs officials. When a suit involving any activities of the Department of Veterans Affairs is filed against the United States or the Secretary or a suit is filed against any employee of the Department of Veterans Affairs in which is involved any official action of the employee, not covered by the provisions of §§ 14.600 through 14.617, a copy of the petition will be forwarded to the General Counsel who will take necessary action to obtain the pertinent facts, cooperate with or receive the cooperation of the Department of Justice and, where indicated, advise the Regional Counsel of any further action required.
(b) Counsel and representation of employees. The Department of Justice may afford counsel and representation to Government employees who are sued individually as a result of the performance of their official duties. A civil action commenced in a State court against an employee, as the result of an action under color of his or her office, may be removed to the applicable Federal District Court. If a suit is filed against an employee as the result of the performance of his or her official duties, where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable (see § 14.610), and the employee desires to be represented by the U.S. Attorney, the Regional Counsel will obtain a written request to this effect from the employee and will also obtain an affidavit of the facility Director describing the incident in sufficient detail to enable a determination to be made as to whether the employee was in the scope of his or her employment at the time. These statements, together with a copy of the petition and two copies of a summary of pertinent facts, will be sent to the General Counsel, who will transmit copies thereof to the Department of Justice for appropriate action.
(c) Indemnification. (1) The Department of Veterans Affairs may indemnify a Department of Veterans Affairs employee, who is personally named as a defendant in any civil suit in state or Federal court or an arbitration proceeding or other proceeding seeking damages against the employee personally, where either 28 U.S.C. 2679 or 38 U.S.C. 7316 is not applicable, for any verdict, judgment, or other monetary award which is rendered against such employee; provided that: the alleged conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the Department of Veterans Affairs, as determined by the Secretary or his designee.
(2) The Department of Veterans Affairs may settle or compromise a personal damage claim against a Department of Veterans Affairs employee, in cases where the provisions
of either 28 U.S.C. 2679 or 38 U.S.C. 7316 are not applicable, by the payment of available funds, at any time; provided that: the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the Department of Veterans Affairs, as determined by the Secretary or his designee.

(3) Absent exceptional circumstances as determined by the Secretary or his designee, the Agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(4) A Department of Veterans Affairs employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the Department of Veterans Affairs General Counsel, who shall make a recommended disposition of the request. Where the Department of Veterans Affairs determines it appropriate, the Agency shall seek the view of the Department of Justice. The General Counsel shall forward the employee request for indemnification, and the accompanying documentation, with the General Counsel's recommendation to the Secretary for decision.

(5) Any payment under this section either to indemnify a Department of Veterans Affairs employee or to settle or compromise a personal damage claim shall be contingent upon the availability of appropriated funds of the Department of Veterans Affairs.

(d) Attorney-client privilege. Attorneys employed by the Department of Veterans Affairs who participate in any process utilized for the purpose of determining whether the Agency should request the Department of Justice to provide representation to a Department employee sued, subpoenaed or charged in his individual capacity, or whether attorneys employed by the Department of Veterans Affairs should provide assistance in the representation of such a Department employee, undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, Department of Veterans Affairs attorneys who assist in the representation of an employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Any adverse information communicated by the client-employee to an attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the Department of Veterans Affairs, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee.

(e) Suits by the United States. In any instance wherein direct submission to a U.S. Attorney for institution of civil action has been authorized by the Department of Justice, the Regional Counsel will furnish the U.S. Attorney a complete report of the facts and applicable law, documentary evidence, names and addresses of witnesses and, in cases wherein Department of Veterans Affairs action has been taken, a copy of any pertinent decision rendered. The Regional Counsel will forward two copies of such report and of any proposed pleading to the General Counsel, and will render any practicable assistance requested by the U.S. Attorney.

§ 14.515 Suits involving loan guaranty matters.

(a) In actions for debt, possession or actions similar in substance (including title actions) in which § 36.4282 or § 36.4319 of this chapter has been complied with, the Regional Counsel is authorized to enter the appearance of and represent the Secretary of Veterans Affairs as the attorney of record and to file claims for debt in probate proceedings without prior reference to the General Counsel. Any such action will normally be taken within the time prescribed by law as though there had been valid service of process. In all other types of cases, the Regional Counsel will not enter an appearance or file any pleading on behalf of the Secretary except in imperative emergency until authorization is received from the General Counsel after submission of all relevant facts. In doubtful cases, the Regional Counsel will request instructions from the General Counsel, submitting copy of so much of the pleadings or other papers, together with a sufficient recital of the facts as will make clear the background, the issues, and the relief sought. The submission also will include names and addresses of adverse parties and attorneys so that immediate action may be taken if injunctive relief seems proper. Where necessary in any case to preserve rights which might be lost by default if there had been proper service of process, appropriate action will be taken by a special appearance, or, in jurisdictions where a special appearance does not serve the purpose or under State statute or decisions will constitute a general appearance for a later date, by an appearance through amicus curiae, to obtain an extension of time, preferably 30 days or more, in which to appear and plead without prejudice. If not feasible to obtain an extension, the Regional Counsel will explain to adverse counsel by letter, and personally, if desirable, the necessity of deferring all action and will see that the proper judge receives a signed copy of the letter before default day. The letter will point out that there is no valid service of process on the Secretary of Veterans Affairs but will not base the delay on that alone.

(b) The General Counsel or each Regional Counsel representing the General Counsel is the attorney of the Secretary of Veterans Affairs for all purposes of 38 U.S.C. 3720 and, as such, is authorized to represent the Secretary in any court action or other legal matter arising under said statutory provisions. Said authorization is subject to any applicable statutes and Executive orders concerning claims of the United States. A Regional Counsel may enter appearance in such cases, subject to the provisions of §§ 36.4282 and 36.4319 of this chapter and paragraph (a) of this section. Each Regional Counsel is authorized to contract for the employment of attorneys on a fee basis for conducting any action arising under guaranty or insurance of loans or direct loans by the Department of Veterans Affairs; or for examination and other proper services with respect to title to and liens on real and personal property, material incident to such activities of the Department of Veterans Affairs, when, such employment is deemed by the Regional Counsel to be appropriate. the authority delegated to the Regional Counsel may be redelegated with the approval of the General Counsel.

(c) The General Counsel and each Regional Counsel, in carrying out their duties as authorized in paragraph (a) or (b) of this section, are authorized: (1) To contract for and execute, for and on behalf of the Secretary, any bond (and appropriate contract or application therefor) which is required in or preliminary to or in connection with any judicial proceeding in which the Regional Counsel is attorney for the Secretary, and to
incur obligations for premiums for such bonds and (2) to do all other acts and incur all costs and expenses which are necessary or appropriate to further or protect the interests of the Secretary in or in connection with prosecuting or defending any cause in any court or tribunal within the United States, which cause arises out of or incident to the guaranty or insurance of loans, or the making or direct loans by the Department of Veterans Affairs, pursuant to 38 U.S.C. ch. 37.

(d) Except in an emergency, no Regional Counsel will initiate action for appellate review without prior approval by the General Counsel. These limitations do not preclude the filing of a motion for a new trial, appeal to intermediate court with hearing de novo, the giving of notice of appeal, reserving of bills of exception, or any other preliminary action in the trial court which may be necessary or appropriate to protect or facilitate, the exercise of the right of appellate review, nor do they preclude the taking of appropriate steps on behalf of the Secretary as appellee (respondent) without prior reference to the General Counsel. Upon the conclusion of the trial of a case, the Regional Counsel will report the result thereof to the General Counsel with recommendation as to seeking appellate review if the result reported is adverse to the position of the Department of Veterans Affairs in the litigation. The reporting Regional Counsel who recommends appellate review will include as a part of the communication, or in exhibits attached: (1) A summary of the evidence; (2) a summary of the law points to be reviewed; (3) citations of statutes and cases; (4) statements of special reasons for recommending appellate review; (5) time limitations for the action recommended; (6) requirements, if any, respecting printing of the record and briefs; (7) the estimated total expenses to be incurred by reason of the appeal, reporting separately the estimated costs for printing the brief and record so that authority for printing may be granted in accordance with the prescribed procedure, MP-1, part II, chapter 9; and (8) the recommendation or a statement as to nonrecommendation by the Loan Guaranty Officer.

n1 Available in any Department of Veterans Affairs facility.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.516 Escheat and post fund cases.

In any case in which the Department of Veterans Affairs is entitled to possession of assets or property under the escheat provisions of 38 U.S.C. 5502(e), the gifts provisions of 38 U.S.C. ch. 83 or the General Post Fund provisions of 38 U.S.C. ch. 85, the Regional Counsel will endeavor to obtain possession of such assets or property in any manner appropriate under local procedure and practice, other than litigation. This procedure would include exploratory inquiry of the person having custody or possession of the assets or property for the purpose of determining whether the person would be willing to turn over the property to the Department of Veterans Affairs without litigation. If unsuccessful in this effort, a complete report will be submitted by the Regional Counsel to the General Counsel so that appropriate action may be taken to obtain the assistance of the Department of Justice in the matter.

§ 14.517 Cases affecting the Department of Veterans Affairs generally.
Regional Counsels will establish and maintain such close liaison with the State and Federal courts as to insure that notice will be afforded the Department of Veterans Affairs on all cases affecting the Department of Veterans Affairs. Such information will be forwarded to the General Counsel promptly in every case.


§ 14.518 Litigation involving beneficiaries in custody of Department of Veterans Affairs employees acting in official capacity.
(a) Service of process generally. An employee, at a field facility, served with a writ of habeas corpus involving a beneficiary of the Department of Veterans Affairs in the employee's custody will immediately notify the District Counsel of the region in addition to taking such steps as in his or her judgment are necessary for self protection.
(b) Habeas corpus writs. (1) If a Director of a Department of Veterans Affairs hospital concerned advises that, according, to current medical opinion, hospitalization is necessary for the veteran's safety or the safety of others, the District Counsel will vigorously oppose the writ at the trial court level. If the writ is granted, no further action will be taken unless so instructed by the General Counsel.
(2) If the medical opinion is that hospitalization is not required for the veteran's safety or the safety of others but continued treatment is clearly indicated in the veteran's interest, the District Counsel will assure that the court issuing the writ is so informed and will abide by the court's decision.
(3) If the medical opinion is that there is no danger of self injury to the veteran or others and the need for continued treatment is not clearly demonstrated, the District Counsel will advise the Director of the hospital concerned that the veteran should be released and will notify the veteran's attorney of the planned discharge. These cases will be handled informally to the extent practicable.
(4) Involuntary confinement of mentally ill patients in Department of Veterans Affairs installations is predicated upon the law of the State in which the installation is located. In the event the writ is filed in Federal Court, the District Counsel will cooperate with the U.S. Attorney to the end that the case is removed to the appropriate State court.


[Effective date note: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]
§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13).
§ 14.561 Administrative action prior to submission.
§ 14.562 Collections or adjustments.

§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13). The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrant prosecution is a matter solely for their determination. If the Department of Justice or U.S. Attorney decides to initiate action, the Regional Counsel will cooperate as may be requested. The Regional Counsel will promptly bring to the attention of the General Counsel any case wherein he or she is of the opinion that criminal or civil action should be initiated notwithstanding a decision by the U.S. Attorney not to bring such action; any case where action has been inordinately delayed; and any case which would cause significant publicity or notoriety.


(38 U.S.C. 501)
[EFFECTIVE DATE NOTE: 68 FR 17459, 17551, Apr. 9, 2003, amended this section, effective Apr. 10, 2003.]

§ 14.561 Administrative action prior to submission.
Before a submission is made to the U.S. Attorney in cases involving personnel or claims, the General Counsel, if the file is in Central Office, or the Regional Counsel at the regional office, hospital or center, if the file is in the regional office or other field facility, will first ascertain that necessary administrative or adjudicatory (forfeiture (see Pub. L. 86-222; 73 Stat. 452), etc.), action has been taken; except that in urgent cases such as breaches of the peace, disorderly conduct, trespass, robbery, or where the evidence may be lost by delay, or prosecution barred by the statute of limitations, submission to the U.S. Attorney will be made immediately.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.562 Collections or adjustments.
When it is determined that a submission is to be made to the U.S. Attorney, no demand for payment or adjustment will be made without the advice of the U.S. Attorney. However, if, before or after submission, the potential defendant or other person tenders payment of the liability to the United States, payment will be accepted if the U.S. Attorney has no objection. If the U.S. Attorney determines that prosecution is not
indicated, or when prosecution has ended, the file will be returned to the appropriate office with a report as to the action taken.

[42 FR 41413, Aug. 17, 1977]
FEDERAL TORT CLAIMS

§ 14.600 Federal Tort Claims Act -- general.
§ 14.601 Investigation and development.

§ 14.600 Federal Tort Claims Act -- general.

(a) Federal Tort Claims Act-overview. The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, and 2671 through 2680) prescribes a uniform procedure for handling of claims against the United States, for money only, on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

(b) Applicable regulations. The regulations issued by the Department of Justice at 28 CFR part 14 are applicable to claims asserted under the Federal Tort Claims Act, including such claims that are filed with VA. The regulations in §§ 14.600 through 14.605 of this part supplement the regulations at 28 CFR part 14.

(c) Delegations of authority concerning claims. Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority to consider, ascertain, adjust, determine, compromise, and settle claims asserted under the Federal Tort Claims Act (including the authority to execute an appropriate voucher and other necessary instruments in connection therewith) is delegated as follows:

(1) To the Under Secretary for Health, the Deputy Under Secretary for Health, Veterans Integrated Service Network (VISN) Directors, and VA Medical Facility Directors; with respect to any claim for $ 2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of $ 200,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

(3) To the Regional Counsels and Deputy Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that:

(i) Any award, compromise, or settlement in excess of $ 100,000 but not more than $ 200,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); and

(ii) Any award, compromise, or settlement in excess of $ 200,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I) and with the prior written approval of the Attorney General or his or her designee.

(d) Delegations of authority to reconsider final denial of a claim. Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority under 28 CFR 14.9 to reconsider final denials of claims under the Federal Tort Claims Act is delegated as follows:
(1) To the Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose, with respect to any claim for $2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

Note (1) to paragraph (c)(2): For any award, compromise, or settlement in excess of $100,000 but not more than $200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

Note (2) to paragraph (c)(3)(i): For any award, compromise, or settlement under paragraph (c)(3)(i) of this section a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

Note (3) to paragraph (d)(2): For any award, compromise, or settlement in excess of $100,000 but not more than $200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.


[EFFECTIVE DATE NOTE: 64 FR 47111, Aug. 30, 1999, revised this section, effective Aug. 30, 1999.]

§ 14.601 Investigation and development.

(a) Development of untoward incidents. (1) A report of any collision involving a Government-owned vehicle which results in property damage or personal injury or death will be made by the operator of the Government vehicle immediately following the accident, on SF 91, Operator's Report of Motor Vehicle Accident, and shall be submitted to the Director of the facility involved. A copy of said report, accompanied by an executed copy of VA Form 2162, Report of Accident, will be promptly submitted by the Director to the appropriate Regional Counsel, who will authorize such additional investigation as the circumstances of the case may warrant. Forms required by other agencies will continue to be used in addition to VA Form 2162.

(ii) Any incident resulting in damage to, or loss of, property, other than personal effects of a patient in a Department of Veterans Affairs facility, or in personal injury or death, due apparently or allegedly to the negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her office or employment, or damage to or loss of Government-owned property caused by other than a Department of Veterans Affairs employee acting within the scope of his or her office or employment, will be immediately reported. The Director of the facility where such occurrence took place will promptly transmit a copy of the report to the appropriate Regional Counsel who will authorize such additional investigation as the circumstances of the case may warrant.

(ii) Where the incident involves the loss of personal effects of a patient in a Department of Veterans Affairs facility, the Director will assist the patient in completing an SF 95,
Claim for Damage, Injury, or Death, and will advise the patient that it will be forwarded immediately to the appropriate Regional Counsel for consideration. The Director will forward along with the claim a brief summary of the facts, as well as his or her recommendation, to the Regional Counsel. The Regional Counsel will expedite the processing of claims of this nature.

(3) An employee will be designated at each facility to investigate motor vehicle collisions and other incidents involving damage to, or loss of privately owned property or personal injury or death, apparently or allegedly resulting from the negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, other than investigation of alleged malpractice, or damage to or loss of Government-owned property caused by other than Department of Veterans Affairs employees. In Central Office, the designation will be made by the Director of Support Service, Office of the Assistant Secretary for Human Resources and Administration, and at all other facilities, by the Director.

(4) The Regional Counsel for the area in which a field facility is located will be responsible for processing claims involving motor vehicle collisions and other occurrences resulting in property damage, personal injury, or death, within such area. The Baltimore Regional Counsel will also have jurisdiction, except as otherwise provided in paragraph (a)(3) of this section over incidents occurring in Department of Veterans Affairs Central Office.

(b) Development of medical malpractice claims. In medical malpractice cases, the Regional Counsel may refer a claim to the Under Secretary for Health via the Director, Medical-Legal Affairs for review and for professional opinion or guidance. In the consideration of claims involving a medical question, the responsible Regional Counsel involved and the General Counsel will be guided by the views of the Under Secretary for Health as to the standard of medical care and treatment, the nature and extent of the injuries, the degree of temporary or permanent disability, the prognosis, the necessity for future treatment or physical rehabilitation, and any other pertinent medical aspects of a claim.


[EFFECTIVE DATE NOTE: 64 FR 47111, 47112, Aug. 30, 1999, amended this section, effective Aug. 30, 1999.]
ADMINISTRATIVE CLAIMS

§ 14.602 Requests for medical information.
§ 14.603 Disposition of claims.
§ 14.604 Filing a claim.
§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

§ 14.602 Requests for medical information.
(a) Where there is indication that a tort claim will be filed, medical records or other information shall not be released without approval of the Regional Counsel.
(b) Request for medical records, documents, reports, or other information shall be handled in accordance with the provisions of § 1.511(a)(2) of this chapter.

[EFFECTIVE DATE NOTE: 64 FR 47111, 47112, Aug. 30, 1999, substituted "shall" for "shall be" in paragraph (a), effective Aug. 30, 1999.]

§ 14.603 Disposition of claims.
(a) [Removed. See 61 FR 27783, 27784, June 3, 1996.]
(b) [Removed. See 61 FR 27783, 27784, June 3, 1996.]
(c) [Removed. See 61 FR 27783, 27784, June 3, 1996.]
(d) [Removed. See 61 FR 27783, 27784, June 3, 1996.]
(e) [Redesignated as undesignated text. See 61 FR 27783, 27784, June 3, 1996.]
Setoff for cost of unauthorized medical treatment. In any tort claim administratively settled or compromised where the claimant owes the Department of Veterans Affairs for unauthorized medical treatment, there will be included in the tort claim award the amount of the claimant's indebtedness to the Government. The amount of the indebtedness is for credit to the appropriation account from which the services were provided. The voucher prepared for settlement of the claim will specify the amount to be deposited to the credit of the designated account and that the balance of the award be paid to the claimant.

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995; 61 FR 27783, 27784, June 3, 1996, which redesignated this section and removed paragraphs (a) through (d) and paragraph designation (e), became effective June 3, 1996.] [CROSS REFERENCE: This section was formerly § 14.608.]

§ 14.604 Filing a claim.
cxcediscussion and analysis in the veterans benefits manual
(a) Each person who inquires as to the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of the Department of Veterans Affairs acting within the scope of his or her employment, will be furnished a copy of SF 95, Claim for Damage, Injury, or Death. The claimant will be advised to submit the executed claim directly to the Regional Counsel having jurisdiction of the area wherein the occurrence complained of took place. He or she will also be advised to submit the information prescribed by 28 CFR 14.4 to the extent applicable. If a claim is presented to the Department of Veterans Affairs which involves the actions of employees or officers of other agencies, it will be forwarded to the Department of Veterans Affairs General Counsel, for appropriate action in accord with 28 CFR 14.2.

(b) A claim shall be deemed to have been presented when the Department of Veterans Affairs receives from a claimant, his or her duly authorized agent or legal representative, an executed SF 95, or other written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death: Provided, however, That before compromising or settling any claim, an executed SF 95 shall be obtained from the claimant.

(c) A claim presented in compliance with paragraphs (a) and (b) of this section may be amended by the claimant at any time prior to final Department of Veterans Affairs action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Department of Veterans Affairs shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment see § 14.600(b)(1).


[EFFECTIVE DATE NOTE: 64 FR 47111, 47112, Aug. 30, 1999, amended this section, effective Aug. 30, 1999.]

§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

(a)(1) Section 2679 of title 28 U.S.C., provides that no suit will lie against a Federal employee, or the employee's estate, for damage to property, personal injury, or death resulting from his or her wrongful act or omission while acting within the scope of his or her office or employment with the Federal Government. An action against the United States under 28 U.S.C. 2671-2680 is the exclusive remedy under these circumstances.

(2) Section 4116 of title 38 U.S.C., provides that (i) where there is remedy against the United States under 28 U.S.C. 2671-2680, or (ii) where proceedings for compensation or other benefits from the United States are provided by law, and the availability of such benefits precludes a remedy under 28 U.S.C. 2671-2680 (as is the case, for example, in the Federal Employees' Compensation Act, 5 U.S.C. 8101, et seq.), such recourse is the exclusive remedy for property damage, personal injury, or death allegedly occurring as a result of malpractice or negligence committed by a physician, dentist, nurse, physician's
assistant, dentist's assistant, pharmacist or paramedical (for example, medical and dental technicians, nursing assistants, and therapists), or other supporting personnel, while furnishing medical care and treatment in the exercise of duties in or for the Veterans Health Administration. Accordingly, a malpractice or negligence suit for property damage, personal injury, or death will not lie against such personnel under the circumstances set forth in this subparagraph.

(b) The Department of Justice will defend any civil action or proceeding brought in any court against persons referred to in paragraph (a) (1) or (2) of this section under the circumstances set forth therein. Accordingly, when a suit is filed against any employee of the Department of Veterans Affairs as a result of a wrongful act or omission arising out of employment with the Government, or as a result of furnishing medical or dental care and treatment in or for the Veterans Health Administration, the employee shall immediately forward a copy of all papers served on him or her to the Regional Counsel having jurisdiction over the area in which the employee works. The employee will also promptly forward to the appropriate Regional Counsel a signed statement indicating whether he or she desires the Department of Justice to provide representation, and to otherwise protect his or her interests as provided for by law. Even though there may not have been service, if an employee learns that a suit arising from either of the above-described circumstances has been filed against him or her, the employee shall immediately so advise the appropriate Regional Counsel, provide the Regional Counsel with a brief description of the facts involved, and state whether he or she desires Federal intervention.

(c) Upon receipt of notice that suit has been filed against an employee of the Department of Veterans Affairs who is entitled to protection under 28 U.S.C. 2679 or 38 U.S.C. 7316, the Regional Counsel having jurisdiction over the place where the employee works will conduct a preliminary investigation, which will include an affidavit by the employee's supervisor as to whether the defendant-employee was acting in the scope of his or her employment at the time of the incident, and a request from the defendant-employee for representation. The affidavit will contain a factual description of the employee's duties and responsibilities at the time of the incident and should describe the incident in question. Upon receipt of such information, the Regional Counsel will make a preliminary determination as to whether such suit comes within the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 7316. The Regional Counsel will refer the matter to the appropriate U.S. Attorney with a recommendation as to whether the employee is eligible for protection under 28 U.S.C. 2679 or 38 U.S.C. 7316. The U.S. Attorney will decide whether the Department of Veterans Affairs employee is eligible for the protection. The Regional Counsel will submit to the General Counsel a preliminary report in duplicate containing the information furnished the U.S. Attorney. In all such cases, the Regional Counsel will conduct a complete investigation of the facts and law. Two copies of the investigation report will be sent to the General Counsel and one copy will be sent to the appropriate U.S. Attorney. The General Counsel, through the Regional Counsel, will keep the employee advised of the action being taken concerning the suit. In the event that the U.S. Attorney or the Department of Justice determines that the employee is not eligible for immunization pursuant to one of the aforementioned provisions, the General Counsel's office, through the district Counsel, will advise the employee and will call to
his or her attention the discretionary conditional indemnification provisions of section 7316(e) of title 38 U.S.C.

(d) Where a civil action is commenced in a State court against a Department of Veterans Affairs employee, and the matter is within the purview of either 28 U.S.C. 2679, or 38 U.S.C. 7316, the Department of Justice will be asked to remove such suit to the appropriate Federal District Court before trial, where it will be deemed an action against the United States. The defendant employee will be dismissed from the suit. After such removal, the United States has available all defenses to which it would have been entitled if the action had originally been commenced against the United States in the proper Federal District Court. Should a Federal District Court determine that the Department of Veterans Affairs employee whose acts or omissions gave rise to the suit was not acting within the scope of his or her office or employment, and therefore not eligible for immunization as provided for in the aforementioned section, the case will be remanded to the State court from which it was removed, the employee will be reinstated as the defendant, and the United States will be dismissed from the suit. Where the employee has been reinstated as the defendant under such circumstances, in order to protect any rights which he or she may have under 38 U.S.C. 7316(e), he or she shall immediately notify the General Counsel, through the local Regional Counsel. Through the Regional Counsel, the General Counsel will call the employee's attention to the discretionary conditional indemnification provisions of section 7316(e).

(e) Under the authority of 38 U.S.C. 7316(e), the Secretary of Veterans Affairs may pay for monetary damages sustained by or assessed against an individual (or his or her estate) described in paragraph (a) (2) of this section, as the result of any suit instituted against such individual which is not cognizable under the provisions of 28 U.S.C. 2671-2680 because the individual was assigned to a foreign country, the said individual was detailed to a State or political division thereof, or the cause of action was specifically excluded under the provisions of 28 U.S.C. 2680(h); Provided, That the amount of damages sustained is reasonable when compared with similar cases, litigated or settled, and the United States was given a reasonable opportunity to defend such individual and to participate in settlement negotiations.

(Authority: 28 U.S.C 2671-2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)


[EFFECTIVE DATE NOTE: 64 FR 47111, 47112, Aug. 30, 1999, amended this section, effective Aug. 30, 1999.]

[CROSS REFERENCE: This section was formerly § 14.610.]
LITIGATED CLAIMS
§ 14.615 General.
§ 14.616 Form and place of filing claim.
§ 14.617 Disposition of claims.

§ 14.615 General.
(a) Authority. Section 515(b), title 38 U.S.C., provides that the Secretary of Veterans Affairs may pay tort claims, in the manner authorized in the first paragraph of section 2672 of title 28 U.S.C., when such claims arise in foreign countries in connection with Department of Veterans Affairs operations abroad.
(b) Action by claimant. Claims for property loss or damage may be filed by the owner of the property or his or her duly authorized agent or legal representative. If the property was insured and the insurer is subrogated, in whole or in part, and if both the owner and the insurer desire to file a claim for their respective losses they should join in one claim. Claims for personal injury may be filed by the injured person or his or her agent or legal representative. Claims for death may be filed by the personal representative of the decedent or any other legally qualified person. When filed by an agent or legal representative, the claim must show the title or capacity of the person representing the claimant and be accompanied by evidence of the appointment of such person as agent, legal representative, executor/executrix, administrator/administratrix, guardian, or other fiduciary.
(c) Time for filing. A claim may not be allowed under 38 U.S.C. 515(b) unless it is presented to the Secretary or his or her designee within 2 years after the claim accrues.

§ 14.616 Form and place of filing claim.
(a) Form of claim. Claims arising under 38 U.S.C. 515(b) will be prepared in the form of a sworn statement and submitted in duplicate. The original copy of the claim will be sworn to or affirmed before an official with authority to administer oaths or affirmations and will contain the following information, at least:
(1) The name and address of claimant;
(2) The amount claimed for injury or death, and for property loss or damage;
(3) If property was lost or damaged, the amount paid or payable by the insurer together with the name of the insurer;
(4) A detailed statement of the facts and circumstances giving rise to the claim, including the time, place, and date of the accident or incident;
(5) If property was involved, a description of the property and the nature and extent of the damage and the cost of repair or replacement based upon at least two impartial estimates;
(6) If personal injury was involved, the nature of the injury, the cost of medical and/or hospital services, and time and income lost due to the injury;
(7) If death is involved, the names and ages of claimants and their relationship to decedent;
(8) The name and official position of the employee of the United States allegedly responsible for the accident or injury, or loss or damage of property;
(9) The names and addresses of any witnesses to accident or incident; and
(10) If desired, the law applicable to the claim.

(b) Place of filing claim. Claims arising in the Philippines under 38 U.S.C. 515(b) will be filed with the Director, Department of Veterans Affairs Regional Office, Manila, Republic of the Philippines. Claims arising in other foreign countries will be filed with the American Embassy or Consulate nearest the place where the incident giving rise to the claim took place.

(c) Evidence to be submitted by claimant--(1) General. The amount claimed on account of damage to or loss of property or on account of personal injury or death shall, so far as possible, be substantiated by competent evidence. Supporting statements, estimates and the like will, if possible, be obtained from disinterested parties. All evidence will be submitted in duplicate. Original evidence or certified copies shall be attached to the original copy of the claim, and simple copies shall be attached to the other copy of the claim. All documents in other than the English language will be accompanied by English translations.

(2) Personal injury or death. In support of claims for personal injury or death, the claimant will submit, as may be appropriate, itemized bills for medical, hospital, or burial expenses actually incurred; a statement from the claimant's or decedent's employer as to time and income lost from work; and a written report by the attending physician with respect to the nature and extent of the injury, the nature and extent of treatment, the degree of disability, the period of hospitalization or incapacitation, and the prognosis as to future treatment, hospitalization and the like.

(3) Damage to personal property. In support of claims for damage to personal property which has been repaired, the claimant will submit an itemized receipt, or, if not repaired, itemized estimates of the cost of repairs by two reliable parties who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to the value of the improvements both before and after the accident or incident and the cost of replacements.

(4) Damage to real property. In support of claims for damage to land, trees, buildings, fences, or other improvements to real property, the claimant will submit an itemized receipt if repairs have been made, or, if repairs have not been made, itemized estimates of the cost of repairs by two reliable persons who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to the value of the improvements both before and after the accident or incident and the cost of replacements.

(5) Damage to crops. In support of claims for damage to crops, the claimant will submit an itemized signed statement showing the number of acres, or other unit measure of crop damaged, the probable yield per unit, the gross amount which would have been realized from such probable yield and an estimate of the costs of cultivating, harvesting and
marketing the crop. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop will also be stated. (Approved by the Office of Management and Budget under control number 2900-0437) [38 FR 5474, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977; 49 FR 32848, Aug. 17, 1984]

§ 14.617 Disposition of claims.
(a) Disposition of claims arising in Philippines. All claims arising under 38 U.S.C. 515(b) in the Philippines, including a complete investigation report and a brief resume of applicable law, will be forwarded directly by the Director to the General Counsel, together with a recommendation as to disposition.
(b) Disposition of claims arising in foreign countries other than the Philippines. When a claim is received in an American Embassy or Consulate, the Embassy or Consulate receiving such claim shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, including a resume of applicable law and a recommendation regarding allowance or disallowance of the claim, through regular channels of the Department of State to the General Counsel, Department of Veterans Affairs Central Office, Washington, DC.
(c) Payment of claims. Upon determining that there is liability on the part of the United States under 38 U.S.C. 515(b), the General Counsel, or such other personnel as may be designated by the Secretary, will take the necessary action to effect payment. [38 FR 5474, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977]
CLAIMS FOR DAMAGE TO OR LOSS OF GOVERNMENT PROPERTY

§ 14.618 Collection action.

§ 14.618 Collection action.
(a) In a case where the Regional Counsel determines that damage to or loss of Government property under the jurisdiction of the Department of Veterans Affairs resulted from the negligence or other legal wrong of a person other than an employee of the United States, while acting within the scope of his or her employment, the Regional Counsel will request payment in full of the amount of damage from the person liable therefor or such person's insurer.

(b) The Regional Counsel may collect, compromise, suspend, or terminate collection action on any such claim as is authorized under § 2.6(e)(4)(ii) of this chapter, in conformity with the standards in § 1.900 series of this chapter. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated and does not exceed $ 100,000, will be referred by the Regional Counsel to the appropriate U.S. attorney along with the information required by §§ 1.951 through 1.953 of this chapter. Any claim in excess of $ 100,000 for which payment in full has not been made, will be transmitted along with the report required by § 14.601(a)(2)(i), a report on credit data (§ 1.952 of this chapter), and any other pertinent information, to the General Counsel for appropriate action.

(c) The General Counsel or those designated in § 2.6(e)(4) of this chapter will take action to collect in full on such claims and to compromise, suspend, or terminate any such claims not exceeding $ 100,000 in conformity with § 1.900 series of this chapter. Any such claims not compromised, or on which collection actions is not suspended or terminated and does not exceed $ 100,000, will be referred to the appropriate U.S. Attorney. Any such claims in excess of $ 100,000, which have not been collected in full, will be referred by the General Counsel to the Department of Justice for appropriate action.

(d) The provisions of paragraphs (a) through (c) of this section are not applicable to the collection of claims involving damage to General Services Administration Motor Pool System vehicles issued for Department of Veterans Affairs use. Whenever there is any indication that a party other than the operator of a motor pool system vehicle is at fault in an accident, all documents and data pertaining to the accident and its investigation will be submitted to the General Services Administration Regional Counsel of the region that issued the vehicle who has jurisdiction over such matters. Whenever a motor pool system vehicle is involved in an accident, resulting in damage to the property of, or injury to the person of a third party, and the third party asserts a claim against the Department of Veterans Affairs based upon the alleged negligence of the vehicle operator, the claim will be considered under § 14.600 et seq.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995; 61 FR 27783, 27784, June 3, 1996, which substituted "$ 100,000" for "$ 20,000" in

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paragraphs (b) and (c) and "14.601(a)(2)(i)" for "14.605(a)(2)(i)" in paragraph (b), became effective June 3, 1996.]
CLAIMS FOR COST OF MEDICAL CARE AND SERVICES

§ 14.619 Collection action.

§ 14.619 Collection action.

(a) In a case where the Regional Counsel determines that medical care and services were furnished as a result of the negligence of a third party, other than an employee of the United States while acting in the scope of his or her employment, the Regional Counsel will request payment in full of the amount of damage from the person liable therefor or such person's insurer.

(b) The Regional Counsel may collect, compromise, suspend, or terminate collection activity on any such claim as is authorized under § 2.6(e)(3) of this chapter. However, claims in excess of $ 100,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice, which will be obtained through the General Counsel. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated will be referred by the Regional Counsel to the appropriate U.S. Attorney along with appropriate information necessary to protect the interest of the Government. A copy of the referral to the U.S. Attorney will be sent to the General Counsel's office.

(c) In a case where the Regional Counsel determines that a claim is appropriate under the provisions of § 17.48(g) of this chapter or 38 U.S.C. 1729, for the cost of medical, hospital, or surgical care, the Regional Counsel may assert the claim and collect payment in full. The Regional Counsel may compromise, settle, waive, suspend or terminate collection activity on any claim not exceeding $ 100,000. Claims in excess of $ 100,000 may only be compromised, settled, or waived with the approval of the General Counsel. Any such claim not compromised, settled, or waived or where collection action is not suspended or terminated will be referred to the appropriate United States Attorney with sufficient data to enable that office to protect the interest of the Government. A copy of all materials referred to the United States Attorney will be furnished the General Counsel.


(38 U.S.C. 1729(c)(1))

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995; 61 FR 27783, 27785, June 3, 1996, which substituted "$ 100,000" for "$ 40,000" in paragraphs (b) and (c) and amended paragraph (b), became effective June 3, 1996.]
§ 14.626 Purpose.
§ 14.627 Definitions.
§ 14.628 Recognition of organizations.
§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.
§ 14.630 Authorization for a particular claim.
§ 14.631 Powers of attorney.
§ 14.632 Determination of qualifications.
§ 14.633 Termination of accreditation of agents, attorneys, and representatives.
§ 14.634 Banks or trust companies acting as guardians.
§ 14.635 Office space and facilities.

§ 14.626 Purpose.

The purpose of the regulation of representatives is to ensure that claimants for Department of Veterans Affairs benefits have responsible, qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.


(38 U.S.C. 501(a), 5902, 5903, 5904)

[EFFECTIVE DATE NOTE: 68 FR 8541, 8544, Feb. 24, 2003, revised this section, effective Feb. 24, 2003.]

§ 14.627 Definitions.

As used in regulations on representation of Department of Veterans Affairs claimants:
(a) Accreditation means recognition by the Department of Veterans Affairs of representatives, attorneys, and agents to represent claimants.
(b) Agent means a person who has met the standards and qualifications outlined in § 14.629(b).
(c) Attorney means a member in good standing of a State bar.
(d) Benefit means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans, dependents, and survivors.
(e) Cancellation means termination of authority to represent claimants.
(f) Claim means application made under title 38 U.S.C., and implementing directives, for entitlement to Department of Veterans Affairs benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.
(g) **Claimant** means a person who has filed or has expressed to a representative, agent, or attorney an intention to file a written application for determination of entitlement to benefits provided under title 38, United States Code, and implementing directives.

(h) **Complete claims service** means representation of each claimant requesting assistance, from the initiation of a claim until the completion of any potential administrative appeal.

(i) **Cross-accreditation** means an accreditation based on the status of a representative as an accredited and functioning representative of another organization.

(j) **Facilities** means equipment and furnishings that promote the efficient operation of an office, and adjacent accommodations, which are needed to facilitate access to office space.

(k) **Recognition** means certification by the Department of Veterans Affairs of organizations to represent claimants.

(l) **Representative** means a person who has been recommended by a recognized organization and accredited by the Department of Veterans Affairs.

(m) **State** includes any State, possession, territory, or Commonwealth of the United States, and the District of Columbia.

(n) **Suspension** means temporary withholding of authority to represent claimants.


(38 U.S.C. 501(a), 5902, 5903, 5904)


§ 14.628 Recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Secretary of Veterans Affairs.

(a) National organization. An organization may be recognized as a national organization if:

1. It was recognized by the Department of Veterans Affairs prior to October 10, 1978, and continues to satisfy the requirements of § 14.628(d) of this section, or
2. It satisfies the following requirements:
   i. Requirements set forth in paragraph (d) of this section, including information required to be submitted under that paragraph;
   ii. In the case of a membership organization, membership of 2,000 or more persons, as certified by the head of the organization;
   iii. Capability and resources to provide representation to a sizable number of claimants;
   iv. Capability to represent claimants before the Board of Veterans' Appeals in Washington, D.C.; and
   v. Geographic diversification, i.e., either one or more posts, chapters, or offices in at least ten states, or one or more members in at least twenty states.

(b) State organization. An organization created and primarily funded by a State government for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) Regional or local organization. An organization other than a State or national organization as set forth in paragraphs (a) and (b) of this section may be recognized when the Department of Veterans Affairs has determined that it is a veterans' service
organization primarily involved in delivering services connected with either title 38 U.S.C., benefits and programs or other Federal and State programs designed to assist veterans. The term veteran as used in this paragraph shall include veterans, former armed forces personnel, and the dependents or survivors of either. Further, the organization shall provide responsible, qualified representation in the preparation, presentation, and prosecution of claims for title 38 U.S.C., benefits.

(d) Requirements for recognition. (1) In order to be recognized under this section, an organization shall meet the following requirements:

(i) Have as a primary purpose serving veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit a statement establishing the purpose of the organization and that veterans would benefit by recognition of the organization.

(ii) Demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of veterans' services to a sizable number of veterans. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) The number of members and number of posts, chapters, or offices and their addresses;

(B) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate;

(C) A description of the services performed or to be performed in connection with programs administered by the Department of Veterans Affairs, with an approximation of the number of veterans, survivors, and dependents served or to be served by the organization in each type of service designated; and

(D) A description of the type of services, if any, performed in connection with other Federal and State programs which are designed to assist former Armed Forces personnel and their dependents, with an approximation of the number of veterans, survivors, and dependents served by the organization under each program designated.

(iii) Commit a significant portion of its assets to veterans' services and have adequate funding to properly perform those services. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting particular veterans' services (VA may, in cases where it deems necessary, require an audited financial statement); and

(B) A statement indicating that use of the organization's funding is not subject to limitations imposed under any Federal grant or law which would prevent it from representing claimants before the Department of Veterans Affairs.

(iv) Maintain a policy and capability of providing complete claims service to each claimant requesting representation or give written notice of any limitation in its claims service with advice concerning the availability of alternative sources of claims service. Except as provided in paragraphs (d)(1)(iv)(A) and (B) of this section, in establishing that it meets this requirement, an organization requesting recognition shall submit evidence of its capability to represent claimants before Department of Veterans Affairs regional offices and before the Board of Veterans' Appeals.

(A) If an organization does not intend to represent claimants before the Board of Veterans' Appeals, the organization shall submit evidence of an association or agreement
with a recognized service organization for the purpose of representation before the Board of Veterans' Appeals, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning the availability of alternative sources of claims service.

(B) If an organization does not intend to represent each claimant requesting assistance, the organization shall submit a statement of its policy concerning the selection of claimants and the proposed method of informing claimants of this policy, with advice concerning the availability of alternative sources of claims service.

Note to Paragraph (d)(1)(iv): An organization may be considered to provide complete claims service notwithstanding the exercise of discretion to determine that provision of representation in a particular case is impracticable or inappropriate because, under the circumstances, the facts or law do not support the filing of a claim or appeal, an appropriate representative-claimant relationship cannot be maintained, or representation would give rise to a conflict of interest on the part of the organization.

(v) Take affirmative action, including training and monitoring of accredited representatives, to ensure proper handling of claims. In establishing that it meets this requirement, an organization requesting recognition shall submit:

(A) A statement of the skills, training, and other qualifications of current paid or volunteer staff personnel for handling veterans' claims; and

(B) A plan for recruiting and training qualified claim representatives, including the number of hours of formal classroom instruction, the subjects to be taught, the period of on-the-job training, a schedule or timetable for training, the projected number of trainees for the first year, and the name(s) and qualifications of the individual(s) primarily responsible for the training.

(2) In addition, the organization requesting recognition shall supply:

(i) A statement that neither the organization nor its accredited representatives will charge or accept a fee or gratuity for service to a claimant and that the organization will not represent to the public that Department of Veterans Affairs recognition of the organization is for any purpose other than claimant representation; and

(ii) The names, titles, and addresses of officers and the official(s) authorized to certify representatives.

(e) Recognition or denial. Only the Secretary is authorized to recognize organizations. Notice of the Secretary's determination on a request for recognition will be sent to an organization within 90 days of receipt of all information to be supplied.

(f) Requests for further information. The Secretary or the Secretary's designee may request further information from any recognized organization, including progress reports, updates, or verifications.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0439.)


(38 U.S.C. 501(a), 5902)

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

The Regional Counsel of jurisdiction will resolve any question of current qualifications of a service organization representative, agent, or attorney. The claimant, the service organization representative, agent, or attorney, or an official of the organization for which such person acts, or a Department of Veterans Service Center Manager may appeal such determination to the General Counsel.

(a) Service Organization Representatives. A recognized organization shall file with the Office of the General Counsel VA Form 21 (Application for Accreditation as Service Organization Representative) for each person it desires accredited as a representative of that organization. In recommending a person, the organization shall certify that the designee:

1. Is of good character and reputation and has demonstrated an ability to represent claimants before the Department of Veterans Affairs;
2. Is either a member in good standing or a paid employee of such organization working for it not less than 1,000 hours annually; is accredited and functioning as a representative of another recognized organization; or, in the case of a county veteran's service officer recommended by a recognized State organization, meets the following criteria:
   i. Is a paid employee of the county working for it not less than 1,000 hours annually;
   ii. Has successfully completed a course of training and an examination which have been approved by a Regional Counsel with jurisdiction for the State; and
   iii. Will receive either regular supervision and monitoring or annual training to assure continued qualification as a representative in the claim process; and
3. Is not employed in any civil or military department or agency of the United States. (Authority: 38 U.S.C. 501(a), 5902)

(b) Agents. (1) An individual desiring accreditation as an agent must establish that he or she is of good character and reputation and is qualified to render assistance to claimants in the presentation of their claim(s). An individual desiring accreditation as an agent must file a completed application with the Office of the General Counsel on VA Form 21a on which the applicant submits the following:

i. His or her full name and business address;
ii. Information concerning the applicant's military and civilian employment history (including character of military discharge, if applicable);
iii. Information concerning representation provided by the applicant before any department, agency, or bureau of the Federal government;
iv. Information concerning any criminal background of the applicant;
v. Information concerning whether the applicant has ever been determined mentally incompetent or hospitalized as a result of a mental disease or disability, or is currently under treatment for a mental disease or disability;
vi. Information concerning whether the applicant was previously accredited as a representative of a veterans service organization and, if so, whether that accreditation was terminated or suspended by or at the request of that organization;
(vii) The names, addresses, and phone numbers of three character references; and
(viii) Information relevant to whether or not the applicant has any physical limitations which would interfere with the completion of a comprehensive written examination administered under the supervision of a VA Regional Counsel.

(2) Applicants must achieve a score of 75 percent or more on a written examination administered by VA as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than twice in any 6-month period.

(Authority: 38 U.S.C. 501(a), 5904)

(c) Attorneys. (1) An attorney may represent a claimant upon submission of authorization as described in § 14.631(a) or (b).

(2) If the claimant consents in writing, an attorney associated or affiliated with the claimant's attorney of record or employed by the same legal services office as the attorney of record may assist in the representation of the claimant.

(3) A legal intern, law student, or paralegal may not be independently accredited to represent claimants under this paragraph. A legal intern, law student, or certified paralegal may assist in the preparation, presentation, or prosecution of a claim, under the direct supervision of an attorney of record designated under § 14.631(a) or (b), if the claimant's written consent is furnished to the Department of Veterans Affairs. Such consent must specifically state that participation in all aspects of the claim by a legal intern, law student, or paralegal furnishing written authorization from the attorney of record is authorized. In addition, suitable authorization for access to the claimant's records must be provided in order for such an individual to participate. The supervising attorney must be present at any hearing in which a legal intern, law student, or paralegal participates. (See § 20.606).

(4) Unless revoked by the claimant, consent provided under paragraph (c)(2) or paragraph (c)(3) of this section shall remain effective in the event the claimant's original attorney is replaced as attorney of record by another member of the same law firm or an attorney employed by the same legal services office.

Note to § 14.629: A legal intern, law student, paralegal, or veterans service organization support-staff person, working under the supervision of an individual designated under § 14.631(a) as the claimant's representative, attorney, or agent, may qualify for read-only access to pertinent Veterans Benefits Administration automated claims records.

(Authority: 38 U.S.C. 501(a), 5904)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0018 and 2900-0605.)


§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute one claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A signed writing, which may be in letter form, identifying the claimant and the type of benefit or relief sought, specifically authorizing a named
individual to act as the claimant's representative, and further authorizing direct access to records pertinent to the claim, will be accepted as a power of attorney.

(b) Representation may be provided by an individual pursuant to this section one time only. An exception to this limitation may be granted by the General Counsel in unusual circumstances. Among the factors which may be considered in determining whether an exception will be granted are:

(1) The number of accredited representatives and claims agents operating in the claimant's geographic region;
(2) Whether the claimant has unsuccessfully sought representation from other sources;
(3) The nature and status of the claim; and
(4) Whether there exists unique circumstances which would render alternative representation inadequate.


(38 U.S.C. 501(a), 5903)

[EFFECTIVE DATE NOTE: 68 FR 8541, 8546, Feb. 24, 2003, revised this section, effective Feb. 24, 2003.]

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either Department of Veterans Affairs Form 21-22 (Appointment of Veterans Service Organization as Claimant's Representative) or Department of Veterans Affairs Form 22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with paragraph (b) of this section or when representation by an individual is authorized under § 14.630. The power of attorney shall meet the following requirements:

(1) Contain signature by:
   (i) The claimant, or
   (ii) The claimant's guardian, or
   (iii) In the case of an incompetent, minor, or otherwise incapacitated person without a guardian, the following in the order named -- spouse, parent, other relative or friend (if interests are not adverse), or the director of the hospital in which the claimant is maintained; and

(2) Shall be presented to the appropriate Department of Veterans Affairs office for filing in the veteran's claims folder.

(b) An attorney engaged by a client may state in a signed writing on his or her letterhead that the attorney is authorized to represent the claimant. This evidence of authorization shall be equivalent to an executed power of attorney and shall be presented to the Department of Veterans Affairs regional office that has jurisdiction over the claim for filing the claimant's claims folder.

(c) The Secretary may, for any purpose, treat a power of attorney naming as a claimant's representative an organization recognized under § 14.628, a particular office of such an organization, or an individual representative of such an organization as an appointment of the entire organization as the claimant's representative, unless the claimant specifically indicates in the power of attorney a desire to appoint only the individual representative. Such specific indication must be made in the space on the power-of-attorney form for...
designation of the representative and must use the word "only" with reference to the individual representative.

(d) An organization, representative, agent, or attorney named in a power of attorney executed pursuant to paragraph (a) of this section may decline to accept appointment as a claimant's representative by so notifying the claimant and the agency of original jurisdiction in writing prior to taking any action on the claimant's behalf before the Department of Veterans Affairs after execution of the power of attorney by the claimant. Note to § 14.631(d): Written notification to VA may be submitted via hand delivery, mail, electronic mail, or facsimile.

(e) Questions concerning the validity or effect of powers of attorney shall be referred to the Regional Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(f)(1) Only one organization, representative, agent, or attorney will be recognized at one time in the prosecution of a particular claim. Except as provided in § 14.629(c) and paragraph (f)(2) of this section, all transactions concerning the claim will be conducted exclusively with the recognized organization, representative, agent, or attorney of record until notice of a change, if any, is received by the appropriate office of the Department of Veterans Affairs.

(2) An organization named in a power of attorney executed in accordance with paragraph (a) of this section may employ an attorney to represent a claimant in a particular claim. Unless the attorney is an accredited representative of the organization, the written consent of the claimant shall be required.

(g)(1) A power of attorney may be revoked at any time, and an attorney may be discharged at any time. Unless a claimant specifically indicates otherwise, the receipt of a new power of attorney shall constitute a revocation of an existing power of attorney.

(2) If an attorney submits a letter concerning representation under paragraph (b) of this section regarding a particular claim, or a claimant authorizes a person to provide representation in a particular claim under § 14.630, such specific authority shall constitute a revocation of an existing general power of attorney filed under paragraph (a) of this section only as it pertains to, and during the pendency of, that particular claim. Following the final determination of such claim, the general power of attorney shall remain in effect as to any new or reopened claim.

§ 14.632 Determination of qualifications.

If challenged, the qualifications of prospective representatives or agents shall be verified by the Regional Counsel of jurisdiction. The report of the Regional Counsel, if any, including any recommendation of the Department of Veterans Affairs facility director, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, notification of accreditation will be issued by the General Counsel or the General Counsel of jurisdiction.
§ 14.633 Termination of accreditation of agents, attorneys, and representatives.
cxcviiDiscussion and Analysis in the Veterans Benefits Manual
(a) Accreditation may be canceled at the request of an agent, attorney, representative, or organization.
(b) Accreditation shall be canceled at such time a determination is made that any requirement of § 14.629 is no longer met by an agent, attorney, or representative.
(c) Accreditation shall be canceled when the General Counsel finds, by clear and convincing evidence, one of the following:
(1) Violation of or refusal to comply with the laws administered by the Department of Veterans Affairs or with the regulations governing practice before the Department of Veterans Affairs;
(2) Knowingly presenting or prosecuting a fraudulent claim against the United States, or knowingly providing false information to the United States;
(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim;
(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following--deceiving, misleading or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish a reasonable response within 90 days of request for evidence by the Department of Veterans Affairs, or willfully withholding an application for benefits.)
(d) Accreditation shall be canceled when the General Counsel finds an agent's, attorney's, or representative's performance before the Department of Veterans Affairs demonstrates a lack of the degree of competence necessary to adequately prepare, present, and prosecute claims for veteran's benefits.
(e) As to cancellation of accreditation under paragraphs (b), (c) or (d) of this section, upon receipt of information from any source indicating failure to meet the requirements of § 14.629, improper conduct, or incompetence, the Regional Counsel of jurisdiction shall initiate an inquiry into the matter. If the matter involves an accredited representative of a recognized organization, this inquiry shall include contact with the representative's organization.
(1) If the result of the inquiry does not justify further action, the Regional Counsel will close the inquiry and maintain the record for 3 years.
(2) If the result of the inquiry justifies further action, the Regional Counsel shall take the following action:
(i) As to representatives, suspend accreditation immediately and notify the representative and the representative's organization of the suspension and of an intent to cancel accreditation. The notice to the representative will also state the reasons for the
suspension and impending cancellation, and inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(ii) As to agents or attorneys, inform the General Counsel of the result of the inquiry and notify the agent or attorney of an intent to cancel accreditation. The notice will also state the reason(s) for the impending cancellation and inform the party of a right to request a hearing on the matter or to submit additional evidence within 10 working days of receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(iii) In the event that a hearing is not requested, the Regional Counsel shall forward the record to the General Counsel for final determination.

(f) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the Regional Counsel. The hearing officer will have authority to administer oaths. A member of the Regional Counsel's office will present the evidence. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. Upon request of the party requesting the hearing, an appropriate Department of Veterans Affairs official designated in § 2.1 of this chapter may issue subpoenas to compel the attendance of witnesses and the production of documents necessary for a fair hearing. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The hearing officer shall submit the entire hearing transcript, any pertinent records or information, and a recommended finding to the Regional Counsel within 10 working days after the close of the hearing. The Regional Counsel will immediately forward the entire record to the General Counsel for decision.

(g) The decision of the General Counsel is final. The effective date for termination of accreditation shall be the date upon which a final decision is rendered. The records of the case will be maintained in the General Counsel's office for 3 years.


(38 U.S.C. 501, 5902, 5904)
[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.634 Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee, including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity.


(38 U.S.C. 5903, 5904)
§ 14.635 Office space and facilities.
The Secretary may furnish office space and facilities, if available, in buildings owned or occupied by the Department of Veterans Affairs, for the use of paid full-time representatives of recognized national organizations, and for employees of recognized State organizations who are accredited to national organizations, for purposes of assisting claimants in the preparation, presentation, and prosecution of claims for Department of Veterans Affairs benefits.

(a) Request for office space should be made by an appropriate official of the organization to the Director of the Department of Veterans Affairs facility in which space is desired and should set forth:

(1) The number of full-time paid representatives who will be permanently assigned to the office;

(2) The number of secretarial or other support staff who will be assigned to the office;

(3) The number of claimants for whom the organization holds powers of attorney whose claims are within the jurisdiction of the facility or who reside in the area served by the facility, the number of such claimants whose claims are pending, and the number of claims prosecuted during the previous three years; and

(4) Any other information the organization deems relevant to the allocation of office space.

(b) When in the judgment of the Director office space and facilities previously granted could be better used by the Department of Veterans Affairs, or would receive more effective use or serve more claimants if allocated to another recognized national organization, the Director may withdraw such space or reassign such space to another organization. In the case of a facility under the control of the Veterans Benefits Administration or the Veterans Health Administration, the final decision on such matters will be made by the Under Secretary for Benefits or the Under Secretary for Health, respectively.


(38 U.S.C. 501(a), 5902)

EXPANDED REMOTE ACCESS TO COMPUTERIZED VETERANS CLAIMS RECORDS BY ACCREDITED REPRESENTATIVES

§ 14.640 Purpose.
§ 14.641 Qualifications for access.
§ 14.642 Utilization of access.
§ 14.643 Disqualification.

§ 14.640 Purpose.
(a) Sections 14.640 through 14.643 establish policy, assign responsibilities and prescribe procedures with respect to:
(1) When, and under what circumstances, VA will grant authorized claimants' representatives read-only access to the automated Veterans Benefits Administration (VBA) claims records of those claimants whom they represent;
(2) The exercise of authorized access by claimants' representatives; and
(3) The bases and procedures for disqualification of a representative for violating any of the requirements for access.
(b) VBA will grant access to its automated claimants' claims records from locations outside Regional Offices under the following conditions. Access will be provided:
(1) Only to individuals and organizations granted access to automated claimants' records under §§ 14.640 through 14.643;
(2) Only to the claims records of VA claimants whom the organization or individual represents as reflected in the claims file;
(3) Solely for the purpose of the representative assisting the individual claimant whose records are accessed in a claim for benefits administered by VA; and
(4) On a read-only basis. Individuals authorized access to VBA automated claims records under §§ 14.640 through 14.643 will not be permitted to modify the data.
(c)(1) Access will be authorized only to the inquiry commands of the Benefits Delivery Network which provide access to the following categories of data:
   (i) Beneficiary identification data such as name, social security number, sex, date of birth, service number and related service data; and
   (ii) Claims history and processing data such as folder location, claim status, claim establishment date, claim processing history, award data, rating data, including service-connected medical conditions, income data, dependency data, deduction data, payment data, educational facility and program data (except chapter 32 benefits), and education program contribution and delimiting data (except chapter 32 benefits).
   (2) Access to this information will currently be through the inquiry commands of BINQ (BIRLS ( Beneficiaries Identification and Records Location Subsystem) Inquiry), SINQ (Status Inquiry), MINQ (Master Record Inquiry), PINQ (Pending Issue Inquiry) and TINQ (Payment History Inquiry). The identifying information received from BIRLS to representative inquiries will be limited to file number, veteran's name, date of death, folder location and transfer date of folder, insurance number, insurance type, insurance lapse date and insurance folder jurisdiction.
(d) Sections 14.640 through 14.643 are not intended to, and do not:
   (1) Waive the sovereign immunity of the United States; or
(2) Create, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Veterans Affairs.
[59 FR 47084, Sept. 14, 1994.]

(38 U.S.C. 5903)

§ 14.641 Qualifications for access.
(a) An applicant for read-only access to VBA automated claims records from a location other than a VA Regional Office must be:
(1) An organization, representative, attorney or agent approved or accredited by VA under §§ 14.626 through 14.635; or
(2) An attorney of record for a claimant in proceedings before the Court of Veterans Appeals or subsequent proceedings who requests access to the claimant's automated claims records as part of the representation of the claimant.
(b) The hardware, modem and software utilized to obtain access, as well as their location, must be approved in advance by VBA.
(c) Each individual and organization approved for access must sign and return a notice provided by the Regional Office Director (or the Regional Office Director's designee) of the Regional Office of jurisdiction for the claim. The notice will specify the applicable operational and security requirements for access and an acknowledgment that the breach of any of these requirements is grounds for disqualification from access.
[59 FR 47084, Sept. 14, 1994.]

(38 U.S.C. 5903)

§ 14.642 Utilization of access.
(a) Once an individual or organization has been issued the necessary passwords to obtain read-only access to the automated claims records of individuals represented, access will be exercised in accordance with the following requirements:
(1) The individual or organization will obtain access only from equipment and software approved in advance by the Regional Office from the location where the individual or organization primarily conducts its representation activities which also has been approved in advance;
(2) The individual will use only his or her assigned password to obtain access;
(3) The individual will not reveal his or her password to anyone else, or allow anyone else to use his or her password;
(4) The individual will access only the VBA automated claims records of VA claimants who are represented by the person obtaining access or by the organization employing the person obtaining access;
(5) The individual will access a claimant's automated claims record solely for the purpose of representing that claimant in a claim for benefits administered by VA;
(6) Upon receipt of the password, the individual will destroy the hard copy; no written or printed record containing the password will be retained; and
(7) The individual and organization will comply with all security requirements VBA deems necessary to ensure the integrity and confidentiality of the data and VBA's automated computer systems.
(b) An organization granted access shall ensure that all employees provided access in accordance with these regulations will receive regular, adequate training on proper security, including the items listed in § 14.643(a). Where an individual such as an attorney or registered agent is granted access, he or she will regularly review the security requirements for the system as set forth in these regulations and in any additional materials provided by VBA.

(c) VBA may, at any time without notice:
   (1) Inspect the computer hardware and software utilized to obtain access and their location;
   (2) Review the security practices and training of any individual or organization granted access under these regulations; and
   (3) Monitor an individual's or organization's access activities. By applying for, and exercising, the access privileges under §§ 14.640 through 14.643, the applicant expressly consents to VBA monitoring the access activities of the applicant at any time.

[59 FR 47084, Sept. 14, 1994.]

§ 14.643 Disqualification.

(a) The Regional Office Director or the Regional Office Director's designee may revoke an individual's or an organization's access privileges to a particular claimant's records because the individual or organization no longer represents the claimant, and, therefore, the beneficiary's consent is no longer in effect. The individual or organization is no longer entitled to access as a matter of law under the Privacy Act, 5 U.S.C. 552a, and 38 U.S.C. 5701 and 7332. Under these circumstances, the individual or organization is not entitled to any hearing or to present any evidence in opposition to the revocation.

(b) The Regional Office Director or the Regional Office Director's designee may revoke an individual's or an organization's access privileges either to an individual claimant's records or to all claimants' records in the VBA automated claims benefits systems if the individual or organization:
   (1) Violates any of the provisions of §§ 14.640 through 14.643;
   (2) Accesses or attempts to access data for a purpose other than representation of an individual veteran;
   (3) Accesses or attempts to access data other than the data specified in these regulations;
   (4) Accesses or attempts to access data on a VA beneficiary who is not represented either by the individual who obtains access or by the organization employing the individual who obtains access;
   (5) Utilizes unapproved computer hardware or software to obtain or attempt to obtain access to VBA computer systems;
   (6) Modifies or attempts to modify data in the VBA computer systems.

(c) If VBA is considering revoking an individual's access under § 14.643(b), and that individual works for an organization, the Regional Office of jurisdiction will notify the individual or the individual's employing organization of the pendency of the action.

(d) After an individual's access privileges are revoked, if the conduct which resulted in revocation was such that it merits reporting to an appropriate governmental licensing organization such as a State bar, the VBA Regional Office of jurisdiction will
immediately inform the licensing organization in writing of the fact that the individual's access privileges were revoked and the reasons why.

(e) The VBA Regional Office of jurisdiction may temporarily suspend access privileges prior to any determination on the merits of the proposed revocation where the Regional Office Director or the Director's designee determines that such immediate suspension is necessary in order to protect the integrity of the system or confidentiality of the data in the system from a reasonably foreseeable compromise. However, in such case, the Regional Office shall offer the individual or organization an opportunity to respond to the charges immediately after the temporary suspension.

[59 FR 47084, Sept. 14, 1994.]

(38 U.S.C. 5903)
PERSONNEL CLAIMS

§ 14.664 Scope of authority and effective date.
§ 14.665 Claims.
§ 14.666 Regional Counsel responsibility.
§ 14.667 Claims payable.
§ 14.668 Disposition of claims.
§ 14.669 Fees of agents or attorneys; penalty.

§ 14.664 Scope of authority and effective date.
Pub. L. 88-558 (78 Stat. 767), approved August 31, 1964, as amended, authorizes the Secretary or the Secretary's designee to settle and pay a claim for not more than $40,000 made by a civilian officer or employee of the Department of Veterans Affairs for damage to, or loss of personal property incident to such person's service. Authority is delegated by §2.6(e)(5) of this chapter to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group III), and the Deputy Assistant General Counsel, of said staff group and the Regional Counsel and those acting for them to settle and pay such claims on behalf of the Secretary, and such settlement shall be final and conclusive.


(31 U.S.C. 3721(b))
[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.665 Claims.
(a) The claim must be presented in writing on VA Form 2-4760, Employee's Claim for Reimbursement for Personal Property Damaged or Lost Incident to Employment. It will be submitted to the personnel office where the claim originates within 2 years after it accrues except that if the claim accrues in time of war or in time of armed conflict in which any Armed Force of the United States is engaged or if such war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist. The claim must be executed and certified by the officer or the employee suffering the loss or damage, or in the event of his or her death, by the surviving spouse, children, father or mother or both, or brothers or sisters or both. Claims of survivors shall be settled and paid in the order named. All claims must contain the following:
(1) The date, time, and place the loss or damage occurred and the circumstances surrounding such loss or damage, together with the supporting statements of any witnesses who can verify such facts.
(2) In the event of damage, the date of acquisition, original cost, condition before damage, and at least two estimates of the cost of repair or replacement. In the event of loss, the date of acquisition, the original cost, the condition, and an estimate of the reasonable market value of the article or articles.
(3) A statement as to any claims or potential claim he or she may have for indemnification of the loss or damage against other than the United States and whether he or she will assign such to the United States and cooperate in its prosecution. Where such claim or potential claim is against a carrier or insurer, evidence that a timely claim has been properly made. Where a recovery from the carrier or his or her insurer has been obtained or offered, such information shall be included.

(4) In cases involving damage or destruction of personal property by patients or domiciliary members, a statement as to whether a claim was filed pursuant to 38 U.S.C. 703(a)(5) and whether such claim has been finally denied.

(b) The Personnel Officer receiving the claim will forward same to the person designated to investigate accidents at the station pursuant to § 14.605 within 5 days after receipt.

(c) The employee designated pursuant to § 14.605 will ascertain if such claim is complete in all respects and conduct such investigation as is necessary to establish all facts required to properly evaluate the claim both as to merit and the reasonable amount payable for the loss or damage. Where it is indicated that the claimant may have a potential claim against other than the United States, the employee designated will secure a suitable assignment of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim. If the potential claim is against a carrier or insurer, the employee designated will ascertain that the claimant has filed a timely proper claim and procure evidence thereof. The employee designated will also include information concerning any offer of settlement the carrier may have made. The completed investigation, original claim and supporting evidence will be forwarded to the appropriate Regional Counsel.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in paragraph (c), became effective Oct. 1, 1995.]

§ 14.666 Regional Counsel responsibility.

(a) The Regional Counsel having jurisdiction will conduct such additional investigation as is deemed necessary to establish all facts required. If the claimant has a potential claim for indemnification against other than the United States, the Regional Counsel will ascertain that a suitable assignment, legally enforceable, of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim is of record. If such potential claim is against a carrier or insurer, the District Council will ascertain that claimant has filed a timely proper claim against the carrier or insurer and review same for legal sufficiency.

(b) The Regional Counsel having jurisdiction over a claim will not authorize payment thereon unless the requirement of §§ 14.664 through 14.667 are met. In determining the equitable value of a claim, the depreciation schedule issued by the General Counsel will be used as a guide.

§ 14.667 Claims payable.
(a) No claim shall be paid unless timely filed in proper form as provided in § 14.665 and the preponderance of the evidence establishes that the loss or damage:
(1) Actually occurred and the amount claimed is reasonable,
(2) Was incident to the employee's service and his or her possession of the property was reasonable, useful, or proper under the circumstances,
(3) Did not occur at quarters occupied within the 50 States or the District of Columbia that were not assigned to the claimant or otherwise provided in kind by the United States.
(4) Was not caused wholly or partly by the negligent act of claimant, the claimant's agent, or employee, and that the claimant has no right to indemnification for the loss or damage from other than the United States, except to the extent that the claimant assigns such right to the United States and agrees to furnish evidence required to enable the United States to enforce such right. In the event there is a right to recovery for the loss or damage from a carrier or insurer the claimant will be required to file a timely claim for such recovery before consideration of the claim against the United States.
(b) No claim for the cost of repair or replacement of personal property of employees damaged or destroyed by patients or domiciliary members while such employees are engaged in the performance of official duties shall be entertained under §§ 14.664 through 14.667, unless claim filed pursuant to 38 U.S.C. 703(a)(5) (§ 17.78 of this chapter) has been finally denied for the reason that such claim did not meet the criteria established by that law.


§ 14.668 Disposition of claims.
(a) Disallowed claims. Claimants will be promptly notified of the disallowance of a claim and the reasons therefor.
(b) Allowed claims--(1) Reimbursement in kind. Where a claim is allowed and it is determined to be to the advantage of the Government, reimbursement will be made in kind. The official authorizing settlement will request the Director, Supply Service, Veterans Health Services and Research Administration, to procure the necessary article or articles and deliver same to the claimant.
(2) Reimbursement by check. The official authorizing settlement will forward allowed claims, other than those requiring reimbursement in kind, to the Finance activity at the Department of Veterans Affairs installation where the claim arose. That activity will audit the claim, which if found proper for payment, will be scheduled on SF 1166, Voucher and Schedule of Payments, and forwarded to the appropriate Regional Disbursing Office for payment.


§ 14.669 Fees of agents or attorneys; penalty.
The Military Personnel and Civilian Employees' Claims Act of 1964 (Pub. L. 88-558; 78 Stat. 767) was amended by Pub. L. 89-185 (79 Stat. 789), on September 15, 1965, by adding a new section which provided that no more than 10 percent of the amount paid in
settlement of each individual claim submitted and settled under the authority of the Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. Any person violating the provisions of this Act is deemed to be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.
[38 FR 5475, Mar. 1, 1973]
COMMITMENTS -- FIDUCIARIES

§ 14.700 Court cost and expenses; commitment, restoration, fiduciary appointments.
§ 14.701 Commitment and restoration proceedings.
§ 14.702 Medical testimony in commitment or restoration proceedings.
§ 14.703 Costs in commitment or restoration proceedings.
§ 14.705 Authority to file petitions for appointment of fiduciaries in State courts.
§ 14.706 Legal services in behalf of beneficiaries.
§ 14.708 Costs and other expenses incident to appointment of fiduciary.
§ 14.709 Surety bonds; court-appointed fiduciary.

§ 14.700 Court cost and expenses; commitment, restoration, fiduciary appointments.
It is the responsibility of the Regional Counsel to assure the protection of the veteran, his or her beneficiaries, and their estates in State court proceedings involving commitment and restoration, and the appointment of fiduciaries. To this end certain expenses such as court costs, publication fees, recording fees, transportation expenses and fees for medical testimony may be authorized by the Regional Counsel. Payment of these costs will be borne by the administration concerned. However, every effort will be made by the Regional Counsel to avoid having these costs imposed on the Department of Veterans Affairs. The travel and per diem cost of the Regional Counsel personnel will be borne by the Regional Counsel.

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.701 Commitment and restoration proceedings.
(a) State institutions. Regional Counsels are authorized to cooperate with State courts, including the production of required records in the commitment of veterans to State hospitals or in their restoration to full civil rights.
(b) Department of Veterans Affairs institutions -- (1) Assistance to courts in commitment proceedings. The Regional Counsel will render assistance to the courts in cases involving the commitment of mentally ill veterans to the Department of Veterans Affairs. To this end, the Regional Counsel may:
(i) Produce Department of Veterans Affairs records.
(ii) Appear in court and present material facts.
(iii) When authorized to institute commitment proceedings under paragraph (b)(2) of this section, prepare and present all necessary legal papers, and arrange and authorize transportation costs of veterans and attendants at Department of Veterans Affairs expense (§§ 14.703 and 14.704).
(2) Commitment proceedings. If a mentally ill veteran will accept hospitalization voluntarily, no action will be initiated by any Department of Veterans Affairs employee to commit such veteran. If the veteran will not accept hospitalization, or after being voluntarily hospitalized by the Department of Veterans Affairs demands his or her release, and hospitalization is necessary for the veteran's safety or the safety of others, the Regional Counsel (if a relative of the veteran or other interested person has not done so) may institute proceedings to commit the veteran to the Department of Veterans Affairs subject to the following conditions:

(i) That the written consent of the veteran's nearest relative has been obtained. If the nearest relative cannot be readily contacted or refuses to consent, coupled with inability or refusal to offer adequate alternative care, the Regional Counsel may initiate the action if the petition is signed by another relative, a civil official or representative of a cooperating agency or other person authorized by State law.

(ii) If timely action cannot be taken under paragraph (b)(2)(i) of this section, the Hospital or Clinic Director, or designee, may sign the petition if permissible under State law, and the Regional Counsel will then take any action necessary to bring the matter before the appropriate court.

(3) Illegal commitment. When a hospitalized veteran, previously committed to the Department of Veterans Affairs, demands release and continued hospitalization is necessary for the veteran's safety or the safety of others, and the Regional Counsel determines the commitment to be illegal, immediate action will be taken to obtain a legal commitment.

(4) Restoration proceedings. When a veteran has been a committed patient in a Department of Veterans Affairs hospital and is subsequently rated competent by the Department of Veterans Affairs, the Regional Counsel upon request, may institute proceedings necessary to restore the veteran to full civil rights.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.702 Medical testimony in commitment or restoration proceedings.

(a) Commitment. When permissible under State law, Department of Veterans Affairs physicians, upon request of the Regional Counsel, will sign interrogatories or certificates of mental illness or insanity and, unless unavailable, as provided in paragraph (c) of this section, will testify in proceedings which the Regional Counsel is authorized to institute under § 14.701 to commit eligible veterans to the Department of Veterans Affairs.

(b) Restoration. (1) When permissible under State law, Department of Veterans Affairs physicians, upon the request of the Regional Counsel, will testify in proceedings brought for the purpose of restoring a committed veteran to full civil rights when the veteran is a committed patient in a Department of Veterans Affairs hospital.

(2) The Director of a Department of Veterans Affairs hospital or the Regional Counsel upon discharge of the veteran, may furnish a certificate of sanity or such similar certificate to the proper civil authorities.

(c) Employment of private physicians. When testimony of Department of Veterans Affairs physicians is prohibited or is unavailable because of a duty assignment, comparative expense or other valid reason, the Director of the Department of Veterans Affairs
Affairs hospital, upon recommendation of the Regional Counsel, may employ any qualified physician for preliminary examination of the veteran and for testimony in any commitment or restoration proceeding which the Regional Counsel is authorized to institute under § 14.701, and authorize the payment of a fee not to exceed the prescribed fee, or in the absence thereof, the customary fee charged for the service rendered. [42 FR 41422, Aug. 17, 1977; 61 FR 7215, 7216, Feb. 27, 1996]

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.703 Costs in commitment or restoration proceedings.
(a) When authorized to institute a proceeding under § 14.701, the Regional Counsel may authorize in advance or thereafter the payment or reimbursement of costs and other expenses for which the veteran is legally liable, including publication of notice necessary to accomplish the commitment.
(b) The Regional Counsel also may authorize the payment of necessary costs and expenses for which the veteran is legally liable incident to his or her restoration to full civil rights in any case in which the Regional Counsel is authorized to institute restoration proceedings under § 14.701(b)(4). [42 FR 41422, Aug. 17, 1977; 61 FR 7215, 7216, Feb. 27, 1996]

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

When a mentally ill veteran who should be committed is hospitalized by the Department of Veterans Affairs and under the law of the State wherein the hospital is located, a commitment may not be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the commitment can be accomplished. If the veteran is in a Department of Veterans Affairs hospital, the Hospital Director may authorize travel of the veteran and an attendant or attendants, if necessary, upon request of the Regional Counsel. If the veteran is being maintained in a non-Department of Veterans Affairs hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the Regional Counsel. [42 FR 41422, Aug. 17, 1977; 61 FR 7215, 7216, Feb. 27, 1996]

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.705 Authority to file petitions for appointment of fiduciaries in State courts.
(a) Adult beneficiary. The Regional Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within § 14.706(a) a petition for the appointment of a fiduciary and all necessary legal papers for an adult beneficiary only if it has been determined that alternative methods of payment would not be to the best interests of the beneficiary and when the Regional Counsel has obtained the written consent of:
   (1) The beneficiary's spouse.
(2) The beneficiary's adult child, parent, adult brother or sister if the beneficiary is unmarried, or consent of the spouse is immaterial because of estrangement or mental incapacity, or refusal to consent coupled with failure to offer adequate alternative means for providing for the beneficiary's needs.

(3) A civil official or representative of a cooperating agency when none of the relative listed in paragraph (a) (1) and (2) of this section can be located after reasonable inquiry or those located are not mentally competent to consent or refuse without offering adequate alternative means for providing for the needs of the beneficiary.

(b) Minor beneficiaries. The Regional Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within § 14.706(a) a petition for the appointment of a fiduciary for a minor. If permissible under the law of the jurisdiction concerned and if it has been determined that protection of the minor's rights under laws administered by the Department of Veterans Affairs requires the appointment, provided: the written consent of the minor's natural or adoptive parent or parents or the person or persons occupying the relationship of "in loco parentis" as defined, by the law of the jurisdiction, in which they reside has been obtained. The Regional Counsel will not institute a court proceeding for the appointment of a fiduciary over the objections of such parent or parents if they are sui juris unless the parent or parents have abandoned the minor or have otherwise refused to meet their parental obligations toward the minor or they have previously been appointed or recognized as the minor's fiduciary and failed to properly execute the duties of their trust. If the minor has no parent or the parent or parents are not sui juris, the Regional Counsel may file the petition without the consent of any relative.

(c) Court-appointed fiduciaries. In court-appointed fiduciary cases, the Regional Counsel may appear in the court of appointment or in any court having original, concurrent, or appellate jurisdiction, and make proper presentation relating to the foregoing matters. The Regional Counsel's authority includes but is not limited to:

(1) Petitioning the court to cite a fiduciary to account;
(2) Filing exceptions to accountings;
(3) Requiring fiduciaries to file bonds or make any necessary adjustments;
(4) Requiring investments;
(5) Filing petitions to vacate or modify court orders;
(6) Appearing or intervening in any State court as attorney for the Secretary of Veterans Affairs in litigation instituted by the Secretary or otherwise affecting money paid to such fiduciary by the Department of Veterans Affairs;
(7) Incurred necessary court costs and other expenses, including witness fees, appeal bonds, advertising in any newspaper or other publication, preparing briefs or transcripts, purchase of records of trial or other records;
(8) Instituting any other action necessary to secure proper administration of the estate of a Department of Veterans Affairs beneficiary, such as filing petitions for the removal of a fiduciary and appointment of a successor;
(9) Taking appropriate action to recover funds improperly disbursed.

(d) Appeal. Unless a trial is de novo, no appeal shall be taken to an appellate court and no costs incurred in connection therewith without the prior approval of the General Counsel and the Under Secretary for Benefits or their designees.

§ 14.706 Legal services in behalf of beneficiaries.
(a) The Regional Counsel may furnish legal services in behalf of minor and incompetent beneficiaries of the Department of Veterans Affairs in fiduciary appointment and estate administration matters involving Department of Veterans Affairs benefits or property derived therefrom when the beneficiary's estate or income is not sufficient to justify the employment of an attorney.
(b) The Regional Counsel may also furnish legal services in hardship situations when restoration from legal disability is a condition of precedent to direct payment of Department of Veterans Affairs benefits.
(c) Where the fiduciary does not in due course institute the necessary action to terminate the trust relationship and the beneficiary requests representation by the Regional Counsel or in any such case where there is in question the proper administration of the estate, the Regional Counsel may file the necessary action and supply legal services. Costs, unless assessed against the fiduciary, should be charged to the estate of the beneficiary.

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

When the appointment of a fiduciary is required for an incompetent veteran hospitalized by the Department of Veterans Affairs and, under the law of the State wherein the hospital is located, the appointment cannot be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the appointment can be accomplished. If the veteran is in a Department of Veterans Affairs hospital, the Hospital Director, upon request of the Regional Counsel, may authorize travel of the veteran and an attendant or attendants, if necessary. If the veteran is being maintained in a non-Department of Veterans Affairs hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the Regional Counsel.

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]

§ 14.708 Costs and other expenses incident to appointment of a fiduciary.
(a) The Regional Counsel may authorize the payment of costs and other necessary expenses incident to the appointment of an initial or successor fiduciary for a Department of Veterans Affairs beneficiary when:
(1) Authorized to render legal services under § 14.706.
(2) Appointment was caused by the Department of Veterans Affairs and it develops that no benefits are payable and there is no estate from which costs may be paid.
(3) Costs must be advanced when there is no immediate estate from which same may be paid. These costs are to be recovered from benefits payable unless the case falls within paragraph (a)(1) of this section.
(b) Costs and necessary expenses include:
(1) All those chargeable by statute or rule of court and certified by the clerk of court.

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§ 14.709 Surety bonds; court-appointed fiduciary.

(a) It is the policy of the Department of Veterans Affairs to require, where possible under State laws and rules of the court, corporate surety bonds in all court-appointed fiduciary cases where the fiduciary is an individual and the estate is sufficient to justify the expense of procuring a corporate surety bond. Corporate bonds may be required of corporate fiduciaries in accordance with State laws. In cases wherein fiduciaries neglect or refuse to furnish corporate bonds, as requested by the Regional Counsel, the Regional Counsel should take appropriate court action and notify the Veterans Service Center Manager.

(b) When it is not practical or feasible to require a fiduciary to furnish a corporate surety bond, the Regional Counsel is authorized to accept bonds with such number of personal sureties as is permissible under State law, but in no event less than one. To be acceptable for Department of Veterans Affairs purposes, each personal surety must be worth at least the penal sum named in the bond over and above all debts, liabilities and exemptions and qualify in accordance with the requirements of State law. The Regional Counsel will request suitable evidence of financial responsibility whenever there is any question as to the ability of a personal surety to meet any probable liability. When suitable evidence is not furnished as requested, or financial responsibility is found to be insufficient to meet the penal sum of the bond, the Regional Counsel should take appropriate court action and notify the Veterans Service Center Manager.

(c) It is the policy of the Department of Veterans Affairs to require surety bonds in an amount commensurate with value of the personal estate derived from Department of Veterans Affairs benefits plus the anticipated net income from Department of Veterans Affairs benefits received during the ensuing accounting period. In cases where the fiduciaries neglect or refuse to furnish surety bonds in the amount requested by the Regional Counsel, the Regional Counsel should take appropriate court action and notify the Veterans Service Center Manager. When permissible under State law, the Regional Counsel may accept, without objection, a lesser degree of protection approved by the court when it is determined that such action will adequately protect the beneficiary's estate.


[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in this section, became effective Oct. 1, 1995.]
TESTIMONY OF DEPARTMENT PERSONNEL AND PRODUCTION OF DEPARTMENT RECORDS IN LEGAL PROCEEDINGS

§ 14.800 Purpose.
§ 14.801 Applicability.
§ 14.802 Definitions.
§ 14.804. Factors to consider.
§ 14.805. Contents of a demand or request.
§ 14.806. Scope of testimony or production.
§ 14.807. Procedure when demand or request is made.
§ 14.808 Expert or opinion testimony.
§ 14.809 Demands or requests in legal proceedings for records protected by confidentiality statutes.
§ 14.810 Fees.

§ 14.800 Purpose.
Sections 14.800 through 14.810 establish policy, assign responsibilities and prescribe procedures with respect to:
(a) The production or disclosure of official information or records of the Department of Veterans Affairs (VA); and
(b) The testimony of present or former VA personnel relating to any official information acquired by any individual as part of that individual's performance of official duties, or by virtue of that individual's official status, in federal, state or other legal proceedings covered by these regulations.
(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)
[59 FR 6566, Feb. 11, 1994]

§ 14.801 Applicability.
(a) Sections 14.800 through 14.810 apply to:
(1) Contractors and subcontractors which undertake a VA activity or maintain VA records when the contract covering their actions provides that these regulations apply, as well as the personnel of contractors and subcontractors.
(2) All components of the Department, including Canteen Service, the Office of Inspector General, and all staff offices, services and administrations, and their personnel.
(b) Sections 14.800 through 14.810 do not apply to:
(1) Testimony or records provided in accordance with Office of Personnel Management regulations implementing 5 U.S.C. 6322.
(2)(i) Legal proceedings in which the Department of Veterans Affairs, the Secretary of Veterans Affairs or the United States is a party, is represented or has a direct and substantial interest; or
(ii) Legal proceedings in which an individual or entity is a party for whom the United States is providing representation.
(3) Legal proceedings in which VA personnel are to testify while in leave or off-duty status as to matters which are purely personal and that do not arise out of, or relate in any
way to, the personnel's official duties or to the functions and activities of the VA or the United States.
(4) Official comments on matters in legal proceedings, where appropriate.
(5) Disclosures, in the absence of a request or demand, of information or records by VA components, particularly the Office of Inspector General, to federal, state, local and foreign law enforcement or regulatory agencies.
(6) Congressional demands or requests for testimony or documents.
(8) Disclosures in child support and alimony proceedings under the authority of 42 U.S.C. 659 and regulations promulgated by the Office of Personnel Management implementing that section.
(9) Legal proceedings before or involving the VA concerning a claim or dispute as to the rights of a beneficiary or obligations or liabilities of the United States under any law or program administered by the Department of Veterans Affairs.
(10) Requests by a veteran or that veteran's representative for access to the veteran's records for use in an administrative or judicial claim for benefits administered by the Department of Veterans Affairs.
(11) Foreign legal proceedings covered by Department of State procedures governing the production of records or witnesses in response to requests or demands in connection with foreign legal proceedings.
(c) Sections 14.800 through 14.810 are not intended to, and do not:
(1) Waive the sovereign immunity of the United States;
(2) Infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases;
(3) Remove the need for the Department to comply with any applicable legal confidentiality provisions, such as the Privacy Act, before having the legal authority to make any disclosure or providing any testimony under these regulations. (Sections 14.800 through 14.810 do not give VA disclosure authority under applicable confidentiality statutes; absent disclosure authority granted by those statutes, information and records subject to those laws may not be disclosed, or testimony given as to them under the procedures established in these regulations); or
(4) Preclude treating any written request for agency records that is not in the nature of a request or demand related to legal proceedings as a request under the Freedom of Information or Privacy Acts.
(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)
[59 FR 6566, Feb. 11, 1994]

§ 14.802 Definitions.
(a) Demand. Order, subpoena, or other demand of a court of competent jurisdiction, or other specific authority or under color of law, for the production, disclosure, or release of VA information or records or for the appearance and testimony of VA personnel as witnesses.
(b) Request. Any informal request, by whatever method, from a party, a party's attorney, or any person acting on behalf of a party, for the production of VA records or information
or for the testimony of VA personnel as witnesses, which has not been ordered by a court of competent jurisdiction or other specific authority or under color of law.

(c) VA personnel. All present and former officers and employees of the VA and any other individuals who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Veterans Affairs or another official of the VA, including nonappropriated fund activity employees, and other individuals hired through contractual agreements by or on behalf of the VA, or performing services under such agreements for VA, such as consultants, contractors, subcontractors, their employees and personnel. This phrase also includes individuals who served or are serving on any advisory committee or in any advisory capacity, whether formal or informal.

d) Legal proceedings. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other tribunals, foreign or domestic that are not specified in § 14.801(b). This phrase includes depositions and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving legal proceedings not specified in § 14.801(b).

(e) Official VA information. All information of any kind, however stored, that is in the custody and control of VA or was acquired by VA personnel as part of their official duties or because of their official status.

(f) Testimony. Testimony in any form, including personal appearances in court, depositions, recorded interviews, telephonic, televised or videotaped testimony or any response during discovery or similar proceedings, which response would involve more than the production of records.

(g) VA records. All documents which are records of the Department of Veterans Affairs for purposes of the Freedom of Information Act, 5 U.S.C. 552, regardless of storage media, including the term "record" as defined in 44 U.S.C. 3301, and implementing regulations.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)

[59 FR 6567, Feb. 11, 1994]
§ 14.804. Factors to consider.
In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, VA personnel responsible for making the decision should consider the following types of factors:
(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning servicing the Nation's veteran population;
(b) How the testimony or production of records would assist VA in performing its statutory duties;
(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;
(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;
(e) Whether the testimony or production of records, including release in camera, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;
(f) Whether the testimony or production of records would violate a statute, executive order, regulation or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute's prohibition against disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and sections 5701, 5705 and 7332 of title 38, United States Code.);
(g) Whether the testimony or production of records, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive Orders;
(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances.
(i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government favoring one litigant over another;
(j) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government endorsing or supporting a position advocated by a party to the proceeding;
(k) The need to prevent the public's possible misconstruction of variances between personal opinions of VA personnel and VA or Federal policy.
(l) The need to minimize VA's possible involvement in issues unrelated to its mission;
(m) Whether the demand or request is within the authority of the party making it;
(n) Whether the demand or request is sufficiently specific to be answered;
(o) Other matters or concerns presented for consideration in making the decision.
(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)
[59 FR 6567, Feb. 11, 1994]

§ 14.805. Contents of a demand or request.
The request or demand for testimony or production of documents shall set forth in, or be accompanied by, an affidavit, or if that is not feasible, in, or accompanied by, a written statement by the party seeking the testimony or records or by the party's attorney, a summary of the nature and relevance of the testimony or records sought in the legal proceedings containing sufficient information for the responsible VA official to determine whether VA personnel should be allowed to testify or records should be produced. Where the materials are considered insufficient to make the determination as described in § 14.807, the responsible VA official may ask the requester to provide additional information.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

[59 FR 6568, Feb. 11, 1994]

§ 14.806. Scope of testimony or production.
VA personnel shall not, in response to a request or demand for testimony or production of records in legal proceedings, comment or testify or produce records without the prior written approval of the responsible VA official designated in § 14.807(b). VA personnel may only testify concerning or comment upon official VA information, subjects or activities, or produce records, that were specified in writing, submitted to and properly approved by the responsible VA official.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

[59 FR 6568, Feb. 11, 1994]

§ 14.807. Procedure when demand or request is made.
(a) VA personnel upon whom a demand or request for testimony or the production of records in connection with legal proceedings as defined in § 14.802(d) is made shall notify the head of his or her field station, or if in Central Office, the head of the component for which he or she works. The field station or Central Office component shall notify the responsible VA official designated in § 14.807(b).

(b) In response to a demand or request for the production of records or the testimony of VA personnel, other than personnel in the Office of the Inspector General (OIG), as witnesses in legal proceedings covered by these regulations, the General Counsel, the Regional Counsel, an attorney in the Office of General Counsel designated by the General Counsel, or an attorney in the Regional Counsel office designated by the Regional Counsel is the responsible VA official authorized to determine whether VA personnel may be interviewed, contacted or used as witnesses, including used as expert witnesses, and whether VA records may be produced; and what, if any, conditions will be imposed upon such interview, contact, testimony or production of records. For personnel in the OIG, the Counselor to the Inspector General or an attorney designated by the Counselor to the Inspector General, is the responsible VA official authorized to make the determinations provided in § 14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.

(c) In appropriate cases, the responsible VA official shall promptly notify the Department of Justice of the demand or request. After consultation and coordination with the Department of Justice, as required, and after any necessary consultation with the VA component which employs or employed the VA personnel whose testimony is sought or
which is responsible for the maintenance of the records sought, the VA official shall
determine in writing whether the individual is required to comply with the demand or
request and shall notify the requester or the court or other authority of the determination
reached where the determination is that VA will not comply fully with the request or
demand. The responsible VA official shall give notice of the decision to other persons as
circumstances may warrant. Oral approval may be granted, and a record of such approval
made and retained in accordance with the procedures in § 14.807(f) concerning oral
requests or demands.

(d) If, after VA personnel have received a request or demand in a legal proceeding and
have notified the responsible VA official in accordance with this section, a response to
the request or demand is required before instructions from the responsible official are
received, the responsible official designated in paragraph (b) of this section shall furnish
the requester or the court or other authority with a copy of §§ 14.800 through 14.810 and
any other relevant documentation, inform the requester or the court or other authority that
the request or demand is being reviewed, and seek a stay of the request or demand
pending a final determination by the VA official concerned.

(e) If a court of competent jurisdiction or other appropriate authority declines to stay the
effect of the demand or request in response to action taken pursuant to § 14.807(d), or if
such court or other authority orders that the demand or request be complied with
notwithstanding the final decision of the appropriate VA official, the VA personnel upon
whom the demand or request was made shall notify the responsible VA official of such
ruling or order. If the responsible VA official determines that no further legal review of
or challenge to the ruling or order will be sought, the affected VA personnel shall comply
with the demand, order or request. If directed by the appropriate VA official after
consultation with the appropriate United States Attorney's office, however, the affected
VA personnel shall respectfully decline to comply with the demand, request or order. See

(f) Normally, written demands or requests allowing reasonable lead time for evaluation
and processing are required. However, in emergency situations where response time is
limited and a written demand or request is impractical, the following procedures should
be followed:

(1) The responsible VA official has the authority to waive the requirement of a written
demand or request and may expedite a response in the event of an emergency under
conditions which could not be anticipated in the course of proper planning or which
demonstrate a good faith attempt to comply with these regulations. Determinations on
oral demands or requests should be reserved for instances where insistence on
compliance with the requirements of a proper written request would result in the effective
denial of the request and cause an injustice in the outcome of the legal proceeding for
which the testimony or records are sought. No requester has a right to make an oral
demand or request and receive a determination, however. Whether to permit such an
exceptional procedure is a decision within the sole discretion of the responsible VA
official.

(2) If the responsible VA official concludes that the demand or request, or any portion of
it, should be granted (after considering the factors listed in § 14.804), the responsible VA
official will then orally advise the requester of the determination in accordance with the
procedures provided in § 14.807(c), including any limitations on such testimony or
production of records, and seek a written confirmation of the oral demand or request. The responsible VA official will make a written record of the determination made concerning the oral demand or request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

[59 FR 6568, Feb. 11, 1994; 61 FR 7215, 7216, Feb. 27, 1996]

[EFFECTIVE DATE NOTE: 61 FR 7215, 7216, Feb. 27, 1996, which substituted "Regional Counsel" for "District Counsel" in paragraph (b), became effective Oct. 1, 1995.]

§ 14.808 Expert or opinion testimony.
(a) VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects or activities, except on behalf of the United States or a party represented by the United States Department of Justice. Upon a showing by the requester or court or other appropriate authority that, in light of the factors listed in § 14.804, there are exceptional circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Veterans Affairs or to the United States, the responsible VA official designated in § 14.807(b) may, in writing, grant special authorization for VA personnel to appear and testify. If, despite the final determination of the responsible VA official, a court of competent jurisdiction or other appropriate authority, orders the expert or opinion testimony of VA personnel, the personnel shall notify the responsible VA official of such order. If the responsible VA official determines that no further legal review of or challenge to the order will be sought, the affected VA personnel shall comply with the order. If directed by the appropriate VA official after consultation with the appropriate United States Attorney's office, however, the affected VA personnel shall respectfully decline to comply with the demand, request or order. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).

(b)(1) If, while testifying in any legal proceeding, VA personnel are asked for expert or opinion testimony concerning official VA information, subjects or activities, which testimony has not been approved in advance in accordance with these regulations, the witness shall:
(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by these regulations;
(ii) Request an opportunity to consult with the responsible VA official mentioned in § 14.807(b) before giving such testimony;
(iii) Explain that, upon such consultation, approval for such testimony may be provided; and
(iv) Explain that providing such testimony absent such approval may expose the individual to criminal liability under 18 U.S.C. 201-209 and to disciplinary or other adverse personnel action.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony concerning official VA information, subjects or activities without the opportunity to consult with the appropriate VA official, the witness respectfully shall refuse to do so. See United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951).
(c) Upon notification by the witness of a request for opinion or expert testimony concerning official VA information, subjects or activities during § 14.802(d) legal proceedings, the responsible VA official shall follow the procedures contained in this section to determine whether such testimony shall be approved.

(d) If VA personnel who are unaware of these regulations provide expert or opinion testimony concerning official VA information, subjects or activities in any legal proceeding, including one mentioned in § 14.802(d) in which the United States is not already represented, without consulting with the responsible VA official, the witness, as soon after testifying as possible, shall inform the responsible VA official of the fact that such testimony was given and provide a summary of the expert or opinion testimony given.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

[59 FR 6569, Feb. 11, 1994]

§ 14.809 Demands or requests in legal proceedings for records protected by confidentiality statutes.

In addition to complying with the requirements of §§ 14.800 through 14.810, requests or demands in legal proceedings for the production of records, or for testimony of VA employees concerning information, protected by the Privacy Act, 5 U.S.C. 552a, or other confidentiality statutes, such as 38 U.S.C. 5701, 5705 and 7332, must satisfy the requirements for disclosure imposed by those statutes, and implementing regulations, such as 38 CFR 1.511, before the records may be provided or testimony given. Accordingly, the responsible VA official may first determine whether there is legal authority to provide the testimony or records sought under applicable confidentiality statutes before applying §§ 14.800 through 14.810. Where an applicable confidentiality statute mandates disclosure, §§ 14.800 through 14.810 will not apply.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

[59 FR 6569, Feb. 11, 1994]

§ 14.810 Fees.

(a) The testimony of VA personnel as witnesses, particularly as expert witnesses, and the production of VA records in legal proceedings subject to §§ 14.800 through 14.810 are services which convey special benefits to the individuals or entities seeking such testimony or production of records above and beyond those accruing to the general public. These services are not regularly received by or available without charge to the public at large. Consequently, these are the sort of services for which the VA may establish a charge for providing under 31 U.S.C. 9701. The responsible VA official will determine all fees associated with §§ 14.800 through 14.810, and shall timely notify the requester of the fees, particularly those which are to be paid in advance.

(b)(1) When a request is granted under § 14.808 to permit VA personnel to testify in whole or in part as to expert, opinion or policy matters, the requester shall pay to the government a fee calculated to reimburse the cost of providing the witness. The fee shall include:

(i) Costs of the time expended by VA personnel to process and respond to the demand or request;

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(ii) Costs of attorney time expended in reviewing the demand or request and any
information located in connection with the demand or request;
(iii) Expenses generated by materials and equipment used to search for, produce, and
copy the responsive information;
(iv) The cost of the time expended by the witness to prepare to testify; and
(v) Costs of travel by the witness and attendance at trial.
(2) All costs for documents necessary for such expert testimony shall be calculated as
provided in VA regulations implementing the fee provisions of the Freedom of
Information Act, 5 U.S.C. 552.
(c) When an individual testifies in legal proceedings covered by these regulations in any
capacity other than as an expert witness, the requester shall pay to the witness the fee and
expenses prescribed for attendance by the applicable rule of court. If no such fee is
prescribed, the applicable Federal rule, such as a local Federal district court rule, will
apply. No additional fee will be prescribed for the time spent while testifying or in
attendance to do so.
(d) When a requester wishes to interview VA personnel as part of legal proceedings
covered by these regulations, and such interview has been approved in accordance with
these regulations, the requester shall pay a fee calculated upon the total hourly pay of the
individual interviewed.
(e) When VA produces records in legal proceedings pursuant to §§ 14.800 through
14.810, the fees to be charged and paid prior to production of the records shall be the fees
charged by VA under its regulations implementing the fee provisions of the Freedom of
Information Act, 5 U.S.C. 552.
(f) Fees shall be paid as follows:
(1) Fees for copies of documents, blueprints, electronic tapes, or other VA records will be
paid to the VA office or station providing the records, and covered to the General Fund of
the Department of the Treasury.
(2) Witness fees for testimony shall be paid to the witness, who shall endorse the check
"pay to the United States," and surrender it to his or her supervisor. It shall thereafter be
deposited in the General Fund.
(3) The private party requesting a VA witness shall forward in advance necessary round
trip tickets and all requisite travel and per diem funds.
(g) A waiver of any fees in connection with the testimony of an expert witness may be
granted by the appropriate VA official at the official's discretion provided that the waiver
is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall
they be granted under circumstances which might create the appearance that the VA or
the United States favors one party or a position advocated by a party to the legal
proceeding.
(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)
[59 FR 6570, Feb. 11, 1994]
PART 15 -- ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF VETERAN AFFAIRS

§ 15.101 Purpose.

§ 15.102 Application.

§ 15.103 Definitions.

§§ 15.104 -- 15.109 [Reserved]

§ 15.110 Self-evaluation.

§ 15.111 Notice.

§§ 15.112 -- 15.129 [Reserved]

§ 15.130 General prohibitions against discrimination.

§§ 15.131 -- 15.139 [Reserved]

§ 15.140 Employment.

§ 15.141 -- 15.148 [Reserved]

§ 15.149 Program accessibility: Discrimination prohibited.

§ 15.150 Program accessibility: Existing facilities.

§ 15.151 Program accessibility: New construction and alterations.

§§ 15.152 -- 15.159 [Reserved]

§ 15.160 Communications.

§§ 15.161 -- 15.169 [Reserved]

§ 15.170 Compliance procedures.

§§ 15.171 -- 15.999 [Reserved]

§ 15.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.


§ 15.102 Application.

This regulation (§§ 15.101-15.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.


§ 15.103 Definitions.

For purposes of this regulation, the term--Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.
Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:
(1) Physical or mental impairment includes--
(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.
(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
(4) Is regarded as having an impairment means--
(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;
(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) Qualified handicapped person as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 15.140.


Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.


§§ 15.104 -- 15.109 [Reserved]

§ 15.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.


§ 15.111 Notice.
The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.


§§ 15.112 -- 15.129 [Reserved]

§ 15.130 General prohibitions against discrimination.
(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.
(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap--
(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;
(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;
(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;
(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.
(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would--
(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap;
or
(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.
(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would--
(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or (ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap. (6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.


§§ 15.131 -- 15.139 [Reserved]

§ 15.140 Employment.
No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.


§§ 15.141 -- 15.148 [Reserved]

§ 15.149 Program accessibility: Discrimination prohibited.
Except as otherwise provided in § 15.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.


§ 15.150 Program accessibility: Existing facilities.
(a) General. The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not--

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 15.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) Methods--

(1) General. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) Historic preservation programs. In meeting the requirements of § 15.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 15.150(a)(2) or (3), alternative methods of achieving program accessibility include--

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.
(c) Time period for compliance. The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum--

1. Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;
2. Describe in detail the methods that will be used to make the facilities accessible;
3. Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
4. Indicate the official responsible for implementation of the plan.


§ 15.151 Program accessibility: New construction and alterations.
Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.


§§ 15.152 -- 15.159 [Reserved]

§ 15.160 Communications.
(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.
(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.
(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.
(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.
(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective
telecommunication systems shall be used to communicate with persons with impaired hearing. 
(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities. 
(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility. 
(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 15.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity. 


§§ 15.161 -- 15.169 [Reserved]

§ 15.170 Compliance procedures.
(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency. 
(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791). 
(c) The Deputy Assistant Secretary for Resolution Management shall be responsible for coordinating implementation of this section. Complaints may be sent to the Secretary of Veterans Affairs or the Deputy Assistant Secretary for Resolution Management at the following address: Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. 
(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.
(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing --

1. Findings of fact and conclusions of law;
2. A description of a remedy for each violation found; and
3. A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 15.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.


§§ 15.171 -- 15.999 [Reserved]
PART 16 -- PROTECTION OF HUMAN SUBJECTS

§ 16.101 To what does this policy apply?
§ 16.102 Definitions.
§ 16.103 Assuring compliance with this policy -- research conducted or supported by any Federal Department or Agency.
§§ 16.104 -- 16.106 [Reserved]
§ 16.107 IRB membership.
§ 16.108 IRB functions and operations.
§ 16.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
§ 16.111 Criteria for IRB approval of research.
§ 16.112 Review by institution.
§ 16.113 Suspension or termination of IRB approval of research.
§ 16.114 Cooperative research.
§ 16.115 IRB records.
§ 16.116 General requirements for informed consent.
§ 16.117 Documentation of informed consent.
§ 16.118 Applications and proposals lacking definite plans for involvement of human subjects.
§ 16.119 Research undertaken without the intention of involving human subjects.
§ 16.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
§ 16.121 [Reserved]
§ 16.122 Use of Federal funds.
§ 16.123 Early termination of research support: Evaluation of applications and proposals.
§ 16.124 Conditions.

§ 16.101 To what does this policy apply?
(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.
(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in § 16.102(e), must comply with all sections of this policy.
(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in § 16.102(e) must be reviewed and approved, in compliance with § 16.101, § 16.102, and § 16.107 through § 16.117 of this policy, by an
institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

1. Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as:
   (i) research on regular and special education instructional strategies, or
   (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

2. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:
   (i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and
   (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

3. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:
   (i) The human subjects are elected or appointed public officials or candidates for public office; or
   (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

4. Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

5. Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:
   (i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

6. Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the
department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the Federal Register or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Human Research Protections, Department of Health and Human Services (HHS), or any successor office, and shall also publish them in the Federal Register or in such other manner as provided in department or agency procedures.1

1 Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A-D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, subpart C. The exemption at 45 CFR 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.


§ 16.102 Definitions.

(a) Department or agency head means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.
(b) **Institution** means any public or private entity or agency (including federal, state, and other agencies).

(c) **Legally authorized representative** means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) **Research** means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

(e) **Research subject to regulation, and similar terms** are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) **Human subject** means a living individual about whom an investigator (whether professional or student) conducting research obtains

1. Data through intervention or interaction with the individual, or
2. Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) **IRB** means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) **IRB approval** means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) **Minimal risk** means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) **Certification** means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research
§ 16.103 Assuring compliance with this policy -- research conducted or supported by any Federal Department or Agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Human Research Protections, HHS, or any successor office, and approved for federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Human Research Protections, HHS, or any successor office.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

1. A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under § 16.101 (b) or (i).

2. Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

3. A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with § 16.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Human Research Protections, HHS, or any successor office.

4. Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator...
(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under § 16.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by § 16.103 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by § 16.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

(Approved by the Office of Management and Budget under Control Number 0990-0260.)

[56 FR 28012, 28021, June 18, 1991; 56 FR 29756, June 28, 1991; 70 FR 36325, June 23, 2005]
§ 16.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

56 FR 28012, 28021, June 18, 1991.

§ 16.108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in § 16.103(b)(4) and, to the extent required by, § 16.103(b)(5).

(b) Except when an expedited review procedure is used (see § 16.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.
(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.
(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 16.116. The IRB may require that information, in addition to that specifically mentioned in § 16.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.
(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § 16.117.
(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.
(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.
(Approved by the Office of Management and Budget under Control Number 0990-0260.)
56 FR 28012, 28021, June 18, 1991; 70 FR 36325, June 23, 2005.

§ 16.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
(a) The Secretary, HHS, has established, and published as a Notice in the FEDERAL REGISTER, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the FEDERAL REGISTER. A copy of the list is available from the Office for Human Research Protections, HHS, or any successor office.
(b) An IRB may use the expedited review procedure to review either or both of the following:
(1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk,
(2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.
Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A
research activity may be disapproved only after review in accordance with the
non-expedited procedure set forth in § 16.108(b).
(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping
all members advised of research proposals which have been approved under the
procedure.
(d) The department or agency head may restrict, suspend, terminate, or choose not to
authorize an institution's or IRB's use of the expedited review procedure.
56 FR 28012, 28021, June 18, 1991; 70 FR 36325, June 23, 2005.


§ 16.111 Criteria for IRB approval of research.
(a) In order to approve research covered by this policy the IRB shall determine that all of
the following requirements are satisfied:
(1) Risks to subjects are minimized: (i) By using procedures which are consistent with
sound research design and which do not unnecessarily expose subjects to risk, and (ii)
whenever appropriate, by using procedures already being performed on the subjects for
diagnostic or treatment purposes.
(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects,
and the importance of the knowledge that may reasonably be expected to result. In
evaluating risks and benefits, the IRB should consider only those risks and benefits that
may result from the research (as distinguished from risks and benefits of therapies
subjects would receive even if not participating in the research). The IRB should not
consider possible long-range effects of applying knowledge gained in the research (for
example, the possible effects of the research on public policy) as among those research
risks that fall within the purview of its responsibility.
(3) Selection of subjects is equitable. In making this assessment the IRB should take into
account the purposes of the research and the setting in which the research will be
conducted and should be particularly cognizant of the special problems of research
involving vulnerable populations, such as children, prisoners, pregnant women, mentally
disabled persons, or economically or educationally disadvantaged persons.
(4) Informed consent will be sought from each prospective subject or the subject's legally
authorized representative, in accordance with, and to the extent required by § 16.116.
(5) Informed consent will be appropriately documented, in accordance with, and to the
extent required by § 16.117.
(6) When appropriate, the research plan makes adequate provision for monitoring the
data collected to ensure the safety of subjects.
(7) When appropriate, there are adequate provisions to protect the privacy of subjects and
to maintain the confidentiality of data.
(b) When some or all of the subjects are likely to be vulnerable to coercion or undue
influence, such as children, prisoners, pregnant women, mentally disabled persons, or
economically or educationally disadvantaged persons, additional safeguards have been
included in the study to protect the rights and welfare of these subjects.
56 FR 28012, 28021, June 18, 1991.

§ 16.112 Review by institution.
Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.
56 FR 28012, 28021, June 18, 1991.


§ 16.113 Suspension or termination of IRB approval of research.
An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.
(Approved by the Office of Management and Budget under Control Number 0990-0260.)
56 FR 28012, 28021, June 18, 1991; 70 FR 36325, June 23, 2005.


§ 16.114 Cooperative research.
Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.
56 FR 28012, 28021, June 18, 1991.


§ 16.115 IRB records.
(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:
(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.
(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.
(3) Records of continuing review activities.
(4) Copies of all correspondence between the IRB and the investigators.
(5) A list of IRB members in the same detail as described is § 16.103(b)(3).
(6) Written procedures for the IRB in the same detail as described in § 16.103(b)(4) and § 16.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by § 16.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

(Approved by the Office of Management and Budget under Control Number 0990-0260.)

56 FR 28012, 28021, June 18, 1991; 70 FR 36325, June 23, 2005.

§ 16.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;
(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and
(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;
(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;
(3) Any additional costs to the subject that may result from participation in the research;
(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;
(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and
(6) The approximate number of subjects involved in the study.

c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and
(2) The research could not practicably be carried out without the waiver or alteration.

d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;
(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;
(3) The research could not practicably be carried out without the waiver or alteration; and
(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.
§ 16.117 Documentation of informed consent.
(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.
(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:
   (1) A written consent document that embodies the elements of informed consent required by § 16.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or
   (2) A short form written consent document stating that the elements of informed consent required by § 16.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.
(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:
   (1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or
   (2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.
In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

§ 16.118 Applications and proposals lacking definite plans for involvement of human subjects.
Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved
within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under § 16.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

56 FR 28012, 28021, June 18, 1991.


§ 16.119 Research undertaken without the intention of involving human subjects.
In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency, and final approval given to the proposed change by the department or agency.
56 FR 28012, 28021, June 18, 1991.


§ 16.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.
(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.
56 FR 28012, 28021, June 18, 1991.


§ 16.121 [Reserved]

§ 16.122 Use of Federal funds.
Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.
56 FR 28012, 28021, June 18, 1991.
§ 16.123 Early termination of research support: Evaluation of applications and proposals.
(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.
(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).
56 FR 28012, 28021, June 18, 1991.

§ 16.124 Conditions.
With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.
56 FR 28012, 28021, June 18, 1991.
PART 17 -- MEDICAL

DEFINITIONS AND ACTIVE DUTY
PROTECTION OF PATIENT RIGHTS
TENTATIVE ELIGIBILITY DETERMINATIONS
HOSPITAL OR NURSING HOME CARE AND MEDICAL SERVICES IN FOREIGN COUNTRIES
Enrollment Provisions and Medical Benefits Package
EXAMINATIONS AND OBSERVATION AND EXAMINATION
HOSPITAL, DOMICILIARY AND NURSING HOME CARE
USE OF DEPARTMENT OF DEFENSE, PUBLIC HEALTH SERVICE OR OTHER FEDERAL HOSPITALS
USE OF PUBLIC OR PRIVATE HOSPITALS
Use of Community Nursing Home Care Facilities.
COMMUNITY RESIDENTIAL CARE
USE OF SERVICES OF OTHER FEDERAL AGENCIES
RESEARCH-RELATED INJURIES
VOCATIONAL TRAINING AND HEALTH-CARE ELIGIBILITY PROTECTION FOR PENSION RECIPIENTS
OUTPATIENT TREATMENT
BREAKING APPOINTMENTS
CHARGES, WAIVERS, AND COLLECTIONS
DISCIPLINARY CONTROL OF BENEFICIARIES RECEIVING HOSPITAL, DOMICILIARY OR NURSING HOME CARE
Copayments
CEREMONIES
REIMBURSEMENT FOR LOSS BY NATURAL DISASTER OF PERSONAL EFFECTS OF HOSPITALIZED OR NURSING HOME PATIENTS
REIMBURSEMENT TO EMPLOYEES FOR THE COST OF REPAIRING OR REPLACING CERTAIN PERSONAL PROPERTY DAMAGED OR DESTROYED BY PATIENTS OR MEMBERS
PAYMENT AND REIMBURSEMENT OF THE EXPENSES OF MEDICAL SERVICES NOT PREVIOUSLY AUTHORIZED
Reconsideration of Denied Claims
DELEGATIONS OF AUTHORITY
TRANSPORTATION OF CLAIMANTS AND BENEFICIARIES
PROSTHETIC, SENSORY, AND REHABILITATIVE AIDS
AUTOMOTIVE EQUIPMENT AND DRIVER TRAINING
DENTAL SERVICES
AUTOPSIES
VETERANS CANTEEN SERVICE
AID TO STATES FOR CARE OF VETERANS IN STATE HOMES
SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION
GRANTS FOR EXCHANGE OF INFORMATION
Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) -- Medical Care for Survivors and Dependents of Certain Veterans
GRANTS TO THE REPUBLIC OF THE PHILIPPINES
CONFIDENTIALITY OF HEALTHCARE QUALITY ASSURANCE REVIEW RECORDS
VA HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM
TRANSITIONAL HOUSING LOAN PROGRAM
Health Care Benefits for Certain Children of Vietnam Veterans -- Spina Bifida and Covered Birth Defects
PAYMENT OR REIMBURSEMENT FOR EMERGENCY SERVICES FOR NONSERVICE-CONNECTED CONDITIONS IN NON-VA FACILITIES
Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.
DEFINITIONS AND ACTIVE DUTY

§ 17.30 Definitions.
§ 17.31 Duty periods defined.
§ 17.31 Duty periods defined.

§ 17.30 Definitions.

When used in Department of Veterans Affairs medical regulations, each of the following terms shall have the meaning ascribed to it in this section:
(a) Medical services. The term medical services includes, in addition to medical examination, treatment, and rehabilitative services:
(1) Surgical services, dental services and appliances as authorized in §§ 17.160 through 17.166, optometric and podiatric services, (in the case of a person otherwise receiving care or services under this chapter) the preventive health care services set forth in 38 U.S.C. 1762, wheelchair, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary.
(Authority: 38 U.S.C. 1701(6)(A)(ii))
(2) Such consultation, professional counseling, training and mental health services as are necessary in connection with the treatment --
(i) Of the service-connected disability of a veteran pursuant to § 17.93(a);
(ii) Of the nonservice-connected disability of a veteran where such services were initiated during the veteran's hospitalization and the provision of such services is essential to permit the release of the veteran from inpatient care; for the members of the immediate family or legal guardian of the veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran or dependent or survivor of a veteran receiving care under § 17.84(c). For the purposes of this paragraph, a dependent or survivor of a veteran receiving care under § 17.84(c) shall be eligible for the same medical services as a veteran; and
(3) Transportation and incidental expenses for any person entitled to such benefits under the provisions of § 17.143.
(Authority: 38 U.S.C. 1701(6))
(b) Domiciliary care. The term domiciliary care means the furnishing of a home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services. The term further includes travel and incidental expenses pursuant to § 17.143.
(Authority: 38 U.S.C. 1701(4))

§ 17.31 Duty periods defined.
Definitions of duty periods applicable to eligibility for medical benefits are as follows:
(a)--(c) [Reserved]
(d) Inactive duty training. The term inactive duty training means: (1) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206, title 37 U.S.C., or any other provision of law;
(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.
(3) Duty (other than full-time duty) for members of the National Guard or Air National Guard of any State under the provisions of law stated in paragraph (c)(3) of this section.
(4) Inactive duty for training does not include work or study performed in connection with correspondence courses, or attendance at an educational institution in an inactive status, or duty performed as a temporary member of the Coast Guard Reserve.

EDITORIAL NOTE: At 61 FR 21965, May 13, 1996, Sec. 17.31 was amended by removing (a), (b) introductory text, (b)(1) through (b)(4), (b)(6), (b)(7) and (c). Text remaining in effect is set forth above.
§ 17.31 Duty periods defined.
Full-time duty as a member of the Women's Army Auxiliary Corps, Women's Reserve of the Navy and Marine Corps and Women's Reserve of the Coast Guard.

EDITORIAL NOTE: At 61 FR 21965, May 13, 1996, § 17.31(b)(5) was redesignated as § 17.31.
PROTECTION OF PATIENT RIGHTS

§ 17.32 Informed consent and advance health care planning.
§ 17.33 Patients' rights.

§ 17.32 Informed consent and advance health care planning.

(a) Definitions:
Advance Directive. Specific written statements made by a patient who has decision-making capacity regarding future health care decisions in any of the following:
(i) VA Living Will. A written statement made by a patient on an authorized VA form which sets forth the patient's wishes regarding the patient's health care treatment preferences including the withholding and withdrawal of life-sustaining treatment.
(iii) State-Authorized Advance Directive. A non-VA living will, durable power of attorney for health care, or other advance health care planning document, the validity of which is determined pursuant to applicable State law. For the purposes of this paragraph and paragraph (h) of this section, "applicable State law" means the law of the State where the advance directive was signed, the State where the patient resided when the advance directive was signed, the State where the patient now resides, or the State where the patient is receiving treatment. VA will resolve any conflict between those State laws regarding the validity of the advance directive by following the law of the State that gives effect to the expressed wishes in the advance directive.
Close Friend. Any person eighteen years or older who has shown care and concern for the patient's welfare, who is familiar with the patient's activities, health, religious beliefs and values, and who has presented a signed written statement for the record that describes that person's relationship to and familiarity with the patient.
Decision-making capacity. The ability to understand and appreciate the nature and consequences of health-care treatment decisions.
Health-Care Agent. An individual named by the patient in a Durable Power of Attorney for Health Care.
Legal Guardian. A person appointed by a court of appropriate jurisdiction to make decisions for an individual who has been judicially determined to be incompetent.
Practitioner. Any physician, dentist, or health-care professional who has been granted specific clinical privileges to perform the treatment or procedure involved. For the purpose of obtaining informed consent for medical treatment, the term practitioner includes medical and dental residents regardless of whether they have been granted clinical privileges.
Signature consent. The patient's or surrogate's signature on a VA-authorized consent form, e.g., a published numbered VA form (OF 522) or comparable form approved by the local VA facility.
Special Guardian. A person appointed by a court of appropriate jurisdiction for the specific purpose of making health-care decisions.
Surrogate. An individual, organization or other body authorized under this section to give informed consent on behalf of a patient who lacks decision-making capacity.

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(b) Policy. Except as otherwise provided in this section, all patient care furnished under title 38 U.S.C. shall be carried out only with the full and informed consent of the patient or, in appropriate cases, a representative thereof. In order to give informed consent, the patient must have decision-making capacity and be able to communicate decisions concerning health care. If the patient lacks decision-making capacity or has been declared incompetent, consent must be obtained from the patient's surrogate. Practitioners may provide necessary medical care in emergency situations without the patient's or surrogate's express consent when immediate medical care is necessary to preserve life or prevent serious impairment of the health of the patient or others and the patient is unable to consent and the practitioner determines that the patient has no surrogate or that waiting to obtain consent from the patient's surrogate would increase the hazard to the life or health of the patient or others. In such circumstances consent is implied.

(c) General requirements for informed consent. Informed consent is the freely given consent that follows a careful explanation by the practitioner to the patient or the patient's surrogate of the proposed diagnostic or therapeutic procedure or course of treatment. The practitioner, who has primary responsibility for the patient or who will perform the particular procedure or provide the treatment, must explain in language understandable to the patient or surrogate the nature of a proposed procedure or treatment; the expected benefits; reasonably foreseeable associated risks, complications or side effects; reasonable and available alternatives; and anticipated results if nothing is done. The patient or surrogate must be given the opportunity to ask questions, to indicate comprehension of the information provided, and to grant permission freely without coercion. The practitioner must advise the patient or surrogate if the proposed treatment is novel or unorthodox. The patient or surrogate may withhold or revoke his or her consent at any time.

(d) Documentation of informed consent. (1) The informed consent process must be appropriately documented in the medical record. In addition, signature consent is required for all diagnostic and therapeutic treatments or procedures that:

(i) Require the use of sedation;

(ii) Require anesthesia or narcotic analgesia;

(iii) Are considered to produce significant discomfort to the patient;

(iv) Have a significant risk of complication or morbidity;

(v) Require injections of any substance into a joint space or body cavity; or

(vi) Involve testing for Human Immunodeficiency Virus (HIV).

(2) The patient's or surrogate's signature on a VA-authorized consent form must be witnessed. The witness' signature only attests to the fact that he or she saw the patient or surrogate and the practitioner sign the form. When the patient's or surrogate's signature is indicated by an "X", two adults must witness the act of signing. The signed form must be filed in the patient's medical record. A properly executed OF 522 or other VA-authorized consent form is valid for a period of 30 calendar days. If, however, the treatment plan involves multiple treatments or procedures, it will not be necessary to repeat the informed consent discussion and documentation so long as the course of treatment proceeds as planned, even if treatment extends beyond the 30-day period. If there is a change in the patient's condition that might alter the diagnostic or therapeutic decision, the consent is automatically rescinded.
(3) If it is impractical to consult with the surrogate in person, informed consent may be obtained by mail, facsimile, or telephone. A facsimile copy of a signed consent form is adequate to proceed with treatment. However, the surrogate must agree to submit a signed consent form to the practitioner. If consent is obtained by telephone, the conversation must be audiotaped or witnessed by a second VA employee. The name of the person giving consent and his or her authority to act as surrogate must be adequately identified for the record.

(e) Surrogate consent. If the practitioner who has primary responsibility for the patient determines that the patient lacks decision-making capacity and is unlikely to regain it within a reasonable period of time, informed consent must be obtained from the patient's surrogate. Patients who are incapable of giving consent as a matter of law, i.e., persons judicially determined to be incompetent and minors not otherwise able to provide informed consent, will be deemed to lack decision-making capacity for the purposes of this section. If the patient is considered a minor in the state where the VA facility is located and cannot consent to medical treatment, consent must be obtained from the patient's parent or legal guardian. The surrogate generally assumes the same rights and responsibilities as the patient in the informed consent process. The surrogate's decision must be based on his or her knowledge of what the patient would have wanted, i.e., substituted judgment. If the patient's wishes are unknown, the decision must be based on the patient's best interest. The following persons are authorized to consent on behalf of patients who lack decision-making capacity in the following order of priority:

1. Health-care agent;
2. Legal guardian or special guardian;
3. Next-of-kin: a close relative of the patient eighteen years of age or older, in the following priority: spouse, child, parent, sibling, grandparent, or grandchild; or

(f) Consent for patients without surrogates. (1) If none of the surrogates listed in paragraph (e) of this section are available, the practitioner may request Regional Counsel assistance to obtain a special guardian for health care or follow the procedures outlined in this paragraph (f).

(2) Facilities may use the following process to make treatment decisions for patients who lack decision-making capacity and have no surrogate. For treatments or procedures that involve minimal risk, the practitioner must verify that no authorized surrogate can be located. The practitioner must attempt to explain the nature and purpose of the proposed treatment to the patient and enter this information in the medical record. For procedures that require signature consent, the practitioner must certify that the patient has no surrogate. The attending physician and the Chief of Service (or his or her designee) must indicate their approval of the treatment decision in writing. For procedures that require signature consent, the practitioner must certify that the patient has no surrogate. The attending physician and the Chief of Service (or his or her designee) must indicate their approval of the treatment decision in writing. Any decision to withhold or withdraw life-sustaining treatment for such patients must be reviewed by a multi-disciplinary committee appointed by the facility Director. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the Chief of Staff who must note his or her approval of the report in writing. After reviewing the record, the facility Director may concur with the decision to withhold or withdraw life support or request further review by Regional Counsel.
(g) Special consent situations. In addition to the other requirements of this section, additional protections are required in the following situations.

(1) No patient will undergo any unusual or extremely hazardous treatment or procedure, e.g., that which might result in irreversible brain damage or sterilization, except as provided in this paragraph (g). Before treatment is initiated, the patient or surrogate must be given adequate opportunity to consult with independent specialists, legal counsel or other interested parties of his or her choosing. The patient's or surrogate's signature on a VA authorized consent form must be witnessed by someone who is not affiliated with the VA health-care facility, e.g., spouse, legal guardian, or patient advocate. If a surrogate makes the treatment decision, a multi-disciplinary committee, appointed by the facility Director, must review that decision to ensure it is consistent with the patient's wishes or in his or her best interest. The committee functions as the patient's advocate and may not include members of the treatment team. The committee must submit its findings and recommendations in a written report to the facility Director. The Director may authorize treatment consistent with the surrogate's decision or request that a special guardian for health care be appointed to make the treatment decision.

(2) Administration of psychotropic medication to an involuntarily committed patient against his or her will must meet the following requirements. The patient or surrogate must be allowed to consult with independent specialists, legal counsel or other interested parties concerning the treatment with psychotropic medication. Any recommendation to administer or continue medication against the patient's or surrogate's will must be reviewed by a multi-disciplinary committee appointed by the facility Director for this purpose. This committee must include a psychiatrist or a physician who has psychopharmacology privileges. The facility Director must concur with the committee's recommendation to administer psychotropic medications contrary to the patient's or surrogate's wishes. Continued therapy with psychotropic medication must be reviewed every 30 days. The patient (or a representative on the patient's behalf) may appeal the treatment decision to a court of appropriate jurisdiction.

(3) If a proposed course of treatment or procedure involves approved medical research in whole or in part, the patient or representative shall be advised of this. Informed consent shall be obtained specifically for the administration or performance of that aspect of the treatment or procedure that involves research. Such consent shall be in addition to that obtained for the administration or performance of the nonresearch aspect of the treatment or procedure and must meet the requirements for informed consent set forth in 38 CFR Part 16, Protection of Human Subjects.

(4) Testing for Human Immunodeficiency Virus (HIV) must be voluntary and must be conducted only with the prior informed and (written) signature consent of the patient or surrogate. Patients who consent to testing for HIV must sign VA form 10-012, "Consent for HIV Antibody Testing." This form must be filed in the patient's medical record. Testing must be accompanied by pre-test and post-test counseling.

(h) Advance health care planning. Subject to the provisions of paragraphs (h)(1) through (h)(4) of this section, VA will follow the wishes of a patient expressed in an Advance Directive when the attending physician determines and documents in the patient's medical record that the patient lacks decision-making capacity and is not expected to regain it. An advance directive that is valid in one or more States under
applicable State law, as defined in paragraph (a) of this section, will be recognized throughout the VA health care system.

(1) Witnesses. A VA Advance Directive: Living Will and Durable Power of Attorney for Health Care must be signed by the patient in the presence of two witnesses. Neither witness may to the witness’ knowledge be named in the patient's will, appointed as health care agent in the advance directive, or financially responsible for the patient's care. VA employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees (e.g., Medical Administration Service, Voluntary Service, or Environmental Management Service) may serve as witnesses. Other individuals employed by the VA facility in which the patient is being treated may not sign as witnesses to the advance directive. Witnesses are attesting only to the fact that they saw the patient sign the form.

(2) Instructions in critical situations. VA will follow the unambiguous verbal or non-verbal instructions regarding future health care decisions of a patient who has decision-making capacity when the patient is admitted to care when critically ill and loss of capacity may be imminent and the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. The patient's instructions must have been expressed to at least two members of the health care team. The substance of the patient's instructions must be recorded in a progress note in the patient's medical record and must be co-signed by at least two members of the health care team who were present and can attest to the wishes expressed by the patient. These instructions will be given effect only if the patient loses decision-making capacity during the presenting situation.

(3) Revocation. A patient who has decision-making capacity may revoke an advance directive or instructions in a critical situation at any time by using any means expressing the intent to revoke.

(4) VA policy and disputes. Neither the treatment team nor surrogate may override a patient's clear instructions in an Advance Directive or in instructions in critical situations, except that those portions of an Advance Directive or instructions given in a critical situation that are not consistent with VA policy will not be given effect.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0583)


(Authority: 38 U.S.C. 7331 through 7334)


§ 17.33 Patients' rights.

(a) General. (1) Patients have a right to be treated with dignity in a humane environment that affords them both reasonable protection from harm and appropriate privacy with regard to their personal needs.

(2) Patients have a right to receive, to the extent of eligibility therefor under the law, prompt and appropriate treatment for any physical or emotional disability.
(3) Patients have the right to the least restrictive conditions necessary to achieve treatment purposes.
(4) No patient in the Department of Veterans Affairs medical care system, except as otherwise provided by the applicable State law, shall be denied legal rights solely by virtue of being voluntarily admitted or involuntarily committed. Such legal rights include, but are not limited to, the following:
(i) The right to hold and to dispose of property except as may be limited in accordance with paragraph (c)(2) of this section;
(ii) The right to execute legal instruments (e.g., will);
(iii) The right to enter into contractual relationships;
(iv) The right to register and vote;
(v) The right to marry and to obtain a separation, divorce, or annulment;
(vi) The right to hold a professional, occupational, or vehicle operator's license.
(b) Residents and inpatients. Subject to paragraphs (c) and (d) of this section, patients admitted on a residential or inpatient care basis to the Department of Veterans Affairs medical care system have the following rights:
(1) Visitations and communications. Each patient has the right to communicate freely and privately with persons outside the facility, including government officials, attorneys, and clergymen. To facilitate these communications each patient shall be provided the opportunity to meet with visitors during regularly scheduled visiting hours, convenient and reasonable access to public telephones for making and receiving phone calls, and the opportunity to send and receive unopened mail.
(i) Communications with attorneys, law enforcement agencies, or government officials and representatives of recognized service organizations when the latter are acting as agents for the patient in a matter concerning Department of Veterans Affairs benefits, shall not be reviewed.
(ii) A patient may refuse visitors.
(iii) If a patient's right to receive unopened mail is restricted pursuant to paragraph (c) of this section, the patient shall be required to open the sealed mail while in the presence of an appropriate person for the sole purpose of ascertaining whether the mail contains contraband material, i.e., implements which pose significant risk of bodily harm to the patient or others or any drugs or medication. Any such material will be held for the patient or disposed of in accordance with instructions concerning patients' mail published by the Veterans Health Administration, Department of Veterans Affairs, and/or the local health care facility.
(iv) Each patient shall be afforded the opportunity to purchase, at the patient's expense, letter writing material including stamps. In the event a patient needs assistance in purchasing writing material, or in writing, reading or sending mail, the medical facility will attempt, at the patient's request, to provide such assistance by means of volunteers, sufficient to mail at least one (1) letter each week.
(v) All information gained by staff personnel of a medical facility during the course of assisting a patient in writing, reading, or sending mail is to be kept strictly confidential except for any disclosure required by law.
(2) Clothing. Each patient has the right to wear his or her own clothing.
(3) Personal Possessions. Each patient has the right to keep and use his or her own personal possessions consistent with available space, governing fire safety regulations,
restrictions on noise, and restrictions on possession of contraband material, drugs and medications.
(4) Money. Each patient has the right to keep and spend his or her own money and to have access to funds in his or her account in accordance with instructions concerning personal funds of patients published by the Veterans Health Administration.
(5) Social Interaction. Each patient has the right to social interaction with others.
(6) Exercise. Each patient has the right to regular physical exercise and to be outdoors at regular and frequent intervals. Facilities and equipment for such exercise shall be provided.
(7) Worship. The opportunity for religious worship shall be made available to each patient who desires such opportunity. No patient will be coerced into engaging in any religious activities against his or her desires.
(c) Restrictions. (1) A right set forth in paragraph (b) of this section may be restricted within the patient's treatment plan by written order signed by the appropriate health care professional if --
   (i) It is determined pursuant to paragraph (c)(2) of this section that a valid and sufficient reason exists for a restriction, and
   (ii) The order imposing the restriction and a progress note detailing the indications therefor are both entered into the patient's permanent medical record.
(2) For the purpose of paragraph (c) of this section, a valid and sufficient reason exists when, after consideration of pertinent facts, including the patient's history, current condition and prognosis, a health care professional reasonably believes that the full exercise of the specific right would --
   (i) Adversely affect the patient's physical or mental health,
   (ii) Under prevailing community standards, likely stigmatize the patient's reputation to a degree that would adversely affect the patient's return to independent living,
   (iii) Significantly infringe upon the rights of or jeopardize the health or safety of others, or
   (iv) Have a significant adverse impact on the operation of the medical facility, to such an extent that the patient's exercise of the specific right should be restricted. In determining whether a patient's specific right should be restricted, the health care professional concerned must determine that the likelihood and seriousness of the consequences that are expected to result from the full exercise of the right are so compelling as to warrant the restriction. The Chief of Service or Chief of Staff, as designated by local policy, should concur with the decision to impose such restriction. In this connection, it should be noted that there is no intention to imply that each of the reasons specified in paragraphs (c)(2)(i) through (iv) of this section are logically relevant to each of the rights set forth in paragraph (b)(1) of this section.
(3) If it has been determined under paragraph (c)(2) of this section that a valid and sufficient reason exists for restricting any of the patient's rights set forth in paragraph (b) of this section, the least restrictive method for protecting the interest or interests specified in paragraphs (c)(2)(i) through (iv) of this section that are involved shall be employed.
(4) The patient must be promptly notified of any restriction imposed under paragraph (c) of this section and the reasons therefor.
(5) All restricting orders under paragraph (c) of this section must be reviewed at least once every 30 days by the practitioner and must be concurred in by the Chief of Service or Chief of Staff.

(d) Restraint and seclusion of patients. (1) Each patient has the right to be free from physical restraint or seclusion except in situations in which there is a substantial risk of imminent harm by the patient to himself, herself, or others and less restrictive means of preventing such harm have been determined to be inappropriate or insufficient. Patients will be physically restrained or placed in seclusion only on the written order of an appropriate licensed health care professional. The reason for any restraint order will be clearly documented in the progress notes of the patient's medical record. The written order may be entered on the basis of telephonic authority, but in such an event, an appropriate licensed health care professional must examine the patient and sign a written order within an appropriate timeframe that is in compliance with current community and/or accreditation standards. In emergency situations, where inability to contact an appropriate licensed health care professional prior to restraint is likely to result in immediate harm to the patient or others, the patient may be temporarily restrained by a member of the staff until appropriate authorization can be received from an appropriate licensed health care professional. Use of restraints or seclusion may continue for a period of time that does not exceed current community and/or accreditation standards, within which time an appropriate licensed health care professional shall again be consulted to determine if continuance of such restraint or seclusion is required. Restraint or seclusion may not be used as a punishment, for the convenience of staff, or as a substitute for treatment programs.

(2) While in restraint or seclusion, the patient must be seen within appropriate timeframes in compliance with current community and/or accreditation standards:
   (i) By an appropriate health care professional who will monitor and chart the patient's physical and mental condition; and
   (ii) By other ward personnel as frequently as is reasonable under existing circumstances.

(3) Each patient in restraint or seclusion shall have bathroom privileges according to his or her needs.

(4) Each patient in restraint or seclusion shall have the opportunity to bathe at least every twenty-four (24) hours.

(5) Each patient in restraint or seclusion shall be provided nutrition and fluid appropriately.

(e) Medication. Patients have a right to be free from unnecessary or excessive medication. Except in an emergency, medication will be administered only on a written order of an appropriate health care professional in that patient's medical record. The written order may be entered on the basis of telephonic authority received from an appropriate health care professional, but in such event, the written order must be countersigned by an appropriate health care professional within 24 hours of the ordering of the medication. An appropriate health care professional will be responsible for all medication given or administered to a patient. A review by an appropriate health care professional of the drug regimen of each inpatient shall take place at least every thirty (30) days. It is recognized that administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, for the
convenience of the staff, or in quantities which interfere with the patient's treatment program.

(f) Confidentiality. Information gained by staff from the patient or the patient's medical record will be kept confidential and will not be disclosed except in accordance with applicable law.

(g) Patient grievances. Each patient has the right to present grievances with respect to perceived infringement of the rights described in this section or concerning any other matter on behalf of himself, herself or others, to staff members at the facility in which the patient is receiving care, other Department of Veterans Affairs officials, government officials, members of Congress or any other person without fear or reprisal.

(h) Notice of patient's rights. Upon the admission of any patient, the patient or his/her representative shall be informed of the rights described in this section, shall be given a copy of a statement of those rights and shall be informed of the fact that the statement of rights is posted at each nursing station. All staff members assigned to work with patients will be given a copy of the statement of rights and these rights will be discussed with them by their immediate supervisor.

(i) Other rights. The rights described in this section are in addition to and not in derogation of any statutory, constitutional or other legal rights.

(Authority: 38 U.S.C. 501, 1721)

§ 17.34 Tentative eligibility determinations.

§ 17.34 Tentative eligibility determinations.
Subject to the provisions of §§ 17.36 through 17.38, when an application for hospital care or other medical services, except outpatient dental care, has been filed which requires an adjudication as to service connection or a determination as to any other eligibility prerequisite which cannot immediately be established, the service (including transportation) may be authorized without further delay if it is determined that eligibility for care probably will be established. Tentative eligibility determinations under this section, however, will only be made if:
(a) In emergencies. The applicant needs hospital care or other medical services in emergency circumstances, or
(b) For persons recently discharged from service. The application was filed within 6 months after date of honorable discharge from a period of not less than 6 months of active duty.
[49 FR 9173, Mar. 12, 1984; redesignated at 61 FR 21964, 21965, May 13, 1996; 64 FR 54207, 54212, Oct. 6, 1999]

[EFFECTIVE DATE NOTE: 64 FR 54207, 54212, Oct. 6, 1999, amended the first sentence of the introductory text, effective Nov. 5, 1999.]
HOSPITAL OR NURSING HOME CARE AND MEDICAL SERVICES IN FOREIGN COUNTRIES

§ 17.35 Hospital care and medical services in foreign countries.

§ 17.35 Hospital care and medical services in foreign countries.
cciDiscussion and Analysis in the Veterans Benefits Manual
The Secretary may furnish hospital care and medical services to any veteran sojourning or residing outside the United States, without regard to the veteran's citizenship:
(a) If necessary for treatment of a service-connected disability, or any disability associated with and held to be aggravating a service-connected disability;
(b) If the care is furnished to a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 who requires care for the reasons enumerated in 38 CFR 17.48(j)(2).
(Authority: 38 U.S.C. 1724)
[35 FR 6586, April 24, 1970; redesignated at 61 FR 21964, 21965, May 13, 1996]
Enrollment Provisions and Medical Benefits Package

§ 17.36 Enrollment -- provision of hospital and outpatient care to veterans.
§ 17.37 Enrollment not required -- provision of hospital and outpatient care to veterans.
§ 17.38 Medical benefits package.
§ 17.39 Certain Filipino veterans.
§ 17.40 Additional services for indigents.

§ 17.36 Enrollment -- provision of hospital and outpatient care to veterans.

(a) Enrollment requirement for veterans. (1) Except as otherwise provided in § 17.37, a veteran must be enrolled in the VA healthcare system as a condition for receiving the "medical benefits package" set forth in § 17.38.
NOTE TO PARAGRAPh (a)(1): A veteran may apply to be enrolled at any time. (See § 17.36(d)(1).)
(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section and who, if required by law to do so, has agreed to make any applicable copayment is eligible for VA hospital and outpatient care as provided in the "medical benefits package" set forth in § 17.38.
NOTE TO PARAGRAPh (a)(2): A veteran's enrollment status will be recognized throughout the United States.
(3) A veteran enrolled based on having a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, or any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e), is eligible for VA provided in the "medical benefits package" set forth in § 17.38 for the disorder.

(b) Categories of veterans eligible to be enrolled. The Secretary will determine which categories of veterans are eligible to be enrolled based on the following order of priority:
(1) Veterans with a singular or combined rating of 50 percent or greater based on one or more service-connected disabilities or unemployability.
(2) Veterans with a singular or combined rating of 30 percent or 40 percent based on one or more service-connected disabilities.
(3) Veterans who are former prisoners of war; veterans awarded the Purple Heart; veterans with a singular or combined rating of 10 percent or 20 percent based on one or more service-connected disabilities; veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty; veterans who receive disability compensation under 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for that care is provided for in the judgment or settlement described in 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the 10 percent rating level based on multiple noncompensable service-connected disabilities that clearly interfere with normal employability.
(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

(5) Veterans not covered by paragraphs (b)(1) through (b)(4) of this section who are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(6) Veterans of the Mexican border period or of World War I; veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, or for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 U.S.C. 1710(e); and veterans with 0 percent service-connected disabilities who are nevertheless compensated, including veterans receiving compensation for inactive tuberculosis.

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes "low income" under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable "low-income" income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable "low-income" income limits for the area in which the veteran resides, the veteran will be considered to have "low income" for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the "low income" income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a FEDERAL REGISTER document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a FEDERAL REGISTER document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;

(iii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(7)(i) of this section;

(iv) Nonservice-connected veterans not included in paragraph (b)(7)(ii) of this section.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:
(i) Noncompensable zero percent service-connected veterans who are in an enrolled status on a specified date announced in a FEDERAL REGISTER document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;
(ii) Nonservice-connected veterans who are in an enrolled status on a specified date announced in a FEDERAL REGISTER document promulgated under paragraph (c) of this section and who subsequently do not request disenrollment;
(iii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) of this section; and
(iv) Nonservice-connected veterans not included in paragraph (b)(8)(ii) of this section.
(c) FEDERAL REGISTER notification of eligible enrollees. (1) It is anticipated that on or before August 1 of each year the Secretary will announce in paragraph (c)(2) of this section which categories of veterans are eligible to be enrolled. As necessary, the Secretary at any time may revise this determination by further amending paragraph (c)(2) of this section. The preamble to a FEDERAL REGISTER document announcing which priority categories are eligible to be enrolled must specify the projected number of fiscal year applicants for enrollment in each priority category, projected healthcare utilization and expenditures for veterans in each priority category, appropriated funds and other revenue projected to be available for fiscal year enrollees, and results -- projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, e.g., economic changes, changes in medical practices, and waiting times to obtain an appointment for care. Consistent with these criteria, the Secretary will determine which categories of veterans are eligible to be enrolled based on the order of priority specified in paragraph (b) of this section.
(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll all priority categories of veterans set forth in § 17.36(b) beginning January 17, 2003 except that those veterans in priority category 8 who were not in an enrolled status on January 17, 2003 or who requested disenrollment after that date, are not eligible to be enrolled.
(d) Enrollment and disenrollment process -- (1) Application for enrollment. A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10-10EZ to a VA medical facility. Veterans applying based on inclusion in priority categories 1, 2, 3, 6, and 8 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because of their need for regular aid and attendance or by being permanently housebound need not complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because they are catastrophically disabled need not complete section II, but must complete the rest of the form, if: they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g); they are a veteran of the Mexican border period or of World War I or a veteran with a 0 percent service-connected disability who is nevertheless compensated; their catastrophic disability is a disorder associated with exposure to a toxic substance or radiation, or with service in the Southwest Asia theater of operations during the Gulf War as provided in 38 U.S.C. 1710(e); or their catastrophic disability is an illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e). All other veterans applying based on inclusion in priority category 4 because they are
catastrophically disabled must complete the entire form. Veterans applying based on inclusion in priority category 5 must complete the entire form. Veterans applying based on inclusion in priority category 7 must complete the entire form except for section IIE. VA form 10-10EZ is set forth in paragraph (f) of this section and is available from VA medical facilities.

(2) Action on application. Upon receipt of a completed VA Form 10-10EZ, a VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, will accept a veteran as an enrollee upon determining that the veteran is in a priority category eligible to be enrolled as set forth in § 17.36(c)(2). Upon determining that a veteran is not in a priority category eligible to be enrolled, the VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, will inform the applicant that the applicant is ineligible to be enrolled.

(3) Placement in enrollment categories.
   (i) Veterans will be placed in priority categories whether or not veterans in that category are eligible to be enrolled.
   (ii) A veteran will be placed in the highest priority category or categories for which the veteran qualifies.
   (iii) A veteran may be placed in only one priority category, except that a veteran placed in priority category 6 based on a specified disorder or illness will also be placed in priority category 7 or priority category 8, as applicable, if the veteran has previously agreed to pay the applicable copayment, for all matters not covered by priority category 6.
   (iv) A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in priority category 5 due to failure to submit to VA a current VA Form 10-10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8 (or more than one of these categories if the previous principle applies), as applicable, and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must be eligible for priority category 5 based on the information submitted to VA in a current VA Form 10-10EZ. To be current, after VA has sent a form 10-10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.
   (v) Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

(4) Automatic enrollment. Notwithstanding other provisions of this section, veterans who were notified by VA letter that they were enrolled in the VA healthcare system under the trial VA enrollment program prior to October 1, 1998, automatically will be enrolled in the VA healthcare system under this section if determined by a VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or
Director, Health Eligibility Center, that the veteran is in a priority category eligible to be enrolled as set forth in § 17.36(c)(2). Upon determining that a veteran is not in a priority category eligible to be enrolled, the VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, will inform the veteran that the veteran is ineligible to be enrolled.

(5) Disenrollment. A veteran enrolled in the VA health care system under paragraph (d)(2) or (d)(4) of this section will be disenrolled only if:

(i) The veteran submits to a VA medical center or the VA Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329, a signed document stating that the veteran no longer wishes to be enrolled; or

(ii) A VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, determines that the veteran is no longer in a priority category eligible to be enrolled, as set forth in § 17.36(c)(2); or

(iii) A VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, determines that the veteran has been enrolled based on inclusion in priority category 5 or priority category 7; determines that the veteran was sent by mail a VA Form 10-10EZ; and determines that the veteran failed to return the completed form to the address on the return envelope within 60 days from receipt of the form. VA Form 10-10EZ is set forth in paragraph (f) of this section.

(6) Notification of enrollment status. Notice of a decision by a VA network or facility director, or the Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center, regarding enrollment status will be provided to the affected veteran by letter and will contain the reasons for the decision. The letter will include an effective date for any changes and a statement regarding appeal rights. The decision will be based on all information available to the decisionmaker, including the information contained in VA Form 10-10EZ.

(e) Catastrophically disabled. For purposes of this section, catastrophically disabled means to have a permanent severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the individual requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others. This definition is met if an individual has been found by the Chief of Staff (or equivalent clinical official) at the VA facility where the individual was examined to have a permanent condition specified in paragraph (e)(1) of this section; to meet permanently one of the conditions specified in paragraph (e)(2) of this section by a clinical evaluation of the patient's medical records that documents that the patient previously met the permanent criteria and continues to meet such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment; or to meet permanently one of the conditions specified in paragraph (e)(2) of this section by a current medical examination that documents that the patient meets the permanent criteria and will continue to meet
such criteria (permanently) or would continue to meet such criteria (permanently) without the continuation of on-going treatment.

(1) Quadriplegia and quadriparesis (ICD-9-CM Code 344.0x: 344.00, 344.01, 344.02, 344.03, 344.04, 3.44.09), paraplegia (ICD-9-CM Code 344.1), blindness (ICD-9-CM Code 369.4), persistent vegetative state (ICD-9-CM Code 780.03), or a condition resulting from two of the following procedures (ICD-9-CM Code 84.x or associated V Codes when available or Current Procedural Terminology (CPT) Codes) provided the two procedures were not on the same limb:

(i) Amputation through hand (ICD-9-CM Code 84.03 or V Code V49.63 or CPT Code 25927);
(ii) Disarticulation of wrist (ICD-9-CM Code 84.04 or V Code V49.64 or CPT Code 25920);
(iii) Amputation through forearm (ICD-9-CM Code 84.05 or V Code V49.65 or CPT Codes 25900, 25905);
(iv) Disarticulation of forearm (ICD-9-CM Code 84.05 or V Code V49.66 or CPT Codes 25900, 25905);
(v) Amputation or disarticulation through elbow. (ICD-9-CM Code 84.06 or V Code V49.66 or CPT Codes 25900, 24999);
(vi) Amputation through humerus (ICD-9-CM Code 84.07 or V Code V49.66 or CPT Codes 24900, 24920);
(vii) Shoulder disarticulation (ICD-9-CM Code 84.08 or V Code V49.67 or CPT Code 23920);
(viii) Forequarter amputation (ICD-9-CM Code 84.09 or CPT Code 23900);
(ix) Lower limb amputation not otherwise specified (ICD-9-CM Code 84.10 or V Code V49.70 or CPT Codes 27880, 27882);
(x) Amputation of great toe (ICD-9-CM Code 84.11 or V Code V49.71 or CPT Codes 28810, 28820);
(xi) Amputation through foot (ICD-9-CM Code 84.12 or V Code V49.73 or CPT Codes 28800, 28805);
(xii) Disarticulation of ankle (ICD-9-CM Code 84.13 or V Code V49.74 or CPT 27889);
(xiii) Amputation through malleoli (ICD-9-CM Code 84.14 or V Code V49.75 or CPT Code 27888);
(xiv) Other amputation below knee (ICD-9-CM Code 84.15 or V Code V49.75 or CPT Codes 27880, 27882);
(xv) Disarticulation of knee (ICD-9-CM Code 84.16 or V Code V49.76 or CPT Code 27598);
(xvi) Above knee amputation (ICD-9-CM Code 84.17 or V Code V49.76 or CPT Code 27598);
(xvii) Disarticulation of hip (ICD-9-CM Code 84.18 or V Code V49.77 or CPT Code 27295); and
(xviii) Hindquarter amputation (ICD-9-CM Code 84.19 or CPT Code 27290).

(2)(i) Dependent in 3 or more Activities of Daily Living (eating, dressing, bathing, toileting, transferring, incontinence of bowel and/or bladder), with at least 3 of the dependencies being permanent with a rating of 1, using the Katz scale.
(ii) A score of 10 or lower using the Folstein Mini-Mental State Examination.
§ 17.37 Enrollment not required -- provision of hospital and outpatient care to veterans.

Even if not enrolled in the VA healthcare system:

(a) A veteran rated for service-connected disabilities at 50 percent or greater will receive VA care provided for in the "medical benefits package" set forth in § 17.38.

(b) A veteran who has a service-connected disability will receive VA care provided for in the "medical benefits package" set forth in § 17.38 for that service-connected disability.

(c) A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty will receive VA care provided for in the "medical benefits package" set forth in § 17.38 for that disability for the 12-month period following discharge or release.

(d) When there is a compelling medical need to complete a course of VA treatment started when the veteran was enrolled in the VA healthcare system, a veteran will receive that treatment.

(e) Subject to the provisions of § 21.240, a veteran participating in VA's vocational rehabilitation program described in §§ 21.1 through 21.430 will receive VA care provided for in the "medical benefits package" set forth in § 17.38.

(f) A veteran may receive care provided for in the "medical benefits package" based on factors other than veteran status (e.g., a veteran who is a private-hospital patient and is referred to VA for a diagnostic test by that hospital under a sharing contract; a veteran who is a VA employee and is examined to determine physical or mental fitness to perform official duties; a Department of Defense retiree under a sharing agreement).

(g) For care not provided within a State, a veteran may receive VA care provided for in the "medical benefits package" set forth in § 17.38 if authorized under the provisions of 38 U.S.C. 1724 and 38 CFR 17.35.

(h) Commonwealth Army veterans and new Philippine Scouts may receive care provided for in the "medical benefits package" set forth in § 17.38 if authorized under the provisions of 38 U.S.C. 1724 and 38 CFR 17.35.
(i) A veteran may receive certain types of VA care not included in the "medical benefits package" set forth in § 17.38 if authorized by statute or other sections of 38 CFR (e.g., humanitarian emergency care for which the individual will be billed, compensation and pension examinations, dental care, domiciliary care, nursing home care, readjustment counseling, care as part of a VA-approved research project, seeing-eye or guide dogs, sexual trauma counseling and treatment, special registry examinations).

(j) A veteran may receive an examination to determine whether the veteran is catastrophically disabled and therefore eligible for inclusion in priority category 4.

[64 FR 54207, 54217, Oct. 6, 1999; 67 FR 35037, 35039, May 17, 2002]

(38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722.)

[EFFECTIVE DATE NOTE: 67 FR 35037, 35039, May 17, 2002, amended this section, effective June 17, 2002.]

§ 17.38 Medical benefits package.

(a) Subject to paragraphs (b) and (c) of this section, the following hospital, outpatient, and extended care services constitute the "medical benefits package" (basic care and preventive care):

(1) Basic care.

(i) Outpatient medical, surgical, and mental healthcare, including care for substance abuse.

(ii) Inpatient hospital, medical, surgical, and mental healthcare, including care for substance abuse.

(iii) Prescription drugs, including over-the-counter drugs and medical and surgical supplies available under the VA national formulary system.

(iv) Emergency care in VA facilities; and emergency care in non-VA facilities in accordance with sharing contracts or if authorized by §§ 17.52(a)(3), 17.53, 17.54, 17.120-132.

(v) Bereavement counseling as authorized in § 17.98.

(vi) Comprehensive rehabilitative services other than vocational services provided under 38 U.S.C. chapter 31.

(vii) Consultation, professional counseling, training, and mental health services for the members of the immediate family or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, if needed to treat:

(A) The service-connected disability of a veteran; or

(B) The nonservice-connected disability of a veteran where these services were first given during the veteran's hospitalization and continuing them is essential to permit the veteran's release from inpatient care.

(viii) Durable medical equipment and prosthetic and orthotic devices, including eyeglasses and hearing aids as authorized under § 17.149.

(ix) Home health services authorized under 38 U.S.C. 1717 and 1720C.

(x) Reconstructive (plastic) surgery required as a result of disease or trauma, but not including cosmetic surgery that is not medically necessary.

(xi) (A) Hospice care, palliative care, and institutional respite care; and

(B) Noninstitutional geriatric evaluation, noninstitutional adult day health care, and noninstitutional respite care.
(xii) Payment of travel and travel expenses for veterans eligible under § 17.143 if authorized by that section.
(xiii) Pregnancy and delivery services, to the extent authorized by law.
(xiv) Completion of forms (e.g., Family Medical Leave forms, life insurance applications, Department of Education forms for loan repayment exemptions based on disability, non-VA disability program forms) by healthcare professionals based on an examination or knowledge of the veteran's condition, but not including the completion of forms for examinations if a third party customarily will pay health care practitioners for the examination but will not pay VA.

(2) Preventive care, as defined in 38 U.S.C. 1701(9), which includes:
(i) Periodic medical exams.
(ii) Health education, including nutrition education.
(iii) Maintenance of drug-use profiles, drug monitoring, and drug use education.
(iv) Mental health and substance abuse preventive services.
(v) Immunizations against infectious disease.
(vi) Prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature.
(vii) Genetic counseling concerning inheritance of genetically determined diseases.
(viii) Routine vision testing and eye-care services.
(ix) Periodic reexamination of members of high-risk groups for selected diseases and for functional decline of sensory organs, and the services to treat these diseases and functional declines.

(b) Provision of the "medical benefits package". Care referred to in the "medical benefits package" will be provided to individuals only if it is determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.

(1) Promote health. Care is deemed to promote health if the care will enhance the quality of life or daily functional level of the veteran, identify a predisposition for development of a condition or early onset of disease which can be partly or totally ameliorated by monitoring or early diagnosis and treatment, and prevent future disease.

(2) Preserve health. Care is deemed to preserve health if the care will maintain the current quality of life or daily functional level of the veteran, prevent the progression of disease, cure disease, or extend life span.

(3) Restoring health. Care is deemed to restore health if the care will restore the quality of life or daily functional level that has been lost due to illness or injury.

(c) In addition to the care specifically excluded from the "medical benefits package" under paragraphs (a) and (b) of this section, the "medical benefits package" does not include the following:
(1) Abortions and abortion counseling.
(2) In vitro fertilization.
(3) Drugs, biologicals, and medical devices not approved by the Food and Drug Administration unless the treating medical facility is conducting formal clinical trials under an Investigational Device Exemption (IDE) or an Investigational New Drug (IND) application, or the drugs, biologicals, or medical devices are prescribed under a compassionate use exemption.
(4) Gender alterations.
(5) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services.

(6) Membership in spas and health clubs.

[64 FR 54207, 54217, Oct. 6, 1999; 67 FR 35037, 35039, May 17, 2002]


[EFFECTIVE DATE NOTE: 67 FR 35037, 35039, May 17, 2002, amended this section, effective June 17, 2002.]

§ 17.39 Certain Filipino veterans.

(a) Any Filipino Commonwealth Army veteran, including one who was recognized by authority of the U.S. Army as belonging to organized Filipino guerilla forces, or any new Philippine Scout is eligible for hospital care, nursing home care, and outpatient medical services within the United States in the same manner and subject to the same terms and conditions as apply to U.S. veterans, if such veteran or scout resides in the United States and is a citizen or lawfully admitted to the United States for permanent residence. For purposes of these VA health care benefits, the standards described in 38 CFR 3.42(c) will be accepted as proof of U.S. citizenship or lawful permanent residence.

(b) Commonwealth Army Veterans, including those who were recognized by authority of the U.S. Army as belonging to organized Filipino guerilla forces, and new Philippine Scouts are not eligible for VA health care benefits if they do not meet the residency and citizenship requirements described in Sec. 3.42(c).

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0091.)

[67 FR 41178, 41179, June 17, 2002; 71 FR 6679, February 9, 2006]

(Authority: 38 U.S.C. 501, 1734)

[EFFECTIVE DATE NOTE: 67 FR 41178, 41179, June 17, 2002, added this section, effective June 17, 2002.]

§ 17.40 Additional services for indigents.

In addition to the usual medical services agreed upon between the governments of the United States and the Republic of the Philippines to be made available to patients for whom the Department of Veterans Affairs has authorized care at the Veterans Memorial Medical Center, any such patient determined by the U.S. Department of Veterans Affairs to be indigent or without funds may be furnished toilet articles and barber services, including haircutting and shaving necessary for hygienic reasons.

§ 17.41 Persons eligible for hospital observation and physical examination.
§ 17.42 Examinations on an outpatient basis.

§ 17.41 Persons eligible for hospital observation and physical examination.
Hospitalization for observation and physical (including mental) examination may be effected when requested by an authorized official, or when found necessary in examination of the following persons:
(a) Claimants or beneficiaries of VA for purposes of disability compensation, pension, participation in a rehabilitation program under 38 U.S.C. chapter 31, and Government insurance. (38 U.S.C. 1711(a))
(b) Claimants or beneficiaries referred to a diagnostic center for study to determine the clinical identity of an obscure disorder.
(c) Employees of the Department of Veterans Affairs when necessary to determine their mental or physical fitness to perform official duties.
(d) Claimants or beneficiaries of other Federal agencies:
   (1) Department of Justice -- plaintiffs in Government insurance suits.
   (2) United States Civil Service Commission -- annuitants or applicants for retirement annuity, and such examinations of prospective appointees as may be requested.
   (3) Office of Workers’ Compensation Programs -- to determine identity, severity, or persistence of disability.
   (4) Railroad Retirement Board -- applicants for annuity under Public No. 162, 75th Congress.
   (5) Other Federal agencies.

§ 17.42 Examinations on an outpatient basis.
Physical examinations on an outpatient basis may be furnished to applicants who have been tentatively determined to be eligible for Department of Veterans Affairs hospital or domiciliary care to determine their need for such care and to the same categories of persons for whom hospitalization for observation and examination may be authorized under § 17.41. [35 FR 6586, Apr. 24, 1970; redesignated and amended at 61 FR 21964, 21965, 21966, May 13, 1996]
§ 17.43 Persons entitled to hospital or domiciliary care.

Hospital or domiciliary care may be provided:

(a) Not subject to the eligibility provisions of 38 U.S.C. 1710, 1722, and 1729 and 38 CFR 17.44 and 17.45, for:

(1) Persons in the Armed Forces when duly referred with authorization therefor, may be furnished hospital care. Emergency treatment may be rendered, without obtaining formal authorization, to such persons upon their own application, when absent from their commands. Identification of active duty members of the uniformed services will be made by military identification card.

(2) Hospital care may be provided, upon authorization, for beneficiaries of the Public Health Service, Office of Workers' Compensation Programs, and other Federal agencies.

(3) Pensioners of nations allied with the United States in World War I and World War II may be supplied hospital care when duly authorized.

(b) Emergency hospital care may be provided for:

(1) Persons having no eligibility, as a humanitarian service.

(2) Persons admitted because of presumed discharge or retirement from the Armed Forces, but subsequently found to be ineligible as such.

(3) Employees (not potentially eligible as ex-members of the Armed Forces) and members of their families, when residing on reservations of field facilities of the Department of Veterans Affairs, and when they cannot feasibly obtain emergency treatment from private facilities.

(c) Hospital care when incidental to, and to the extent necessary for, the use of a specialized Department of Veterans Affairs medical resource pursuant to a sharing agreement entered into under § 17.210, may be authorized for any person designated by the other party to the agreement as a patient to be benefited under the agreement.

(d) The authorization of services under any provision of this section, except services for eligible veterans, is subject to charges as required by § 17.101.

§ 17.44 Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).

Hospital care may be furnished when beds are available to members or former members of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, now National Oceanic and Atmospheric Administration hereinafter referred to as NOAA, and Public Health Service) temporarily or permanently retired for physical disability or receiving disability retirement pay who require hospital care for chronic diseases and who have no eligibility for hospital care under laws governing the Department of Veterans Affairs, or who having eligibility do not elect hospitalization as Department of Veterans Affairs beneficiaries. Care under this section is subject to the following conditions:

(a) Persons defined in this section who are members or former members of the active military, naval, or air service must agree to pay the subsistence rate set by the Secretary of Veterans Affairs, except that no subsistence charge will be made for those persons who are members or former members of the Public Health Service, Coast Guard, Coast and Geodetic Survey now NOAA, and enlisted personnel of the Army, Navy, Marine Corps, and Air Force.

(b) Under this section, the term chronic diseases shall include chronic arthritis, malignancy, psychiatric disorders, poliomyelitis with residuals, neurological disabilities, diseases of the nervous system, severe injuries to the nervous system, including quadriplegia, hemiplegia and paraplegia, tuberculosis, blindness and deafness requiring definitive rehabilitation, disability from major amputation, and other diseases as may be agreed upon from time to time by the Under Secretary for Health and designated officials of the Department of Defense and Department of Health and Human Services. For the purpose of this section, blindness is defined as corrected visual acuity of 20/200 or less in the better eye, or corrected central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that its widest diameter subtends the widest diameter of the field of the better eye at an angle no greater than 20[degrees].

(c) In the case of persons who are former members of the Coast and Geodetic Survey, care may be furnished under this section even though their retirement for disability was from the Environmental Service Administration or NOAA.


§ 17.45 Hospital care for research purposes.

Subject to the provisions of § 17.62(g), any person who is a bona fide volunteer may be admitted to a Department of Veterans Affairs hospital when the treatment to be rendered is part of an approved Department of Veterans Affairs research project and there are insufficient veteran-patients suitable for the project.
§ 17.46 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

(a) In furnishing hospital care under 38 U.S.C. 1710(a)(1), VA officials shall:
(1) If the veteran is in immediate need of hospitalization, furnish care at VA facility where the veteran applies or, if that facility is incapable of furnishing care, arrange to admit the veteran to the nearest VA medical center, or Department of Defense hospital with which VA has a sharing agreement under 38 U.S.C. 8111, which is capable of providing the needed care, or if VA or DOD facilities are not available, arrange for care on a contract basis if authorized by 38 U.S.C. 1703 and 38 CFR 17.52; or
(2) If the veteran needs non-immediate hospitalization, schedule the veteran for admission at VA facility where the veteran applies, if the schedule permits, or refer the veteran for admission or scheduling for admission at the nearest VA medical center, or Department of Defense facility with which VA has a sharing agreement under 38 U.S.C. 8111.

(b) Domiciliary care may be furnished when needed to:
(1) Any veteran whose annual income does not exceed the maximum annual rate of pension payable to a veteran in need of regular aid and attendance, or
(2) Any veteran who the Secretary determines had no adequate means of support. An additional requirement for eligibility for domiciliary care is the ability of the veteran to perform the following:
   (i) Perform without assistance daily ablutions, such as brushing teeth; bathing; combing hair; body eliminations.
   (ii) Dress self, with a minimum of assistance.
   (iii) Proceed to and return from the dining hall without aid.
   (iv) Feed self.
   (v) Secure medical attention on an ambulatory basis or by use of personally propelled wheelchair.
   (vi) Have voluntary control over body eliminations or control by use of an appropriate prosthesis.
   (vii) Share in some measure, however slight, in the maintenance and operation of the facility.
   (viii) Make rational and competent decisions as to his or her desire to remain or leave the facility.
§ 17.47 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

(a)(1) For applicants discharged or released for disability incurred or aggravated in line of duty and who are not in receipt of compensation for service-connected or service-aggravated disability, the official records of the Armed Forces relative to findings of line of duty for its purposes will be accepted in determining eligibility for hospital care. Where the official records of the Armed Forces show a finding of disability not incurred or aggravated in line of duty and evidence is submitted to the Department of Veterans Affairs which permits of a different finding, the decision of the Armed Forces will not be binding upon the Department of Veterans Affairs, which will be free to make its own determination of line of duty incurrence or aggravation upon evidence so submitted. It will be incumbent upon the applicant to present controverting evidence and, until such evidence is presented and a determination favorable to the applicant is made by the Department of Veterans Affairs, the finding of the Armed Forces will control and hospital care will not be authorized. Such controverting evidence, when received from an applicant, will be referred to the adjudicating agency which would have jurisdiction if the applicant was filing claim for pension or disability compensation, and the determination of such agency as to line of duty, which is promptly to be communicated to the head of the field facility receiving the application for hospital care, will govern the facility Director's disapproval or approval of admission, other eligibility requirements having been met. Where the official records of the Armed Forces show that the disability for which a veteran was discharged or released from the Armed Forces under other than dishonorable conditions was incurred or aggravated in the line of duty, such showing will be accepted for the purpose of determining his or her eligibility for hospitalization, notwithstanding the fact that the Department of Veterans Affairs has made a determination in connection with a claim for monetary benefits that the disability was incurred or aggravated not in line of duty.

(2) In those exceptional cases where the official records of the Armed Forces show discharge or release under other than dishonorable conditions because of expiration of period of enlistment or any other reason except disability, but also show a disability incurred or aggravated in line of duty during the said enlistment; and the disability so recorded is considered in medical judgment to be or to have been of such character, duration, and degree as to have justified a discharge or release for disability had the period of enlistment not expired or other reason for discharge or release been given, the Under Secretary for Health, upon consideration of a clear, full statement of circumstances, is authorized to approve admission of the applicant for hospital care, provided other eligibility requirements are met. A typical case of this kind will be one where the applicant was under treatment for the said disability recorded during his or her service at the time discharge or release was given for the reason other than disability.

(b)(1) Under 38 U.S.C. 1710(a)(1), veterans who are receiving disability compensation awarded under § 3.800 of this chapter, where a disease, injury or the aggravation of an existing disease or injury occurs as a result of VA examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. ch. 31, under any law administered by VA and not the result of his/her own willful misconduct. Treatment may be provided for the
disability for which the compensation is being paid or for any other disability. Treatment under the authority of 38 U.S.C. 1710(a)(1) may not be authorized during any period when disability compensation under § 3.800 of this title is not being paid because of the provision of § 3.800(a)(2), except to the extent continuing eligibility for such treatment is provided for in the judgment for settlement described in § 3.800(a)(2) of this title.


(2) For purposes of eligibility for domiciliary care, the phrase no adequate means of support refers to an applicant for domiciliary care whose annual income exceeds the annual rate of pension for a veteran in receipt of regular aid and attendance, as defined in 38 U.S.C. 1503, but who is able to demonstrate to competent VA medical authority, on the basis of objective evidence, that deficits in health and/or functional status render the applicant incapable of pursuing substantially gainful employment, as determined by the Chief of Staff, and who is otherwise without the means to provide adequately for self, or be provided for in the community.


(c) A disability, disease, or defect will comprehend any acute, subacute, or chronic disease (or a general medical, tuberculous, or neuropsychiatric type) of any acute, subacute, or chronic surgical condition susceptible of cure or decided improvement by hospital care; or any condition which does not require hospital care for an acute or chronic condition but requires domiciliary care. Domiciliary care, as the term implies, is the provision of a home, with such ambulant medical care as is needed. To be provided with domiciliary care, the applicant must consistently have a disability, disease, or defect which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period.

(Authority: 38 U.S.C. 1701, 1710)

(d)(1) For purposes of determining eligibility for hospital or nursing home care under § 17.47(a), a veteran will be determined unable to defray the expenses of necessary care if the veteran agrees to provide verifiable evidence, as determined by the Secretary, that:

(i) The veteran is eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act;

(Authority: 42 U.S.C. 1396, et seq.)

(ii) The veteran is in receipt of pension under 38 U.S.C. 1521; or

(iii) The veteran's attributable income does not exceed $ 15,000 if the veteran has no dependents, $ 18,000 if the veteran has one dependent, plus $ 1,000 for each additional dependent.


(2) For purposes of determining eligibility for hospital or nursing home care under § 17.47(c), a veteran will be determined eligible for necessary care if the veteran agrees to provide verifiable evidence, as determined by the Secretary, that: The veteran's attributable income does not exceed $ 20,000 if the veteran has no dependents, $ 25,000 if the veteran has one dependent, plus $ 1,000 for each additional dependent.


(3) Effective on January 1 of each year after calendar year 1986, the amounts set forth in paragraph (d)(1) and (2) of this section shall be increased by the percentage by which the maximum rates of pension were increased under 38 U.S.C. 1111(a), during the preceding year.

(4) Determinations with respect to attributable income made under paragraph (d)(1) and (2) of this section, shall be made in the same manner, including the same sources of income and exclusions from income, as determinations with respect to income are made for determining eligibility for pension under §§ 3.271 and 3.272 of this title. The term attributable income means income of a veteran for the calendar year preceding application for care, determined in the same manner as the manner in which a determination is made of the total amount of income by which the rate of pension for such veteran under 38 U.S.C. 1521 would be reduced if such veteran were eligible for pension under that section. 


(5) Notwithstanding the attributable income of a veteran, VA may determine that such veteran is not eligible under paragraph (d)(1) and (2) of this section if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some part of the corpus of the estate of the veteran be consumed for the veteran's maintenance. The corpus of the estate of a veteran shall be determined in the same manner as determinations are made with respect to the determinations of eligibility for pension under § 3.275 of this chapter. The term corpus of the estate of the veteran includes the corpus of the estates of the veteran's spouse and dependent children, if any. 


(6) In order to avoid hardship VA may determine that a veteran is eligible for care notwithstanding that the veteran does not meet the income requirements established in paragraph (d)(1)(iii) or (d)(2) of this section, if projections of the veteran's income for the year following application for care are substantially below the income requirements established in paragraph (d)(1)(iii) or (d)(2) of this section. 


(e)(1) If VA determines that an individual was incorrectly charged a copayment, VA will refund the amount of any copayment actually paid by that individual. 


(2) In the event a veteran provided inaccurate information on an application and is incorrectly deemed eligible for care under 38 U.S.C. 1710 (a)(1) rather than § 1710(a)(2), VA shall retroactively bill the veteran for the applicable copayment. 


(f) If a veteran who receives hospital or nursing home care under 38 U.S.C. (a)(2) or outpatient care under 38 U.S.C. 1712(a)(4) by virtue of the veteran's eligibility for hospital care under 38 U.S.C. 1710(a), fails to pay to the United States the amounts agreed to under those sections shall be grounds for determining, in accordance with guidelines promulgated by the Under Secretary for Health, that the veteran is not eligible to receive further care under those sections until such amounts have been paid in full. 


(g)(1) Persons hospitalized who have no service-connected disabilities pursuant to § 17.47, and/or persons receiving outpatient medical services pursuant to paragraphs (e), (f), (i), (j), and/or (k) of § 17.60 who have no service-connected disabilities who it is believed may be eligible for hospital care and/or medical services, or reimbursement for the expenses of care or services for all or part of the cost thereof by reason of the following: 

(i) Membership in a union, fraternal or other organization, or
(ii) Coverage under an insurance policy, or contract, medical, or hospital service agreement, membership, or subscription contract or similar arrangement under which health services for individuals are provided or the expenses of such services are paid, will not be furnished hospital care or medical services without charge therefore to the extent of the amount for which such parties referred to in paragraphs (g)(1)(i) or (g)(1)(ii) of this section, are, will become, or may be liable. Persons believed entitled to care under any of the plans discussed above will be required to provide such information as the Secretary may require. Provisions of this paragraph are effective April 7, 1986, except in the case of a health care policy or contract that was entered into before that date, the effective date shall be the day after the plan was modified or renewed or on which there was any change in premium or coverage and will apply only to care and services provided by VA after the date the plan was modified, renewed, or on which there was any change in premium or coverage.


(2) Persons hospitalized for the treatment of nonservice-connected disabilities pursuant to § 17.47, or persons receiving outpatient medical services pursuant to paragraph (e), (f), (h), (i), (j), or (k) of § 17.60, and who it is believed may be entitled to hospital care and/or medical services or to reimbursement for all or part of the cost thereof from any one or more of the following parties:

(i) Workers' Compensation or employer's liability statutes, State or Federal;
(ii) By reason of statutory or other relationships with third parties, including those liable for damages because of negligence or other legal wrong;
(iii) By reason of a statute in a State, or political subdivision of a State;
(A) Which requires automobile accident reparations or;
(B) Which provides compensation or payment for medical care to victims suffering personal injuries as the result of a crime of personal violence;
(iv) Right to maintenance and cure in admiralty;

will not be furnished hospital care or medical services without charge therefore to the extent of the amount for which such parties are, will become, or may be liable. Persons believed entitled to care under circumstances described in paragraph (g)(2)(ii) of this section will be required to complete such forms as the Secretary may require, such as a power of attorney and assignment. Notice of this assignment will be mailed promptly to the party or parties believed to be liable. When the amount of charges is ascertained, a bill therefore will be mailed to such party or parties. Persons believed entitled to care under circumstances described in paragraph (g)(2)(i) or (g)(2)(iii) of this section will be required to complete such forms as the Secretary may require.


(h) Within the limits of Department of Veterans Affairs facilities, any veteran who is receiving nursing home care in a hospital under the direct jurisdiction of the Department of Veterans Affairs, may be furnished medical services to correct or treat any nonservice-connected disability of such veteran, in addition to treatment incident to the disability for which the veteran is hospitalized, if the veteran is willing, and such services are reasonably necessary to protect the health of such veteran.

(i) Participating in a rehabilitation program under 38 U.S.C. chapter 31 refers to any veteran
(1) Who is eligible for and entitled to participate in a rehabilitation program under chapter 31.

(i) Who is in an extended evaluation period for the purpose of determining feasibility, or
(ii) For whom a rehabilitation objective has been selected, or
(iii) Who is pursuing a rehabilitation program, or
(iv) Who is pursuing a program of independent living, or
(v) Who is being provided employment assistance under 38 U.S.C. chapter 31, and

(2) Who is medically determined to be in need of hospital care or medical services (including dental) for any of the following reasons:

(i) Make possible his or her entrance into a rehabilitation program; or
(ii) Achieve the goals of the veteran's vocational rehabilitation program; or
(iii) Prevent interruption of a rehabilitation program; or
(iv) Hasten the return to a rehabilitation program of a veteran in interrupted or leave status; or
(v) Hasten the return to a rehabilitation program of a veteran placed in discontinued status because of illness, injury or a dental condition; or
(vi) Secure and adjust to employment during the period of employment assistance; or
(vii) To enable the veteran to achieve maximum independence in daily living.

(Authority: 38 U.S.C. 3104(a)(9); Pub. L. 96-466, sec. 101(a))

(j) Veterans eligible for treatment under chapter 17 of 38 U.S.C. who are alcohol or drug abusers or who are infected with the human immunodeficiency virus (HIV) shall not be discriminated against in admission or treatment by any Department of Veterans Affairs health care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection. This does not preclude the rule of clinical judgment in determining appropriate treatment which takes into account the patient's immune status and/or the infectivity of the HIV or other pathogens (such as tuberculosis, cytomegalovirus, cryptosporidiosis, etc.). Hospital Directors are responsible for assuring that admission criteria of all programs in the medical center do not discriminate solely on the basis of alcohol, drug abuse or infection with human immunodeficiency virus. Quality Assurance Programs should include indicators and monitors for nondiscrimination.

(Authority: 38 U.S.C. 7333)

(k) In seeking medical care from VA under 38 U.S.C. 1710 or 1712, a veteran shall furnish such information and evidence as the Secretary may require to establish eligibility.


[EFFECTIVE DATE NOTE: 64 FR 54207, 54218, Oct. 6, 1999, amended this section, effective Nov. 5, 1999.]

§ 17.48 Compensated Work Therapy/Transitional Residences program.
(a) This section sets forth requirements for persons residing in housing under the Compensated Work Therapy/Transitional Residences program.
(b) House managers shall be responsible for coordinating and supervising the day-to-day operations of the facilities. The local VA program coordinator shall select
each house manager and may give preference to an individual who is a current or past resident of the facility or the program. A house manager must have the following qualifications:
(1) A stable, responsible and caring demeanor;
(2) Leadership qualities including the ability to motivate;
(3) Effective communication skills including the ability to interact;
(4) A willingness to accept feedback;
(5) A willingness to follow a chain of command.
(c) Each resident admitted to the Transitional Residence, except for a house manager, must also be in the Compensated Work Therapy program.
(d) Each resident, except for a house manager, must bi-weekly, in advance, pay a fee to VA for living in the housing. The local VA program coordinator will establish the fee for each resident in accordance with the provisions of paragraph (d)(1) of this section.
(1) The total amount of actual operating expenses of the residence (utilities, maintenance, furnishings, appliances, service equipment, all other operating costs) for the previous fiscal year plus 15 percent of that amount equals the total operating budget for the current fiscal year. The total operating budget is to be divided by the average number of beds occupied during the previous fiscal year and the resulting amount is the average yearly amount per bed. The bi-weekly fee shall equal 1/26th of the average yearly amount per bed, except that a resident shall not, on average, pay more than 30 percent of their gross CWT (Compensated Work Therapy) bi-weekly earnings. The VA program manager shall, bi-annually, conduct a review of the factors in this paragraph for determining resident payments. If he or she determines that the payments are too high or too low by more than 5 percent of the total operating budget, he or she shall recalculate resident payments under the criteria set forth in this paragraph, except that the calculations shall be based on the current fiscal year (actual amounts for the elapsed portion and projected amounts for the remainder).
(2) If the revenues of a residence do not meet the expenses of the residence resulting in an inability to pay actual operating expenses, the medical center of jurisdiction shall provide the funds necessary to return the residence to fiscal solvency in accordance with the provisions of this section.
(e) The length of stay in housing under the Compensated Work Therapy/Transitional Residences program is based on the individual needs of each resident, as determined by consensus of the resident and his/her VA Clinical Treatment team. However, the length of stay should not exceed 12 months.


[CROSS REFERENCE: This section was formerly § 17.49.]

§ 17.49 Priorities for Outpatient Medical Services and Inpatient Hospital Care. cccviii

In scheduling appointments for outpatient medical services and admissions for inpatient hospital care, the Under Secretary for Health shall give priority to:
(a) Veterans with service-connected disabilities rated 50 percent or greater based on one or more disabilities or unemployability; and
(b) Veterans needing care for a service-connected disability.

(38 U.S.C. 101, 501, 1705, 1710.)

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USE OF DEPARTMENT OF DEFENSE, PUBLIC HEALTH SERVICE OR OTHER FEDERAL HOSPITALS

§ 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Department of Veterans Affairs.

§ 17.51 Emergency use of Department of Defense, Public Health Service or other Federal hospitals.

§ 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Department of Veterans Affairs.
Hospital facilities operated by the Department of Defense or the Public Health Service (or any other agency of the United States Government) may be used for the care of Department of Veterans Affairs patients pursuant to agreements between the Department of Veterans Affairs and the department or agency operating the facility. When such an agreement has been entered into and a bed allocation for Department of Veterans Affairs patients has been provided for in a specific hospital covered by the agreement, care may be authorized within the bed allocation for any veteran eligible under 38 U.S.C. 1710 or 38 CFR 17.44. Care in a Federal facility not operated by the Department of Veterans Affairs, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.46b, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under § 17.46b, § 17.47(b)(2) or § 17.47(c)(2) regardless of whether he or she may have dual eligibility under other provisions of § 17.47.

§ 17.51 Emergency use of Department of Defense, Public Health Service or other Federal hospitals.
Hospital care in facilities operated by the Department of Defense or the Public Health Service (or any other agency of the U.S. Government) which do not have beds allocated for the care of Department of Veterans Affairs patients may be authorized subject to the limitations enumerated in § 17.50 only in emergency circumstances for any veteran otherwise eligible for hospital care under 38 U.S.C. 1710 or 38 CFR 17.46.
USE OF PUBLIC OR PRIVATE HOSPITALS

§ 17.52 Hospital care and medical services in non-VA facilities.
§ 17.53 Limitations on use of public or private hospitals.
§ 17.54 Necessity for prior authorization.
§ 17.55 Payment for authorized public or private hospital care.
§ 17.56 Payment for non-VA physician and other health care professional services.

§ 17.52 Hospital care and medical services in non-VA facilities.

When VA facilities or other government facilities are not capable of furnishing economical hospital care or medical services because of geographic inaccessibility or are not capable of furnishing care or services required, VA may contract with non-VA facilities for care in accordance with the provisions of this section. When demand is only for infrequent use, individual authorizations may be used. Care in public or private facilities, however, subject to the provisions of § 17.53 through f, will only be authorized, whether under a contract or an individual authorization, for
(1) Hospital care or medical services to a veteran for the treatment of --
   (i) A service-connected disability; or
   (ii) A disability for which a veteran was discharged or released from the active military, naval, or air service or
   (iii) A disability of a veteran who has a total disability permanent in nature from a service-connected disability, or
   (iv) For a disability associated with and held to be aggravating a service-connected disability, or
   (v) For any disability of a veteran participating in a rehabilitation program under 38 U.S.C. ch. 31 and when there is a need for hospital care or medical services for any of the reasons enumerated in § 17.48(j).
(2) Medical services for the treatment of any disability of --
   (i) A veteran who has a service-connected disability rated at 50 percent or more,
   (ii) A veteran who has received VA inpatient care for treatment of nonservice-connected conditions for which treatment was begun during the period of inpatient care. The treatment period (to include care furnished in both facilities of VA and non-VA facilities or any combination of such modes of care) may not continue for a period exceeding 12 months following discharge from the hospital except when it is determined that a longer period is required by virtue of the disabilities being treated, and
   (iii) A veteran of the Mexican border period or World War I or who is in receipt of increased pension or additional compensation based on the need for aid and attendance or housebound benefits when it has been determined based on an examination by a physician employed by VA (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in VA facilities;
(3) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving hospital care or medical...
services in a facility over which the Secretary has direct jurisdiction or government facility with which the Secretary contracts, and for which the facility is not staffed or equipped to perform, and transfer to a public or private hospital which has the necessary staff or equipment is the only feasible means of providing the necessary treatment, until such time following the furnishing of care in the non-VA facility as the veteran can be safely transferred to a VA facility;


(4) Hospital care for women veterans;


(5) Through September 30, 1988, hospital care or medical services that will obviate the need for hospital admission for veterans in the Commonwealth of Puerto Rico, except that the dollar expenditure in Fiscal year 1986 cannot exceed 85% of the Fiscal year 1985 obligations, in Fiscal year 1987 the dollar expenditure cannot exceed 50% of the Fiscal year 1985 obligations and in Fiscal year 1988 the dollar expenditure cannot exceed 25% of the Fiscal year 1985 obligations.


(6) Hospital care or medical services that will obviate the need for hospital admission for veterans in Alaska, Hawaii, Virgin Islands and other territories of the United States except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of VA in government and non-VA facilities in each such State or territory shall be consistent with the patient load or incidence of the provision of medical services for veterans hospitalized or treated by VA within the 48 contiguous States.


(7) Outpatient dental services and treatment, and related dental appliances, for a veteran who is a former prisoner of war and was detained or interned for a period of not less that 181 days.


(8) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran which developed during authorized travel to the hospital, or during authorized travel after hospital discharge preventing completion of travel to the originally designated point of return (and this will encompass any other medical services necessitated by the emergency, including extra ambulance or other transportation which may also be furnished at VA expense.

(Authority: 38 U.S.C. 1701(5))

(9) Diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent VA outpatient clinics to obviate the need for hospital admission.


(10) For any disability of a veteran receiving VA contract nursing home care. The veteran is receiving contract nursing home care and requires emergency treatment in non-VA facilities.

(Authority: 38 U.S.C. 1703(a))

(11) For completion of evaluation for observation and examination (O&E) purposes, clinic directors or their designees will authorize necessary diagnostic services at non-VA facilities (on an inpatient or outpatient basis) in order to complete requests from VA
Regional Offices for O&E of a person to determine eligibility for VA benefits or services.
(b) The Under Secretary for Health shall only furnish care and treatment under paragraph (a) of this section to veterans described in § 17.47(d).
(1) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in § 17.47 (a) and (c), and
(2) If the veteran agrees to pay the United States an amount as determined in § 17.48(e).


[EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "Under Secretary for Health" for "Chief Medical Director" in the introductory text of paragraph (b), effective April 9, 1997.]

§ 17.53 Limitations on use of public or private hospitals.

The admission of any patient to a private or public hospital at Department of Veterans Affairs expense will only be authorized if a Department of Veterans Affairs medical center or other Federal facility to which the patient would otherwise be eligible for admission is not feasibly available. A Department of Veterans Affairs facility may be considered as not feasibly available when the urgency of the applicant's medical condition, the relative distance of the travel involved, or the nature of the treatment required makes it necessary or economically advisable to use public or private facilities. In those instances where care in public or private hospitals at Department of Veterans Affairs expense is authorized because a Department of Veterans Affairs or other Federal facility was not feasibly available, as defined in this section, the authorization will be continued after admission only for the period of time required to stabilize or improve the patient's condition to the extent that further care is no longer required to satisfy the purpose for which it was initiated.


§ 17.54 Necessity for prior authorization.

The admission of a veteran to a non-Department of Veterans Affairs hospital at Department of Veterans Affairs expense must be authorized in advance. In the case of an emergency which existed at the time of admission, an authorization may be deemed a prior authorization if an application, whether formal or informal, by telephone, telegraph or other communication, made by the veteran or by others in his or her behalf is dispatched to the Department of Veterans Affairs (1) for veterans in the 48 contiguous States and Puerto Rico, within 72 hours after the hour of admission, including in the computation of time Saturday, Sunday and holidays, or (2) for veterans in a noncontiguous State, territory or possession of the United States (not including Puerto
Rico) if facilities for dispatch of application as described in this section are not available within the 72-hour period, provided the application was filed within 72 hours after facilities became available.

(b) When an application for admission by a veteran in one of the 48 contiguous States in the United States or in Puerto Rico has been made more than 72 hours after admission, or more than 72 hours after facilities are available in a noncontiguous State, territory of possession of the United States, authorization for continued care at Department of Veterans Affairs expense shall be effective as of the postmark or dispatch date of the application, or the date of any telephone call constituting an informal application.


§ 17.55 Payment for authorized public or private hospital care.

Except as otherwise provided in this section, payment for public or private hospital care authorized under 38 U.S.C. 1703 and 38 CFR 17.52 of this part or under 38 U.S.C. 1728 and 38 CFR 17.120 of this part shall be based on a prospective payment system similar to that used in the Medicare program for paying for similar inpatient hospital services in the community. Payment shall be made using the Health Care Financing Administration (HCFA) PRICER for each diagnosis-related group (DRG) applicable to the episode of care.

(a) Payment shall be made of the full prospective payment amount per discharge, as determined according to the methodology in subparts D and G of 42 CFR part 412, as appropriate.

(b)(1) In the case of a veteran who was transferred to another facility before completion of care, VA shall pay the transferring hospital an amount calculated by the HCFA PRICER for each patient day of care, not to exceed the full DRG rate as provided in paragraph (a) of this section. The hospital that ultimately discharges the patient will receive the full DRG payment.

(2) In the case of a veteran who has transferred from a hospital and/or distinct part unit excluded by Medicare from the DRG-based prospective payment system or from a hospital that does not participate in Medicare, the transferring hospital will receive a payment for each patient day of care not to exceed the amount provided in paragraph (i) of this section.

(c) VA shall pay the providing facility the full DRG-based rate or reasonable cost, without regard to any copayments or deductible required by any Federal law that is not applicable to VA.

(d) If the cost or length of a veteran's care exceeds an applicable threshold amount, as determined by the HCFA PRICER program, VA shall pay, in addition to the amount payable under paragraph (a) of this section, an outlier payment calculated by the HCFA PRICER program, in accordance with subpart F of 42 CFR part 412.

(e) In addition to the amount payable under paragraph (a) of this section, VA shall pay, for each discharge, an amount to cover the non-Federal hospital's capital-related costs, kidney, heart and liver acquisition costs incurred by hospitals with approved transplantation centers, direct costs of medical education, and the costs of qualified nonphysician anesthetists in small rural hospitals. These amounts will be determined by the Under Secretary for Health on an annual basis and published in the "Notices" section of the FEDERAL REGISTER.
(f) Payment shall be made only for those services authorized by VA.

(g) Payments made in accordance with this section shall constitute payment in full and the provider or agent for the provider may not impose any additional charge on a veteran or his or her health care insurer for any inpatient services for which payment is made by the VA.

(h) Hospitals of distinct part hospital units excluded from the prospective payment system by Medicare and hospitals that do not participate in Medicare will be paid at the national cost-to-charge ratio times the billed charges that are reasonable, usual, customary, and not in excess of rates or fees the hospital charges the general public for similar services in the community.

(i) A hospital participating in an alternative payment system that has been granted a Federal waiver from the prospective payment system under the provisions of 42 U.S.C. section 1395f(b)(3) or 42 U.S.C. section 1395ww(c) for the purposes of Medicare payment shall not be subject to the payment methodology set forth in this section so long as such Federal waiver remains in effect.

(j) Payments for episodes of hospital care furnished in Alaska that begin during the period starting on the effective date of this section through the 364th day thereafter will be in the amount determined by the HCFA PRICER plus 50 percent of the difference between the amount billed by the hospital and the amount determined by the PRICER. Claims for services provided during that period will be accepted for payment by VA under this paragraph (k) until December 31 of the year following the year in which this section became effective.

(k) Notwithstanding other provisions of this section, VA, for public or private hospital care covered by this section, will pay the lesser of the amount determined under paragraphs (a) through (j) of this section or the amount negotiated with the hospital or its agent.


(38 USC 513, 1703, 1728; § 233 of P. L. 99-576)

[EFFECTIVE DATE NOTE: 65 FR 66636, 66637, Nov. 7, 2000, added paragraph (k) and revised the authority citation, effective Nov. 7, 2000.]

§ 17.56 Payment for non-VA physician and other health care professional services.

(a) Except for anesthesia services, and services provided in the State of Alaska under paragraph (d) of this section, payment for non-VA health care professional services associated with outpatient and inpatient care provided at non-VA facilities authorized under § 17.52, or made under § 17.120 of this part, shall be the lesser of the amount billed or the amount calculated using the formula developed by the Centers for Medicare and Medicaid Services' (CMS) participating physician fee schedule for the period in which the service is provided (see 42 CFR Parts 414 and 415). This payment methodology is set forth in paragraph (b) of this section. If no amount has been calculated under Centers for Medicare and Medicaid Services' participating physician fee schedule or if the services constitute anesthesia services, payment for such non-VA health care professional services associated with outpatient and inpatient care provided at non-VA
facilities authorized under § 17.52, or made under § 17.120 of this part, shall be the lesser of the actual amount billed or the amount calculated using the 75th percentile methodology set forth in paragraph (c) of this section; or the usual and customary rate if there are fewer than 8 treatment occurrences for a procedure during the previous fiscal year.

(b) The payment amount for each service paid under Centers for Medicare and Medicaid Services’ participating physician fee schedule is the product of three factors: a nationally uniform relative value for the service; a geographic adjustment factor for each physician fee schedule area; and a nationally uniform conversion factor for the service. The conversion factor converts the relative values into payment amounts. For each physician fee schedule service, there are three relative values: An RVU for physician work; an RVU for practice expense; and an RVU for malpractice expense. For each of these components of the fee schedule, there is a geographic practice cost index (GPCI) for each fee schedule area. The GPICS reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average. The GPICS reflect the full variation from the national average in the costs of practice expenses and malpractice insurance, but only one-quarter of the difference in area costs for physician work. The general formula calculating the Centers for Medicare and Medicaid Services' fee schedule amount for a given service in a given fee schedule area can be expressed as: Payment = [(RVUwork x GPCIwork) + (RVUpractice expense x GPCIpractice expense) + (RVUmalpractice x GPCImalpractice)] x CF.

(c) Payment under the 75th percentile methodology is determined for each VA medical facility by ranking all occurrences (with a minimum of eight) under the corresponding code during the previous fiscal year with charges ranked from the highest rate billed to the lowest rate billed and the charge falling at the 75th percentile as the maximum amount to be paid.

(d) For services rendered in Alaska, VA will pay for services in accordance with a fee schedule that uses the Health Insurance Portability and Accountability Act mandated national standard coding sets. VA will pay a specific amount for each service for which there is a corresponding code. Under the VA Alaska Fee Schedule the amount paid in Alaska for each code will be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2003. For services that VA provided less than eight times in Alaska in FY 2003, for services represented by codes established after FY 2003, and for unit-based codes prior to FY 2004, VA will take the Centers for Medicare and Medicaid Services' rate for each code and multiply it times the average percentage paid by VA in Alaska for Centers for Medicare and Medicaid Services-like codes. VA will increase the amounts on the VA Alaska Fee Schedule annually beginning in 2005 in accordance with the published national Medicare Economic Index (MEI). For those years where the annual average is a negative percentage, the fee schedule will remain the same as the previous year. Payment for non-VA health care professional services in Alaska shall be the lesser of the amount billed, or the amount calculated under this subpart.

(e) Payments made in accordance with this section shall constitute payment in full. Accordingly, the provider or agent for the provider may not impose any additional charge for any services for which payment is made by VA.
(f) Notwithstanding other provisions of this section, VA, for physician services covered by this section, will pay the lesser of the amount determined under paragraphs (a) through (e) of this section or the amount negotiated with the physician or the physician's agent. [63 FR 39514, 39515, July 23, 1998; 65 FR 66636, 66637, Nov. 7, 2000; 70 FR 5926, Feb. 4, 2005]

[EFFECTIVE DATE NOTE: 65 FR 66636, 66637, Nov. 7, 2000, added paragraph (e), effective Nov. 7, 2000.]
Use of Community Nursing Home Care Facilities.

§ 17.57 Use of community nursing homes.

§ 17.60 Extensions of community nursing home care beyond six months.

§ 17.57 Use of community nursing homes.

(a) Nursing home care in a contract public or private nursing home facility may be authorized for the following: Any veteran who has been discharged from a hospital under the direct jurisdiction of VA and is currently receiving VA hospital based home health services.

(Authority: Pub. L. 99-166)


(b) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in 38 U.S.C. 1710(a)(1), the Under Secretary for Health may furnish care under this paragraph to any veteran described in 38 U.S.C. 1710(a)(2) if the veteran agrees to pay the United States an amount as determined in 38 U.S.C. 1710(f).


(38 U.S.C. 1720(b))


[CROSS REFERENCE: This section was formerly § 17.56.]

§ 17.60 Extensions of community nursing home care beyond six months.

Directors of health care facilities may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond six months when the need for nursing home care continues to exist and

(a) Arrangements for payment of such care through a public assistance program (such as Medicaid) for which the veteran has applied, have been delayed due to unforeseen eligibility problems which can reasonably be expected to be resolved within the extension period, or

(b) The veteran has made specific arrangements for private payment for such care, and

(1) Such arrangements cannot be effectuated as planned because of unforeseen, unavoidable difficulties, such as a temporary obstacle to liquidation of property, and

(2) Such difficulties can reasonably be expected to be resolved within the extension period; or

(c) The veteran is terminally ill and life expectancy has been medically determined to be less than six months.

(d) In no case may an extension under paragraph (a) or (b) of this section exceed 45 days.
[53 FR 13121, April 21, 1988; redesignated at 61 FR 21964, 21965, May 13, 1996]

(38 U.S.C. 501, 1720(a))
COMMUNITY RESIDENTIAL CARE

§ 17.61 Eligibility.
VA health care personnel may assist a veteran by referring such veteran for placement in a privately or publicly-owned community residential care facility if:
(a) At the time of initiating the assistance:
   (1) The veteran is receiving VA medical services on an outpatient basis or VA medical center, domiciliary, or nursing home care; or
   (2) Such care or services were furnished the veteran within the preceding 12 months;
(b) The veteran does not need hospital or nursing home care but is unable to live independently because of medical (including psychiatric) conditions and has no suitable family resources to provide needed monitoring, supervision, and any necessary assistance in the veteran's daily living activities; and
(c) The facility has been approved in accordance with § 17.63 of this part.

§ 17.62 Definitions.
For the purpose of §§ 17.61 through 17.72:
(a) The term community residential care means the monitoring, supervision, and assistance, in accordance with a statement of needed care, of the daily living activities of referred veterans in an approved home in the community by the facility's provider.
(b) The term statement of needed care means a written description of needed assistance in daily living activities devised by VA for each referred veteran in the community residential care program.
(c) The term daily living activities includes:
   (1) Walking;
   (2) Bathing, shaving, brushing teeth, combing hair;
   (3) Dressing;
   (4) Eating;
   (5) Getting in or getting out of bed;
(6) Laundry;
(7) Cleaning room;
(8) Managing money;
(9) Shopping;
(10) Using public transportation;
(11) Writing letters;
(12) Making telephone calls;
(13) Obtaining appointments;
(14) Self-administration of medications;
(15) Recreational and leisure activities; and
(16) Other similar activities.
(d) The term paper hearing means a review of the written evidence of record by the hearing official.
(e) The term oral hearing means the in person testimony of representatives of a community residential care facility and of VA before the hearing official and the review of the written evidence of record by that official.
(f) The term approving official means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.
(g) The term hearing official means the Director or, if designated by the Director, the Associate Director or Chief of Staff of a Department of Veterans Affairs Medical Center or Outpatient Clinic which has jurisdiction to approve a community residential care facility.

(38 U.S.C. 1730)

§ 17.63 Approval of community residential care facilities.
The approving official may approve a community residential care facility, based on the report of a VA inspection and on any findings of necessary interim monitoring of the facility, if that facility meets the following standards:
(a) Health and safety standards. The facility must:
(1) Meet all State and local regulations including construction, maintenance, and sanitation regulations;
(2) Meet the requirements of chapters 1-7, 22-23, and 31 and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition), and NFPA 101A, Guide on Alternative Approaches to Life Safety (1995 edition), which are incorporated by reference. The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA
02269. (For ordering information, call toll-free 1-800-344-3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

(3) Have safe and functioning systems for heating, hot and cold water, electricity, plumbing, sewage, cooking, laundry, artificial and natural light, and ventilation.

(b) Health services. The facility must agree to assist residents in obtaining the statement of needed care developed by VA.

(c) Interior plan. The facility must:
(1) Have comfortable dining areas, adequate in size for the number of residents;
(2) Have comfortable living room areas, adequate in size to accommodate a reasonable proportion of residents; and
(3) Maintain at least one functional toilet and lavatory, and bathing or shower facility for every six people living in the facility, including provider and staff.

(d) Laundry service. The facility must provide or arrange for laundry service.

(e) Residents' bedrooms. Residents' bedrooms must:
(1) Contain no more than four beds;
(2) Measure, exclusive of closet space, at least 100 square feet for a single-resident room, or 80 square feet for each resident in a multiresident room; and
(3) Contain a suitable bed for each resident and appropriate furniture and furnishings.

(f) Nutrition. The facility must:
(1) Provide a safe and sanitary food service that meets individual nutritional requirements and residents' preferences;
(2) Plan menus to meet currently recommended dietary allowances;

(g) Activities. The facility must plan and facilitate appropriate recreational and leisure activities to meet individual needs specified in the statement of needed care.

(h) Residents' rights. The facility must have written policies and procedures that ensure the following rights for each resident:
(1) Each resident has the right to:
  (i) Be informed of the rights described in this section;
  (ii) The confidentiality and nondisclosure of information obtained by community residential care facility staff on the residents and the residents' records subject to the requirements of applicable law;
  (iii) Be able to inspect the residents' own records kept by the community residential care facility;
  (iv) Exercise rights as a citizen; and
  (v) Voice grievances and make recommendations concerning the policies and procedures of the facility.

(2) Financial affairs. Residents must be allowed to manage their own personal financial affairs, except when the resident has been restricted in this right by law. If a resident requests assistance from the facility in managing personal financial affairs the request must be documented.

(3) Privacy. Residents must:
  (i) Be treated with respect, consideration, and dignity;
  (ii) Have access, in reasonable privacy, to a telephone within the facility;
  (iii) Be able to send and receive mail unopened and uncensored; and
(iv) Have privacy of self and possessions.

(4) Work. No resident will perform household duties, other than personal housekeeping tasks, unless the resident receives compensation for these duties or is told in advance they are voluntary and the patient agrees to do them.

(5) Freedom of association. Residents have the right to:
(i) Receive visitors and associate freely with persons and groups of their own choosing both within and outside the facility;
(ii) Make contacts in the community and achieve the highest level of independence, autonomy, and interaction in the community of which the resident is capable;
(iii) Leave and return freely to the facility, and
(iv) Practice the religion of their own choosing or choose to abstain from religious practice.

(6) Transfer. Residents have the right to transfer to another facility or to an independent living situation.
(i) Records. (1) The facility must maintain records on each resident in a secure place.
(2) Facility records must include:
(i) A copy of the statement of needed care;
(ii) Emergency notification procedures; and
(iii) A copy of all signed agreements with the resident.
(3) Records may only be disclosed with the resident's permission, or when required by law.

(Approved by the Office of Management and Budget under control number 2900-0491)

(j) Staff requirements. (1) Sufficient, qualified staff must be on duty and available to care for the resident and ensure the health and safety of each resident.
(2) The community residential care provider and staff must have the following qualifications: Adequate education, training, or experience to maintain the facility.

(k) Cost of community residential care. (1) Payment for the charges of community residential care is not the responsibility of the United States Government or VA.
(2) The resident or an authorized personal representative and a representative of the community residential care facility must agree upon the charge and payment procedures for community residential care.
(3) The charges for community residential care must be reasonable:
(i) For residents in a community residential care facility as of June 14, 1989, the rates charged for care are pegged to the facility's basic rate for care as of July 31, 1987. Increases in the pegged rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year;
(ii) For community residential care facilities approved after July 31, 1987, the rates for care shall not exceed 110 percent of the average rate for approved facilities in that State as of March 31, 1987. Increases in this rate during any calendar year cannot exceed the annual percentage increase in the National Consumer Price Index (CPI) for that year.
(iii) The approving official may approve a deviation from the requirements of paragraphs (k)(3)(i) through (ii) of this section upon request from a community residential care facility representative, a resident in the facility, or an applicant for residency, if the approving official determines that the cost of care for the resident will be greater than the average cost of care for other residents, or if the resident chooses to pay more for the care provided at a facility which exceeds VA standards.
§ 17.64 Exceptions to standards in community residential care facilities.
(a) Facilities which have participated in VA's community residential care program prior to (the effective date of these regulations) may continue to be approved when the standard for § 17.63(c)(3) and/or § 17.63(e)(2) of this part are not met if:
(1) All standards other than § 17.63(c)(3) and/or § 17.63(e)(2) of this part are met;
(2) There is at least one functional toilet, lavatory, and bathing or shower facility for every eight people living in the facility, including provider and staff;
(3) The resident's bedrooms measure, exclusive of closet space, at least 80 square feet for a single-resident room, or 65 square feet for each resident in a multiresident room.
(b) Community residential care facilities which do not meet the requirements for continued approval because they do not comply with paragraphs (a)(2) or (a)(3) of this section may apply in writing to the Secretary of Veterans Affairs for an exception. The application must include a detailed description of the facility, including a description of the toilet, lavatory and bathing and shower facilities and/or resident's bedroom size, and an analysis of alternative solutions.

§ 17.65 Duration of approval.
(a) Approval may be valid for up to 24 months if VA finds that the facility complies with all standards during the current and all previous VA inspections and any necessary interim monitoring for a period of two years.
(b) Approval may be valid for up to 15 months if VA finds the facility has complied with all standards except the records standard set forth in § 17.51j(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.
(c) Approval may be valid for up to 12 months if the VA finds that the facility has complied with all standards except the laundry service standard set forth in § 17.63(d) and the records standard set forth in § 17.63(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.
(d) Approval may be valid for up to 9 months if the VA finds that the facility has complied with all standards except the laundry service standard set forth in § 17.63(d) of this part; the bedroom standard set forth in § 17.63(e) of this part; the activities standard set forth in § 17.63(g) of this part; and the records standard set forth in § 17.63(i) of this part during the current and all previous VA inspections and any necessary interim monitoring.

§ 17.66 Notice of noncompliance with VA standards.
If the hearing official determines that an approved community residential care facility does not comply with the standards set forth in § 17.63 of this part, the hearing official shall notify the community residential care facility in writing of:

(a) The standards which have not been met;
(b) The date by which the standards must be met in order to avoid revocation of VA approval;
(c) The community residential care facility's opportunity to request an oral or paper hearing under § 17.51n of this part before VA approval is revoked; and
(d) The date by which the hearing official must receive the community residential care facility's request for a hearing, which shall not be less than 10 calendar days and not more than 20 calendar days after the date of VA notice of noncompliance, unless the hearing official determines that noncompliance with the standards threatens the lives of community residential care residents in which case the hearing official must receive the community residential care facility's request for an oral or paper hearing within 36 hours of receipt of VA notice.


(38 U.S.C. 1730)

§ 17.67 Request for a hearing.
The community residential care facility operator must specify in writing whether an oral or paper hearing is requested. The request for the hearing must be sent to the hearing official. Timely receipt of a request for a hearing will stay the revocation of VA approval until the hearing official issues a written decision on the community residential care facility's compliance with VA standards. The hearing official may accept a request for a hearing received after the time limit, if the community residential care facility shows that the failure of the request to be received by the hearing official's office by the required date was due to circumstances beyond its control.

[54 FR 20842, May 15, 1989; redesignated at 61 FR 21964, 21965, May 13, 1996]

(38 U.S.C. 1730)

§ 17.68 Notice and conduct of hearing.
(a) Upon receipt of a request for an oral hearing, the hearing official shall:
(1) Notify the community residential care facility operator of the date, time, and location for the hearing; and
(2) Notify the community residential care facility operator that written statements and other evidence for the record may be submitted to the hearing official before the date of the hearing. An oral hearing shall be informal. The rules of evidence shall not be followed. Witnesses shall testify under oath or affirmation. A recording or transcript of every oral hearing shall be made. The hearing official may exclude irrelevant, immaterial, or unduly repetitious testimony.

(b) Upon the receipt of a community residential care facility's request for a paper hearing, the hearing official shall notify the community residential care facility operator that written statements and other evidence must be submitted to the hearing official by a specified date in order to be considered as part of the record.

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(c) In all hearings, the community residential care facility operator and VA may be represented by counsel.
[54 FR 20842, May 15, 1989; redesignated at 61 FR 21964, 21965, May 13, 1996]

(38 U.S.C. 1730)

§ 17.69 Waiver of opportunity for hearing.
If representatives of a community residential care facility which receive a notice of noncompliance under § 17.66 of this part fail to appear at an oral hearing of which they have been notified or fail to submit written statements for a paper hearing in accordance with § 17.68 of this part, unless the hearing official determines that their failure was due to circumstances beyond their control, the hearing official shall:
(a) Consider the representatives of the community residential care facility to have waived their opportunity for a hearing; and,
(b) Revoke VA approval of the community residential care facility and notify the community residential care facility of this revocation.

(38 U.S.C. 1730)

§ 17.70 Written decision following a hearing.
(a) The hearing official shall issue a written decision within 20 days of the completion of the hearing. An oral hearing shall be considered completed when the hearing ceases to receive in person testimony. A paper hearing shall be considered complete on the date by which written statements must be submitted to the hearing official in order to be considered as part of the record.
(b) The hearing official's determination of a community residential care facility's noncompliance with VA standards shall be based on the preponderance of the evidence.
(c) The written decision shall include:
(1) A statement of the facts;
(2) A determination whether the community residential care facility complies with the standards set forth in § 17.63 of this part; and
(3) A determination of the time period, if any, the community residential care facility shall have to remedy any noncompliance with VA standards before revocation of VA approval occurs.
(d) The hearing official's determination of any time period under paragraph (c)(3) of this section shall consider the safety and health of the residents of the community residential care facility and the length of time since the community residential care facility received notice of the noncompliance.
[54 FR 20842, May 15, 1989; redesignated at 61 FR 21964, 21965, 21967, May 13, 1996]

(38 U.S.C. 1730)

§ 17.71 Revocation of VA approval.
(a) If a hearing official determines under § 17.70 of this part that a community residential care facility does not comply with the standards set forth in § 17.63 of this part and determines that the community residential care facility shall not have further time to
remedy the noncompliance, the hearing official shall revoke approval of the community residential care facility and notify the community residential care facility of this revocation.

(b) Upon revocation of VA approval, VA health care personnel shall:
(1) Cease referring veterans to the community residential care facility; and,
(2) Notify any veteran residing in the community residential care facility of the facility's disapproval and request permission to assist in the veteran's removal from the facility. If a veteran has a person or entity authorized by law to give permission on behalf of the veteran, VA health care personnel shall notify that person or entity of the community residential care facility's disapproval and request permission to assist in removing the veteran from the community residential care facility.

(c) If the hearing official determines that a community residential care facility fails to comply with the standards set forth in § 17.63 of this part and determines that the community residential care facility shall have an additional time period to remedy the noncompliance, the hearing official shall review at the end of the time period the evidence of the community residential care facility's compliance with the standards which were to have been met by the end of that time period and determine if the community residential care facility complies with the standards. If the community residential care facility fails to comply with these or any other standards, the procedures set forth in §§ 17.66-17.71 of this part shall be followed.


(38 U.S.C. 1730)

§ 17.72 Availability of information.
VA standards will be made available to other Federal, State and local agencies charged with the responsibility of licensing, or otherwise regulating or inspecting community residential care facilities.

[54 FR 20842, May 15, 1989; redesignated at 61 FR 21964, 21965, May 13, 1996]

(38 U.S.C. 1730)
USE OF SERVICES OF OTHER FEDERAL AGENCIES

§ 17.80 Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.
§ 17.81 Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.
§ 17.82 Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.
§ 17.83 Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation.

§ 17.80 Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.

discussion and analysis in the veterans benefits manual
(a) Alcohol and drug dependence or abuse treatment and rehabilitation may be authorized by contract in nonresidential facilities and in residential facilities provided by halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities, when considered to be medically advantageous and cost effective for the following:
(1) Veterans who have been or are being furnished care by professional staff over which the Secretary has jurisdiction and such transitional care is reasonably necessary to continue treatment;
(2) Persons in the Armed Forces who, upon discharge therefrom will become eligible veterans, when duly referred with authorization for Department of Veterans Affairs medical center hospital care in preparation for treatment and rehabilitation in this program under the following limitations:
   (i) Such persons may be accepted by transfer only during the last 30 days of such person's enlistment or tour of duty,
   (ii) The person requests transfer in writing for treatment for a specified period of time during the last 30 days of such person's enlistment period or tour of duty,
   (iii) Treatment does not extend beyond the period of time specified in the request unless such person requests in writing an extension for a further specified period of time and such request is approved by the Department of Veterans Affairs Medical Center Director authorizing treatment and rehabilitation,
   (iv) Such care and treatment will be provided as if the person were a veteran, subject to reimbursement by the respective military service for the costs of hospital care and control treatment provided while the person is an active duty member.
   (b) The maximum period for one treatment episode is limited to 60 days. The Department of Veterans Affairs Medical Center Director may authorize one 30-day extension.
   (c) Any person who has been discharged or released from active military, naval or air service, and who, upon application for treatment and rehabilitative services under the authority of this section is determined to be legally ineligible for such treatment or rehabilitation services shall be:
   (1) Provided referral services to assist the person, to the maximum extent possible, in obtaining treatment and rehabilitation services from sources outside the Department of Veterans Affairs, not at Department of Veterans Affairs expense and,
(2) If pertinent, advised of the right to apply to the appropriate military, naval or air service and the Department of Veterans Affairs for review of such person's discharge or release from such service.

(38 U.S.C. 1720A)

§ 17.81 Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under § 17.80(a) may be awarded in accordance with applicable Department of Veterans Affairs and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the residents of the contractor's program, has been determined and then only to contractors, determined by the Under Secretary for Health or designee to meet the following requirements.

(1) Meet fire safety requirements as follows:

(i) The building must meet the requirements of the applicable residential occupancy chapters (1-7, 22-23, and 31) and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition) which are incorporated by reference. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

(ii) Where applicable, the home must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.

(iii) All Department of Veterans Affairs sponsored residents will be mentally and physically capable of leaving the building, unaided, in the event of an emergency. Halfway house, therapeutic community and other residential program management must agree that all the other residents in any building housing veterans will also have such capability.

(iv) There must be at least one staff member on duty 24 hours a day.

(v) Fire exit drills must be held at least quarterly. Residents must be instructed in evacuation procedures when the primary and/or secondary exits are blocked. A written fire plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff and residents in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(vi) A written policy regarding tobacco smoking in the facility shall be established and enforced.
(vii) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, Portable Fire Extinguishers, as guidance in selection and location requirements of extinguishers.
(viii) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:
(A) The fire alarm system shall be test operated at least semi-annually.
(B) All smoke detectors shall be test operated, by activation of the smoke detector, at least semi-annually.
(C) The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.
(D) All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.
(ix) An annual fire and safety inspection shall be conducted at the halfway house or residential facility by qualified Department of Veterans Affairs personnel. If a review of past Department of Veterans Affairs inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.
(2) Be in compliance with existing standards of State safety codes and local, and/or State health and sanitation codes.
(3) Be licensed under State or local authority.
(4) Where applicable, be accredited by the State.
(5) Comply with the requirements of the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part II) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 7332), which shall be part of the contract.
(6) Demonstrate an existing capability to furnish the following:
(i) A supervised alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.
(ii) Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.
(iii) Board and room.
(iv) Laundry facilities for residents to do their own laundry.
(v) Structured activities.
(vi) Appropriate group activities, including physical activities.
(vii) Health and personal hygiene maintenance.
(viii) Monitoring administration of medications.
(ix) Supportive social service.
(x) Individual counseling as appropriate.
(xi) Opportunities for learning/development of skills and habits which will enable Department of Veterans Affairs sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.
(xii) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).
(xiii) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and for upgrading skills and improving personal relationships.
(7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible.

(b) Representatives of the Department of Veterans Affairs will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Department of Veterans Affairs.

(c) All requirements in this rule, and Department of Veterans Affairs reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 7332), and will be made available on a need to know basis to appropriate Department of Veterans Affairs staff members involved with the treatment program of the veterans concerned.

(e) Contractors under this section shall provide reports of budget and case load experience upon request from a Department of Veterans Affairs official.


(38 U.S.C. 1720A)

§ 17.82 Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) Contracts for treatment services authorized under § 17.80 may be awarded in accordance with applicable Department of Veterans Affairs and Federal procurement procedures. Such contracts will be awarded only after the quality and effectiveness, including adequate protection for the safety of the participants of the contractor's program, has been determined and then only to contractors determined by the Under Secretary for Health or designee to be fully capable of meeting the following standards:

(1) The following minimum fire safety requirements must be met:

   (i) The building must meet the requirements of the applicable business occupancy chapters (1-7, 26-27, and 31) and Appendix A of the NFPA 101, National Fire Protection Association's Life Safety Code (1994 edition) which are incorporated by reference. Incorporation by reference of these materials was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, N.W., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.) Any equivalencies or variances to Department of Veterans Affairs requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Networks (VISN) Director.

   (ii) Where applicable, the facility must have a current occupancy permit issued by the local and state governments in the jurisdiction where the home is located.
(iii) All Department of Veterans Affairs sponsored patients will be mentally and physically capable of leaving the building, unaided, in the event of an emergency.

(iv) Fire exit drills must be held at least quarterly. A written plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff in the event of a fire emergency. This plan shall be implemented during fire exit drills.

(v) Portable fire extinguishers shall be installed at the facility. Use NFPA 10, Portable Fire Extinguishers, as guidance in selection and location requirements of extinguishers.

(vi) Requirements for fire protection equipment and systems shall be in accordance with NFPA 101. Where installed, maintenance and testing of these systems/equipment shall include the following:

- The fire alarm system shall be test operated at least semi-annually.
- All smoke detectors shall be test operated, by activation of the smoke detector, at least semi-annually.
- The monthly and annual inspections and the maintenance of the extinguishers shall be in accordance with NFPA 10.
- All fire protection systems and equipment, such as the fire alarm system, smoke detectors, and portable extinguishers, shall be inspected, tested and maintained in accordance with the applicable NFPA fire codes and the results documented.
- An annual fire and safety inspection shall be conducted at the facility by qualified Department of Veterans Affairs personnel. If a review of past Department of Veterans Affairs inspections or inspections made by the local authorities indicates that a fire and safety inspection would not be necessary, then the visit to the facility may be waived.

(2) Conform to existing standards of State safety codes and local and/or State health and sanitation codes.

(3) Be licensed under State or local authority.

(4) Where applicable, be accredited by the State.

(5) Comply with the requirements of the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 7332), which shall be part of the contract.

(6) Demonstrate an existing capability to furnish the following:

- A supervised, alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs.
- Staff sufficient in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility.
- Structured activities.
- Appropriate group activities.
- Monitoring medications.
- Supportive social service.
- Individual counseling as appropriate.
- Opportunities for learning/development of skills and habits which will enable Department of Veterans Affairs sponsored residents to adjust to and maintain freedom from dependence on or involvement with alcohol or drug abuse or dependence during or subsequent to leaving the facility.
- Support for the individual desire for sobriety (alcohol/drug abuse-free life style).
(x) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and to upgrade skills and improve personal relationships.

(7) Data normally maintained and included in a medical record as a function of compliance with State or community licensing standards will be accessible.

(b) Representatives of the Department of Veterans Affairs will inspect the facility prior to award of a contract to assure that prescribed requirements can be met. Inspections may also be carried out at such other times as deemed necessary by the Department of Veterans Affairs.

(c) All requirements in this rule and Department of Veterans Affairs reports of inspection of residential facilities furnishing treatment and rehabilitation services to eligible veterans shall, to the extent possible, be made available to all government agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

(d) An individual case record will be created for each client which shall be maintained in security and confidence as required by the "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR part 2) and the "Confidentiality of Certain Medical Records" (38 U.S.C. 7332), and will be made available on a need to know basis to appropriate Department of Veterans Affairs staff members involved with the treatment program of the veterans concerned.


(38 U.S.C. 1720A)

[EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "Under Secretary for Health" for "Chief Medical Director" in the introductory text of paragraph (a), effective April 9, 1997.]

§ 17.83 Limitations on payment for alcohol and drug dependence or abuse treatment and rehabilitation.

The authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation acts, and payments shall not exceed these amounts.


(Pub. L. 96-22, 38 U.S.C. 1720A)
RESEARCH-RELATED INJURIES

§ 17.85 Treatment of research-related injuries to human subjects.

§ 17.85 Treatment of research-related injuries to human subjects.
(a) VA medical facilities shall provide necessary medical treatment to a research subject injured as a result of participation in a research project approved by a VA Research and Development Committee and conducted under the supervision of one or more VA employees. This section does not apply to:
(1) Treatment for injuries due to noncompliance by a subject with study procedures, or
(2) Research conducted for VA under a contract with an individual or a non-VA institution.
Note to § 17.85(a)(1) and (a)(2): Veterans who are injured as a result of participation in such research may be eligible for care from VA under other provisions of this part.
(b) Except in the following situations, care for VA research subjects under this section shall be provided in VA medical facilities.
(1) If VA medical facilities are not capable of furnishing economical care or are not capable of furnishing the care or services required, VA medical facility directors shall contract for the needed care.
(2) If inpatient care must be provided to a non-veteran under this section, VA medical facility directors may contract for such care.
(3) If a research subject needs treatment in a medical emergency for a condition covered by this section, VA medical facility directors shall provide reasonable reimbursement for the emergency treatment in a non-VA facility.
(c) For purposes of this section, "VA employee" means any person appointed by VA as an officer or employee and acting within the scope of his or her appointment (VA appoints officers and employees under title 5 and title 38 of the United States Code).
(Authority: 38 U.S.C. 501, 7303)
[63 FR 11123, 11124, March 6, 1998]

[EFFECTIVE DATE NOTE: 63 FR 11123, 11124, March 6, 1998, added this section, effective April 6, 1998.]
§ 17.90 Medical care for veterans receiving vocational training under 38 U.S.C. chapter 15.

Hospital care, nursing home care and medical services may be provided to any veteran who is participating in a vocational training program under 38 U.S.C. chapter 15. (a) For purposes of determining eligibility for this medical benefit, the term participating in a vocational training program under 38 U.S.C. chapter 15 means the same as the term participating in a rehabilitation program under 38 U.S.C. chapter 31 as defined in § 17.47(j). Eligibility for such medical care will continue only while the veteran is participating in the vocational training program.

(38 U.S.C. 1524, 1525, 1516)

§ 17.91 Protection of health-care eligibility.

Any veteran whose entitlement to VA pension is terminated by reason of income from work or training shall, subject to paragraphs (a) and (b) of this section, retain for 3 years after the termination, the eligibility for hospital care, nursing home care and medical services (not including dental) which the veteran otherwise would have had if the pension had not been terminated as a result of the veteran's receipt of earnings from activity performed for remuneration or gain by the veteran but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.

(a) A veteran who participates in a vocational training program under 38 U.S.C. chapter 15 is eligible for the one-time 3 year retention of hospital care, nursing home care and medical services benefits at any time that the veteran's pension is terminated by reason of income from the veteran's employment.

(b) A veteran who does not participate in a vocational training program under 38 U.S.C. chapter 15 is eligible for the one-time 3 year retention of hospital care and medical services benefits only if the veteran's pension is terminated by reason of income from the veteran's employment during the period February 1, 1985 through January 31, 1989.

(38 U.S.C. 1524, 1525, 1516)
OUTPATIENT TREATMENT

§ 17.92 Outpatient care for research purposes.
§ 17.93 Eligibility for outpatient services.
§ 17.94 Outpatient medical services for military retirees and other beneficiaries.
§ 17.95 Outpatient medical services for Department of Veterans Affairs employees and others in emergencies.
§ 17.96 Medication prescribed by non-VA physicians.
§ 17.97 Prescriptions in Alaska, and territories and possessions.
§ 17.98 Mental health services.

§ 17.92 Outpatient care for research purposes.
Subject to the provisions of § 17.101, any person who is a bona fide volunteer may be furnished outpatient treatment when the treatment to be rendered is part of an approved Department of Veterans Affairs research project and there are insufficient veteran-patients suitable for the project.

§ 17.93 Eligibility for outpatient services.
(a) VA shall furnish on an ambulatory or outpatient basis medical services as are needed, to the following applicants under the conditions stated, except that applications for dental treatment must also meet the provisions of § 17.161.
(Authority: 38 U.S.C. 1712)
(1) For compensation and pension examinations. A compensation and pension examination shall be performed for any veteran who is directed to have such an examination by VA.
(Authority: 38 U.S.C. 111 and 501)
(2) For adjunct treatment. Subject to the provisions of §§ 17.36 through 17.38, medical services on an ambulatory or outpatient basis shall be provided to veterans for an adjunct nonservice-connected condition associated with and held to be aggravating a disability from a disease or injury adjudicated as being service-connected.
(b) The term "shall furnish" in this section and 38 U.S.C. 1712 (a)(1) and (a)(2) means that, if the veteran is in immediate need of outpatient medical services, VA shall furnish care at the VA facility where the veteran applies. If the needed medical services are not available there, VA shall arrange for care at the nearest VA medical facility or Department of Defense facility (with which VA has a sharing agreement) that can provide the needed care. If VA and Department of Defense facilities are not available, VA shall arrange for care on a fee basis, but only if the veteran is eligible to receive medical services in non-VA facilities under § 17.52.
If the veteran is not in immediate need of outpatient medical services, VA shall schedule the veteran for care where the veteran applied, if the schedule there permits, or refer the veteran for scheduling to the nearest VA medical center or Department of Defense facility (with which VA has a sharing agreement).
§ 17.94 Outpatient medical services for military retirees and other beneficiaries.
Outpatient medical services for military retirees and other beneficiaries for which charges shall be made as required by § 17.101, may be authorized for persons properly referred by authorized officials of other Federal agencies for which the Secretary of Veterans Affairs may agree to render such service under the conditions stipulated by the Secretary and pensioners of nations allied with the United States in World War I and World War II when duly authorized.

§ 17.95 Outpatient medical services for Department of Veterans Affairs employees and others in emergencies.
Outpatient medical services for which charges shall be made as required by § 17.101 may be authorized for employees of the Department of Veterans Affairs, their families, and the general public in emergencies, subject to conditions stipulated by the Secretary of Veterans Affairs.

§ 17.96 Medication prescribed by non-VA physicians.
(a) General. VA may not furnish a veteran with medication prescribed by a duly licensed physician who is not an employee of the VA or is not providing care to the veteran under a contract with the VA, except as provided in paragraphs (b) through (i) of this section.
(b) Medication furnished prior to an initial primary care appointment. Beginning on September 22, 2003, VA may furnish medication prescribed by a non-VA physician for a veteran enrolled under § 17.36 of this part prior to July 25, 2003, who had prior to July 25, 2003, requested an initial appointment for primary care in a VA health care facility,
and the next available appointment date was more than 30 days from the date of the request.

(c) Quantity of medication. VA may furnish a quantity of medication under paragraph (b) of this section that is sufficient to appropriately meet the treatment needs of the veteran until the date of the veteran's initial appointment for primary care in a VA health care facility.

(d) Appointment cancellation. If VA reschedules a veteran eligible under paragraph (b) for an initial appointment for primary care in a VA health care facility, or if such a veteran reschedules the appointment for good cause, as determined by the local VA treatment facility, VA may furnish the eligible veteran with a quantity of medication under paragraph (b) of this section that is sufficient to appropriately meet the treatment needs of the veteran until the date of the veteran's rescheduled appointment for primary care in a VA health care facility.

(e) Written prescription and information requirements. VA may furnish medication under paragraph (b) of this section only if the veteran provides VA with a written prescription for the medication signed by a duly licensed physician within the previous 90 days.

(1) The veteran must furnish the following information:

(i) Name;
(ii) Date of Birth;
(iii) Social Security Number;
(iv) Home address;
(v) Phone number (with area code);
(vi) Name of Health Insurance Company and Health Insurance Policy Number;
(vii) List of any allergies;
(viii) History of any adverse reaction to any medication;
(ix) List of current medications, including over-the-counter medications or herbal supplements; and
(x) Indication of whether the VA pharmacist may call a non-VA physician for information regarding medications.

(2) The non-VA physician must furnish the following information:

(i) Name;
(ii) Group practice name;
(iii) Social Security Number or Tax ID number;
(iv) License Number;
(v) Office address;
(vi) Phone number and fax number; and
(vii) E-mail address.

(f) Medications that may be furnished. VA may furnish medication under paragraph (b) of this section only if the medication:

(1) Must be dispensed by prescription;
(2) Is not an over-the-counter medication;
(3) Is not listed as a controlled substance under schedule I through V of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. 812;
(4) Is included on VA's National Formulary, unless VA determines a non-Formulary medication is medically necessary; and
(5) Is not an acute medication, an intravenous medication nor one required to be administered only by a medical professional.

(g) Copayments. Copayment provisions in § 17.110 of this part apply to medication furnished under paragraph (b) of this section.

(h) Mailing of Medications. VA may furnish medication under paragraph (b) of this section only by having the medication mailed to the veteran.

(i) Medications for veterans receiving increased compensation or pension. Any prescription, which is not part of authorized Department of Veterans Affairs hospital or outpatient care, for drugs and medicines ordered by a private or non-Department of Veterans Affairs doctor of medicine or doctor of osteopathy duly licensed to practice in the jurisdiction where the prescription is written, shall be filled by a Department of Veterans Affairs pharmacy or a non-VA pharmacy in a state home under contract with VA for filling prescriptions for patients in state homes, provided:

(1) The prescription is for:

(i) A veteran who by reason of being permanently housebound or in need of regular aid and attendance is in receipt of increased compensation under 38 U.S.C. chapter 11, or increased pension under section 3.1(u) (Section 306 Pension) or section 3.1(w) (Improved Pension), of this title, as a veteran of the Mexican Border Period, World War I, World War II, the Korean Conflict, or the Vietnam Era (or, although eligible for such pension, is in receipt of compensation as the greater benefit), or

(ii) A veteran in need of regular aid and attendance who was formerly in receipt of increased pension as described in paragraph (a)(1) of this section whose pension has been discontinued solely by reason of excess income, but only so long as such veteran's annual income does not exceed the maximum annual income limitation by more than $1,000, and

(2) The drugs and medicines are prescribed as specific therapy in the treatment of any of the veteran's illnesses or injuries.

§ 17.97 Prescriptions in Alaska, and territories and possessions.
In Alaska and territories and possessions, where there are no Department of Veterans Affairs pharmacies, the expenses of any prescriptions filled by a private pharmacist which otherwise could have been filled by a Department of Veterans Affairs pharmacy under 38 U.S.C. 1712(h), may be reimbursed.

§ 17.98 Mental health services.
(a) Following the death of a veteran, bereavement counseling involving services defined in 38 U.S.C. 1701(6)(B) of this part, may be furnished to persons who were receiving mental health services in connection with treatment of the veteran under 38 U.S.C. 1710, 1712, 1712A, 1713, or 1717, or 38 CFR 17.84 of this part, prior to the veteran's death, but may only be furnished in instances where the veteran's death had been unexpected or occurred while the veteran was participating in a VA hospice or similar program. Bereavement counseling may be provided only to assist individuals with the emotional and psychological stress accompanying the veteran's death, and only for a limited period of time, as determined by the Medical Center Director, but not to exceed 60 days. The Medical Center Director may approve a longer period of time when medically indicated.

(b) For purposes of paragraph (a) of this section, an unexpected death is one which occurs when in the course of an illness the provider of care did not or could not have anticipated the timing of the death. Ordinarily, the provider of care can anticipate the patient's death and can inform the patient and family of the immediacy and certainty of death. If that has not taken place, a death can be described as unexpected.

[53 FR 7186, March 7, 1988; redesignated and amended at 61 FR 21964, 21965, 21967, May 13, 1996]

(38 U.S.C. 1701(6)(B))

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BREAKING APPOINTMENTS

§ 17.100 Refusal of treatment by unnecessarily breaking appointments.

§ 17.100 Refusal of treatment by unnecessarily breaking appointments.

A patient under medical treatment who breaks an appointment without a reasonable excuse will be informed that breaking an additional appointment will be deemed to be a refusal to accept VA treatment. If such a patient fails to keep a second appointment, without at least 24 hours notice, such action will be deemed as a refusal to accept VA treatment. Thereafter, no further treatment will be furnished until the veteran has agreed to cooperate by keeping appointments. Treatment will not be discontinued until the treating physician has reviewed the treatment files, concurred in the action and signed a statement to this effect in the record. Consideration will be given to the veteran's ability to make a rational decision concerning the need for medical care and/or examination. The veteran will be advised of the final decision. Nothing in this section will be construed to prevent treatment for an emergent condition that may arise during or subsequent to this action. Where an appointment is broken without notice and satisfactory reasons are advanced for breaking the appointment and circumstances were such that notice could not be given, the patient will not be deemed to have refused treatment.


(38 U.S.C. 7304)

[EFFECTIVE DATE NOTE: 64 FR 54207, 54218, Oct. 6, 1999, amended the third sentence, effective Nov. 5, 1999.]
CHARGES, WAIVERS, AND COLLECTIONS

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

§ 17.102 Charges for care or services.

§ 17.103 Referrals of compromise settlement offers.

§ 17.104 Terminations and suspensions.

§ 17.105 Waivers.

§ 17.101 Collection or recovery by VA for medical care or services provided or furnished to a veteran for a nonservice-connected disability.

Discussion and Analysis in the Veterans Benefits Manual

(a)(1) General. This section covers collection or recovery by VA, under 38 U.S.C. 1729, for medical care or services provided or furnished to a veteran:

(i) For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;

(ii) For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or

(iii) For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

(2) Methodologies. Based on the methodologies set forth in this section, the charges billed will include the following types of charges, as appropriate: Acute inpatient facility charges; skilled nursing facility/sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. In addition, the charges billed for prescription drugs not administered during treatment will be based on VA costs in accordance with the methodology set forth in § 17.102. Data for calculating actual charge amounts based on the methodologies set forth in this section will either be published in a notice in the Federal Register or will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at http://www.va.gov/cbo, under "Charge Data." For care for which VA has established a charge, VA will bill using its most recent published or posted charge. For care for which VA has not established a charge, VA will bill according to the methodology set forth in paragraph (a)(8) of this section.

(3) Data sources. In this section, data sources are identified by name. The specific editions of these data sources used to calculate actual charge amounts, and information on where these data sources may be obtained, will be presented along with the data for calculating actual charge amounts, either in notices in the Federal Register or on the Internet site of the Veterans Health Administration Chief Business Office, currently at http://www.va.gov/cbo, under "Charge Data."

(4) Amount of recovery or collection-third party liability. A third-party payer liable under a health plan contract has the option of paying either the billed charges described in this
section or the amount the health plan demonstrates is the amount it would pay for care or services furnished by providers other than entities of the United States for the same care or services in the same geographic area. If the amount submitted by the health plan for payment is less than the amount billed, VA will accept the submission as payment, subject to verification at VA's discretion in accordance with this section. A VA employee having responsibility for collection of such charges may request that the third party health plan submit evidence or information to substantiate the appropriateness of the payment amount (e.g., health plan or insurance policies, provider agreements, medical evidence, proof of payment to other providers in the same geographic area for the same care and services VA provided).

(5) Definitions. For purposes of this section:

APC means Medicare Ambulatory Payment Classification.

CMS means the Centers for Medicare and Medicaid Services.

CPI-U means Consumer Price Index—All Urban Consumers.

CPT code and CPT procedure code mean Current Procedural Terminology code, a five-digit identifier defined by the American Medical Association for a specified physician service or procedure.

DME means Durable Medical Equipment.

DRG means Diagnosis Related Group.

Geographic area means a three-digit ZIP Code area, where three-digit ZIP Codes are the first three digits of standard U.S. Postal Service ZIP Codes.

HCPCS code means a Healthcare Common Procedure Coding System Level II identifier, consisting of a letter followed by four digits, defined by CMS for a specified physician service, procedure, test, supply, or other medical service.

ICU means Intensive Care Unit, including coronary care units.

MDR means Medical Data Research, a medical charge database published by Ingenix, Inc.

MedPAR means the Medicare Provider Analysis and Review file.

Non-provider-based means a VA health care entity (such as a small VA community-based outpatient clinic) that functions as the equivalent of a doctor's office or for other reasons does not meet CMS provider-based criteria, and, therefore, is not entitled to bill outpatient facility charges.

Provider-based means the outpatient department of a VA hospital or any other VA health care entity that meets CMS provider-based criteria. Provider-based entities are entitled to bill outpatient facility charges.

RBRVS means Resource-Based Relative Value Scale.

RVU means Relative Value Unit.

Unlisted procedures mean procedures, services, items, and supplies that have not been defined or specified by the American Medical Association or CMS, and the CPT and HCPCS codes used to report such procedures, services, items, and supplies.

(6) Provider-based and non-provider-based entities and charges. Each VA health care entity (medical center, hospital, community-based outpatient clinic, independent outpatient clinic, etc.) is designated as either provider-based or non-provider-based. Provider-based entities are entitled to bill outpatient facility charges; non-provider-based entities are not. The charges for physician and other professional services provided at non-provider-based entities will be billed as professional charges only. Professional
charges for both provider-based entities and non-provider-based entities are produced by
the methodologies set forth in this section, with professional charges for provider-based
entities based on facility practice expense RVUs, and professional charges for
non-provider-based entities based on non-facility practice expense RVUs.
(7) Charges for medical care or services provided by non-VA providers at VA expense.
When medical care or services are furnished at the expense of the VA by non-VA
providers, the charges billed for such care or services will be the higher of the charges
determined according to this section, or the amount VA paid to the non-VA provider.
(8) Charges for medical care or services for which VA does not have an established
charge. When medical care or services are provided or furnished at VA expense by either
VA or non-VA providers, and VA does not have an established charge for such care or
services, then the charges billed for such care or services will be according to the first of
the following subparagraphs that applies:
(i) In the event that a new identifier (DRG, CPT code, or HCPCS code) is assigned to a
particular type or item of medical care or service, then until such time as VA establishes a
charge for the new identifier, VA's charge for such care or service will be VA's most
recent established charge for the identifier previously assigned to that type or item of
medical care or service; otherwise,
(ii) In the event that the medical care or service is provided or furnished at VA expense
by a non-VA provider, then VA's charge for such care or service will be the amount VA
paid to the non-VA provider; otherwise,
(iii) VA's charges for prosthetic devices and durable medical equipment will be VA's
actual cost; otherwise,
(iv) If a Medicare allowed charge amount can be determined for the care or service, then
VA's charge will be the Medicare participating provider allowed charge amount
geo graphically adjusted using the applicable geographic area adjustment factors
determined pursuant to this section; otherwise,
(v) If a charge cannot be established under paragraphs (a)(8)(i) through (iv) of this
section, then VA will not charge for the care or service under this section.
(b) Acute inpatient facility charges. When VA provides or furnishes acute inpatient
services within the scope of care referred to in paragraph (a)(1) of this section, acute
inpatient facility charges billed for such services will be determined in accordance with
the provisions of this paragraph. Acute inpatient facility charges consist of per diem
charges for room and board and for ancillary services that vary by geographic area and by
DRG. These charges are calculated as follows:
(1) Formula. For each acute inpatient stay, or portion thereof, for which a particular DRG
assignment applies, the total acute inpatient facility charge is the sum of the applicable
charges determined pursuant to paragraphs (b)(1)(i), (ii), and (iii) of this section. For
purposes of this section, standard room and board days and ICU room and board days are
mutually exclusive: VA will bill either a standard room and board per diem charge or an
ICU room and board per diem charge, as applicable, for each day of a given acute
inpatient stay.
(i) Standard room and board charges. Multiply the nationwide standard room and board
per diem charge determined pursuant to paragraph (b)(2) of this section by the
appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of
this section. The result constitutes the area-specific standard room and board per diem

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charge. Multiply this amount by the number of days for which standard room and board charges apply to obtain the total acute inpatient facility standard room and board charge.

(ii) ICU room and board charges. Multiply the nationwide ICU room and board per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ICU room and board per diem charge. Multiply this amount by the number of days for which ICU room and board per diem charges apply to obtain the total acute inpatient facility ICU room and board charge.

(iii) Ancillary charges. Multiply the nationwide ancillary per diem charge determined pursuant to paragraph (b)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (b)(3) of this section. The result constitutes the area-specific ancillary per diem charge. Multiply this amount by the number of days of acute inpatient care to obtain the total acute inpatient facility ancillary charge.

Note to paragraph (b)(1): If there is a change in a patient's condition and/or treatment during a single acute inpatient stay such that the DRG assignment changes (for example, a psychiatric patient who develops a medical or surgical problem), then calculations of acute inpatient facility charges will be made separately for each DRG, according to the number of days of care applicable for each DRG, and the total acute inpatient facility charge will be the sum of the total acute inpatient facility charges for the different DRGs.

(2) Per diem charges. To establish a baseline, two nationwide average per diem amounts for each DRG are calculated, one from the MedPAR file and one from the MedStat claims database, a database of nationwide commercial insurance claims. Average per diem charges are calculated based on all available charges, except for care reported for emergency room, ambulance, professional, and observation care. These two data sources may report charges for two differing periods of time; when this occurs, the data source charges with the earlier center date are trended forward to the center date of the other data source, based on changes to the inpatient hospital services component of the CPI-U. Results obtained from these two data sources are then combined into a single weighted average per diem charge for each DRG. The resulting charge for each DRG is then separated into its two components, a room and board component and an ancillary component, with the per diem charge for each component calculated by multiplying the weighted average per diem charge by the corresponding percentage determined pursuant to paragraph (b)(2)(i) of this section. The room and board per diem charge is further differentiated into a standard room and board per diem charge and an ICU room and board per diem charge by multiplying the average room and board charge by the corresponding DRG-specific ratios determined pursuant to paragraph (b)(2)(ii) of this section. The resulting per diem charges for standard room and board, ICU room and board, and ancillary services for each DRG are then each multiplied by the final ratio determined pursuant to paragraph (b)(2)(iii) of this section to reflect the nationwide 80th percentile charges. Finally, the resulting amounts are each trended forward from the center date of the trended data sources to the effective time period for the charges, as set forth in paragraph (b)(2)(iv) of this section. The results constitute the nationwide 80th percentile standard room and board, ICU room and board, and ancillary per diem charges.

(i) Room and board charge and ancillary charge component percentages. Using only those cases from the MedPAR file for which a distinction between room and board charges and ancillary charges can be determined, the percentage of the total charges for
room and board compared to the combined total charges for room and board and ancillary services, and the percentage of the total charges for ancillary services compared to the combined total charges for room and board and ancillary services, are calculated by DRG.

(ii) Standard room and board per diem charge and ICU room and board per diem charge ratios. Using only those cases from the MedPAR file for which a distinction between room and board and ancillary charges can be determined, overall average per diem room and board charges are calculated by DRG. Then, using the same cases, an average standard room and board per diem charge is calculated by dividing total non-ICU room and board charges by total non-ICU room and board days. Similarly, an average ICU room and board per diem charge is calculated by dividing total ICU room and board charges by total ICU room and board days. Finally, ratios of standard room and board per diem charges to average overall room and board per diem charges are calculated by DRG, as are ratios of ICU room and board per diem charges to average overall room and board per diem charges.

(iii) 80th percentile. Using cases from the MedPAR file with separately identifiable semi-private room rates, the ratio of the day-weighted 80th percentile semi-private room and board per diem charge to the average semi-private room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain a final 80th percentile ratio.

(iv) Trending forward. 80th percentile charges for each DRG, obtained as described in paragraph (b)(2) of this section, are trended forward based on changes to the inpatient hospital services component of the CPI-U. Actual CPI-U changes are used from the center date of the trended data sources through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges.

(3) Geographic area adjustment factors. For each geographic area, the average per diem room and board charges and ancillary charges from the MedPAR file are calculated for each DRG. The DRGs are separated into two groups, surgical and non-surgical. For each of these groups of DRGs, for each geographic area, average room and board per diem charges and ancillary per diem charges are calculated, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. This results in four average per diem charges for each geographic area: room and board for surgical DRGs, ancillary for surgical DRGs, room and board for non-surgical DRGs, and ancillary for non-surgical DRGs. Four corresponding national average per diem charges are obtained from the MedPAR file, weighted by nationwide VA discharges and by average lengths of stay from the combined MedPAR file and MedStat claims database. Four geographic area adjustment factors are then calculated for each geographic area by dividing each geographic area average per diem charge by the corresponding national average per diem charge.

(c) Skilled nursing facility/sub-acute inpatient facility charges. When VA provides or furnishes skilled nursing/sub-acute inpatient services within the scope of care referred to in paragraph (a)(1) of this section, skilled nursing facility/sub-acute inpatient facility charges billed for such services will be determined in accordance with the provisions of
this paragraph. The skilled nursing facility/sub-acute inpatient facility charges are per diem charges that vary by geographic area. The facility charges cover care, including room and board, nursing care, pharmaceuticals, supplies, and skilled rehabilitation services (e.g., physical therapy, inhalation therapy, occupational therapy, and speech-language pathology), that is provided in a nursing home or hospital inpatient setting, is provided under a physician's orders, and is performed by or under the general supervision of professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech-language pathologists, and audiologists. These charges are calculated as follows:

(1) Formula. For each stay, multiply the nationwide per diem charge determined pursuant to paragraph (c)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (c)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total skilled nursing facility/sub-acute inpatient facility charge.

(2) Per diem charge. To establish a baseline, a nationwide average per diem billed charge is calculated based on charges reported in the MedPAR skilled nursing facility file. For this purpose, the following MedPAR charge categories are included: room and board (private, semi-private, and ward), physical therapy, occupational therapy, inhalation therapy, speech-language pathology, pharmacy, medical/surgical supplies, and "other" services. The following MedPAR charge categories are excluded from the calculation of the per diem charge and will be billed separately, using the charges determined as set forth in other applicable paragraphs of this section, when these services are provided to skilled nursing patients or sub-acute inpatients: ICU and CCU room and board, laboratory, radiology, cardiology, dialysis, operating room, blood and blood administration, ambulance, MRI, anesthesia, durable medical equipment, emergency room, clinic, outpatient, professional, lithotripsy, and organ acquisition services. The resulting average per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (c)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (c)(2)(ii) of this section.

(i) 80th percentile adjustment factor. Using the MedPAR skilled nursing facility file, the ratio of the day-weighted 80th percentile room and board per diem charge to the day-weighted average room and board per diem charge is obtained for each geographic area. The geographic area-based ratios are averaged to obtain the 80th percentile adjustment factor.

(ii) Trending forward. The 80th percentile charge is trended forward based on changes to the inpatient hospital services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charge.

(3) Geographic area adjustment factors. The average billed per diem charge for each geographic area is calculated from the MedPAR skilled nursing facility file. This amount
is divided by the nationwide average billed charge calculated in paragraph (c)(2) of this section. The geographic area adjustment factor for charges for each VA facility is the ratio for the geographic area in which the facility is located.

(d) Partial hospitalization facility charges. When VA provides or furnishes partial hospitalization services that are within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such services will be determined in accordance with the provisions of this paragraph. Partial hospitalization facility charges are per diem charges that vary by geographic area. These charges are calculated as follows:

(1) Formula. For each partial hospitalization stay, multiply the nationwide per diem charge determined pursuant to paragraph (d)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (d)(3) of this section. The result constitutes the area-specific per diem charge. Finally, multiply the area-specific per diem charge by the number of days of care to obtain the total partial hospitalization facility charge.

(2) Per diem charge. To establish a baseline, a nationwide median per diem billed charge is calculated based on charges associated with partial hospitalization from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. That median per diem billed charge is then multiplied by the 80th percentile adjustment factor determined pursuant to paragraph (d)(2)(i) of this section to obtain a nationwide 80th percentile charge level. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (d)(2)(ii) of this section.

(i) 80th percentile adjustment factor. The 80th percentile adjustment factor for partial hospitalization facility charges is the same as that computed for skilled nursing facility/sub-acute inpatient facility charges under paragraph (c)(2)(i) of this section.

(ii) Trending forward. The 80th percentile charge is trended forward based on changes to the outpatient hospital services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges, as described in paragraph (d)(2) of this section.

(3) Geographic area adjustment factors. The geographic area adjustment factors for partial hospitalization facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(e) Outpatient facility charges. When VA provides or furnishes outpatient facility services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for outpatient facility services vary by geographic area and by CPT/HCPCS code. These charges apply in the situations set forth in paragraph (e)(1) of this section and are calculated as set forth in paragraph (e)(2) of this section.

(1) Settings and circumstances in which outpatient facility charges apply. Outpatient facility charges consist of facility charges for procedures, diagnostic tests, evaluation and management services, and other medical services, items, and supplies provided in the following settings and circumstances:

(i) Outpatient departments and clinics at VA medical centers;
(ii) Other VA provider-based entities; and
(iii) VA non-provider-based entities, for procedures and tests for which no corresponding
professional charge is established under the provisions of paragraph (f) of this section.

(2) Formula. For each outpatient facility charge CPT/HCPCS code, multiply the
nationwide 80th percentile charge determined pursuant to paragraph (e)(3) of this section
by the appropriate geographic area adjustment factor determined pursuant to paragraph
(e)(4) of this section. The result constitutes the area-specific outpatient facility charge.

When multiple surgical procedures are performed during the same outpatient encounter
by a provider or provider team, the outpatient facility charges for such procedures will be
reduced as set forth in paragraph (e)(5) of this section.

(3) Nationwide 80th percentile charges by CPT/HCPCS code. For each CPT/HCPCS
code for which outpatient facility charges apply, the nationwide 80th percentile charge is
calculated as set forth in either paragraph (e)(3)(i) or (e)(3)(ii) of this section. The
resulting amount is trended forward to the effective time period for the charges, as set
forth in paragraph (e)(3)(iii) of this section. The results constitute the nationwide 80th
percentile outpatient facility charges by CPT/HCPCS code.

(i) Nationwide 80th percentile charges for CPT/HCPCS codes which have APC
assignments. Using the outpatient facility charges reported in the outpatient facility
component of the Medicare Standard Analytical File 5 percent Sample, claim records are
selected for which all charges can be assigned to an APC. Using this subset of the 5
percent Sample data, nationwide median charge to Medicare APC payment amount ratios,
by APC, and nationwide 80th percentile to median charge ratios, by APC, are computed
according to the methodology set forth in paragraphs (e)(3)(i)(A) and (e)(3)(i)(B) of this
section, respectively. The product of these two ratios by APC is then computed, resulting
in a composite nationwide 80th percentile charge to Medicare APC payment amount ratio.
This ratio is then compared to the alternate nationwide 80th percentile charge to
Medicare APC payment amount ratio computed in paragraph (e)(3)(i)(C) of this section,
and the lesser amount is selected and multiplied by the current Medicare APC payment
amount. The resulting product is the APC-specific nationwide 80th percentile charge
amount for each applicable CPT/HCPCS code.

(A) Nationwide median charge to Medicare APC payment amount ratios. For each
CPT/HCPCS code, the ratio of median billed charge to Medicare APC payment amount
is determined. The weighted average of these ratios for each APC is then obtained, using
the reported 5 percent Sample frequencies as weights. In addition, corresponding ratios
are calculated for each of the APC categories set forth in paragraph (e)(3)(i)(D) of this
section, again using the reported 5 percent Sample frequencies as weights. For APCs
where the 5 percent Sample frequencies provide a statistically credible result, the
APC-specific weighted average nationwide median charge to Medicare APC payment
amount ratio so obtained is accepted without further adjustment. However, if the 5
percent Sample data do not produce statistically credible results for any specific APC,
then the APC category-specific ratio is applied for that APC.

(B) Nationwide 80th percentile to median charge ratios. For each CPT/HCPCS code, a
geographically normalized nationwide 80th percentile billed charge amount is divided by
a similarly normalized nationwide median billed charge amount. The weighted average of
these ratios for each APC is then obtained, using the reported 5 percent Sample
frequencies as weights. In addition, corresponding ratios are calculated for each of the
APC categories set forth in paragraph (e)(3)(i)(D) of this section, again using the reported 5 percent Sample frequencies as weights. For APCs where the 5 percent Sample frequencies provide a statistically credible result, the APC-specific weighted average nationwide 80th percentile to median charge ratio so obtained is accepted without further adjustment. However, if the 5 percent Sample data do not produce statistically credible results for any specific APC, then the APC category-specific ratio is applied for that APC.

(C) Alternate nationwide 80th percentile charge to Medicare APC payment amount ratios. A minimum 80th percentile charge to Medicare APC payment amount ratio is set at 2.0 for APCs with Medicare APC payment amounts of $25 or less. A maximum 80th percentile charge to Medicare APC payment amount ratio is set at 6.5 for APCs with Medicare APC payment amounts of $10,000 or more. Using linear interpolation with these endpoints, the alternate APC-specific nationwide 80th percentile charge to Medicare APC payment amount ratio is then computed, based on the Medicare APC payment amount.

(D) APC categories for the purpose of establishing 80th percentile to median factors. For the purpose of the statistical methodology set forth in paragraph (e)(3)(i) of this section, APCs are assigned to the following APC categories:

(1) Radiology.
(2) Drugs.
(3) Office, Home, and Urgent Care Visits.
(4) Cardiovascular.
(5) Emergency Room Visits.
(6) Outpatient Psychiatry, Alcohol and Drug Abuse.
(7) Pathology.
(8) Surgery.
(9) Allergy Immunotherapy, Allergy Testing, Immunizations, and Therapeutic Injections.
(10) All APCs not assigned to any of the above groups.

(ii) Nationwide 80th percentile charges for CPT/HCPCS codes which do not have APC assignments. Nationwide 80th percentile billed charge levels by CPT/HCPCS code are computed from the outpatient facility component of the MDR database, from the MedStat claims database, and from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. If the MDR database contains sufficient data to provide a statistically credible 80th percentile charge, then that result is retained for this purpose. If the MDR database does not provide a statistically credible 80th percentile charge, then the result from the MedStat database is retained for this purpose, provided it is statistically credible. If neither the MDR nor the MedStat databases provide statistically credible results, then the nationwide 80th percentile billed charge computed from the 5 percent Sample data is retained for this purpose. The nationwide 80th percentile charges retained from each of these data sources are trended forward to the effective time period for the charges, as set forth in paragraph (e)(3)(iii) of this section.

(iii) Trending forward. The charges for each CPT/HCPCS code, obtained as described in paragraph (e)(3) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month
is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges, as described in paragraph (e)(3) of this section.

(4) Geographic area adjustment factors. For each geographic area, a single adjustment factor is calculated as the arithmetic average of the outpatient geographic area adjustment factor published in the Milliman USA, Inc., Health Cost Guidelines (this factor constitutes the ratio of the level of charges for each geographic area to the nationwide level of charges), and a geographic area adjustment factor developed from the MDR database (see paragraph (a)(3) of this section for Data Sources). The MDR-based geographic area adjustment factors are calculated as the ratio of the CPT/HCPCS code weighted average charge level for each geographic area to the nationwide CPT/HCPCS code weighted average charge level.

(5) Multiple surgical procedures. When multiple surgical procedures are performed during the same outpatient encounter by a provider or provider team as indicated by multiple surgical CPT/HCPCS procedure codes, then the CPT/HCPCS procedure code with the highest facility charge will be billed at 100 percent of the charges established under this section; the CPT/HCPCS procedure code with the second highest facility charge will be billed at 25 percent of the charges established under this section; the CPT/HCPCS procedure code with the third highest facility charge will be billed at 15 percent of the charges established under this section; and no outpatient facility charges will be billed for any additional surgical procedures.

(f) Physician and other professional charges except for anesthesia services and certain dental services. When VA provides or furnishes physician and other professional services, other than professional anesthesia services and certain professional dental services, within the scope of care referred to in paragraph (a)(1) of this section, physician and other professional charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional dental services identified by CPT code are determined in accordance with the provisions of this paragraph; charges for professional dental services identified by HCPCS Level II code are determined in accordance with the provisions of paragraph (h) of this section. Physician and other professional charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code, by site of service, and by modifier, where applicable. These charges are calculated as follows:

(1) Formula. For each CPT/HCPCS code or, where applicable, each CPT/HCPCS code and modifier combination, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (f)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (f)(3) of this section to obtain the physician charge for each CPT/HCPCS code in a particular geographic area. Then, multiply this charge by the appropriate factors for any charge-significant modifiers, determined pursuant to paragraph (f)(4) of this section.

(2)(i) Total geographically-adjusted RVUs for physician services that have Medicare RVUs. The work expense and practice expense RVUs for CPT/HCPCS codes, other than the codes described in paragraphs (f)(2)(ii) and (f)(2)(iii) of this section, are compiled using Medicare Physician Fee Schedule RVUs. The sum of the geographically-adjusted work expense RVUs determined pursuant to paragraph (f)(2)(i)(A) of this section and the
geographically-adjusted practice expense RVUs determined pursuant to paragraph (f)(2)(i)(B) of this section equals the total geographically-adjusted RVUs.

(A) Geographically-adjusted work expense RVUs. For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule work expense RVUs are multiplied by the work expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted work expense RVUs.

(B) Geographically-adjusted practice expense RVUs. For each CPT/HCPCS code for each geographic area, the Medicare Physician Fee Schedule practice expense RVUs are multiplied by the practice expense Medicare Geographic Practice Cost Index. The result constitutes the geographically-adjusted practice expense RVUs. In these calculations, facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by provider-based entities, and non-facility practice expense RVUs are used to obtain geographically-adjusted practice expense RVUs for use by non-provider-based entities.

(ii) RVUs for CPT/HCPCS codes that do not have Medicare RVUs and are not designated as unlisted procedures. For CPT/HCPCS codes that are not assigned RVUs in paragraphs (f)(2)(i) or (f)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5 percent Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases and dividing by the untrended nationwide conversion factor for the corresponding CPT/HCPCS code group determined pursuant to paragraphs (f)(3) and (f)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) RVUs for CPT/HCPCS codes designated as unlisted procedures. For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (f)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures. The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each
geographic area using charge data for representative CPT/HCPCS codes statistically
selected and weighted for work expense and practice expense.
(3) Geographically-adjusted 80th percentile conversion factors. CPT/HCPCS codes are
separated into the following 23 CPT/HCPCS code groups: allergy immunotherapy,
allergy testing, cardiovascular, chiropractor, consults, emergency room visits and
observation care, hearing/speech exams, immunizations, inpatient visits,
maternity/cesarean deliveries, maternity/non-deliveries, maternity/normal deliveries,
miscellaneous medical, office/home/urgent care visits, outpatient psychiatry/alcohol and
drug abuse, pathology, physical exams, physical medicine, radiology, surgery,
therapeutic injections, vision exams, and well baby exams. For each of the 23
CPT/HCPCS code groups, representative CPT/HCPCS codes are statistically selected and
weighted so as to give a weighted average RVU comparable to the weighted average
RVU of the entire CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth
in the Milliman USA, Inc., Health Cost Guidelines fee survey); see paragraph (a)(3) of
this section for Data Sources. The 80th percentile charge for each selected CPT/HCPCS
code is obtained from the MDR database. A nationwide conversion factor (a monetary
amount) is calculated for each CPT/HCPCS code group as set forth in paragraph (f)(3)(i)
of this section. The nationwide conversion factors for each of the 23 CPT/HCPCS code
groups are trended forward to the effective time period for the charges, as set forth in
paragraph (f)(3)(ii) of this section. The resulting amounts for each of the 23 groups are
multiplied by geographic area adjustment factors determined pursuant to paragraph
(f)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion
factors for each geographic area for the 23 CPT/HCPCS code groups for the effective
charge period.
(i) Nationwide conversion factors. Using the nationwide 80th percentile charges for the
selected CPT/HCPCS codes from paragraph (f)(3) of this section, a nationwide
conversion factor is calculated for each of the 23 CPT/HCPCS code groups by dividing
the weighted average charge by the weighted average RVU.
(ii) Trending forward. The nationwide conversion factors for each of the 23 CPT/HCPCS
code groups, obtained as described in paragraph (f)(3)(i) of this section, are trended
forward based on changes to the physicians' services component of the CPI-U. Actual
CPI-U changes are used from the time period of the source data through the latest
available month as of the time the calculations are performed. The three-month average
annual trend rate as of the latest available month is then held constant to the midpoint of
the calendar year in which the charges are primarily expected to be used. The projected
total CPI-U change so obtained is then applied to the 23 conversion factors.
(iii) Geographic area adjustment factors. Using the 80th percentile charges for the
selected CPT/HCPCS codes from paragraph (f)(3) of this section for each geographic
area, a geographic area-specific conversion factor is calculated for each of the 23
CPT/HCPCS code groups by dividing the weighted average charge by the weighted
average geographically-adjusted RVU. The resulting conversion factor for each
geographic area for each of the 23 CPT/HCPCS code groups is divided by the
corresponding nationwide conversion factor determined pursuant to paragraph (f)(3)(i) of
this section. The resulting ratios are the geographic area adjustment factors for the
conversion factors for each of the 23 CPT/HCPCS code groups for each geographic area.
(4) Charge adjustment factors for specified CPT/HCPCS code modifiers. Surcharges or charge discounts are calculated in the following manner: from the Part B component of the Medicare Standard Analytical File 5 percent Sample, the ratio of weighted average billed charges for CPT/HCPCS codes with the specified modifier to the weighted average billed charge for CPT/HCPCS codes with no charge modifier is calculated, using the frequency of procedure codes with the modifier as weights in both weighted average calculations. The resulting ratios constitute the surcharge or discount factors for specified charge-significant CPT/HCPCS code modifiers.

(5) Certain charges for providers other than physicians. When services for which charges are established according to the preceding provisions of this paragraph (f) are performed by providers other than physicians, the charges for those services will be as determined by the preceding provisions of this paragraph, except as follows:

(i) Outpatient facility charges. When the services of providers other than physicians are furnished in outpatient facility settings or in other facilities designated as provider-based, and outpatient facility charges for those services have been established under paragraph (e) of this section, then the outpatient facility charges established under paragraph (e) will apply instead of the charges established under this paragraph (f).

(ii) Discounted charges. Charges for the professional services of the following providers will be the indicated percentages of the amount that would be charged if the care had been provided by a physician:

(A) Nurse practitioner: 85 percent.
(B) Clinical nurse specialist: 85 percent.
(C) Physician Assistant: 85 percent.
(D) Clinical psychologist: 80 percent.
(E) Clinical social worker: 75 percent.
(F) Dietitian: 75 percent.
(G) Clinical pharmacist: 80 percent.

(g) Professional charges for anesthesia services. When VA provides or furnishes professional anesthesia services within the scope of care referred to in paragraph (a)(1) of this section, professional anesthesia charges billed for such services will be determined in accordance with the provisions of this paragraph. Charges for professional anesthesia services personally performed by anesthesiologists will be 100 percent of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by non-medically directed certified registered nurse anesthetists will also be 100 percent of the charges determined as set forth in this paragraph. Charges for professional anesthesia services provided by medically directed certified registered nurse anesthetists will be 50 percent of the charges otherwise determined as set forth in this paragraph. Professional anesthesia charges consist of charges for professional services that vary by geographic area, by CPT/HCPCS code base units, and by number of time units. These charges are calculated as follows:

(1) Formula. For each anesthesia CPT/HCPCS code, multiply the total anesthesia RVUs determined pursuant to paragraph (g)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (g)(3) of this section to obtain the professional anesthesia charge for each CPT/HCPCS code in a particular geographic area.
(2) Total RVUs for professional anesthesia services. The total anesthesia RVUs for each anesthesia CPT/HCPCS code are the sum of the base units (as compiled by CMS) for that CPT/HCPCS code and the number of time units reported for the anesthesia service, where one time unit equals 15 minutes. For anesthesia CPT/HCPCS codes designated as unlisted procedures, base units are developed based on the weighted median base units for anesthesia CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median base units.

(3) Geographically-adjusted 80th percentile conversion factors. A nationwide 80th percentile conversion factor is calculated according to the methodology set forth in paragraph (g)(3)(i) of this section. The nationwide conversion factor is then trended forward to the effective time period for the charges, as set forth in paragraph (g)(3)(ii) of this section. The resulting amount is multiplied by geographic area adjustment factors determined pursuant to paragraph (g)(3)(iii) of this section, resulting in geographically-adjusted 80th percentile conversion factors for each geographic area for the effective charge period.

(i) Nationwide conversion factor. Preliminary 80th percentile conversion factors for each area are compiled from the MDR database. Then, a preliminary nationwide weighted-average 80th percentile conversion factor is calculated, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (see paragraph (a)(3) of this section for Data Sources). A nationwide 80th percentile fee by CPT/HCPCS code is then computed by multiplying this conversion factor by the MDR base units for each CPT/HCPCS code. An adjusted 80th percentile conversion factor by CPT/HCPCS code is then calculated by dividing the nationwide 80th percentile fee for each procedure code by the anesthesia base units (as compiled by CMS) for that CPT/HCPCS code. Finally, a nationwide weighted average 80th percentile conversion factor is calculated using combined frequencies for billed base units and time units from the part B component of the Medicare Standard Analytical File 5 percent Sample as weights.

(ii) Trending forward. The nationwide conversion factor, obtained as described in paragraph (g)(3)(i) of this section, is trended forward based on changes to the physicians' services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the conversion factor.

(iii) Geographic area adjustment factors. The preliminary 80th percentile conversion factors for each geographic area described in paragraph (g)(3)(i) of this section are divided by the corresponding preliminary nationwide 80th percentile conversion factor also described in paragraph (g)(3)(i). The resulting ratios are the adjustment factors for each geographic area.

(h) Professional charges for dental services identified by HCPCS Level II codes. When VA provides or furnishes outpatient dental professional services within the scope of care referred to in paragraph (a)(1) of this section, and such services are identified by HCPCS code rather than CPT code, the charges billed for such services will be determined in
accordance with the provisions of this paragraph. The charges for dental services vary by geographic area and by HCPCS code. These charges are calculated as follows:

1. **Formula.** For each HCPCS dental code, multiply the nationwide 80th percentile charge determined pursuant to paragraph (h)(2) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (h)(3) of this section. The result constitutes the area-specific dental charge.

2. **Nationwide 80th percentile charges by HCPCS code.** For each HCPCS dental code, 80th percentile charges are extracted from three independent data sources: Prevailing Healthcare Charges System database; National Dental Advisory Service nationwide pricing index; and the Dental UCR Module of the Comprehensive Healthcare Payment System, a release from Ingenix from a nationwide database of dental charges (see paragraph (a)(3) of this section for Data Sources). Charges for each database are then trended forward to a common date, based on actual changes to the dental services component of the CPI-U. Charges for each HCPCS dental code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (h)(2)(i) of this section. HCPCS dental codes designated as unlisted are assigned 80th percentile charges by means of the methodology set forth in paragraph (h)(2)(ii) of this section. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (h)(2)(iii) of this section. The results constitute the nationwide 80th percentile charge for each HCPCS dental code.

   i. **Averaging methodology.** The average charge for any particular HCPCS dental code is calculated by first computing a preliminary mean average of the three charges for each code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 50 percent of the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 50 percent of the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

   ii. **Nationwide 80th percentile charges for HCPCS dental codes designated as unlisted procedures.** For HCPCS dental codes designated as unlisted procedures, 80th percentile charges are developed based on the weighted median 80th percentile charge of HCPCS dental codes within the series in which the unlisted procedure code occurs. The distribution of procedures and services from the Prevailing Healthcare Charges System nationwide commercial insurance database is used for the purpose of computing the weighted median.

   iii. **Trending forward.** 80th percentile charges for each dental procedure code, obtained as described in paragraph (h)(2) of this section, are trended forward based on the dental services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges.

3. **Geographic area adjustment factors.** A geographic adjustment factor (consisting of the ratio of the level of charges in a given geographic area to the nationwide level of charges)
for each geographic area and dental class of service is obtained from Milliman USA, Inc., Dental Health Cost Guidelines, a database of nationwide commercial insurance charges and relative costs; and a normalized geographic adjustment factor computed from the Dental UCR Module of the Comprehensive Healthcare Payment System compiled by Ingenix, as follows: Using local and nationwide average charges reported in the Ingenix data, a local weighted average charge for each dental class of procedure codes is calculated using utilization frequencies from the Milliman USA, Inc., Dental Health Cost Guidelines as weights (see paragraph (a)(3) of this section for Data Sources). Similarly, using nationwide average charge levels, a nationwide average charge by dental class of procedure codes is calculated. The normalized geographic adjustment factor for each dental class of procedure codes and for each geographic area is the ratio of the local average charge divided by the corresponding nationwide average charge. Finally, the geographic area adjustment factor is the arithmetic average of the corresponding factors from the data sources mentioned in the first sentence of this paragraph (h)(3).

(i) Pathology and laboratory charges. When VA provides or furnishes pathology and laboratory services within the scope of care referred to in paragraph (a)(1) of this section, charges billed for such services will be determined in accordance with the provisions of this paragraph. Pathology and laboratory charges consist of charges for services that vary by geographic area and by CPT/HCPCS code. These charges are calculated as follows:

(1) Formula. For each CPT/HCPCS code, multiply the total geographically-adjusted RVUs determined pursuant to paragraph (i)(2) of this section by the applicable geographically-adjusted conversion factor (a monetary amount) determined pursuant to paragraph (i)(3) of this section to obtain the pathology/laboratory charge for each CPT/HCPCS code in a particular geographic area.

(2)(i) Total geographically-adjusted RVUs for pathology and laboratory services that have Medicare-based RVUs. Total RVUs are developed based on the Medicare Clinical Diagnostic Laboratory Fee Schedule (CLAB). The CLAB payment amounts are upwardly adjusted such that the adjusted payment amounts are, on average, equivalent to Medicare Physician Fee Schedule payment levels, using statistical comparisons to the 80th percentile derived from the MDR database. These adjusted payment amounts are then divided by the corresponding Medicare conversion factor to derive RVUs for each CPT/HCPCS code. The resulting nationwide total RVUs are multiplied by the geographic adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(ii) RVUs for CPT/HCPCS codes that do not have Medicare-based RVUs and are not designated as unlisted procedures. For CPT/HCPCS codes that are not assigned RVUs in paragraphs (i)(2)(i) or (i)(2)(iii) of this section, total RVUs are developed based on various charge data sources. For these CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the MDR database. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Part B component of the Medicare Standard Analytical File 5 percent Sample. For any remaining CPT/HCPCS codes, the nationwide 80th percentile billed charges are obtained, where statistically credible, from the Prevailing Healthcare Charges System nationwide commercial insurance database. For each of these CPT/HCPCS codes, nationwide total RVUs are obtained by taking the nationwide 80th percentile billed charges obtained using the preceding three databases.
and dividing by the untrended nationwide conversion factor determined pursuant to paragraphs (i)(3) and (i)(3)(i) of this section. For any remaining CPT/HCPCS codes that have not been assigned RVUs using the preceding data sources, the nationwide total RVUs are calculated by summing the work expense and non-facility practice expense RVUs found in Ingenix/St. Anthony's RBRVS. The resulting nationwide total RVUs obtained using these four data sources are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iii) RVUs for CPT/HCPCS codes designated as unlisted procedures. For CPT/HCPCS codes designated as unlisted procedures, total RVUs are developed based on the weighted median of the total RVUs of CPT/HCPCS codes within the series in which the unlisted procedure code occurs. A nationwide VA distribution of procedures and services is used for the purpose of computing the weighted median. The resulting nationwide total RVUs are multiplied by the geographic area adjustment factors determined pursuant to paragraph (i)(2)(iv) of this section to obtain the area-specific total RVUs.

(iv) RVU geographic area adjustment factors for CPT/HCPCS codes that do not have Medicare RVUs, including codes that are designated as unlisted procedures. The adjustment factor for each geographic area consists of the weighted average of the work expense and practice expense Medicare Geographic Practice Cost Indices for each geographic area using charge data for representative CPT/HCPCS codes statistically selected and weighted for work expense and practice expense.

(3) Geographically-adjusted 80th percentile conversion factors. Representative CPT/HCPCS codes are statistically selected and weighted so as to give a weighted average RVU comparable to the weighted average RVU of the entire pathology/laboratory CPT/HCPCS code group (the selected CPT/HCPCS codes are set forth in the Milliman USA, Inc., Health Cost Guidelines fee survey). The 80th percentile charge for each selected CPT/HCPCS code is obtained from the MDR database. A nationwide conversion factor (a monetary amount) is calculated as set forth in paragraph (i)(3) of this section. The nationwide conversion factor is trended forward to the effective time period for the charges, as set forth in paragraph (i)(3)(ii) of this section. The resulting amount is multiplied by a geographic area adjustment factor determined pursuant to paragraph (i)(3)(iv) of this section, resulting in the geographically-adjusted 80th percentile conversion factor for the effective charge period.

(i) Nationwide conversion factors. Using the nationwide 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section, a nationwide conversion factor is calculated by dividing the weighted average charge by the weighted average RVU.

(ii) Trending forward. The nationwide conversion factor, obtained as described in paragraph (i)(3) of this section, is trended forward based on changes to the physicians' services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the pathology/laboratory conversion factor.
(iii) Geographic area adjustment factor. Using the 80th percentile charges for the selected CPT/HCPCS codes from paragraph (i)(3) of this section for each geographic area, a geographic area-specific conversion factor is calculated by dividing the weighted average charge by the weighted average geographically-adjusted RVU. The resulting geographic area conversion factor is divided by the corresponding nationwide conversion factor determined pursuant to paragraph (i)(3)(i) of this section. The resulting ratios are the geographic area adjustment factors for pathology and laboratory services for each geographic area.

(j) Observation care facility charges. When VA provides observation care within the scope of care referred to in paragraph (a)(1) of this section, the facility charges billed for such care will be determined in accordance with the provisions of this paragraph. The charges for this care vary by geographic area and number of hours of care. These charges are calculated as follows:

(1) Formula. For each occurrence of observation care, add the nationwide base charge determined pursuant to paragraph (j)(2) of this section to the product of the number of hours in observation care and the hourly charge also determined pursuant to paragraph (j)(2) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (j)(3) of this section. The result constitutes the area-specific observation care facility charge.

(2)(i) Nationwide 80th percentile observation care facility charges. To calculate nationwide base and hourly facility charges, all claims with observation care line items are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Then, using the 80th percentile observation line item charges for each unique hourly length of stay, a standard linear regression technique is used to calculate the nationwide 80th percentile base charge and 80th percentile hourly charge. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (j)(2)(ii) of this section. The results constitute the nationwide 80th percentile base and hourly facility charges for observation care.

(ii) Trending forward. The nationwide 80th percentile base and hourly facility charges for observation care, obtained as described in paragraph (j)(2)(i) of this section, are trended forward based on changes to the outpatient hospital services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges.

(3) Geographic area adjustment factors. The geographic area adjustment factors for observation care facility charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(k) Ambulance and other emergency transportation charges. When VA provides ambulance and other emergency transportation services that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services will be determined in accordance with the provisions of this paragraph. The charges for these services vary by HCPCS code, length of trip, and geographic area. These charges are calculated as follows:
(1) Formula. For each occasion of ambulance or other emergency transportation service, add the nationwide base charge for the appropriate HCPCS code determined pursuant to paragraph (k)(2)(i) of this section to the product of the number of miles traveled and the appropriate HCPCS code mileage charge determined pursuant to paragraph (k)(2)(ii) of this section. Then multiply this amount by the appropriate geographic area adjustment factor determined pursuant to paragraph (k)(3) of this section. The result constitutes the area-specific ambulance or other emergency transportation service charge.

(2)(i) Nationwide 80th percentile all-inclusive base charge. To calculate a nationwide all-inclusive base charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Excluding professional and mileage charges, as well as all-inclusive charges which are reported on such claims, the total charge per claim, including incidental supplies, is computed. Then, the 80th percentile amount for each HCPCS code is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile all-inclusive base charge for each HCPCS base charge code.

(ii) Nationwide 80th percentile mileage charge. To calculate a nationwide mileage charge, all ambulance and other emergency transportation claims are selected from the outpatient facility component of the Medicare Standard Analytical File 5 percent Sample. Excluding professional, incidental, and base charges, as well as claims with all-inclusive charges, the total mileage charge per claim is computed. This amount is divided by the number of miles reported on the claim. Then, the 80th percentile amount for each HCPCS code, using miles as weights, is computed. Finally, the resulting amounts are each trended forward to the effective time period for the charges, as set forth in paragraph (k)(2)(iii) of this section. The results constitute the nationwide 80th percentile mileage charge for each HCPCS mileage code.

(iii) Trending forward. The nationwide 80th percentile charge for each HCPCS code, obtained as described in paragraphs (k)(2)(i) and (k)(2)(ii) of this section, is trended forward based on changes to the outpatient hospital services component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges.

(3) Geographic area adjustment factors. The geographic area adjustment factors for ambulance and other emergency transportation charges are the same as those computed for outpatient facility charges under paragraph (e)(4) of this section.

(l) Charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. When VA provides DME, drugs, injectables, or other medical services, items, or supplies that are identified by HCPCS Level II codes and that are within the scope of care referred to in paragraph (a)(1) of this section, the charges billed for such services, items, and supplies will be determined in accordance with the provisions of this paragraph. The charges for these services, items, and supplies vary by geographic area, by HCPCS code, and by modifier, when applicable. These charges are calculated as follows:
(1) Formula. For each HCPCS code, multiply the nationwide charge determined pursuant to paragraphs (l)(2), (l)(3), and (l)(4) of this section by the appropriate geographic area adjustment factor determined pursuant to paragraph (l)(5) of this section. The result constitutes the area-specific charge.

(2) Nationwide 80th percentile charges for HCPCS codes with RVUs. For each applicable HCPCS code, RVUs are compiled from the data sources set forth in paragraph (l)(2)(i) of this section. The RVUs are multiplied by the charge amount for each incremental RVU determined pursuant to paragraph (l)(2)(ii) of this section, and this amount is added to the fixed charge amount also determined pursuant to paragraph (l)(2)(ii) of this section. Then, for each HCPCS code, this charge is multiplied by the appropriate 80th percentile to median charge ratio determined pursuant to paragraph (l)(2)(iii) of this section. Finally, the resulting amount is trended forward to the effective time period for the charges, as set forth in paragraph (l)(2)(iv) of this section to obtain the nationwide 80th percentile charge.

(i) RVUs for DME, drugs, injectables, and other medical services, items, and supplies. For the purpose of the statistical methodology set forth in paragraph (l)(2)(ii) of this section, HCPCS codes are assigned to the following HCPCS code groups. For the HCPCS codes in each group, the RVUs or amounts indicated constitute the RVUs:

(A) Chemotherapy Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.
(B) Other Drugs: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.
(C) DME-Hospital Beds: Medicare DME Fee Schedule amounts.
(D) DME-Medical/Surgical Supplies: Medicare DME Fee Schedule amounts.
(E) DME-Orthotic Devices: Medicare DME Fee Schedule amounts.
(F) DME-Oxygen and Supplies: Medicare DME Fee Schedule amounts.
(G) DME-Wheelchairs: Medicare DME Fee Schedule amounts.
(H) Other DME: Medicare DME Fee Schedule amounts.
(I) Enteral/Parenteral Supplies: Medicare Parenteral and Enteral Nutrition Fee Schedule amounts.
(J) Surgical Dressings and Supplies: Medicare DME Fee Schedule amounts.
(K) Vision Items-Other Than Lenses: Medicare DME Fee Schedule amounts.
(L) Vision Items-Lenses: Medicare DME Fee Schedule amounts.
(M) Hearing Items: Ingenix/St. Anthony's RBRVS Practice Expense RVUs.

(ii) Charge amounts. Using combined Part B and DME components of the Medicare Standard Analytical File 5% Sample, the median billed charge is calculated for each HCPCS code. A mathematical approximation methodology based on least squares techniques is applied to the RVUs specified for each of the groups set forth in paragraph (l)(2)(i) of this section, yielding two charge amounts for each HCPCS code group: a charge amount per incremental RVU, and a fixed charge amount.

(iii) 80th Percentile to median charge ratios. Two ratios are obtained for each HCPCS code group set forth in paragraph (l)(2)(i) of this section by dividing the weighted average 80th percentile charge by the weighted average median charge derived from two data sources: Medicare data, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5% Sample; and the MDR database. Charge frequencies from the Medicare data are used as weights when calculating all weighted averages. For each HCPCS code group, the smaller of the two ratios is selected as the adjustment from median to 80th percentile charges.
(iv) Trending forward. The charges for each HCPCS code, obtained as described in paragraph (l)(2)(iii) of this section, are trended forward based on changes to the medical care commodities component of the CPI-U. Actual CPI-U changes are used from the time period of the source data through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(2)(iii) of this section.

(3) Nationwide 80th percentile charges for HCPCS codes without RVUs. For each applicable HCPCS code, 80th percentile charges are extracted from three independent data sources: the MDR database; Medicare, as represented by the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample; and Milliman USA, Inc., Optimized HMO (Health Maintenance Organization) Data Sets (see paragraph (a)(3) of this section for Data Sources). Charges from each database are then trended forward to the effective time period for the charges, as set forth in paragraph (l)(3)(i) of this section. Charges for each HCPCS code from each data source are combined into an average 80th percentile charge by means of the methodology set forth in paragraph (l)(3)(ii) of this section. The results constitute the nationwide 80th percentile charge for each applicable HCPCS code.

(i) Trending forward. The charges from each database for each HCPCS code, obtained as described in paragraph (l)(3) of this section, are trended forward based on changes to the medical care commodities component of the CPI-U. Actual CPI-U changes are used from the time period of each source database through the latest available month as of the time the calculations are performed. The three-month average annual trend rate as of the latest available month is then held constant to the midpoint of the calendar year in which the charges are primarily expected to be used. The projected total CPI-U change so obtained is then applied to the 80th percentile charges, as described in paragraph (l)(3) of this section.

(ii) Averaging methodology. The average 80th percentile trended charge for any particular HCPCS code is calculated by first computing a preliminary mean average of the three charges for each HCPCS code. Statistical outliers are identified and removed by testing whether any charge differs from the preliminary mean charge by more than 5 times the preliminary mean charge, or by less than 0.2 times the preliminary mean charge. In such cases, the charge most distant from the preliminary mean is removed as an outlier, and the average charge is calculated as a mean of the two remaining charges. In cases where none of the charges differ from the preliminary mean charge by more than 5 times the preliminary mean charge, or less than 0.2 times the preliminary mean charge, the average charge is calculated as a mean of all three reported charges.

(4) Nationwide 80th percentile charges for HCPCS codes designated as unlisted or unspecified. For HCPCS codes designated as unlisted or unspecified, 80th percentile charges are developed based on the weighted median 80th percentile charges of HCPCS codes within the series in which the unlisted or unspecified code occurs. A nationwide VA distribution of procedures, services, items, and supplies is used for the purpose of computing the weighted median.

(5) Geographic area adjustment factors. For the purpose of geographic adjustment, HCPCS codes are combined into two groups: drugs and DME/supplies, as set forth in
paragraph (l)(5)(i) of this section. The geographic area adjustment factor for each of these groups is calculated as the ratio of the area-specific weighted average charge determined pursuant to paragraph (l)(5)(ii) of this section divided by the nationwide weighted average charge determined pursuant to paragraph (l)(5)(iii) of this section.

(i) Combined HCPCS code groups for geographic area adjustment factors for DME, drugs, injectables, and other medical services, items, and supplies. For the purpose of the statistical methodology set forth in paragraph (l)(5) of this section, each of the HCPCS code groups set forth in paragraph (l)(2)(i) of this section is assigned to one of two combined HCPCS code groups, as follows:

(A) Chemotherapy Drugs: Drugs.
(B) Other Drugs: Drugs.
(C) DME-Hospital Beds: DME/supplies.
(D) DME-Medical/Surgical Supplies: DME/supplies.
(E) DME-Orthotic Devices: DME/supplies.
(F) DME-Oxygen and Supplies: DME/supplies.
(G) DME-Wheelchairs: DME/supplies.
(H) Other DME: DME/supplies.
(I) Enteral/Parenteral Supplies: DME/supplies.
(J) Surgical Dressings and Supplies: DME/supplies.
(K) Vision Items-Other Than Lenses: DME/supplies.
(L) Vision Items-Lenses: DME/supplies.
(M) Hearing Items: DME/supplies.

(ii) Area-specific weighted average charges. Using the median charges by HCPCS code from the MDR database for each geographic area and utilization frequencies by HCPCS code from the combined Part B and DME components of the Medicare Standard Analytical File 5 percent Sample, an area-specific weighted average charge is calculated for each combined HCPCS code group.

(iii) Nationwide weighted average charges. Using the area-specific weighted average charges determined pursuant to paragraph (l)(5)(ii) of this section, a nationwide weighted average charge is calculated for each combined HCPCS code group, using as weights the population (census) frequencies for each geographic area as presented in the Milliman USA, Inc., Health Cost Guidelines (see paragraph (a)(3) of this section for Data Sources).

(m) Charges for prescription drugs not administered during treatment. Notwithstanding other provisions of this section, when VA provides or furnishes prescription drugs not administered during treatment, within the scope of care referred to in paragraph (a)(1) of this section, charges billed separately for such prescription drugs will be based on VA costs in accordance with the methodology set forth in § 17.102 of this part.

Note to § 17.101: The charges generated by the methodology set forth in this section are the same charges prescribed by the Office of Management and Budget for use under the Federal Medical Care Recovery Act, 42 U.S.C. 2651-2653.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0606.)


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§ 17.102 Charges for care or services.

Except as provided in §17.101, charges at the indicated rates shall be made for Department of Veterans Affairs hospital care or medical services (including, but not limited to, dental services, supplies, medicines, orthopedic and prosthetic appliances, and domiciliary or nursing home care) as follows:

(a) Furnished in error or on tentative eligibility. Charges at rates prescribed by the Under Secretary for Health shall be made for inpatient or outpatient care or services (including domiciliary care) authorized for any person on the basis of eligibility as a veteran or a tentative eligibility determination under §17.34 but he or she was subsequently found to have been ineligible for such care or services as a veteran because the military service or any other eligibility requirement was not met, or

(b) Furnished in a medical emergency. Charges at rates prescribed by the Under Secretary for Health shall be made for any inpatient or outpatient care or services rendered any person in a medical emergency who was not eligible for such care or services as a veteran, if:

(1) The care or services were rendered as a humanitarian service, under §17.43(c)(1) or §17.95 to a person neither claiming eligibility as a veteran nor for whom the establishment of eligibility as a veteran was expected, or

(2) The person for whom care or services were rendered was a Department of Veterans Affairs employee or a member of a Department of Veterans Affairs employee's family; or

(c) Furnished beneficiaries of the Department of Defense or other Federal agencies. Except as provided for in paragraph (f) of this section and the second sentence of this paragraph, charges at rates prescribed by the Office of Management and Budget shall be made for any inpatient or outpatient care or services authorized for a member of the Armed Forces on active duty or for any beneficiary or designee of any other Federal agency. Charges for services provided a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, will be at rates prescribed by the Secretary (E.O. 11609, dated July 22, 1971, 36 FR 13747), or

(d) Furnished pensioners of allied nations. Charges at rates prescribed by the Under Secretary for Health shall be made for any inpatient or outpatient care or services rendered a pensioner of a nation allied with the United States in World War I and World War II; or

(e) Furnished under sharing agreements. Charges at rates agreed upon in an agreement for sharing specialized medical resources shall be made for all medical care or services, either on an inpatient or outpatient basis, rendered to a person designated by the other party to the agreement as a patient to be benefited under the agreement; or
(f) Furnished military retirees with chronic disability. Charges for subsistence at rates prescribed by the Under Secretary for Health shall be made for the period during which hospital care is rendered when such care is rendered to a member or former member of the Armed Forces required to pay the subsistence rate under § 17.47 (b)(2) and (c)(2). (g) Furnished for research purposes. Charges will not be made for medical services, including transportation, furnished as part of an approved Department of Veterans Affairs research project, except that if the services are furnished to a person who is not eligible for the services as a veteran, the medical care appropriation shall be reimbursed from the research appropriation at the same rates used for billings under paragraph (b) of this section. (h) Computation of charges. The method for computing the charges under paragraphs (a), (b), (d), (f), and (g), and the last sentence of paragraph (c) of this section is based on the Cost Distribution Report, which sets forth the actual basic costs and per diem rates by type of inpatient care and outpatient visit. Factors for depreciation of buildings and equipment and Central Office overhead are added, based on accounting manual instructions. Additional factors are added for interest on capital investment and for standard fringe benefit costs covering government employee retirement and disability costs. The current year billing rates are projected on prior year actual rates by applying the budgeted percentage increase. In addition, based on the detail available in the Cost Distribution Report, VA intends to, on each bill break down the all-inclusive rate into its three principal components; namely, physician cost, ancillary services cost, and nursing, room and board cost. The rates generated by the foregoing methodology will be published by either VA or OMB in the "Notices" section of the Federal Register. (Authority: 38 U.S.C. 1729; sec. 19013, Pub. L. 99-272) [32 FR 11382, Aug. 5, 1967, as amended at 34 FR 7807, May 16, 1969; 35 FR 11470, July 17, 1970; 36 FR 18794, Sept. 22, 1971; 47 FR 50861, Nov. 10, 1982; 47 FR 58249, Dec. 1982; 52 FR 3010, Jan. 30, 1987; redesignated and amended at 61 FR 21964, 21965, 21967, May 13, 1996; 62 FR 17072, April 9, 1997; redesignated and amended at 64 FR 22676, 22678, 22683, Apr. 27, 1999; 69 FR 1060, 1061, Jan. 7, 2004] [EFFECTIVE DATE NOTE: 69 FR 1060, 1061, Jan. 7, 2004, amended paragraph (h), effective Jan. 7, 2004.]

§ 17.103 Referrals of compromise settlement offers.
Any offer to compromise or settle any charges or claim for $ 20,000 or less asserted by the Department of Veterans Affairs in connection with the medical program shall be referred as follows:
(a) To Chiefs of Fiscal activities. If the debt represents charges made under § 17.101(a), the compromise offer shall be referred to the Chief of the Fiscal activity of the facility for application of the collection standards in § 1.900 et seq. of this chapter, provided:
(1) The debt does not exceed $ 1,000, and
(2) There has been a previous denial of waiver of the debt by a field station Committee on Waivers and Compromises.
(b) To Regional Counsel. If the debt in any amount represents charges for medical services for which there is or may be a claim against a third party tort-feasor or under workers' compensation laws or Pub. L. 87-693; 76 Stat. 593 (see § 1.903 of this chapter) or involves a claim contemplated by § 1.902 of this chapter over which the Department of
Veterans Affairs lacks jurisdiction, the compromise offer (or request for waiver or proposal to terminate or suspend collection action) shall be promptly referred to the field station Regional Counsel having jurisdiction in the area in which the claim arose, or (c) To Committee on Waivers and Compromises. If one of the following situations contemplated in paragraph (c)(1) through (3) of this section applies
(1) If the debt represents charges made under § 17.101(a), but is not of a type contemplated in paragraph (a) of this section, or
(2) If the debt represents charges for medical services made under § 17.101(b), or
(3) A claim arising in connection with any transaction of the Veterans Health Administration for which the instructions in paragraph (a) or (b) of this section or in § 17.105(c) are not applicable, then, the compromise offer should be referred for disposition under § 1.900 et seq. of this chapter to the field station Committee on Waivers and Compromises which shall take final action.


[EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "17.101(b)" for "17.62(b)" in paragraph (c)(2), effective April 9, 1997.]

§ 17.104 Terminations and suspensions.
Any proposal to suspend or terminate collection action on any charges or claim for $20,000 or less asserted by the Department of Veterans Affairs in connection with the medical program shall be referred as follows:
(a) Of charges for medical services. If the debt represents charges made under § 17.101(a) or (b) questions concerning suspension or termination of collection action shall be referred to the Chief of the Fiscal activity of the station for application of the collection standards in § 1.900 et seq. of this chapter, or
(b) Of other debts. If the debt is of a type other than those contemplated in paragraph (a) of this section, questions concerning suspension or termination of collection action shall be referred in accordance with the same referral procedures for compromise offers (except the Fiscal activity shall make final determinations in terminations or suspensions involving claims of § 150 or less pursuant to the provisions of § 1.900 et seq. of this chapter.)


§ 17.105 Waivers.
Applications or requests for waiver of debts or claims asserted by the Department of Veterans Affairs in connection with the medical program generally will be denied by the facility Fiscal activity on the basis there is no legal authority to waive debts, unless the question of waiver should be referred as follows:
(a) Of charges for medical services. If the debt represents charges made under § 17.102, the application or request for waiver should be referred for disposition under § 1.900 et
seq. of this chapter to the field facility Committee on Waivers and Compromises which shall take final action, or
(b) Of claims against third persons and other claims. If the debt is of a type contemplated in § 17.103(b), the waiver question should be referred in accordance with the same referral procedures for compromise offers in such categories of claims, or
(c) Of charges for copayments. If the debt represents charges for outpatient medical care, inpatient hospital care, medication or extended care services copayments made under §§ 17.108, 17.110 or 17.111 of this chapter, the claimant must request a waiver by submitting VA Form 5655 (Financial Status Report) to a Fiscal Officer at a VA medical facility where all or part of the debt was incurred. The claimant must submit this form within the time period provided in § 1.963(b) of this chapter and may request a hearing under § 1.966(a) of this chapter. The Fiscal Officer may extend the time period for submitting a claim if the Chairperson of the Committee on Waivers and Compromises could do so under § 1.963(b) of this chapter. The Fiscal Officer will apply the standard `equity and good conscience" in accordance with §§ 1.965 and 1.966(a) of this chapter, and may waive all or part of the claimant's debts. A decision by the Fiscal Officer under this provision is final (except that the decision may be reversed or modified based on new and material evidence, fraud, a change in law or interpretation of law, or clear and unmistakable error shown by the evidence in the file at the time of the prior decision as provided in § 1.969 of this chapter) and may be appealed in accordance with 38 CFR parts 19 and 20.
(d) Other debts. If the debt represents any claim or charges other than those contemplated in paragraphs (a) and (b) of this section, and is a debt for which waiver has been specifically provided for by law or under the terms of a contract, initial action shall be taken at the station level for referral of the request for waiver through channels for action by the appropriate designated official. If, however, the question of waiver may also involve a concurrent opportunity to negotiate a compromise settlement, the application shall be referred to the Committee on Waivers and Compromises.
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0165.)
(Authority: 38 U.S.C. 501, 1721, 1722A, 1724)
DISCIPLINARY CONTROL OF BENEFICIARIES RECEIVING HOSPITAL,
DOMICILIARY OR NURSING HOME CARE

§ 17.106 Authority for disciplinary action.

§ 17.106 Authority for disciplinary action.
The good conduct of beneficiaries receiving hospitalization for observation and
examination or for treatment, or receiving domiciliary or nursing home care in facilities
under direct and exclusive jurisdiction of the Department of Veterans Affairs, will be
maintained by corrective and disciplinary procedure formulated by the Department of
Veterans Affairs. Such corrective and disciplinary measures, to be selectively applied in
keeping with the comparative gravity of the particular offense, will consist, in respect to
hospital patients, of such penalties as the withholding for a determined period of pass
privileges, exclusion from entertainments, or disciplinary discharge; and, in respect to
domiciled members, such penalties as confinement to sections or grounds, deprivation of
privileges, enforced furlough, or disciplinary discharge. Also, for any violation of the
Department of Veterans Affairs rules set forth in § 1.218, or other Federal laws on
Department of Veterans Affairs property, a beneficiary is subject to the penalty
prescribed for the offense.
[38 FR 24366, Sept. 7, 1973; redesignated at 61 FR 21964, 21965, May 13, 1996]
Copayments

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.
§ 17.110 Copayments for medication.

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.  
(a) General. This section sets forth requirements regarding copayments for inpatient hospital care and outpatient medical care provided to veterans by VA.
(b) Copayments for inpatient hospital care. (1) Except as provided in paragraphs (d) or (e) of this section, a veteran, as a condition of receiving inpatient hospital care provided by VA (provided either directly by VA or obtained by VA by contract), must agree to pay VA (and is obligated to pay VA) the applicable copayment, as set forth in paragraph (b)(2) or (b)(3) of this section.
(2) The copayment for inpatient hospital care shall be, during any 365-day period, a copayment equaling the sum of:
   (i) $10 for every day the veteran receives inpatient hospital care, and
   (ii) The lesser of:
      (A) The sum of the inpatient Medicare deductible for the first 90 days of care and one-half of the inpatient Medicare deductible for each subsequent 90 days of care (or fraction thereof) after the first 90 days of such care during such 365-day period, or
      (B) VA's cost of providing the care.
(3) The copayment for inpatient hospital care for veterans enrolled in priority category 7 shall be 20 percent of the amount computed under paragraph (b)(2) of this section.
NOTE TO § 17.108(b): The requirement that a veteran agree to pay the copayment would be met by submitting to VA a signed VA Form 10-10EZ. This is the application form for enrollment in the VA healthcare system and also is the document used for providing means-test information annually.
(c) Copayments for outpatient medical care. (1) Except as provided in paragraphs (d), (e) or (f) of this section, a veteran, as a condition of receiving outpatient medical care provided by VA, must agree to pay VA (and is obligated to pay VA) a copayment as set forth in paragraph (c)(2) of this section.
(2) The copayment for outpatient medical care is $15 for a primary care outpatient visit and $50 for a specialty care outpatient visit. If a veteran has more than one primary care encounter on the same day and no specialty care encounter on that day, the copayment amount is the copayment for one primary care outpatient visit. If a veteran has one or more primary care encounters and one or more specialty care encounters on the same day, the copayment amount is the copayment for one specialty care outpatient visit.
(3) For purposes of this section, a primary care visit is an episode of care furnished in a clinic that provides integrated, accessible healthcare services by clinicians who are accountable for addressing a large majority of personal healthcare needs, developing a sustained partnership with patients, and practicing in the context of family and community. Primary care includes, but is not limited to, diagnosis and management of acute and chronic biopsychosocial conditions, health promotion, disease prevention, overall care management, and patient and caregiver education. Each patient's identified primary care clinician delivers services in the context of a larger interdisciplinary primary...
care team. Patients have access to the primary care clinician and much of the primary care team without need of a referral. In contrast, specialty care is generally provided through referral. A specialty care outpatient visit is an episode of care furnished in a clinic that does not provide primary care, and is only provided through a referral. Some examples of specialty care provided at a specialty care clinic are radiology services requiring the immediate presence of a physician, audiology, optometry, magnetic resonance imagery (MRI), computerized axial tomography (CAT) scan, nuclear medicine studies, surgical consultative services, and ambulatory surgery.

NOTE TO § 17.108(c): The requirement that a veteran agree to pay the copayment would be met by submitting to VA a signed VA Form 10-10EZ. This is the application form for enrollment in the VA healthcare system and also is the document used for providing means-test information annually.

(d) Veterans not subject to copayment requirements for inpatient hospital care or outpatient medical care. The following veterans are not subject to the copayment requirements of this section:

(1) A veteran with a compensable service-connected disability;
(2) A veteran who is a former prisoner of war;
(3) A veteran awarded a Purple Heart;
(4) A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty;
(5) A veteran who receives disability compensation under 38 U.S.C. 1151;
(6) A veteran whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that the veteran's continuing eligibility for care is provided for in the judgment or settlement described in 38 U.S.C. 1151;
(7) A veteran whose entitlement to disability compensation is suspended because of the receipt of military retirement pay;
(8) A veteran of the Mexican border period or of World War I;
(9) A military retiree provided care under an interagency agreement as defined in section 113 of Public Law 106-117, 113 Stat. 1545; or
(10) A veteran who VA determines to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(e) Services not subject to copayment requirements for inpatient hospital care or outpatient medical care. The following are not subject to the copayment requirements under this section:

(1) Care provided to a veteran for a noncompensable zero percent service-connected disability;
(2) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Gulf War veterans, or post-Gulf War combat-exposed veterans;
(3) Special registry examinations (including any follow-up examinations or testing ordered as part of the special registry examination) offered by VA to evaluate possible health risks associated with military service;
(4) Counseling and care for sexual trauma as authorized under 38 U.S.C 1720D;
(5) Compensation and pension examinations requested by the Veterans Benefits Administration;
(6) Care provided as part of a VA-approved research project authorized by 38 U.S.C. 7303;
(7) Outpatient dental care provided under 38 U.S.C. 1712;
(8) Readjustment counseling and related mental health services authorized under 38 U.S.C 1712A;
(9) Emergency treatment paid for under 38 U.S.C. 1725 or 1728;
(10) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck;
(11) Publicly announced VA public health initiatives (e.g., health fairs) or an outpatient visit solely consisting of preventive screening and immunizations (e.g. influenza immunization, pneumococcal immunization, hypertension screening, hepatitis C screening, tobacco screening, alcohol screening, hyperlipidemia screening, breast cancer screening, cervical cancer screening, screening for colorectal cancer by fecal occult blood testing, and education about the risks and benefits of prostate cancer screening);
(12) Smoking cessation counseling (individual and group); and
(13) Laboratory services, flat film radiology services, and electrocardiograms.
(f) Additional care not subject to outpatient copayment. Outpatient care is not subject to the outpatient copayment requirements under this section when provided to a veteran during a day for which the veteran is required to make a copayment for extended care services that were provided either directly by VA or obtained for VA by contract.

(38 U.S.C. 1710)

§ 17.110 Copayments for medication.

(a) General. This section sets forth requirements regarding copayments for medications provided to veterans by VA.
(b) Copayments. (1) Unless exempted under paragraph (c) of this section, a veteran is obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment). For the period from February 4, 2002 through December 31, 2002, the copayment amount is $7. The copayment amount for each calendar year thereafter will be established by using the Prescription Drug component of the Medical Consumer Price Index as follows: For each calendar year beginning after December 31, 2002, the Index as of the previous September 30 will be divided by the Index as of September 30, 2001. The ratio so obtained will be multiplied by the original copayment amount of $7. The copayment amount for the new calendar year will be this result, rounded down to the whole dollar amount.

Note to Paragraph (b)(1): Example for determining copayment amount. If the ratio of the Prescription Drug component of the Medical Consumer Price Index for September 30, 2003, to the corresponding Index for September 30, 2001, is 1.2242, then this ratio multiplied by the original copayment amount of $7 would equal $8.57, and the

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copayment amount for calendar year 2004, rounded down to the whole dollar amount, would be $8.

(2) The total amount of copayments in a calendar year for a veteran enrolled in one of the priority categories 2 through 6 of VA's health care system (see § 17.36) shall not exceed the cap established for the calendar year. The cap for calendar year 2002 is $840. If the copayment amount increases after calendar year 2002, the cap of $840 shall be increased by $120 for each $1 increase in the copayment amount.

(c) Medication not subject to the copayment requirements. The following are exempt from the copayment requirements of this section:

(1) Medication for a veteran who has a service-connected disability rated 50% or more based on a service-connected disability or unemployability;

(2) Medication for a veteran's service-connected disability;

(3) Medication for a veteran whose annual income (as determined under 38 U.S.C. 1503) does not exceed the maximum annual rate of VA pension which would be payable to such veteran if such veteran were eligible for pension under 38 U.S.C. 1521;

(4) Medication authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans;

(5) Medication for treatment of sexual trauma as authorized under 38 U.S.C. 1720D;

(6) Medication for treatment of cancer of the head or neck authorized under 38 U.S.C. 1720E; and

(7) Medications provided as part of a VA approved research project authorized by 38 U.S.C. 7303.

[66 FR 63449, 63451, Dec. 6, 2001]

(38 U.S.C. 501, 1710, 1720D, 1722A)

[EFFECTIVE DATE NOTE: 66 FR 63449, 63451, Dec. 6, 2001, added this section, effective Feb. 4, 2002.]
§ 17.111 Copayments for Extended care services.

(a) General. This section sets forth requirements regarding copayments for extended care services provided to veterans by VA (either directly by VA or paid for by VA).

(b) Copayments. (1) Unless exempted under paragraph (f) of this section, as a condition of receiving extended care services from VA, a veteran must agree to pay VA and is obligated to pay VA a copayment as specified by this section. A veteran has no obligation to pay a copayment for the first 21 days of extended care services that VA provided the veteran in any 12-month period (the 12-month period begins on the date that VA first provided extended care services to the veteran). However, for each day that extended care services are provided beyond the first 21 days, a veteran is obligated to pay VA the copayment amount set forth below to the extent the veteran has available resources. Available resources are based on monthly calculations, as determined under paragraph (d) of this section. The following sets forth the extended care services provided by VA and the corresponding copayment amount per day:

(i) Adult day health care -- $15.
(ii) Domiciliary care -- $5.
(iii) Institutional respite care -- $97.
(iv) Institutional geriatric evaluation -- $97.
(v) Non-institutional geriatric evaluation -- $15.
(vi) Non-institutional respite care -- $15.
(vii) Nursing home care -- $97.

(2) For purposes of counting the number of days for which a veteran is obligated to make a copayment under this section, VA will count each day that adult day health care, non-institutional geriatric evaluation, and non-institutional respite care are provided and will count each full day and partial day for each inpatient stay except for the day of discharge.

(c) Definitions. For purposes of this section:

(1) Adult day health care is a therapeutic outpatient care program that provides medical services, rehabilitation, therapeutic activities, socialization, nutrition and transportation services to disabled veterans in a congregate setting.
(2) Domiciliary care is defined in § 17.30(b).
(3) Extended care services means adult day health care, domiciliary care, institutional geriatric evaluation, noninstitutional geriatric evaluation, nursing home care, institutional respite care, and noninstitutional respite care.
(4) Geriatric evaluation is a specialized, diagnostic/consultative service provided by an interdisciplinary team that is for the purpose of providing a comprehensive assessment, care plan, and extended care service recommendations.
(5) Institutional means a setting in a hospital, domiciliary, or nursing home of overnight stays of one or more days.
(6) Noninstitutional means a service that does not include an overnight stay.
(7) Nursing home care means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care (nursing services must be provided 24 hours a day). Such term includes services furnished in skilled nursing care facilities. Such term excludes hospice care.

(8) Respite care means care which is of limited duration, is furnished on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home, and is furnished for the purpose of helping the veteran to continue residing primarily at home. (Respite providers temporarily replace the caregivers to provide services ranging from supervision to skilled care needs.)

d) Effect of the veteran's financial resources on obligation to pay copayment. (1) A veteran is obligated to pay the copayment to the extent the veteran and the veteran's spouse have available resources. For veterans who have been receiving extended care services for 180 days or less, their available resources are the sum of the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, and expenses. For veterans who have been receiving extended care services for 181 days or more, their available resources are the sum of the value of the liquid assets, the fixed assets, and the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, the spousal resource protection amount, and (but only if the veteran--has a spouse or dependents residing in the community who is not institutionalized) expenses. When a veteran is legally separated from a spouse, available resources do not include spousal income, expenses, and assets or a spousal allowance.

(2) For purposes of determining available resources under this section:
(i) Income means current income (including, but not limited to, wages and income from a business (minus business expenses), bonuses, tips, severance pay, accrued benefits, cash gifts, inheritance amounts, interest income, standard dividend income from non tax deferred annuities, retirement income, pension income, unemployment payments, worker's compensation payments, black lung payments, tort settlement payments, social security payments, court mandated payments, payments from VA or any other Federal programs, and any other income). The amount of current income will be stated in frequency of receipt, e.g., per week, per month.
(ii) Expenses means basic subsistence expenses, including current expenses for the following: rent/mortgage for primary residence; vehicle payment for one vehicle; food for veteran, veteran's spouse, and veteran's dependents; education for veteran, veteran's spouse, and veteran's dependents; court-ordered payments of veteran or veteran's spouse (e.g., alimony, child-support); and including the average monthly expenses during the past year for the following: utilities and insurance for the primary residence; out-of-pocket medical care costs not otherwise covered by health insurance; health insurance premiums for the veteran, veteran's spouse, and veteran's dependents; and taxes paid on income and personal property.
(iii) Fixed Assets means:
(A) Real property and other non-liquid assets; except that this does not include--
(1) Burial plots;
(2) A residence if the residence is:
(i) The primary residence of the veteran and the veteran is receiving only noninstitutional extended care service; or
(ii) The primary residence of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.
(3) A vehicle if the vehicle is:
(i) The vehicle of the veteran and the veteran is receiving only noninstitutional extended care service; or
(ii) The vehicle of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.
(B) [Reserved]
(iv) Liquid assets means cash, stocks, dividends received from IRA, 401K's and other tax deferred annuities, bonds, mutual funds, retirement accounts (e.g., IRA, 401Ks, annuities), art, rare coins, stamp collections, and collectibles of the veteran, spouse, and dependents. This includes household and personal items (e.g., furniture, clothing, and jewelry) except when the veteran's spouse or dependents are living in the community.
(v) Spousal allowance is an allowance of $20 per day that is included only if the spouse resides in the community (not institutionalized).
(vi) Spousal resource protection amount means the value of liquid assets but not to exceed $89,280 if the spouse is residing in the community (not institutionalized).
(vii) Veterans allowance is an allowance of $20 per day.
(3) The maximum amount of a copayment for any month equals the copayment amount specified in paragraph (b)(1) of this section multiplied by the number of days in the month. The copayment for any month may be less than the amount specified in paragraph (b)(1) of this section if the veteran provides information in accordance with this section to establish that the copayment should be reduced or eliminated.
(e) Requirement to submit information. (1) Unless exempted under paragraph (f) of this section, a veteran must submit to a VA medical facility a completed VA Form 10-10EC and documentation requested by the Form at the following times:
(i) At the time of initial request for an episode of extended care services;
(ii) At the time of request for extended care services after a break in provision of extended care services for more than 30 days; and
(iii) Each year at the time of submission to VA of VA Form 10-10EZ.
(2) When there are changes that might change the copayment obligation (i.e., changes regarding marital status, fixed assets, liquid assets, expenses, income (when received), or whether the veteran has a spouse or dependents residing in the community), the veteran must report those changes to a VA medical facility within 10 days of the change.
(f) Veterans and care that are not subject to the copayment requirements. The following veterans and care are not subject to the copayment requirements of this section:
(1) A veteran with a compensable service-connected disability;
(2) A veteran whose annual income (determined under 38 U.S.C. 1503) is less than the amount in effect under 38 U.S.C. 1521(b);
(3) Care for a veteran's noncompensable zero percent service-connected disability;
(4) An episode of extended care services that began on or before November 30, 1999;
(5) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans;
(6) Care for treatment of sexual trauma as authorized under 38 U.S.C. 1720D; or
(7) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.
(g) VA Form 10-10EC.

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(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0629.)
(Authority: 38 U.S.C. 101(28), 501, 1701(7), 1710, 1710B, 1720B, 1720D, 1722A)
[67 FR 35037, 35040, May 17, 2002; 69 FR 39845, 39846, July 1, 2004]

[EFFECTIVE DATE NOTE: 69 FR 39845, 39846, July 1, 2004, revised paragraphs (d) through (g), effective Aug. 2, 2004.]
§ 17.112 Services or ceremonies on Department of Veterans Affairs hospital or center reservations.

(a) Services or ceremonies on Department of Veterans Affairs hospital or center reservations are subject to the following limitations:

(1) All activities must be conducted with proper decorum, and not interfere with the care and treatment of patients. Organizations must provide assurance that their members will obey all rules in effect at the hospital or center involved, and act in a dignified and proper manner;

(2) Partisan activities are inappropriate and all activities must be nonpartisan in nature. An activity will be considered partisan and therefore inappropriate if it includes commentary in support of, or in opposition to, or attempts to influence, any current policy of the Government of the United States or any State of the United States. If the activity is closely related to partisan activities being conducted outside the hospital or center reservations, it will be considered partisan and therefore inappropriate.

(b) Requests for permission to hold services or ceremonies will be addressed to the Secretary, or the Director of the Department of Veterans Affairs hospital or center involved. Such applications will describe the proposed activity in sufficient detail to enable a determination as to whether it meets the standards set forth in paragraph (a) of this section. If permission is granted, the Director of the hospital or center involved will assign an appropriate time, and render assistance where appropriate. No organization will be given exclusive permission to use the hospital or center reservation on any particular occasion. Where several requests are received for separate activities, the Director will schedule each so as to avoid overlapping or interference, or require appropriate modifications in the scope or timing of the activity.


[(EFFECTIVE DATE NOTE: 67 FR 35037, 35040, May 17, 2002, redesignated this section, effective June 17, 2002.]

[CROSS REFERENCE: This section was formerly § 17.111.]

§ 17.113 Conditions of custody.

When the personal effects of a patient who has been or is hospitalized or receiving nursing home care in a Department of Veterans Affairs hospital or center were or are duly delivered to a designated location for custody and loss of such personal effects has occurred or occurs by fire, earthquake, or other natural disaster, either during such storage or during laundering, reimbursement will be made as provided in §§ 17.113 and 17.114.
§ 17.114 Submittal of claim for reimbursement.
The claim for reimbursement for personal effects damaged or destroyed will be submitted by the patient to the Director. The patient will separately list and evaluate each article with a notation as to its condition at the time of the fire, earthquake, or other natural disaster i.e. whether new, worn, etc. The date of the fire, earthquake, or other natural disaster will be stated. It will be certified by a responsible official that each article listed was stored in a designated location at the time of loss by fire, earthquake, or other natural disaster or was in process of laundering. The patient will further state whether the loss of each article was complete or partial, permitting of some further use of the article. The responsible official will certify that the amount of reimbursement claimed on each article of personal effects is not in excess of the fair value thereof at time of loss. The certification will be prepared in triplicate, signed by the responsible officer who made it, and countersigned by the Director of the medical center. After the above papers have been secured, voucher will be prepared, signed, and certified, and forwarded to the Fiscal Officer for approval, payment to be made in accordance with fiscal procedure. The original list of property and certificate are to be attached to voucher.
§ 17.115 Claims in cases of incompetent patients.
§ 17.116 Adjudication of claims.

§ 17.115 Claims in cases of incompetent patients.
Where the patient is insane and incompetent, the patient will not be required to make claim for reimbursement for personal effects lost by fire, earthquake, or other natural disaster as required under the provisions of § 17.113. The responsible official will make claim for the patient, adding the certification in all details as provided for in § 17.113. After countersignature of this certification by the Director, payment will be made as provided in § 17.113, and the amount thereby disbursed will be turned over to the Director for custody.


[EFFECTIVE DATE NOTE: 67 FR 35037, 35039, May 17, 2002, redesignated this section, effective June 17, 2002.]
[CROSS REFERENCE: This section was formerly § 17.114.]

§ 17.116 Adjudication of claims.
Claims comprehended. Claims for reimbursing Department of Veterans Affairs employees for cost of repairing or replacing their personal property damaged or destroyed by patients or members while such employees are engaged in the performance of their official duties will be adjudicated by the Director of the medical center concerned. Such claims will be considered under the following conditions, both of which must have existed and, if either one is lacking, reimbursement or payment for the cost or repair of the damaged article will not be authorized:
(a) The claim must be for an item of personal property normally used by the employee in his or her day to day employment, e.g., eyeglasses, hearing aids, clothing, etc., and,
(b) Such personal property was damaged or destroyed by a patient or domiciliary member while the employee was engaged in the performance of official duties.
Reimbursement or payment as provided in this paragraph will be made in a fair and reasonable amount, taking into consideration the condition and reasonable value of the article at the time it was damaged or destroyed.

[EFFECTIVE DATE NOTE: 67 FR 35037, 35039, May 17, 2002, redesignated this section, effective June 17, 2002.]
[CROSS REFERENCE: This section was formerly § 17.115.]
PAYMENT AND REIMBURSEMENT OF THE EXPENSES OF MEDICAL SERVICES NOT PREVIOUSLY AUTHORIZED

§ 17.120 Payment or reimbursement of the expenses of hospital care and other medical services not previously authorized.
§ 17.121 Limitations on payment or reimbursement of the costs of emergency hospital care and medical services not previously authorized.
§ 17.122 Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization.
§ 17.123 Claimants.
§ 17.124 Preparation of claims.
§ 17.125 Where to file claims.
§ 17.126 Timely filing.
§ 17.127 Date of filing claims.
§ 17.128 Allowable rates and fees.
§ 17.129 Retroactive payments prohibited.
§ 17.130 Payment for treatment dependent upon preference prohibited.
§ 17.131 Payment of abandoned claims prohibited.
§ 17.132 Appeals.

§ 17.120 Payment or reimbursement of the expenses of hospital care and other medical services not previously authorized.

To the extent allowable, payment or reimbursement of the expenses of care, not previously authorized, in a private or public (or Federal) hospital not operated by the Department of Veterans Affairs, or of any medical services not previously authorized including transportation (except prosthetic appliances, similar devices, and repairs) may be paid on the basis of a claim timely filed, under the following circumstances:
(a) For veterans with service connected disabilities. Care or services not previously authorized were rendered to a veteran in need of such care or services:
   (1) For an adjudicated service-connected disability;
   (2) For nonservice-connected disabilities associated with and held to be aggravating an adjudicated service-connected disability;
   (3) For any disability of a veteran who has a total disability permanent in nature resulting from a service-connected disability (does not apply outside of the States, Territories, and possessions of the United State, the District of Columbia, and the Commonwealth of Puerto Rico);
   (4) For any illness, injury or dental condition in the case of a veteran who is participating in a rehabilitation program under 38 U.S.C. ch. 31 and who is medically determined to be in need of hospital care or medical services for any of the reasons enumerated in § 17.48(); and
   (Authority: 38 U.S.C. 1724, 1728)
(b) In a medical emergency. Care and services not previously authorized were rendered in a medical emergency of such nature that delay would have been hazardous to life or health, and

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(c) When Federal facilities are unavailable, VA or other Federal facilities were not feasibly available, and an attempt to use them beforehand or obtain prior VA authorization for the services required would not have been reasonable, sound, wise, or practicable, or treatment had been or would have been refused.

(Authority: 38 U.S.C. 1724, 1728, 7304)


§ 17.121 Limitations on payment or reimbursement of the costs of emergency hospital care and medical services not previously authorized.

Claims for payment or reimbursement of the costs of emergency hospital care or medical services not previously authorized will not be approved for any period beyond the date on which the medical emergency ended. For the purpose of payment or reimbursement of the expense of emergency hospital care or medical services not previously authorized, an emergency shall be deemed to have ended at that point when a VA physician has determined that, based on sound medical judgment, a veteran:

(a) Who received emergency hospital care could have been transferred from the non-VA facility to a VA medical center for continuation of treatment for the disability, or
(b) Who received emergency medical services, could have reported to a VA medical center for continuation of treatment for the disability.

From that point on, no additional care in a non-VA facility will be approved for payment by VA.

[49 FR 15548, April 19, 1984; redesignated at 61 FR 21964, 21965, May 13, 1996]

(38 U.S.C. 501(c)(1))

§ 17.122 Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization.

The expenses of repairs to prosthetic appliances, or similar appliances, therapeutic or rehabilitative aids or devices, furnished without prior authorization, but incurred in the care of an adjudicated service-connected disability (or, in the case of a veteran who is participating in a rehabilitation program under 38 U.S.C. ch. 31 and who is determined to be in need of the repairs for any of the reasons enumerated in § 17.47(g)) may be paid or reimbursed on the basis of a timely filed claim, if

(Authority: 38 U.S.C. 1728)

(a) Obtaining the repairs locally was necessary, expedient, and not a matter of preference to using authorized sources, and
(b) The costs were reasonable, except that where it is determined the costs were excessive or unreasonable, the claim may be allowed to the extent the costs were deemed reasonable and disallowed as to the remainder. In no circumstances will any claim for repairs be allowed to the extent the costs exceed $125.

(Authority: 38 U.S.C. 1728, 7304)

§ 17.123 Claimants.
A claim for payment or reimbursement of services not previously authorized may be filed by the veteran who received the services (or his/her guardian) or by the hospital, clinic, or community resource which provided the services, or by a person other than the veteran who paid for the services.

§ 17.124 Preparation of claims.
Claims for costs of services not previously authorized shall be on such forms as shall be prescribed and shall include the following:
(a) The claimant shall specify the amount claimed and furnish bills, vouchers, invoices, or receipts or other documentary evidence establishing that such amount was paid or is owed, and
(b) The claimant shall provide an explanation of the circumstances necessitating the use of community medical care, services, or supplies instead of Department of Veterans Affairs care, services, or supplies, and
(c) The claimant shall furnish such other evidence or statements as are deemed necessary and requested for adjudication of the claim.

(38 U.S.C. 501, 5705.)

§ 17.125 Where to file claims.
Claims for payment or reimbursement of the expenses of services not previously authorized should be filed as follows:
(a) For services rendered in the U.S. Claims for the expenses of care or services rendered in the United States, including the Territories or possessions of the United States, should be filed with the Chief, Outpatient Service, or Clinic Director of the VA facility designated as a clinic or jurisdiction which serves the region in which the care or services were rendered, and
(Authority: 38 U.S.C. 7304)
(b) For services rendered in the Philippines. Claims for the expenses of care or services rendered in the Republic of the Philippines should be filed with the Department of Veterans Affairs Outpatient Clinic (358/00), 2201 Roxas Blvd., Pasay City, 1300, Republic of the Philippines, and
(c) For services rendered in Canada. Claims for the expenses of care or services rendered in Canada should be filed with the Chief, Medical Administration Service (136), Department of Veterans Affairs Medical Center, White River Junction, VT 05009.
(d) For services rendered in other foreign countries. Claims for the expenses of care or services rendered in other foreign countries must be mailed to the Health Administration Center, P.O. Box 65023, Denver, CO 80206-3023.
(Authority: 38 U.S.C. 7304)
§ 17.126 Timely filing.

Claims for payment or reimbursement of the expenses of medical care or services not previously authorized must be filed within the following time limits:

(a) A claim must be filed within 2 years after the date the care or services were rendered (and in the case of continuous care, payment will not be made for any part of the care rendered more than 2 years prior to filing claim), or

(b) In the case of care or services rendered prior to a VA adjudication allowing service-connection:

(1) The claim must be filed within 2 years of the date the veteran was notified by VA of the allowance of the award of service-connection.

(2) VA payment may be made for care related to the service-connected disability received only within a 2-year period prior to the date the veteran filed the original or reopened claim which resulted in the award of service-connection but never prior to the effective date of the award of service-connection within that 2-year period.

(3) VA payment will never be made for any care received beyond this 2-year period whether service connected or not.

§ 17.127 Date of filing claims.

The date of filing any claim for payment or reimbursement of the expenses of medical care and services not previously authorized shall be the postmark date of a formal claim, or the date of any preceding telephone call, telegram, or other communication constituting an informal claim.

§ 17.128 Allowable rates and fees.

When it has been determined that a veteran has received public or private hospital care or outpatient medical services, the expenses of which may be paid under § 17.120 of this part, the payment of such expenses shall be paid in accordance with §§ 17.55 and 17.56 of this part.
§ 17.129 Retroactive payments prohibited.
When a claim for payment or reimbursement of expenses of services not previously authorized has not been timely filed in accordance with the provisions of § 17.126, the expenses of any such care or services rendered prior to the date of filing the claim shall not be paid or reimbursed. In no event will a bill or claim be paid or allowed for any care or services rendered prior to the effective date of any law, or amendment to the law, under which eligibility for the medical services at Department of Veterans Affairs expense has been established.
[39 FR 1844, Jan. 15, 1974; redesignated and amended at 61 FR 21964, 21965, 21968, May 13, 1996]

§ 17.130 Payment for treatment dependent upon preference prohibited.
No reimbursement or payment of services not previously authorized will be made when such treatment was procured through private sources in preference to available Government facilities.
[39 FR 1844, Jan. 15, 1974; redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.131 Payment of abandoned claims prohibited.
Any informal claim for the payment or reimbursement of medical expenses which is not followed by a formal claim, or any formal claim which is not followed by necessary supporting evidence, within 1 year from the date of the request for a formal claim or supporting evidence shall be deemed abandoned, and payment or reimbursement shall not be authorized on the basis of such abandoned claim or any future claim for the same expenses. For the purpose of this section, time limitations shall be computed from the date following the date of request for a formal claim or supporting evidence.

§ 17.132 Appeals.
When any claim for payment or reimbursement of expenses of medical care or services rendered in non-Department of Veterans Affairs facilities or from non-Department of Veterans Affairs resources has been disallowed, the claimant shall be notified of the reasons for the disallowance and of the right to initiate an appeal to the Board of Veterans Appeals by filing a Notice of Disagreement, and shall be furnished such other notices or statements as are required by part 19 of this chapter, governing appeals.
Reconsideration of Denied Claims

§ 17.133 Procedures.

(a) Scope. This section sets forth reconsideration procedures regarding claims for benefits administered by the Veterans Health Administration (VHA). These procedures apply to claims for VHA benefits regarding decisions that are appealable to the Board of Veterans' Appeals (e.g., reimbursement for non-VA care not authorized in advance, reimbursement for beneficiary travel expenses, reimbursement for home improvements or structural alterations, etc.). These procedures do not apply when other regulations providing reconsideration procedures do apply (this includes CHAMPVA (((38 CFR 17.270 through 17.278) and spina bifida (((38 CFR 17.904) and any other regulations that contain reconsideration procedures). Also, these procedures do not apply to decisions made outside of VHA, such as decisions made by the Veterans Benefits Administration and adopted by VHA for decisionmaking. These procedures are not mandatory, and a claimant may choose to appeal the denied claim to the Board of Veterans' Appeals pursuant to 38 U.S.C. 7105 without utilizing the provisions of this section. Submitting a request for reconsideration shall constitute a notice of disagreement for purposes of filing a timely notice of disagreement under 38 U.S.C. 7105(b).

(b) Process. An individual who disagrees with the initial decision denying the claim in whole or in part may obtain reconsideration under this section by submitting a reconsideration request in writing to the Director of the healthcare facility of jurisdiction within one year of the date of the initial decision. The reconsideration decision will be made by the immediate supervisor of the initial VA decision-maker. The request must state why it is concluded that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for the dispute will be returned to the sender without further consideration. The request for reconsideration may include a request for a meeting with the immediate supervisor of the initial VA decision-maker, the claimant, and the claimant's representative (if the claimant wishes to have a representative present). Such a meeting shall only be for the purpose of discussing the issues and shall not include formal procedures (e.g., presentation, cross-examination of witnesses, etc.). The meeting will be taped and transcribed by VA if requested by the claimant and a copy of the transcription shall be provided to the claimant. After reviewing the matter, the immediate supervisor of the initial VA decision-maker shall issue a written decision that affirms, reverses, or modifies the initial decision.

Note to § 17.133: The final decision of the immediate supervisor of the initial VA decision-maker will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0600)

[64 FR 44659, 44660, Aug. 17, 1999]
[EFFECTIVE DATE NOTE: 64 FR 44659, 44660, Aug. 17, 1999, added this section, effective Aug. 17, 1999.]
DELEGATIONS OF AUTHORITY

§ 17.140 Authority to adjudicate reimbursement claims.
§ 17.141 Authority to adjudicate foreign reimbursement claims.
§ 17.142 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.

§ 17.140 Authority to adjudicate reimbursement claims.
The Department of Veterans Affairs medical installation having responsibility for the fee basis program in the region or territory (including the Republic of the Philippines) served by such medical installation shall adjudicate all claims for the payment or reimbursement of the expenses of services not previously authorized rendered in the region or territory. [39 FR 1844, Jan. 15, 1974; redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.141 Authority to adjudicate foreign reimbursement claims.
The Health Administration Center in Denver, CO, shall adjudicate claims for the payment or reimbursement of the expenses of services not previously authorized rendered in any foreign country except Canada which will be referred to the VA Medical Center in White River Junction, VT, and the Republic of the Philippines which will be referred to the VA Outpatient Clinis in Pasay City. [39 FR 1844, Jan. 15, 1974, as amended at 45 FR 6938, Jan. 31, 1980; redesignated and amended at 61 FR 21964, 21965, 21968, May 13, 1996]

§ 17.142 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.
The Under Secretary for Health is delegated authority to enter into
(a) Sharing agreements authorized under the provisions of 38 U.S.C. 8153 and § 17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8-3.204(e);
(b) Contracts with schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Department of Veterans Affairs health care facilities (including, but not limited to, services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel); and
(c) When a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 513 for medical and ancillary services. The authority under this section generally will be exercised by approval of proposed contracts or agreements negotiated at the health care facility level. Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in § 17.99. All such contracts and agreements will be negotiated pursuant to 41 CFR chapters 1 and 8. [45 FR 6938, Jan. 31, 1980; redesignated at 61 FR 21964, 21965, May 13, 1996; 62 FR 17072, April 9, 1997]
(38 U.S.C. 512, 513, 7409, 8153)

[EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "Under Secretary for Health" for "Chief Medical Director" in the introductory text, effective April 9, 1997.]
TRANSPORTATION OF CLAIMANTS AND BENEFICIARIES

§ 17.143 Transportation of claimants and beneficiaries.
§ 17.144 Limitations.
§ 17.145 Approval of unauthorized travel of claimants and beneficiaries.

§ 17.143 Transportation of claimants and beneficiaries.

Discussion and Analysis in the Veterans Benefits Manual

(a) If travel will be provided, it shall be paid in accordance with 38 U.S.C. 111 and this section.

(Authority: 38 U.S.C. 111)

(b) Transportation at Government expense shall be authorized for the following categories of VA beneficiaries, subject to the deductible established in Sec. 17.101, "Limitations":

(1) A veteran or other person traveling in connection with treatment for a service-connected disability (irrespective of percent of disability).
(2) A veteran with a service-connected disability rated at 30 percent or more, for treatment of any condition.
(3) A veteran receiving VA pension benefits.
(4) A veteran whose annual income, as determined under 38 U.S.C. 1503, does not exceed the maximum annual rate of pension which would be payable if the veteran were eligible for pension, or who is unable to defray the expenses of travel.

(c) Transportation at Government expense shall be authorized for the following VA beneficiaries without their being subject to the deductible established in Sec. 17.101, "Limitations":

(1) A veteran traveling in connection with a scheduled compensation or pension examination.
(2) A veteran or other person traveling by a specialized mode of transportation such as an ambulance, ambulette, air ambulance, wheelchair van, or other vehicle specially designed to transport disabled individuals provided:

(i) A physician determines that the special mode of travel is medically required;
(ii) The person is unable to defray the expenses of the travel; and
(iii) The travel is authorized in advance or was undertaken in connection with a medical emergency such that delay to obtain authorization would be hazardous to the person's life or health.

(d) For the purposes of this section, the term "other person" refers to:

(1) An attendant when it has been determined in advance that the beneficiary's physical or mental condition requires the presence of an attendant.
(2) A dependent or survivor receiving care in a VA facility under 38 U.S.C. 1713.
(3) Members of the veteran's immediate family, the veteran's legal guardian, or the individual in whose household the veteran certifies an intention to live, when the veteran is receiving services under 38 U.S.C. 1701(6)(B).

(e) A veteran or other person shall be considered unable to defray the expenses of travel if:
(1) Annual income for the year immediately preceding the application for benefits does not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or
(2) The person is able to demonstrate that due to circumstances such as loss of employment, or incurrence of a disability, income in the year of application will not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or
(3) The person has a service-connected disability rated at least 30 percent; or
(4) The person is traveling in connection with treatment of a service-connected disability.
(Authority: 38 U.S.C. 111)
(f) Admission. (1) Admission of applicants under 38 U.S.C. 1710, 38 CFR 17.46 and 17.84.
(2) Hospital admission for observation and examination.
(g) Readmissions. Hospital readmissions, when medically determined necessary to observe progress, modify treatment or diet, etc.
(h) Preparatory and posthospital care. When necessary to the provision of medical services furnished veterans under 38 U.S.C. 1712(a)(5), and 1717.
(i) Authorized absence. Transportation will not be furnished beneficiaries who are on authorized absence, to depart from or return to Department of Veterans Affairs health care facilities, except that if a patient in such status develops an emergent condition and the patient (or guardian, if there be one) is without funds to return such patient to a Department of Veterans Affairs health care facility, travel may be approved by the Director of the Department of Veterans Affairs facility to which the patient is to be returned.
(j) Discharge. (1) Subject to the limitations of this section, upon regular discharge from hospitalization for treatment, observation and examination, or from nursing home care, return transportation to the point from which the beneficiary had proceeded; or to another point if no additional expense be thereby caused the Government.
(2) A patient in a terminal condition may be discharged to his or her home or transferred to a hospital suitable and nearer that home, regardless of whether travel so required exceeds that covered in proceeding to the hospital of original admission.
(3) Transportation may be furnished to a point other than that from which a patient had proceeded to a hospital upon a showing of bona fide change of address of the patient's residence during the period of hospital care.
(4) No return transportation will be supplied a patient who receives an irregular discharge from hospital or nursing home care, unless the patient executes an affidavit of inability to defray the expense of return transportation.
(k) Outpatient services. (1) Outpatient physical examination, subject to limitations described in 38 U.S.C. 111(c) and 38 CFR 17.144, "Limitations".
(2) Outpatient treatment for service-connected conditions, including adjunct treatment thereof; for veterans under Sec. 17.93 (a)(2) and (d)(3); and for nonservice-connected disabilities of veterans who are participating in a rehabilitation program under 38 U.S.C. chapter 31 and who are medically determined to be in need of medical services for any of the reasons enumerated in 17.47(j), subject to limitations described in Sec. 17.144, "Limitations".
(Authority: 38 U.S.C. 111(b))
(l) Accessories of transportation. The accessories of transportation, meals and lodging en route, and accompaniment by an attendant or attendants, may be authorized when determined necessary for the travel.

(m) Furnishing transportation and other expenses incident thereto. In furnishing transportation and other expenses incident thereto, as defined, VA may (1) issue requests for transportation, meals, and lodging; or (2) reimburse the claimant, beneficiary or representative, for payment made for such purpose, upon due certification of vouchers submitted therefor. The provisions of 38 U.S.C. 111 and 38 CFR 17.143, 17.144 and 17.145 will be complied with in all instances when transportation costs are claimed. (Authority: 38 U.S.C. 111)

(n) Transportation of other than Department of Veterans Affairs beneficiaries. Transportation of beneficiaries of other Federal agencies, incident to medical services rendered upon requests of those agencies, will not be furnished by the Department of Veterans Affairs, except that facility vehicles may be used subject to reimbursement, and with the exception of beneficiaries of the Bureau of Old Age and Survivors Insurance in the Philippines on a reimbursable basis under agreement with that agency. Transportation incident to medical services rendered allied beneficiaries under agreement will be subject to reimbursement by the governments concerned.


§ 17.144 Limitations.

(a) VA shall deduct from amounts payable to persons under § 17.100(b), an amount equal to $3 for each one-way trip to a VA facility, up to a maximum of $18 in any calendar month. Persons required to make more than six one-way visits per calendar month will receive full travel reimbursement after the $18 cap is met.

(b) The provisions of paragraph (a) of this section may be waived when imposition of the deductible would cause severe financial hardship. Loss of employment, or sudden illness or disability causing the beneficiary's income in the year of application to fall below the maximum level of VA pension, shall be deemed to constitute severe financial hardship.

(c) Transportation will not be authorized for the cost of travel by taxi or a hired car for visually impaired veterans (as a special mode), or by privately owned vehicle in any amount in excess of the cost of such travel by other forms of public transportation unless public transportation is not reasonably accessible or would be medically inadvisable.

(d) Transportation will not be authorized for the cost of travel in excess of the actual expense incurred by any person as certified by that person in writing.


(38 U.S.C. 111)

§ 17.145 Approval of unauthorized travel of claimants and beneficiaries.

(a) Payment may be approved for travel performed under § 17.143(a) through (g) without prior authorization only in those cases where the Department of Veterans Affairs determines that there was a need for prompt medical care which was approved and:
(1) The circumstances prevented a request for prior travel authorization, or
(2) Due to Department of Veterans Affairs delay or error prior authorization for travel was not given, or
(3) There was a justifiable lack of knowledge on the part of a third party acting for the veteran that a request for prior authorization was necessary.

(b) In other cases, payment may be approved for such travel without prior authorization only upon a finding by the Secretary or designee that failure to secure prior authorization was justified.


(38 U.S.C. 111)

[EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "§ 17.143(a)" for "§ 17.100(a)" in the introductory text of paragraph (a), effective April 9, 1997.]
§ 17.149 Sensori-neural Aids.
§ 17.150 Prosthetic and similar appliances.
§ 17.151 Invalid lifts for recipients of aid and attendance allowance or special monthly compensation.
§ 17.152 Devices to assist in overcoming the handicap of deafness.
§ 17.153 Training in the use of appliances.
§ 17.154 Dog-guides and equipment for blind.

§ 17.149 Sensori-neural Aids.

(a) Notwithstanding any other provision of this part, VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) only to veterans otherwise receiving VA care or services and only as provided in this section.
(b) VA will furnish needed sensori-neural aids (i.e., eyeglasses, contact lenses, hearing aids) to the following veterans:
   (1) Those with a compensable service-connected disability;
   (2) Those who are former prisoners of war;
   (3) Those awarded a Purple Heart;
   (4) Those in receipt of benefits under 38 U.S.C. 1151;
   (5) Those in receipt of increased pension based on the need for regular aid and attendance or by reason of being permanently housebound;
   (6) Those who have a visual or hearing impairment that resulted from the existence of another medical condition for which the veteran is receiving VA care, or which resulted from treatment of that medical condition;
   (7) Those with a significant functional or cognitive impairment evidenced by deficiencies in activities of daily living, but not including normally occurring visual or hearing impairments; and
   (8) Those visually or hearing impaired so severely that the provision of sensori-neural aids is necessary to permit active participation in their own medical treatment.
(c) VA will furnish needed hearing aids to those veterans who have service--connected hearing disabilities rated 0 percent if there is organic conductive, mixed, or sensory hearing impairment, and loss of pure tone hearing sensitivity in the low, mid, or high-frequency range or a combination of frequency ranges which contribute to a loss of communication ability; however, hearing aids are to be provided only as needed for the service--connected hearing disability.

(38 U.S.C. 501, 1707(b))
[EFFECTIVE DATE NOTE: 69 FR 33575, June 16, 2004, amended this section, effective July 16, 2004.]

§ 17.150 Prosthetic and similar appliances.

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Artificial limbs, braces, orthopedic shoes, hearing aids, wheelchairs, medical accessories, similar appliances including invalid lifts and therapeutic and rehabilitative devices, and special clothing made necessary by the wearing of such appliances, may be purchased, made or repaired for any veteran upon a determination of feasibility and medical need, provided:

(a) As part of outpatient care. The appliances or repairs are a necessary part of outpatient care for which the veteran is eligible under 38 U.S.C. 1712 and 38 CFR 17.93 (or a necessary part of outpatient care authorized under § 17.94) or

(b) As part of hospital care. The appliances or repairs are a necessary part of inpatient care for any service-connected disability or any nonservice-connected disability, if:

1. The nonservice-connected disability is associated with an aggravating a service-connected disability, or

2. The nonservice-connected disability is one for which hospital admission was authorized, or

3. The nonservice-connected disability is associated with and aggravating a nonservice-connected disability for which hospital admission was authorized, or

4. The nonservice-connected disability is one for which treatment may be authorized under the provisions of § 17.48(f), or

(c) As part of domiciliary care. The appliances or repairs are necessary for continued domiciliary care, or are necessary to treat a member's service-connected disability, or nonservice-connected disability associated with and aggravating a service-connected disability, or

(d) As part of nursing home care. The appliances or repairs are a necessary part of nursing home care furnished in facilities under the direct and exclusive jurisdiction of the Department of Veterans Affairs.


§ 17.151 Invalid lifts for recipients of aid and attendance allowance or special monthly compensation.
An invalid lift may be furnished if:

(a) The applicant is a veteran who is receiving (1) special monthly compensation (including special monthly compensation based on the need for aid and attendance) under the provisions of 38 U.S.C. 1114(r), or (2) comparable compensation benefits at the rates prescribed under 38 U.S.C. 1134, or (3) increased pension based on the need for aid and attendance or a greater compensation benefit rather than aid and attendance pension to which he or she has been adjudicated to be presently eligible; and

(b) The veteran has loss, or loss of use, of both lower extremities and at least one upper extremity (loss of use may result from paralysis or other impairment to muscle power and includes all cases in which the veteran cannot use his or her extremities or is medically prohibited from doing so because of a serious disease or disability); and

(c) The veteran has been medically determined incapable of moving himself or herself from his or her bed to a wheelchair, or from his or her wheelchair to his or her bed,
without the aid of an attendant, because of the disability involving the use of his or her extremities; and
d) An invalid lift would be a feasible means by which the veteran could accomplish the necessary maneuvers between bed and wheelchair, and is medically determined necessary.

§ 17.152 Devices to assist in overcoming the handicap of deafness.
Devices for assisting in overcoming the handicap of deafness (including telecaptioning television decoders) may be furnished to any veteran who is profoundly deaf (rated 80% or more disabled for hearing impairment by the Department of Veterans Affairs) and is entitled to compensation on account of such hearing impairment.
[53 FR 46607, Nov. 18, 1988; redesignated at 61 FR 21964, 21965, May 13, 1996]

(38 U.S.C. 3902)

§ 17.153 Training in the use of appliances.
Beneficiaries supplied prosthetic and similar appliances will be additionally entitled to fitting and training in the use of the appliances. Such training will usually be given in Department of Veterans Affairs facilities and by Department of Veterans Affairs employees, but may be obtained under contract if determined necessary.
[26 FR 5871, June 30, 1961; redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.154 Dog-guides and equipment for blind.
(a) Blind ex-members of the Armed Forces entitled to disability compensation for a service-connected disability may be furnished a trained dog-guide. In addition, they may be furnished necessary travel expense to and from their places of residence to the point where adjustment to the dog-guide is available and meals and lodging during the period of adjustment, provided they are required to be away from their usual places of residence during the period of adjustment.
(b) Mechanical and/or electronic equipment considered necessary as aids to overcoming the handicap of blindness may also be supplied to beneficiaries defined in paragraph (a) of this section.
[26 FR 5872, June 30, 1961; redesignated at 61 FR 21964, 21965, May 13, 1996]
AUTOMOTIVE EQUIPMENT AND DRIVER TRAINING

§ 17.155 Minimum standards of safety and quality for automotive adaptive equipment.

§ 17.156 Eligibility for automobile adaptive equipment.

§ 17.157 Definition-adaptive equipment.

§ 17.158 Limitations on assistance.

§ 17.159 Obtaining vehicles for special driver training courses.

§ 17.155 Minimum standards of safety and quality for automotive adaptive equipment.

Discussion and Analysis in the Veterans Benefits Manual

(a) The Under Secretary for Health or designee is authorized to develop and establish minimum standards of safety and quality for adaptive equipment provided under 38 U.S.C. chapter 39.

(b) In the performance of this function, the following considerations will apply:

(1) Minimum standards of safety and quality will be developed and promulgated for basic adaptive equipment specifically designed to facilitate operation and use of standard passenger motor vehicles by persons who have specified types of disablement and for the installation of such equipment.

(2) In those instances where custom-built adaptive equipment is designed and installed to meet the peculiar needs of uniquely disabled persons and where the incidence of probable usage is not such as to justify development of formal standards, such equipment will be inspected and, if in order, approved for use by a qualified designee of the Under Secretary for Health.

(3) Adaptive equipment, available to the general public, which is manufactured under standards of safety imposed by a Federal agency having authority to establish the same, shall be deemed to meet required standards for use as adaptive equipment. These include such items as automatic transmissions, power brakes, power steering and other automotive options.

(c) For those items where specific Department of Veterans Affairs standards of safety and quality have not as yet been developed, or where such standards are otherwise provided as with custom-designed or factory option items, authorization of suitable adaptive equipment will not be delayed. Approval of such adaptive equipment, however, shall be subject to the judgment of designated certifying officials that it meets implicit standards of safety and quality adopted by the industry or as later developed by the Department of Veterans Affairs.


[EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "Under Secretary for Health" for "Chief Medical Director" in paragraphs (a) and (b)(2), effective April 9, 1997.]

§ 17.156 Eligibility for automobile adaptive equipment.
Automobile adaptive equipment may be authorized if the Under Secretary for Health or designee determines that such equipment is deemed necessary to insure that the eligible person will be able to operate the automobile or other conveyance in a manner consistent with such person's safety and so as to satisfy the applicable standards of licensure established by the State of such person's residency or other proper licensing authority. (a) Persons eligible for adaptive equipment are:
(1) Veterans who are entitled to receive compensation for the loss or permanent loss of use of one or both feet; or the loss or permanent loss of use of one or both hands; or ankylosis of one or both knees, or one of both hips if the disability is the result of injury incurred or disease contracted in or aggravated by active military, naval or air service. (2) Members of the Armed Forces serving on active duty who are suffering from any disability described in paragraph (a)(1) of this section incurred or contracted during or aggravated by active military service are eligible to receive automobile adaptive equipment. (b) Payment or reimbursement of reasonable costs for the repair, replacement, or reinstallion of adaptive equipment deemed necessary for the operation of the automobile may be authorized by the Under Secretary for Health or designee. [53 FR 46607, Nov. 18, 1988; redesignated at 61 FR 21964, 21965, May 13, 1996; 62 FR 17072, April 9, 1997] (38 U.S.C. 3902) [EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "Under Secretary for Health" for "Chief Medical Director" in the introductory text and paragraph (b), effective April 9, 1997.]
§ 17.157 Definition-adaptive equipment. The term, adaptive equipment, means equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant, and enable that person to meet the applicable standards of licensure. Adaptive equipment includes any term specified by the Under Secretary for Health or designee as ordinarily necessary for any of the classes of losses or combination of such losses specified in § 17.156 of this part, or as deemed necessary in an individual case. Adaptive equipment includes, but is not limited to, a basic automatic transmission, power steering, power brakes, power window lifts, power seats, air-conditioning equipment when necessary for the health and safety of the veteran, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle. [53 FR 46608, Nov. 18, 1988; redesignated and amended at 61 FR 21964, 21965, 21968, May 13, 1996] (38 U.S.C. 3901, 3902) § 17.158 Limitations on assistance.

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(a) An eligible person shall not be entitled to adaptive equipment for more than two automobiles or other conveyances at any one time or during any four-year period except when due to circumstances beyond control of such person, one of the automobiles or conveyances for which adaptive equipment was provided during the applicable four-year period is no longer available for the use of such person.

(1) Circumstances beyond the control of the eligible person are those where the vehicle was lost due to fire, theft, accident, court action, or when repairs are so costly as to be prohibitive or a different vehicle is required due to a change in the eligible person's physical condition.

(2) For purposes of paragraph (a)(1) of this section, an eligible person shall be deemed to have access to and use of an automobile or other conveyance for which the Department of Veterans Affairs has provided adaptive equipment if that person has sold, given or transferred the vehicle to a spouse, family member or other person residing in the same household as the eligible person, or to a business owned by such person.

(Authority: 38 U.S.C. 3903)

(b) Eligible persons may be reimbursed for the actual cost of adaptive equipment subject to a dollar amount for specific items established from time to time by the Under Secretary for Health.

(Authority: 38 U.S.C. 3902)

(c) Reimbursement for a repair to an item of adaptive equipment is limited to the current vehicles of record and only to the basic components authorized as automobile adaptive equipment. Reimbursable amounts for repairs are limited to the cost of parts and labor based on the amounts published in generally acceptable commercial estimating guides for domestic automobiles.

(Authority: 38 U.S.C. 3902)

§ 17.159 Obtaining vehicles for special driver training courses.
The Secretary may obtain by purchase, lease, gift or otherwise, any automobile, motor vehicle, or other conveyance deemed necessary to conduct special driver training courses at Department of Veterans Affairs health care facilities. The Secretary may sell, assign, transfer or convey any such automobile, vehicle or conveyance to which the Department of Veterans Affairs holds title for such price or under such terms deemed appropriate by the Secretary. Any proceeds received from such disposition shall be credited to the applicable Department of Veterans Affairs appropriation.

[45 FR 6939, Jan. 31, 1980; redesignated at 54 FR 46607, Nov. 18, 1988; further redesignated at 61 FR 21964, 21965, May 13, 1996]

(38 U.S.C. 3903(e)(3))

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DENTAL SERVICES

§ 17.160 Authorization of dental examinations.
When a detailed report of dental examination is essential for a determination of eligibility for benefits, dental examinations may be authorized for the following classes of claimants or beneficiaries:
(a) Those having a dental disability adjudicated as incurred or aggravated in active military, naval, or air service or those requiring examination to determine whether the dental disability is service connected.
(b) Those having disability from disease or injury other than dental, adjudicated as incurred or aggravated in active military, naval, or air service but with an associated dental condition that is considered to be aggravating the basic service-connected disorder.
(c) Those for whom a dental examination is ordered as a part of a general physical examination.
(d) Those requiring dental examination during hospital, nursing home, or domiciliary care.
(e) Those held to have suffered dental injury or aggravation of an existing dental injury, as the result of examination, hospitalization, or medical or surgical (including dental) treatment that had been awarded.
(f) Veterans who are participating in a rehabilitation program under 38 U.S.C. chapter 31 are entitled to such dental services as are professionally determined necessary for any of the reasons enumerated in § 17.47(g).
(Authority: 38 U.S.C. 1712(b); ch. 31)
(g) Those for whom a special dental examination is authorized by the Under Secretary for Health or the Assistant Chief Medical Director for Dentistry.
(h) Persons defined in § 17.60(d).

Outpatient dental treatment may be authorized by the Chief, Dental Service, for beneficiaries defined in 38 U.S.C. 1712(b) and 38 CFR 17.93 to the extent prescribed
and in accordance with the applicable classification and provisions set forth in this section.

(a) Class I. Those having a service-connected compensable dental disability or condition, may be authorized any dental treatment indicated as reasonably necessary to maintain oral health and masticatory function. There is no time limitation for making application for treatment and no restriction as to the number of repeat episodes of treatment.

(b) Class II. (1)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place after September 30, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They served on active duty during the Persian Gulf War and were discharged or released, under conditions other than dishonorable, from a period of active military, naval, or air service of not less than 90 days, or they were discharged or released under conditions other than dishonorable, from any other period of active military, naval, or air service of not less than 180 days;

(B) Application for treatment is made within 90 days after such discharge or release.

(C) The certificate of discharge or release does not bear a certification that the veteran was provided, within the 90-day period immediately before such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental treatment indicated by the examination to be needed, and

(D) Department of Veterans Affairs dental examination is completed within six months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service after August 12, 1981, who had reentered active military service within 90 days after the date of a discharge or release from a prior period of active military service, may apply for treatment of service-connected noncompensable dental conditions relating to any such periods of service within 90 days from the date of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within 90 days after the date of correction.

(2)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place before October 1, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They were discharged or released, under conditions other than dishonorable, from a period of active military, naval or air service of not less than 180 days.

(B) Application for treatment is made within one year after such discharge or release.

(C) Department of Veterans Affairs dental examination is completed within 14 months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service before August 13, 1981, who had reentered active military service within one year from the date of a prior discharge or release, may apply for treatment of service-connected noncompensable dental conditions relating to any such prior periods of service within one year of their final discharge or release.
(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within one year after the date of correction.

(Authority: 38 U.S.C. 1712)

(c) Class II (a). Those having a service-connected noncompensable dental condition or disability adjudicated as resulting from combat wounds or service trauma may be authorized any treatment indicated as reasonably necessary for the correction of such service-connected noncompensable condition or disability.

(d) Class II(b). Those having a service-connected noncompensable dental condition or disability and who had been detained or interned as prisoners of war for a period of less than 90 days may be authorized any treatment as reasonably necessary for the correction of such service-connected dental condition or disability.


(e) Class II(c). Those who were prisoners of war for 90 days or more, as determined by the concerned military service department, may be authorized any needed dental treatment.


(f) Class IIR (Retroactive). Any veteran who had made prior application for and received dental treatment from the Department of Veterans Affairs for noncompensable dental conditions, but was denied replacement of missing teeth which were lost during any period of service prior to his/her last period of service may be authorized such previously denied benefits under the following conditions:

(1) Application for such retroactive benefits is made within one year of April 5, 1983.

(2) Existing Department of Veterans Affairs records reflect the prior denial of the claim. All Class IIR (Retroactive) treatment authorized will be completed on a fee basis status.

(Authority: 38 U.S.C. 1712)

(g) Class III. Those having a dental condition professionally determined to be aggravating disability from an associated service-connected condition or disability may be authorized dental treatment for only those dental conditions which, in sound professional judgment, are having a direct and material detrimental effect upon the associated basic condition or disability.

(h) Class IV. Those whose service-connected disabilities are rated at 100% by schedular evaluation or who are entitled to the 100% rate by reason of individual unemployability may be authorized any needed dental treatment.

(Authority: 38 U.S.C. 1712)

(i) Class V. A veteran who is participating in a rehabilitation program under 38 U.S.C. chapter 31 may be authorized such dental services as are professionally determined necessary for any of the reasons enumerated in § 17.47(g).

(Authority: 38 U.S.C. 1712(b); chapter 31)

(j) Class VI. Any veterans scheduled for admission or otherwise receiving care and services under chapter 17 of 38 U.S.C. may receive outpatient dental care which is medically necessary, i.e., is for dental condition clinically determined to be complicating a medical condition currently under treatment.

(Authority: 38 U.S.C. 1712)

§ 17.162 Eligibility for Class II dental treatment without rating action.
When an application has been made for class II dental treatment under § 17.161(b), the applicant may be deemed eligible and dental treatment authorized on a one-time basis without rating action if:
(a) The examination to determine the need for dental care has been accomplished within the specified time limit after date of discharge or release unless delayed through no fault of the veteran, and sound dental judgment warrants a conclusion the condition originated in or was aggravated during service and the condition existed at the time of discharge or release from active service, and
(Authority: 38 U.S.C. 1712)
(b) The treatment will not involve replacement of a missing tooth noted at the time of Department of Veterans Affairs examination except:
(1) In conjunction with authorized extraction replacement, or
(2) When a determination can be made on the basis of sound professional judgment that a tooth was extracted or lost on active duty.
(c) Individuals whose entire tour of duty consisted of active or inactive duty for training shall not be eligible for treatment under this section.

§ 17.163 Posthospital outpatient dental treatment.
The Chief, Dental Service may authorize outpatient dental care which is reasonably necessary to complete treatment of a nonservice-connected dental condition which was begun while the veteran was receiving Department of Veterans Affairs authorized hospital care.
(38 U.S.C. 1712(b)(5))

§ 17.164 Patient responsibility in making and keeping dental appointments.
Any veteran eligible for dental treatment on a one-time completion basis only and who has not received such treatment within 3 years after filing the application shall be presumed to have abandoned the claim for dental treatment.

§ 17.165 Emergency outpatient dental treatment.
When outpatient emergency dental care is provided, as a humanitarian service, to individuals who have no established eligibility for outpatient dental care, the treatment will be restricted to the alleviation of pain or extreme discomfort, or the remediation of a dental condition which is determined to be endangering life or health. The provision of emergency treatment to persons found ineligible for dental care will not entitle the
applicant to further dental treatment. Individuals provided emergency dental care who are
found to be ineligible for such care will be billed.
[50 FR 14704, Apr. 15, 1985; 50 FR 21604, May 28, 1985; redesignated at 61 FR 21964,
21965, May 13, 1996]

(38 U.S.C. 501)

§ 17.166 Dental services for hospital or nursing home patients and domiciled
members.
Persons receiving hospital, nursing home, or domiciliary care pursuant to the provisions
of §§ 17.46 and 17.47, will be furnished such dental services as are professionally
determined necessary to the patients' or members' overall hospital, nursing home, or
domiciliary care.
[30 FR 1790, Feb. 9, 1965; redesignated at 61 FR 21964, 21965, May 13, 1996]
§ 17.170 Autopsies.

(a) Except as provided in this section, no autopsy will be performed by the Department of Veterans Affairs unless there is no known surviving spouse or known next of kin; or without the consent of the surviving spouse or, in a proper case, the next of kin, unless the patient or domiciled person was abandoned by the spouse, if any, or, if no spouse, by the next of kin for a period of not less than 6 months next preceding death. Where no inquiry has been made for or in regard to the decedent for a period of 6 months next preceding his death, he or she shall be deemed to have been abandoned.

(b) If there is no known surviving spouse or known next of kin, or if the decedent shall have been abandoned or if the request is sent and the spouse or, in proper cases, the next of kin fails to reply within the reasonable time stated in such request of the Department of Veterans Affairs for permission to perform the autopsy, the Director is hereby authorized to cause an autopsy to be performed if in the Director's discretion he or she concludes that such autopsy is reasonably required for any necessary purpose of the Department of Veterans Affairs, including the completion of official records and advancement of medical knowledge.

(c) If it is suspected that death resulted from crime and if the United States has jurisdiction over the area where the body is found, the Director of the Department of Veterans Affairs facility will inform the Office of Inspector General of the known facts concerning the death. Thereupon the Office of Inspector General will transmit all such information to the United States Attorney for such action as may be deemed appropriate and will inquire whether the United States Attorney objects to an autopsy if otherwise it be appropriate. If the United States Attorney has no objection, the procedure as to autopsy will be the same as if the death had not been reported to him or her.

(d) If the United States does not have exclusive jurisdiction over the area where the body is found the local medical examiner/coroner will be informed. If the local medical examiner/coroner declines to assume jurisdiction the procedure will be the same as is provided in paragraph (c) of this section. If a Federal crime is indicated by the evidence, the procedure of paragraph (c) of this section will also be followed.

(e) The laws of the decedent's domicile are determinative as to whether the spouse or the next of kin is the proper person to grant permission to perform an autopsy and of the question as to the order of preference among such persons. Usually the spouse is first entitled, except in some situations of separation; followed by children, parents, brothers and sisters, etc. When the next of kin as defined by the laws of decedent's domicile consists of a number of persons as children, parents, brothers and sisters, etc., permission to perform an autopsy may be accepted when granted by the person in the appropriate class who assumes the right and duty of burial.

(f) The Director of a Department of Veterans Affairs facility is authorized to cause an autopsy to be performed on a veteran who dies outside of a Department of Veterans Affairs facility while undergoing post-hospital care under the provisions of 38 U.S.C. 1712 and 38 CFR 17.93, if the Director determines such autopsy is reasonably required for any necessary purpose of the Department of Veterans Affairs, including the
completion of official records and advancement of medical knowledge. Such authority also encompasses the furnishing of transportation of the body at Department of Veterans Affairs expense to the Department of Veterans Affairs facility and return of the body. Consent for the autopsy will be obtained as provided for in paragraph (e) of this section. [16 FR 5701, June 15, 1951, as amended at 18 FR 2414, Apr. 24, 1953; 24 FR 8330, Oct. 14, 1959; 35 FR 6586, Apr. 24, 1970; 36 FR 23386, Dec. 9, 1971; 45 FR 6939, Jan. 31, 1980; 61 FR 7215, 7216, Feb. 27, 1996; redesignated and amended at 61 FR 21964, 21965, 21968, May 13, 1996; 61 FR 29293, 29294, June 10, 1996; 68 FR 17549, 17551, Apr. 10, 2003]

[EFFECTIVE DATE NOTE: 68 FR 17549, 17551, Apr. 10, 2003, amended paragraph (c), effective Apr. 10, 2003.]
§ 17.180 Delegation of authority.

§ 17.180 Delegation of authority.
In connection with the Veterans Canteen Service, the Under Secretary for Health is hereby delegated authority as follows:
(a) To exercise the powers and functions of the Secretary with respect to the maintenance and operation of the Veterans Canteen Service.
(b) To designate the Assistant Chief Medical Director for Administration to administer the overall operation of the Veterans Canteen Service and to designate selected employees of the Veterans Canteen Service to perform the functions described in the enabling statute, 38 U.S.C. ch. 75, so as to effectively maintain and operate the Veterans Canteen Service.

[EFFECTIVE DATE NOTE: 62 FR 17072, April 9, 1997, substituted "Under Secretary for Health" for "Chief Medical Director" in the introductory text, effective April 9, 1997.]
AID TO STATES FOR CARE OF VETERANS IN STATE HOMES

§ 17.190 Recognition of a State home.
§ 17.191 Filing applications.
§ 17.192 Approval of annexes and new facilities.
§ 17.193 Prerequisites for payments to State homes.
§ 17.194 Aid for domiciliary care.
§ 17.196 Aid for hospital care.
§ 17.197 Amount of aid payable.
§ 17.198 Department of Veterans Affairs approval of eligibility required.
§ 17.199 Inspection of recognized State homes.
§ 17.200 Audit of State homes.

Note: Sections 17.190 through 17.200 do not apply to nursing home care in State homes. The provisions for nursing home care in State homes are set forth in 38 CFR part 51.

§ 17.190 Recognition of a State home.

A State-operated facility which provides hospital or domiciliary care to veterans must be formally recognized by the Secretary as a State home before Federal aid payments can be made for the care of such veterans. Any agency of a State (exclusive of a territory or possession) responsible for the maintenance or administration of a State home may apply for recognition by the Department of Veterans Affairs for the purpose of receiving aid for the care of veterans in such State home. A State home may be recognized if:

(Authority: 38 U.S.C. 501, 1741)
(a) The State home is a facility which exists primarily for the accommodation of veterans incapable of earning a living and who are in need of domiciliary, and
(b) The majority of such veterans who are domiciliary members in the home are veterans who may be included in the computation of the amount of aid payable from the Department of Veterans Affairs, and
(c) The personnel, building and other facilities and improvements at the home are devoted primarily to the care of veterans, and


[EFFECTIVE DATE NOTE: 65 FR 962, 968, Jan. 6, 2000, amended this section, effective Feb. 7, 2000.]

§ 17.191 Filing applications.

Applications for Department of Veterans Affairs recognition of a State home may be filed with the Under Secretary for Health, Department of Veterans Affairs. After arranging for an inspection of the State home's facilities for furnishing domiciliary or hospital care, the Under Secretary for Health will make a recommendation to the Secretary who will notify the State official in writing of a decision.

§ 17.192 Approval of annexes and new facilities.
Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of a recognized home which is not on the same or contiguous grounds on which the parent facility is located. When a recognized State home establishes hospital care facilities which have not been inspected and approved by the Department of Veterans Affairs, a request for separate approval of such facilities must be made.

(38 U.S.C. 1741, 501)
[Effective Date Note: 65 FR 962, 968, Jan. 6, 2000, removed "nursing home or," effective Feb. 7, 2000.]

§ 17.193 Prerequisites for payments to State homes.
No payment or grant may be made to any State home unless the State home meets the standards prescribed by the Secretary.

(38 U.S.C. 1742(a))
[Effective Date Note: 65 FR 962, 968, Jan. 6, 2000, removed the second sentence, effective Feb. 7, 2000.]

§ 17.194 Aid for domiciliary care.
Aid may be paid to the designated State official for domiciliary care furnished in a recognized State home for any veteran if the veteran is eligible for domiciliary care in a Department of Veterans Affairs facility.

(38 U.S.C. 1741)

§ 17.196 Aid for hospital care.
Aid may be paid to the designated State official for hospital care furnished in a recognized State home for any veteran if:
(a) The veteran is eligible for hospital care in a Department of Veterans Affairs facility, and
(b) The quarters in which the hospital care is carried out are in an area clearly designated for such care, specifically established, staffed and equipped to provide hospital type care, are not intermingled with the quarters of nursing home care patients or domiciliary members, and meet such other minimum standards as the Department of Veterans Affairs may prescribe.
§ 17.197 Amount of aid payable.

The amount of aid payable to a recognized State home shall be at the per diem rates established by title 38 U.S.C., section 1741(a)(1) for domiciliary care, and section 1741(a)(3) for hospital care. In no case shall the payments made with respect to any veteran exceed one-half of the cost of the veteran's care in the State home. VA will publish the actual per diem rates, whenever they change, in a FEDERAL REGISTER notice.

§ 17.198 Department of Veterans Affairs approval of eligibility required.

Federal aid will be paid only for the care of veterans whose separate eligibility for hospital or domiciliary care has been approved by the Department of Veterans Affairs. To obtain such approval, State homes will complete a Department of Veterans Affairs application form for each veteran for the type of care to be provided and submit it to the Department of Veterans Affairs office of jurisdiction for determination of eligibility. Payments shall be made only from the date the Department of Veterans Affairs office of jurisdiction receives such application; however, if such request is received by the Department of Veterans Affairs office of jurisdiction within 10 days after the beginning of the care of such veteran for which he or she is determined to be eligible, payment shall be made on account of such veteran from the date care began.

§ 17.199 Inspection of recognized State homes.

Representatives of the Department of Veterans Affairs may inspect any State home at such times as are deemed necessary. Such inspections shall be concerned with the physical plant; records relating to admissions, discharges and occupancy; fiscal records; and all other areas of interest necessary to a determination of compliance with applicable laws and regulations relating to the payment of Federal aid. The authority to inspect carries with it no authority over the management or control of any State home.
§ 17.200 Audit of State homes.
The State must comply with the Single Audit Act of 1984 (part 41 of this chapter).
[52 FR 23825, June 25, 1987; redesignated at 61 FR 21964, 21965, May 13, 1996]

(31 U.S.C. 7501-7507)
§ 17.230 Contingency backup to the Department of Defense.
§ 17.240 Sharing specialized medical resources.
§ 17.241 Sharing medical information services.
§ 17.242 Coordination of programs with Department of Health and Human Services.

§ 17.230 Contingency backup to the Department of Defense.
(a) Priority care to active duty personnel. The Secretary, during and/or immediately following a period of war or national emergency declared by the Congress or the President that involves the use of United States Armed Forces in armed conflict, is authorized to furnish hospital care, nursing home care, and medical services to members of the Armed Forces on active duty. The Secretary may give higher priority in the furnishing of such care and services in VA facilities to members of the Armed Forces on active duty than to any other group of persons eligible for such care and services with the exception of veterans with service-connected disabilities.


(b) Contract authority. During a period in which the Secretary is authorized to furnish care and services to members of the Armed Forces under paragraph (a) of this section, the Secretary, to the extent authorized by the President and subject to the availability of appropriations or reimbursements, may authorize VA facilities to enter into contracts with private facilities for the provision during such period of hospital care and medical services for certain veterans. These veterans include only those who are receiving hospital care under 38 U.S.C. 1710 or, in emergencies, for those who are eligible for treatment under that section, or who are receiving care under 38 U.S.C. 1712 (f) and (g). This authorization pertains only to circumstances in which VA facilities are not capable of furnishing or continuing to furnish the care or services required because of the furnishing of care and services to members of the Armed Forces.

(Authority: 38 U.S.C. 8111A)


(Sec. 501 and 1720(a) of Title 38, U.S.C.)

§ 17.240 Sharing specialized medical resources.
Subject to such terms and conditions as the Under Secretary for Health shall prescribe, agreements may be entered into for sharing medical resources with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions, or medical schools or clinics in a medical community with geographical limitations determined by the Under Secretary for Health, provided:

(a) The agreement will achieve one of the following purposes: (1) It will secure the use of a specialized medical resource which otherwise might not be feasibly available by providing for the mutual use or exchange of use of specialized medical resources when such an agreement will obviate the need for a similar resource to be installed or provided at a facility operated by the Department of Veterans Affairs, or
(2) It will secure effective use of Department of Veterans Affairs specialized medical resources by providing for the mutual use, or exchange of use, of specialized medical resources in a facility operated by the Department of Veterans Affairs, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity; and

(b) The agreement is determined to be in the best interest of the prevailing standards of the Department of Veterans Affairs Medical Program; and

(c) The agreement provides for reciprocal reimbursement based on a charge which covers the full cost of the use of specialized medical resources, incidental hospital care or other needed services, supplies used, and normal depreciation and amortization costs of equipment.

(d) Reimbursement for medical care rendered to an individual who is entitled to hospital or medical services (Medicare) under subchapter XVIII of chapter 7 of title 42 U.S.C., and who has no entitlement to medical care from the Department of Veterans Affairs, will be made to such facility, or if the contract or agreement so provides, to the community health care facility which is party to the agreement, in accordance with:

(1) Rates prescribed by the Secretary of Health and Human Services, after consultation with the Secretary of Veterans Affairs, and

(2) Procedures jointly prescribed by the Secretary of Health and Human Services and the Secretary of Veterans Affairs to assure reasonable quality of care and service and efficient and economical utilization of resources.

(38 U.S.C. 8153)


§ 17.241 Sharing medical information services.

(a) Agreements for exchange of information. Subject to such terms and conditions as the Under Secretary for Health shall prescribe, Directors of Department of Veterans Affairs medical centers, may enter into agreements with medical schools, Federal, State or local, public or private hospitals, research centers, and individual members of the medical profession, under which medical information and techniques will be freely exchanged and the medical information services of all parties to the agreement will be available for use by any party to the agreement under conditions specified in the agreement.

(b) Purpose of sharing agreements. Agreements for the exchange of information shall be used to the maximum extent practicable to create at each Department of Veterans Affairs medical center which has entered into such an agreement, an environment of academic medicine which will help the hospital attract and retain highly trained and qualified members of the medical profession.

(c) Use of electronic equipment. Recent developments in electronic equipment shall be utilized under information sharing programs to provide a close educational, scientific, and professional link between Department of Veterans Affairs medical centers and major medical centers.
(d) Furnishing information services on a fee basis. The educational facilities and programs established at Department of Veterans Affairs Medical Centers and the electronic link to medical centers shall be made available for use by medical entities in the surrounding medical community which have not entered into sharing agreements with the Department of Veterans Affairs, in order to bring about utilization of all medical information in the surrounding medical community, particularly in remote areas, and to foster and encourage the widest possible cooperation and consultation among all members of the medical profession in the surrounding medical community.

(e) Establishing fees for information services. Subject to such terms and conditions as the Under Secretary for Health shall prescribe, Directors of Department of Veterans Affairs medical centers shall charge for information and educational facilities and services made available under paragraph (d) of this section. The fee may be on an annual or other periodic basis, at rates determined, after appropriate study, to be fair and equitable. The financial status of any user of such services shall be taken into consideration in establishing the amount of the fee to be paid.

§ 17.242 Coordination of programs with Department of Health and Human Services.

Programs for sharing specialized medical resources or medical information services shall be coordinated to a maximum extent practicable, with programs carried out under part F, title XVI of the Public Health Service Act under the jurisdiction of the Department of Health and Human Services.

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GRANTS FOR EXCHANGE OF INFORMATION

§ 17.250 Scope of the grant program.
§ 17.251 The Subcommittee on Academic Affairs.
§ 17.252 Ex officio member of subcommittee.
§ 17.253 Applicants for grants.
§ 17.254 Applications.
§ 17.255 Applications for grants for programs which include construction projects.
§ 17.256 Amended or supplemental applications.
§ 17.257 Awards procedures.
§ 17.258 Terms and conditions to which awards are subject.
§ 17.259 Direct costs.
§ 17.260 Patient care costs to be excluded from direct costs.
§ 17.261 Indirect costs.
§ 17.262 Authority to approve applications discretionary.
§ 17.263 Suspension and termination procedures.
§ 17.264 Recoupments and releases.
§ 17.265 Payments.
§ 17.266 Copyrights and patents.

§ 17.250 Scope of the grant program.
The provisions of §§ 17.250 through 17.266 are applicable to grants under 38 U.S.C. 8155 for programs for the exchange of medical information. The purpose of these grants is to assist medical schools, hospitals, and research centers in planning and carrying out agreements for the exchange of medical information, techniques, and information services. The grant funds may be used for the employment of personnel, the construction of facilities, the purchasing of equipment, research, training or demonstration activities when necessary to implement exchange of information agreements.
[33 FR 6011, April 19, 1968, as redesignated and amended at 61 FR 21964, 21965, 21968, May 13, 1996]

§ 17.251 The Subcommittee on Academic Affairs.
There is established within the Special Medical Advisory Group authorized under the provisions of 38 U.S.C. 7312 a Subcommittee on Academic Affairs, and the Subcommittee shall advise the Secretary, through the Under Secretary for Health, in matters pertinent to achieving the objectives of programs for exchange of medical information. The Subcommittee shall review each application for a grant and prepare a written report setting forth recommendations as to the final action to be taken on the application.

§ 17.252 Ex officio member of subcommittee.
The Assistant Chief Medical Director for Academic Affairs shall be an ex officio member of the Subcommittee on Academic Affairs.
[42 FR 54804, Oct. 11, 1977, as redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.253 Applicants for grants.
Applicants for grants generally will be persons authorized to represent a medical school, hospital, or research center which has in effect or has tentatively approved an agreement with the Department of Veterans Affairs to exchange medical information.
[33 FR 6011, Apr. 19, 1968, as redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.254 Applications.
Each application for a grant shall be submitted to the Under Secretary for Health on such forms as shall be prescribed and shall include the following evidence, assurances, and supporting documents:
(a) To specify amount. Each application shall show the amount of the grant requested, and if the grant is to be for more than one objective, the amounts allocated to each objective (e.g., to training, demonstrations, or construction) shall be specified, and
(b) To include copy of agreement. Each application shall be accompanied by a copy of the agreement for the exchange of information or information services which the grant funds applied for will implement, and
(c) To include descriptions and plans. Each application shall include a description of the use to which the grant funds will be applied in sufficient detail to show need, purpose, and justifications, and shall be illustrated by financial and budgetary data, and
(d) To include cost participation information. Each application shall show the amount of the grant requested to be used for direct expenses by category of direct expenses, the amount requested for indirect expenses related to the direct expenses, any additional amounts which will be applied to the program or planning from other Federal agencies, and from other sources, and amounts or expenses which will be borne by the applicant, and
(e) To include assurance records will be kept. Each application shall include sufficient assurances that the applicant shall keep records which fully disclose the amount and disposition of the proceeds of the grant, the total cost of the project or undertaking in connection with which the grant is made or used, the portion of the costs supplied by non-Federal sources, and such other records as will facilitate an effective audit. All such records shall be retained by the applicant (grantee) for a period of 3 years after the submission of the final expenditure report, or if litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved, and
(f) To include assurance records will be made available. Each application shall include sufficient assurances the applicant will give the Secretary and the Comptroller General of the United States, or any of their authorized representatives, access to its books, documents, papers, and records which are pertinent to the grant for the purposes of audit and examination, and
(g) To include assurance progress reports will be made. Each application shall include sufficient assurances the applicant will furnish the Under Secretary for Health periodic
progress reports in sufficient detail showing the status of the project, planning, program, or system funded by the grant for which application is made, and the extent to which the stated objectives will have been achieved, and

(h) To include civil rights assurances. Each application shall include sufficient assurances that no part of the grant funds will be used either by the grantee or by any contractor or subcontractor to be paid from grant funds for any purpose which is inconsistent with regulations promulgated by the Secretary (part 18 of this chapter) implementing Title VI of the Civil Rights Act of 1964, or inconsistent with Executive Order 11246 (30 FR 12319) and any implementing regulations the Secretary of Labor may promulgate.


§ 17.255 Applications for grants for programs which include construction projects.

In addition to the documents and evidence required by § 17.254, any application for a grant for the construction of any facility, structure or system which is part of an exchange of information program shall include the following:

(a) Each application shall include complete descriptions, maps, and surveys of the construction site, and documentary evidence and explanations showing ownership, and

(b) Each application shall include complete plans and specifications for the construction project, and where applicable, sufficient explanations of technical applications so that they may be understood by the layman, and

(c) Each application shall contain assurance that the rates of pay for laborers and mechanics engaged in construction activities will not be less than the prevailing local wage rates for similar work as determined in accordance with the provisions of 40 U.S.C. 276a--276a-5 (The Davis-Bacon Act).


§ 17.256 Amended or supplemental applications.

An amended application, or an application for a supplemental grant, may be considered either before or after final action has been taken on the original application. Amended applications and applications for supplemental grants shall be subject to the same terms, conditions and requirements necessary for original applications.

[33 FR 6012, Apr. 19, 1968; redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.257 Awards procedures.

Applications for grants for planning or implementing agreements for the exchange of medical information or information facilities shall be reviewed by the Under Secretary for Health or designee. If it is determined approval of the grant is warranted, recommendations to that effect shall be made to the Secretary in writing and shall be accompanied by the following:

(a) The recommendation for approval shall be accompanied by the written recommendation of the Subcommittee on Academic Affairs, and
§ 17.258 Terms and conditions to which awards are subject.
Each certificate of award of a grant for planning or implementing an agreement for the exchange of information or information facilities shall specify that the grant is subject to the following terms and conditions:
(a) Grants subject to terms of agreement for exchange of information. Each grant shall be subject to, and the certificate shall incorporate by reference, all terms, conditions, and obligations specified in the agreement or planning protocols which the grant will implement, and
(b) Grants subject to assurances in application. Each grant shall be subject to all assurances made by the grantee in its application for the grant as required by §§ 17.254 through 17.256, and
(c) Grants subject to limitations on use of funds. Each grant shall be subject to the limitations on the use of grant funds, either for direct or indirect costs, as prescribed in §§ 17.259 through 17.261, and
(d) Grants subject to special provisions. Each grant shall be subject to any special terms or conditions which may be warranted by circumstances applicable to individual applications, and specified in the certificate of award.

§ 17.259 Direct costs.
Direct costs to which grant funds may be applied may include in proportion to time and effort spent, but are not limited to, fees and costs directly paid to personnel or for fringe benefits, rent, publications, educational programs, training, research, demonstration activities, or construction carried out in connection with pilot programs for planning or exchange of information.
[33 FR 6012, Apr. 19, 1968; redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.260 Patient care costs to be excluded from direct costs.
Grant funds for planning or implementing agreements for the exchange of medical information shall not be available for the payment of any hospital, medical, or other costs involving the care of patients except to the extent that such costs are determined to be incident to research, training, or demonstration activities carried out in connection with an exchange of information program.
§ 17.261 Indirect costs.
The grantee shall allocate expenditures as between direct and indirect costs according to generally accepted accounting procedures. The amount allocated for indirect costs may be computed on a percentage basis or on the basis of a negotiated lump-sum allowance. In the method of computation used, only indirect costs shall be included which bear a reasonable relationship to the planning or program funded by the grant and shall not exceed a percentage greater than the percentage the total institutional indirect cost is of the total direct salaries and wages paid by the institution.

§ 17.262 Authority to approve applications discretionary.
Notwithstanding any recommendation by the Subcommittee on Academic Affairs of the Special Medical Advisory Group, or any recommendation by the Under Secretary for Health or designee, the final determination on any application for a grant rests solely with the Secretary.

§ 17.263 Suspension and termination procedures.
Termination of a grant means the cancellation of Department of Veterans Affairs sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. Suspension of a grant is an action by the Department of Veterans Affairs which temporarily suspends Department of Veterans Affairs sponsorship under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the Department of Veterans Affairs.

(a) Posttermination appeal. The following procedures are applicable for reviewing postaward disputes which may arise in the administration of or carrying out of the Exchange of Medical Information Grant Program.

(1) Reviewable decisions. The Department of Veterans Affairs reserves the right to terminate any grant in whole or in part at any time before the date of completion, whenever it determines that the grantee has failed to comply with conditions of the agreement, or otherwise failed to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) Notice. The Department of Veterans Affairs shall promptly notify the grantee in writing of the determination. The notice shall set forth the reason for the determination in sufficient detail to enable the grantee to respond, and shall inform the grantee of his or her opportunity for review by the Assistant Chief Medical Director as provided in this section.

(3) Request for appeal. A grantee with respect to whom a determination described in paragraph (a)(1) of this section has been made, and who desires review, may file with the Assistant Chief Medical Director for Academic Affairs an application for review of such determination. The grantee's application for review must be post-marked no later than 30
days after the postmarked date of notification provided pursuant to paragraph (a)(2) of this section.

(4) Contents of request. The application for review must clearly identify the question or questions in dispute, contain a full statement of the grantee's position in respect to such question or questions, and provide pertinent facts and reasons in support of his or her position. The Assistant Chief Medical Director for Academic Affairs will promptly send a copy of the grantee's application to the Department of Veterans Affairs official responsible for the determination which is to be reviewed.

(5) Effect of submission. When an application for review has been filed no action may be taken by the Department of Veterans Affairs pursuant to such determination until such application has been disposed of, except that the filing of the application shall not affect the authority which the constituent agency may have to suspend the system under a grant during proceedings under this section or otherwise to withhold or defer payments under the grant.

(6) Consideration of request. When an application for review has been filed with the Assistant Chief Medical Director for Academic Affairs, and it has been determined that the application meets the requirements stated in this paragraph, all background material of the issues shall be reviewed. If the application does not meet the requirements, the grantee shall be notified of the deficiencies.

(7) Presentation of case. If the Assistant Chief Medical Director for Academic Affairs believes there is no dispute as to material fact, the resolution of which would be materially assisted by oral testimony, both parties shall be notified of the issues to be considered, and take steps to afford both parties the opportunity for presenting their cases, at the option of the Assistant Chief Medical Director for Academic Affairs, in whole or in part in writing, or in an informal conference. Where it is concluded that oral testimony is required to resolve a dispute over a material fact, both parties shall be afforded an opportunity to present and cross-examine witnesses at a hearing.

(8) Decision. After both parties have presented their cases, the Assistant Chief Medical Director for Academic Affairs shall prepare an initial written decision which shall include findings of fact and conclusions based thereon. Copies of the decision shall be mailed promptly to each of the parties together with a notice informing them of their right to appeal the decision of the Secretary, or to the officer or employee to whom the Secretary has delegated such authority, by submitting written comments thereon within a specified reasonable time.

(9) Final decision. Upon filing comments with the Secretary, or designated officer or employee, the review of the initial decision shall be conducted on the basis of the decision, the hearing record, if any, and written comments submitted by both parties. The decision shall be final.

(10) Participation by a party. Either party may participate in person, or by counsel pursuant to the procedure set forth in this section.

(b) Termination for convenience. The Department of Veterans Affairs or the grantee may terminate a grant in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date,
and shall cancel as many outstanding obligations as possible. The Department of Veterans Affairs shall allow full credit to the grantee for the Department of Veterans Affairs share of the noncancellable obligations, properly incurred by the grantee prior to termination.

(c) Suspension procedures. When a grantee has failed to comply with the terms of the grant agreement and conditions or standards, the Department of Veterans Affairs may, on reasonable notice to the grantee, suspend the grant and withhold further payments, prohibit the grantee from incurring additional obligations of funds, pending corrective action by the grantee, or make a decision to terminate as described in paragraph (a) of this section. The Department of Veterans Affairs shall allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable Federal cost principles.


§ 17.264 Recoupments and releases.
In any case where the Department of Veterans Affairs or a grantee's obligations under an exchange of information agreement implemented by grant funds are terminated, or where grant-financed equipment or facilities cease to be used for the purposes for which grant support was given, or when grant-financed property is transferred, the grantee shall return the proportionate value of such equipment or facility as was financed by the grant. When it is determined the Department of Veterans Affairs equitable interest is greater that proportionate value, then a claim in such greater amount shall be asserted. If it is determined an amount less than proportionate value or less than the Department of Veterans Affairs equitable interest should be recouped, or that the Department of Veterans Affairs should execute any releases, then a proposal concerning such a settlement or releases complete with explanations and justifications shall be submitted to the Assistant Chief Medical Director for Academic Affairs for a final determination.


§ 17.265 Payments.
Payments of grant funds are made to grantees through a letter-of-credit, an advance by Treasury check, or a reimbursement by Treasury check, as appropriate. A letter-of-credit is an instrument certified by an authorized official of the Department of Veterans Affairs which authorizes the grantee to draw funds when needed from the Treasury, through a Federal Reserve bank and the grantee's commercial bank and shall be used by the Department of Veterans Affairs where all the following conditions exist:

(a) When there is or will be a continuing relationship between the grantee and the Department of Veterans Affairs for at least a 12-month period and the total amount of advance payments expected to be received within that period is $ 250,000, or more;

(b) When the grantee has established or demonstrated the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee; and

(c) When the grantee's financial management meets the standards for fund control and accountability. An advance by Treasury check is a payment made to a grantee upon its request before outlays are made by the grantee, or through use of predetermined payment
schedules and shall be used by the Department of Veterans Affairs when the grantee meets all of the above requirements of this section except that advances will be less than $250,000, or for a period less than 12 months. Reimbursement by Treasury check is a payment made to a grantee upon request for reimbursement from the grantee and shall be the preferred method when the grantee does not meet the requirements of paragraphs (b) and (c) of this section. This method may be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, the Department of Veterans Affairs shall make payment within 30 days after receipt of the billing, unless billing is improper. Unless otherwise required by law, payments shall not be withheld for proper charges at any time during the grant period unless a grantee has failed to comply with the program objectives, award conditions, or Federal reporting requirements; or the grantee is indebted. [42 FR 54806, Oct. 11, 1977, as redesignated at 61 FR 21964, 21965, May 13, 1996]

§ 17.266 Copyrights and patents.
If a grant-supported program results in copyrightable material or patentable inventions or discoveries, the United States Government shall have the right to use such publications or inventions on a royalty-free basis. [33 FR 6013, Apr. 19, 1968, as redesignated at 61 FR 21964, 21965, May 13, 1996]
Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) -- Medical Care for Survivors and Dependents of Certain Veterans

§ 17.270 General provisions.
§ 17.271 Eligibility.
§ 17.272 Benefits limitations/exclusions.
§ 17.273 Preauthorization.
§ 17.274 Cost sharing.
§ 17.275 Claim filing deadline.
§ 17.276 Appeal and review process.
§ 17.277 Third-party liability and Medicare cost recovery.
§ 17.278 Confidentiality of records.

§ 17.270 General provisions.

Discussion and Analysis in the Veterans Benefits Manual

(a) CHAMPVA is the Civilian Health and Medical Program of the Department of Veterans Affairs and is administered by the Health Administration Center, Denver, Colorado. Pursuant to 38 U.S.C. 1713, VA is authorized to provide medical care in the same or similar manner and subject to the same or similar limitations as medical care furnished to certain dependents and survivors of active duty and retired members of the Armed Forces. The CHAMPVA program is designed to accomplish this purpose. Under CHAMPVA, VA shares the cost of medically necessary services and supplies for eligible beneficiaries as set forth in §§ 17.271 through 17.278.

(b) For purposes of this section, the definitions of "child," "service-connected condition/disability," "spouse," and "surviving spouse" must be those set forth further in 38 U.S.C. 101. The term "fiscal" year refers to October 1, through September 30.

Authority: 38 U.S.C. 1713
[63 FR 48100, 48102, Sept. 9, 1998]

[EFFECTIVE DATE NOTE: 63 FR 48100, 48102, Sept. 9, 1998, added this section, effective Oct. 9, 1998.]

§ 17.271 Eligibility.

Discussion and Analysis in the Veterans Benefits Manual

(a) General Entitlement. The following persons are eligible for CHAMPVA benefits provided that they are not eligible under Title 10 for the TRICARE Program or Part A of Title XVIII of the Social Security Act (Medicare) except as provided in paragraph (b) of this section.

(1) The spouse or child of a veteran who has been adjudicated by VA as having a permanent and total service-connected disability;

(2) The surviving spouse or child of a veteran who died as a result of an adjudicated service-connected condition(s); or who at the time of death was adjudicated permanently and totally disabled from a service-connected condition(s);

(3) The surviving spouse or child of a person who died on active military service and in the line of duty and not due to such person's own misconduct; and

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(4) An eligible child who is pursuing a full-time course of instruction approved under 38 U.S.C. Chapter 36, and who incurs a disabling illness or injury while pursuing such course (between terms, semesters or quarters; or during a vacation or holiday period) that is not the result of his or her own willful misconduct and that results in the inability to continue or resume the chosen program of education must remain eligible for medical care until:
(i) The end of the six-month period beginning on the date the disability is removed; or
(ii) The end of the two-year period beginning on the date of the onset of the disability; or
(iii) The twenty-third birthday of the child, whichever occurs first.
(Authority: 38 U.S.C. 1713)
(b) CHAMPVA and Medicare entitlement.
(1) Individuals under age 65 who are entitled to Medicare Part A and enrolled in Medicare Part B, retain CHAMPVA eligibility as secondary payer to Medicare Parts A and B, Medicare supplemental insurance plans, and Medicare HMO plans.
(2) Individuals age 65 or older, and not entitled to Medicare Part A, retain CHAMPVA eligibility.
Note to paragraph (b)(2): If the person is not eligible for Part A of Medicare, a Social Security Administration "Notice of Disallowance" certifying that fact must be submitted. Additionally, if the individual is entitled to only Part B of Medicare, but not Part A, or Part A through the Premium HI provisions, a copy of the individual's Medicare card or other official documentation noting this must be provided.
(3) Individuals age 65 on or after June 5, 2001, who are entitled to Medicare Part A and enrolled in Medicare Part B, are eligible for CHAMPVA as secondary payer to Medicare Parts A and B, Medicare supplemental insurance plans, and Medicare HMO plans for services received on or after October 1, 2001.
(4) Individuals age 65 or older prior to June 5, 2001, who are entitled to Medicare Part A and who have not purchased Medicare Part B, are eligible for CHAMPVA as secondary payer to Medicare Part A and any other health insurance for services received on or after October 1, 2001.
(5) Individuals age 65 or older prior to June 5, 2001, who are entitled to Medicare Part A and who have purchased Medicare Part B must continue to carry Part B to retain CHAMPVA eligibility as secondary payer for services received on or after October 1, 2001.
Note to § 17.271: Eligibility criteria specific to Dependency and Indemnity Compensation (DIC) benefits are not applicable to CHAMPVA eligibility determinations.
[63 FR 48100, 48102, Sept. 9, 1998; 67 FR 4357, 4359, Jan. 30, 2002, as confirmed at 67 FR 66555, Nov. 1, 2002]


§ 17.272 Benefits limitations/exclusions.
(a) Benefits cover allowable expenses for medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not
specifically excluded from program coverage. Covered benefits may have limitations. The fact that a physician may prescribe, order, recommend, or approve a service or supply does not, of itself, make it medically necessary or make the charge an allowable expense, even though it is not listed specifically as an exclusion. The following are specifically excluded from program coverage:

(1) Services, procedures or supplies for which the beneficiary has no legal obligation to pay, or for which no charge would be made in the absence of coverage under a health benefits plan.

(2) Services and supplies required as a result of an occupational disease or injury for which benefits are payable under workers' compensation or similar protection plan (whether or not such benefits have been applied for or paid) except when such benefits are exhausted and are otherwise not excluded from CHAMPVA coverage.

(3) Services and supplies that are paid directly or indirectly by a local, State or Federal government agency (Medicaid excluded), including court-ordered treatment. In the case of the following exceptions, CHAMPVA assumes primary payer status:
   (i) Medicaid.
   (ii) State Victims of Crime Compensation Programs.

(4) Services and supplies that are not medically or psychologically necessary for the diagnosis or treatment of a covered condition (including mental disorder) or injury.

(5) Radiology, laboratory, and pathological services and machine diagnostic testing not related to a specific illness or injury or a definitive set of symptoms.

(6) Services and supplies above the appropriate level required to provide necessary medical care.

(7) Services and supplies related to an inpatient admission primarily to perform diagnostic tests, examinations, and procedures that could have been and are performed routinely on an outpatient basis.

(8) Postpartum inpatient stay of a mother for purposes of staying with the newborn infant (primarily for the purpose of breast feeding the infant) when the infant (but not the mother) requires the extended stay; or continued inpatient stay of a newborn infant primarily for purposes of remaining with the mother when the mother (but not the newborn infant) requires extended postpartum inpatient stay.

(9) Therapeutic absences from an inpatient facility or residential treatment center (RTC).

(10) Custodial care.

(11) Inpatient stays primarily for domiciliary care purposes.

(12) Inpatient stays primarily for rest or rest cures.

(13) Services and supplies provided as a part of, or under, a scientific or medical study, grant, or research program.

(14) Services and supplies not provided in accordance with accepted professional medical standards or related to experimental or investigational procedures or treatment regimens.

(15) Services or supplies prescribed or provided by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household.

(16) Services and supplies that are (or are eligible to be) payable under another medical insurance or program, either private or governmental, such as coverage through employment or Medicare.
(17) Services or supplies subject to preauthorization (see § 17.273) that were obtained without the required preauthorization; and services and supplies that were not provided according to the terms of the preauthorization.

(18) Inpatient stays primarily to control or detain a runaway child, whether or not admission is to an authorized institution.

(19) Services and supplies (to include prescription medications) in connection with cosmetic surgery which is performed to primarily improve physical appearance or for psychological purposes or to restore form without correcting or materially improving a bodily function.

(20) Electrolysis.

(21) Dental care with the following exceptions:
   (i) Dental care that is medically necessary in the treatment of an otherwise covered medical condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition.
   (ii) Dental care required in preparation for, or as a result of, radiation therapy for oral or facial cancer.
   (iii) Gingival Hyperplasia.
   (iv) Loss of jaw substance due to direct trauma to the jaw or due to treatment of neoplasm.
   (v) Intraoral abscess when it extends beyond the dental alveolus.
   (vi) Extraoral abscess.
   (vii) Cellulitis and osteitis which is clearly exacerbating and directly affecting a medical condition currently under treatment.
   (viii) Repair of fracture, dislocation, and other injuries of the jaw, to include removal of teeth and tooth fragments only when such removal is incidental to the repair of the jaw.
   (ix) Treatment for stabilization of myofascial pain dysfunction syndrome, also referred to as temporomandibular joint (TMJ) syndrome. Authorization is limited to initial radiographs, up to four office visits, and the construction of an occlusal splint.
   (x) Total or complete ankyloglossia.
   (xi) Adjunctive dental and orthodontic support for cleft palate.
   (xii) Prosthetic replacement of jaw due to trauma or cancer.

(22) Nonsurgical treatment of obesity or morbid obesity for dietary control or weight reduction (with the exception of gastric bypass, gastric stapling, or gastroplasty procedures in connection with morbid obesity when determined to be medically necessary) including prescription medications.

(23) Services and supplies related to transsexualism or other similar conditions such as gender dysphoria (including, but not limited to, intersex surgery and psychotherapy, except for ambiguous genitalia which was documented to be present at birth).

(24) Sex therapy, sexual advice, sexual counseling, sex behavior modification, psychotherapy for mental disorders involving sexual deviations (e.g., transvestic fetish), or other similar services, and any supplies provided in connection with therapy for sexual dysfunctions or inadequacies.

(25) Removal of corns or calluses or trimming of toenails and other routine foot care services, except those required as a result of a diagnosed systemic medical disease affecting the lower limbs, such as severe diabetes.
(26) Services and supplies, to include psychological testing, provided in connection with a specific developmental disorder. The following exception applies: Diagnostic and evaluative services required to arrive at a differential diagnosis for an otherwise eligible child unless the state is required to provide those services under Public Law 94-142, Education for All Handicapped Children Act of 1975 as amended, see 20 U.S.C. chapter 33.

(27) Surgery to reverse voluntary surgical sterilization procedures.

(28) Services and supplies related to artificial insemination (including semen donors and semen banks), in vitro fertilization, gamete intrafallopian transfer and all other noncoital reproductive technologies.

(29) Nonprescription contraceptives.

(30) Diagnostic tests to establish paternity of a child; or tests to determine sex of an unborn child.

(31) Preventive care (such as routine, annual, or employment-requested physical examinations; routine screening procedures; and immunizations). The following exceptions apply:

(i) Well-child care from birth to age six. Periodic health examinations designed for prevention, early detection, and treatment of disease are covered to include screening procedures, immunizations, and risk counseling. The following services are payable when required as part of a well-child care program and when rendered by the attending pediatrician, family physician, or a pediatric nurse practitioner.

(A) Newborn examination, heredity and metabolic screening, and newborn circumcision.

(B) Periodic health supervision visits intended to promote optimal health for infants and children to include the following services:

(1) History and physical examination.

(2) Vision, hearing, and dental screening.

(3) Developmental appraisal to include body measurement.

(4) Immunizations as recommended by the Centers for Disease Control (CDC) and Prevention Advisory Committee on Immunization Practices.

(5) Pediatric blood lead level test.

(6) Tuberculosis screening.

(7) Blood pressure screening.

(8) Measurement of hemoglobin and hematocrit for anemia.

(9) Urinalysis.

(C) Additional services or visits required because of specific findings or because the particular circumstances of the individual case are covered if medically necessary and otherwise authorized for benefits under CHAMPVA.

(ii) Rabies vaccine following an animal bite.

(iii) Tetanus vaccine following an accidental injury.

(iv) Rh immune globulin.

(v) Pap smears.

(vi) Mammography tests.

(vii) Genetic testing and counseling determined to be medically necessary.

(viii) Chromosome analysis in cases of habitual abortion or infertility.

(ix) Gamma globulin.
(x) School-required physical examinations for beneficiaries through age 17 that are provided on or after October 1, 2001.
(32) Chiropractic and naturopathic services.
(33) Counseling services that are not medically necessary in the treatment of a diagnosed medical condition (such as educational counseling; vocational counseling; and counseling for socioeconomic purposes, stress management, life style modification, etc.).
(34) Acupuncture, whether used as a therapeutic agent or as an anesthetic.
(35) Hair transplants, wigs, or hairpieces, except that benefits may be extended for one wig or hairpiece per beneficiary (lifetime maximum) when the attending physician certifies that alopecia has resulted from treatment of malignant disease and the beneficiary certifies that a wig or hairpiece has not been obtained previously through the U.S. Government (including the Department of Veterans Affairs). The wig or hairpiece benefit does not include coverage for the following:
(i) Maintenance, wig or hairpiece supplies, or replacement of the wig or hairpiece.
(ii) Hair transplant or any other surgical procedure involving the attachment of hair or a wig or hairpiece to the scalp.
(iii) Any diagnostic or therapeutic method or supply intended to encourage hair growth.
(36) Self-help, academic education or vocational training services and supplies.
(37) Exercise equipment, spas, whirlpools, hot tubs, swimming pools, health club membership or other such charges or items.
(38) General exercise programs, even if recommended by a physician.
(39) Services of an audiologist or speech therapist, except when prescribed by a physician and rendered as a part of treatment addressed to the physical defect itself and not to any educational or occupational deficit.
(40) Eye exercises or visual training (orthoptics).
(41) Eye and hearing examinations except when rendered in connection with medical or surgical treatment of a covered illness or injury or in connection with well-child care.
(42) Eyeglasses, spectacles, contact lenses, or other optical devices with the following exceptions:
(i) When necessary to perform the function of the human lens, lost as a result of intraocular surgery, ocular injury or congenital absence.
(ii) Pinhole glasses prescribed for use after surgery for detached retina.
(iii) Lenses prescribed as "treatment" instead of surgery for the following conditions:
(A) Contact lenses used for treatment of infantile glaucoma.
(B) Corneal or scleral lenses prescribed in connection with treatment of keratoconus.
(C) Scleral lenses prescribed to retain moisture when normal tearing is not present or is inadequate.
(D) Corneal or scleral lenses prescribed to reduce a corneal irregularity other than astigmatism.
(iv) The specified benefits are limited to one set of lenses related to one qualifying eye condition as set forth in paragraphs (a)(42)(iii)(A) through (D) of this section. If there is a prescription change requiring a new set of lenses, but still related to the qualifying eye condition, benefits may be extended for a second set of lenses, subject to medical review.
(43) Hearing aids or other auditory sensory enhancing devices.
(44) Prostheses with the following exceptions:
(i) Artificial limbs.
(ii) Voice prostheses.
(iii) Eyes.
(iv) Items surgically inserted in the body as an integral part of a surgical procedure.
(v) Dental prostheses specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.
(45) Orthopedic shoes, arch supports, shoe inserts, and other supportive devices for the feet, including special ordered, custom-made built-up shoes, or regular shoes later built up with the following exceptions:
(i) Shoes that are an integral part of an orthopedic brace, and which cannot be used separately from the brace.
(ii) Extra-depth shoes with inserts or custom molded shoes with inserts for individuals with diabetes.
(46) Services or advice rendered by telephone are excluded except that a diagnostic or monitoring procedure which incorporates electronic transmission of data or remote detection and measurement of a condition, activity, or function (biotelemetry) is covered when:
(i) The procedure, without electronic data transmission, is a covered benefit; and
(ii) The addition of electronic data transmission or biotelemetry improves the management of a clinical condition in defined circumstances; and
(iii) The electronic data or biotelemetry device has been classified by the U.S. Food and Drug Administration, either separately or as part of a system, for use consistent with the medical condition and clinical management of such condition.
(47) Air conditioners, humidifiers, dehumidifiers, and purifiers.
(48) Elevators.
(49) Alterations to living spaces or permanent features attached thereto, even when necessary to accommodate installation of covered durable medical equipment or to facilitate entrance or exit.
(50) Items of clothing, even if required by virtue of an allergy (such as cotton fabric versus synthetic fabric and vegetable-dyed shoes).
(51) Food, food substitutes, vitamins or other nutritional supplements, including those related to prenatal care for a home patient whose condition permits oral feeding.
(52) Enuretic (bed-wetting) devices; enuretic conditioning programs.
(53) Autopsy and post-mortem examinations.
(54) All camping, even when organized for a specific therapeutic purpose (such as diabetic camp or a camp for emotionally disturbed children), or when offered as a part of an otherwise covered treatment plan.
(55) Housekeeping, homemaker, or attendant services, including a sitter or companion.
(56) Personal comfort or convenience items, such as beauty and barber services, radio, television, and telephone.
(57) Smoking cessation services and supplies.
(58) Megavitamin psychiatric therapy; orthomolecular psychiatric therapy.
(59) All transportation except for specialized transportation with life sustaining equipment, when medically required for the treatment of a covered condition.
(60) Inpatient mental health services in excess of 30 days in any fiscal year (or in an admission), in the case of a patient nineteen years of age or older; 45 days in any fiscal year (or in an admission), in the case of a patient under 19 years of age; or 150 days of
residential treatment care in any fiscal year (or in an admission) unless a waiver for extended coverage is granted in advance.

(61) Outpatient mental health services in excess of 23 visits in a fiscal year unless a waiver for extended coverage is granted in advance.

(62) Institutional services for partial hospitalization in excess of 60 treatment days in any fiscal year (or in an admission) unless a waiver for extended coverage is granted in advance.

(63) Detoxification in a hospital setting or rehabilitation facility in excess of seven days.

(64) Outpatient substance abuse services in excess of 60 visits during a benefit period. A benefit period begins with the first date of covered service and ends 365 days later.

(65) Family therapy for substance abuse in excess of 15 visits during a benefit period. A benefit period begins with the first date of covered service and ends 365 days later.

(66) Services that are provided to a beneficiary who is referred to a provider of such services by a provider who has an economic interest in the facility to which the patient is referred, unless a waiver is granted.

(67) Abortion except when a physician certifies that the life of the mother would be endangered if the fetus were carried to term.

(68) Abortion counseling.

(69) Aversion therapy.

(70) Rental or purchase of biofeedback equipment.

(71) Biofeedback therapy for treatment of ordinary muscle tension states (including tension headaches) or for psychosomatic conditions.

(72) Drug maintenance programs where one addictive drug is substituted for another, such as methadone substituted for heroin.

(73) Immunotherapy for malignant diseases except for treatment of Stage O and Stage A carcinoma of the bladder.

(74) Services and supplies provided by other than a hospital, such as nonskilled nursing homes, intermediate care facilities, halfway houses, homes for the aged, or other institutions of similar purpose.

(75) Services performed when the patient is not physically present.

(76) Medical photography.

(77) Special tutoring.

(78) Surgery for psychological reasons.

(79) Treatment of premenstrual syndrome (PMS).

(80) Medications not requiring a prescription, except for insulin and related diabetic testing supplies and syringes.

(81) Thermography.

(82) Removal of tattoos.

(83) Penile implant/testicular prosthesis procedures and related supplies for psychological impotence.

(84) Dermabrasion of the face except in those cases where coverage has been authorized for reconstructive or plastic surgery required to restore body form following an accidental injury or to revise disfiguring and extensive scars resulting from neoplastic surgery.

(85) Chemical peeling for facial wrinkles.

(86) Panniculectomy, body sculpting procedures.

(b) CHAMPVA-determined allowable amount.
(1) The term allowable amount is the maximum CHAMPVA-determined level of payment to a hospital or other authorized institutional provider, a physician or other authorized individual professional provider, or other authorized provider for covered services. The CHAMPVA-allowable amount is determined prior to cost sharing and the application of deductibles and/or other health insurance.

(2) A Medicare-participating hospital must accept the CHAMPVA-determined allowable amount for inpatient services as payment-in-full. (Reference 42 CFR parts 489 and 1003).

(3) An authorized provider of covered medical services or supplies must accept the CHAMPVA-determined allowable amount as payment-in-full.

(4) A provider who has collected and not made appropriate refund, or attempts to collect from the beneficiary, any amount in excess of the CHAMPVA-determined allowable amount may be subject to exclusion from Federal benefit programs.

(Authority: 38 U.S.C. 1713)

[63 FR 48100, 48103, Sept. 9, 1998; 67 FR 4357, 4359, Jan. 30, 2002, as confirmed at 67 FR 66555, Nov. 1, 2002]


§ 17.273 Preauthorization.

Preauthorization or advance approval is required for any of the following:

(a) Non-emergent inpatient mental health and substance abuse care including admission of emotionally disturbed children and adolescents to residential treatment centers.

(b) All admissions to a partial hospitalization program (including alcohol rehabilitation).

(c) Outpatient mental health visits in excess of 23 per calendar year and/or more than two (2) sessions per week.

(d) Dental care.

(e) Durable medical equipment with a purchase or total rental price in excess of $ 300.00.

(f) Organ transplants.

(Authority: 38 U.S.C. 1713)

[63 FR 48100, 48106, Sept. 9, 1998]

[EFFECTIVE DATE NOTE: 63 FR 48100, 48106, Sept. 9, 1998, added this section, effective Oct. 9, 1998.]

§ 17.274 Cost sharing.

(a) With the exception of services obtained through VA facilities, CHAMPVA is a cost-sharing program in which the cost of covered services is shared with the beneficiary. CHAMPVA pays the CHAMPVA-determined allowable amount less the deductible, if applicable, and less the beneficiary cost share.

(b) In addition to the beneficiary cost share, an annual (calendar year) outpatient deductible requirement ($ 50 per beneficiary or $ 100 per family) must be satisfied prior to the payment of outpatient benefits. There is no deductible requirement for inpatient services or for services provided through VA facilities.

(c) To provide financial protection against the impact of a long-term illness or injury, a calendar year cost limit or "catastrophic cap" has been placed on the beneficiary.

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cost-share amount for covered services and supplies. Credits to the annual catastrophic cap are limited to the applied annual deductible(s) and the beneficiary cost-share amount. Costs above the CHAMPVA-allowable amount, as well as costs associated with non-covered services are not credited to the catastrophic cap computation. After a family has paid the maximum cost-share and deductible amounts for a calendar year, CHAMPVA will pay allowable amounts for the remaining covered services through the end of that calendar year.

(i) Through December 31, 2001, the annual cap on cost sharing is $7,500 per CHAMPVA-eligible family.
(ii) Effective January 1, 2002, the cap on cost sharing is $3,000 per CHAMPVA-eligible family.
(d) If the CHAMPVA benefit payment is under $1.00, payment will not be issued. Catastrophic cap and deductible will, however, be credited.


(38 U.S.C. 1713)

[EFFECTIVE DATE NOTE: 67 FR 4357, 4359, Jan. 30, 2002, revised this section, effective Jan. 30, 2002, except for paragraph (c), which is effective Jan. 1, 2002.]

§ 17.275 Claim filing deadline.
(a) Unless an exception is granted under paragraph (b) of this section, claims for medical services and supplies must be filed with the Center no later than:
(1) One year after the date of service; or
(2) In the case of inpatient care, one year after the date of discharge; or
(3) In the case of retroactive approval for medical services/supplies, 180 days following beneficiary notification of authorization; or
(4) In the case of retroactive approval of CHAMPVA eligibility, 180 days following notification to the beneficiary of authorization for services occurring on or after the date of first eligibility.

(b) Requests for an exception to the claim filing deadline must be submitted, in writing, to the Center and include a complete explanation of the circumstances resulting in late filing along with all available supporting documentation. Each request for an exception to the claim filing deadline will be reviewed individually and considered on its own merit. The Center Director may grant exceptions to the requirements in paragraph (a) if he or she determines that there was good cause for missing the filing deadline. For example, when dual coverage exists CHAMPVA payment, if any, cannot be determined until after the primary insurance carrier has adjudicated the claim. In such circumstances an exception may be granted provided that the delay on the part of the primary insurance carrier is not attributable to the beneficiary. Delays due to provider billing procedures do not constitute a valid basis for an exception.

[63 FR 48100, 48106, Sept. 9, 1998]

[EFFECTIVE DATE NOTE: 63 FR 48100, 48106, Sept. 9, 1998, added this section, effective Oct. 9, 1998.]

§ 17.276 Appeal review process.
Notice of the initial determination regarding payment of CHAMPVA benefits will be provided to the beneficiary on a CHAMPVA Explanation of Benefits (EOB) form. The EOB form is generated by the CHAMPVA automated payment processing system. If a beneficiary disagrees with the determination concerning covered services or calculation of benefits, he or she may request reconsideration. Such requests must be submitted to the Center in writing within one year of the date of the initial determination. The request must state why the beneficiary believes the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the claimant without further consideration. After reviewing the claim and any relevant supporting documentation, a CHAMPVA benefits advisor will issue a written determination to the beneficiary that affirms, reverses or modifies the previous decision. If the beneficiary is still dissatisfied, within 90 days of the date of the decision he or she may make a written request for review by the Center Director. The Director will review the claim, and any relevant supporting documentation, and issue a decision in writing that affirms, reverses or modifies the previous decision. The decision of the Director with respect to benefit coverage and computation of benefits is final.

(Authority: 38 U.S.C. 1713)

Note to § 17.276: Denial of CHAMPVA benefits based on legal eligibility requirements may be appealed to the Board of Veterans' Appeals in accordance with 38 CFR part 20. Medical determinations are not appealable to the Board. 20 CFR 20.101.
[63 FR 48100, 48106, Sept. 9, 1998]

[EFFECTIVE DATE NOTE: 63 FR 48100, 48106, Sept. 9, 1998, added this section, effective Oct. 9, 1998.]

§ 17.277 Third-party liability/medical cost recovery.
The Center will actively pursue third-party liability/medical care cost recovery in accordance with applicable law.
[63 FR 48100, 48106, Sept. 9, 1998]

[EFFECTIVE DATE NOTE: 63 FR 48100, 48106, Sept. 9, 1998, added this section, effective Oct. 9, 1998.]

§ 17.278 Confidentiality of records.
Confidentiality of records will be maintained in accordance with 38 CFR 1.460 through 1.582.
[63 FR 48100, 48106, Sept. 9, 1998]

[EFFECTIVE DATE NOTE: 63 FR 48100, 48106, Sept. 9, 1998, added this section, effective Oct. 9, 1998.]
GRANTS TO THE REPUBLIC OF THE PHILIPPINES

§ 17.350 The program of assistance to the Philippines.
§ 17.351 Grants for the replacement and upgrading of equipment at Veterans Memorial Medical Center.
§ 17.352 Amounts and use of grant funds for the replacement and upgrading of equipment.
§ 17.355 Awards procedures.
§ 17.362 Acceptance of medical supplies as payment.
§ 17.363 Length of stay.
§ 17.364 Eligibility determinations.
§ 17.365 Admission priorities.
§ 17.366 Authorization of emergency admissions.
§ 17.367 Republic of the Philippines to print forms.
§ 17.369 Inspections.
§ 17.370 Termination of payments.

§ 17.350 The program of assistance to the Philippines.
The provisions of this section through § 17.370 are applicable to grants to the Republic of the Philippines and to furnishing medical services under 38 U.S.C. 1724 and § 1732, and 38 CFR 17.36 through 17.40, and implement the "Agreement between the Government of the United States of America and the Government of the Republic of the Philippines on the Use of the Veterans Memorial Medical Center and the Provision of Inpatient and Outpatient Medical Care and Treatment of Veterans by the Government of the Philippines and Furnishing of Grants-in-Aid Thereof by the Government of the United States of America," dated April 25, 1967 (Treaties and Other International Acts Series 6248), and a subsidiary agreement of the same date, both of which were entered into pursuant to the provisions of 38 U.S.C. 1731-1734. All such implementing regulations have been approved by the Director of the Office of Management and Budget.

§ 17.351 Grants for the replacement and upgrading of equipment at Veterans Memorial Medical Center.
Grants to assist the Republic of the Philippines in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of the Veterans Memorial Medical Center, which the Secretary may make under the authority cited in § 17.350, shall be subject to such terms and conditions as the Secretary may prescribe. Among such terms and conditions to which the grants will be subject, will be advance approval by the U.S. Department of Veterans Affairs of equipment purchases, maintenance or repair projects. The awarding of such grants is further subject to the limitations on available funds in § 17.352.

(38 U.S.C. 1732, as amended by Pub. L. 97-72, sec. 107(c)(1))
§ 17.352 Amounts and use of grant funds for the replacement and upgrading of equipment.
Grants awarded under § 17.351 shall not exceed the amounts provided by the appropriation acts of the Congress of the United States for the purpose. Funds appropriated for the upgrading and replacement of equipment at the Veterans Memorial Medical Center, or for rehabilitating its equipment, shall remain available in consecutive fiscal years until expended, but in no event shall exceed the amount of $500,000 per year. It is not intended that such funds will be utilized to expand the medical center facilities. Upgrading of equipment, however, would permit purchase of new and additional equipment not now possessed by the medical center.
[47 FR 58250, Dec. 30, 1982]
(38 U.S.C. 1732)

§ 17.355 Awards procedures.
All applications for grants to the Republic of the Philippines under the provisions of § 17.351 shall be submitted to the Under Secretary for Health or a designee for consideration.
(38 U.S.C. 1732)

§ 17.362 Acceptance of medical supplies as payment.
Upon request of the Government of the Republic of the Philippines, payment for medical and nursing home services provided to eligible United States veterans may consist in whole or in part, of available medicines, medical supplies, or equipment furnished by the Department of Veterans Affairs to the Veterans Memorial Medical Center at valuations determined by the Secretary. Such valuations shall not be less than the cost of the items and shall include the cost of transportation, arrastre, brokerage, shipping and handling charges.
[47 FR 58250, Dec. 30, 1982]
(38 U.S.C. 1732(a)(2))

§ 17.363 Length of stay.
In computing the length of stay for which payment will be made, the day of admission will be counted, but not the day of discharge, death, or transfer. Where a veteran for whom hospitalization has been authorized in Veterans Memorial Medical Center or a contract facility, is absent from the hospital for a period longer than 24 hours, no payment will be made for hospital care during that absence.
[47 FR 58250, Dec. 30, 1982]
(38 U.S.C. 1732)

§ 17.364 Eligibility determinations.
Determinations of legal eligibility and medical need for hospitalization of United States veterans for treatment rest exclusively with the United States Department of Veterans Affairs.
Affairs. Determinations as to various factors upon which eligibility may depend shall be made as follows:

(a) Determinations of service connection. For the purpose of meeting any requirement in 38 U.S.C. 1724 and 1732, and 38 CFR 17.36 through 17.37 for service-connected disability, the United States Department of Veterans Affairs shall determine that under laws it administers the disability in question was incurred in or aggravated by service, and

(b) Determinations of valid service. For the purpose of determining the necessary prerequisite service, determinations by the Department of Defense of the United States as to military service shall be accepted. In those cases in which the United States Department of Veterans Affairs shall have information which it deems reliable and in conflict with the information upon which the Department of Defense determination was made, the conflicting information shall be referred to the Department of Defense for reconsideration and redetermination. Such determinations and redeterminations as to military service shall be conclusive.


§ 17.365 Admission priorities.
Appropriate provisions of § 17.49 apply.
[47 FR 58251, Dec. 30, 1982]

§ 17.366 Authorization of emergency admissions.
The Secretary of National Defense of the Republic of the Philippines shall make determinations as to whether any patient should be admitted in emergency circumstances before the U.S. Department of Veterans Affairs has made a legal determination of eligibility, except that liability for payment will not accrue to the United States until such eligibility determination has been made. Eligibility determinations will be given effect retroactively to the date of admission when the U.S. Department of Veterans Affairs has been notified by telephone, telegram, letter, or other communication of the emergency admission within 72 hours of the hour of admission. The Clinic Director of the VA Regional Office, Manila, may make an exception to the 72-hour limitation when it is determined that the delay in notification was fully justified. When any authorization cannot be made effective retroactively to the date of admission, it shall be effective from the date of receipt of notification.

§ 17.367 Republic of the Philippines to print forms.
The Secretary of National Defense of the Republic of the Philippines will, with the concurrence of the Secretary of Veterans Affairs, print all forms for applications for hospitalization, forms for physical examination reports, forms for billings for services rendered, and such other forms as may be necessary and incident to the efficient execution of the program governed by the provisions of 38 U.S.C. 1724 and 1732, and
38 CFR 17.36 through 17.40 and 17.350 through 17.370. The forms will be used whenever applicable in the general operation of the program.
[33 FR 5301, April 3, 1968; 61 FR 21964, 21969, May 13, 1996]

§ 17.369 Inspections.
The U.S. Department of Veterans Affairs, through authorized representatives, has the right under the agreements cited in § 17.350, to inspect the Veterans Memorial Medical Center, its premises and all appurtenances and records to determine completeness and correctness of such records, and to determine according to the provisions of the cited agreements whether standards maintained conform to the necessary requirements.

§ 17.370 Termination of payments.
Payments may be terminated if the U.S. Department of Veterans Affairs determines the Veterans Memorial Medical Center has not replaced and upgraded as needed equipment during the period in which the agreements cited in § 17.50 are in effect or has not rehabilitated the existing physical plant and facilities to place the medical center on a sound and effective operating basis, or has not maintained the medical center in a well-equipped and effective operating condition. Payments, however, will not be stopped unless the Veterans Memorial Medical Center has been given at least 60 days advance written notice of intent to stop payments.

(38 U.S.C. 1732)
§ 17.500 General.
§ 17.501 Confidential and privileged documents.
§ 17.502 Applicability of other statutes.
§ 17.503 Improper disclosure.
§ 17.504 Disclosure methods.
§ 17.505 Disclosure authorities.
§ 17.506 Appeal of decision by Veterans Health Administration to deny disclosure.
§ 17.507 Employee responsibilities.
§ 17.508 Access to quality assurance records and documents within the agency.
§ 17.509 Authorized disclosure: Non-Department of Veterans Affairs requests.
§ 17.510 Redisclosure.
§ 17.511 Penalties for violations.

§ 17.500 General.
(a) Section 5705, title 38, United States Code was enacted to protect the integrity of the VA's medical quality assurance program by making confidential and privileged certain records and documents generated by this program and information contained therein. Disclosure of quality assurance records and documents made confidential and privileged by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511 may only be made in accordance with the provisions of 38 U.S.C. 5705 and those regulations.
(b) The purpose of the regulations in §§ 17.500 through 17.511 is to specify and provide for the limited disclosure of those quality assurance documents which are confidential under the provisions of 38 U.S.C. 5705.
(c) For purposes of the regulations in §§ 17.500 through 17.511, the VA's medical quality assurance program consists of systematic healthcare reviews carried out by or for VA for the purpose of improving the quality of medical care or improving the utilization of healthcare resources in VA medical facilities. These review activities may involve continuous or periodic data collection and may relate to either the structure, process, or outcome of health care provided in the VA.
(d) Nothing in the regulations in §§ 17.500 through 17.511 shall be construed as authority to withhold any record or document from a committee or subcommittee of either House of Congress or any joint committee or subcommittee of Congress, if such record or document pertains to any matter within the jurisdiction of such committee or joint committee.
(e) The regulations in §§ 17.500 through 17.511 do not waive the sovereign immunity of the United States, and do not waive the confidentiality provisions and disclosure restrictions of 38 U.S.C. 5705.

§ 17.501 Confidential and privileged documents.
(a) Documents and parts of documents are considered confidential and privileged if they were produced by or for the VA in the process of conducting systematic healthcare reviews for the purpose of improving the quality of health care or improving the utilization of healthcare resources in VA healthcare facilities and meet the criteria in paragraphs (b) and (c) of this section. The four classes of healthcare quality assurance reviews with examples are:

(1) Monitoring and evaluation reviews conducted by a facility:
   (i) Medical records reviews,
   (ii) Drug usage evaluations,
   (iii) Blood usage reviews,
   (iv) Surgical case/invasive procedure reviews,
   (v) Service and program monitoring including monitoring performed by individual services or programs, several services or programs working together, or individuals from several services or programs working together as a team,
   (vi) Mortality and morbidity reviews,
   (vii) Infection control review and surveillance,
   (viii) Occurrence screening,
   (ix) Tort claims peer reviews (except reviews performed to satisfy the requirements of a governmental body or a professional health care organization which is licensing practitioners or monitoring their professional performance),
   (x) Admission and continued stay reviews,
   (xi) Diagnostic studies utilization reviews,
   (xii) Reports of special incidents (VA Form 10-2633 or similar forms) and follow-up documents unless developed during or as a result of a Board of Investigation;

(2) Focused reviews which address specific issues or incidents and which are designated by the reviewing office at the outset of the review as protected by 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511; focused reviews may be either:
   (i) Facility focused reviews;
   (ii) VA Central Office or Regional focused reviews;

(3) VA Central Office or Regional general oversight reviews to assess facility compliance with VA program requirements if the reviews are designated by the reviewing office at the outset of the review as protected by 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511; and

(4) Contracted external reviews of care, specifically designated in the contract or agreement as reviews protected by 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511.

(b) The Under Secretary for Health, Regional Director or facility Director will describe in advance in writing those quality assurance activities included under the classes of healthcare quality assurance reviews listed in paragraph (a) of this section. Only documents and parts of documents resulting from those activities which have been so described are protected by 38 U.S.C. 5705 and the regulations in §§17.500 through 17.511. If an activity is not described in a VA Central Office or Regional policy document, this requirement may be satisfied at the facility level by description in advance of the activity and its designation as protected in the facility quality assurance plan or other policy document.
(c) Documents and parts of documents generated by activities which meet the criteria in paragraphs (a) and (b) of this section shall be confidential and privileged only if they:
(1) Identify, either implicitly or explicitly, individual practitioners, patients, or reviewers except as provided in paragraph (g)(6) of this section; or
(2) Contain discussions relating to the quality of VA medical care or utilization of VA medical resources by healthcare evaluators during the course of a review of quality assurance information or data, even if they do not identify practitioners, patients, or reviewers; or
(3) Are individual committee, service, or study team minutes, notes, reports, memoranda, or other documents either produced by healthcare evaluators in deliberating on the findings of healthcare reviews, or prepared for purposes of discussion or consideration by healthcare evaluators during a quality assurance review; or
(4) Are memoranda, letters, or other documents from the medical facility to the Regional Director or VA Central Office which contain information generated by a quality assurance activity meeting the criteria in § 17.501 (a) and (b); or
(5) Are memoranda, letters, or other documents produced by the Regional Director or VA Central Office which either respond to or contain information generated by a quality assurance activity meeting the criteria in § 17.501 (a) and (b).

(d) Documents which meet the criteria in this section are confidential and privileged whether they are produced at the medical facility, Regional or VA Central Office levels, or by external contractors performing healthcare quality assurance reviews.

(e) Documents which are confidential and privileged may be in written, computer, electronic, photographic or any other form.

(f) Documents which contain confidential and privileged material in one part, but not in others, such as Clinical Executive Board minutes, should be filed and maintained as if the entire document was protected by 38 U.S.C. 5705. This is not required if the confidential and privileged material is deleted.

(g) The following records and documents and parts of records and documents are not confidential even if they meet the criteria in paragraphs (a) through (c) of this section:
(1) Statistical information regarding VA healthcare programs or activities that does not implicitly or explicitly identify individual VA patients or VA employees or individuals involved in the quality assurance process;
(2) Summary documents or records which only identify study topics, the period of time covered by the study, criteria, norms, and/or major overall findings, but which do not identify individual healthcare practitioners, even by implication;
(3) The contents of Credentialing and Privileging folders as described in VACO policy documents (38 U.S.C. 5705-protected records shall not be filed in Credentialing and Privileging folders);
(4) Records and documents developed during or as a result of Boards of Investigations;
(5) Completed patient satisfaction survey questionnaires and findings from patient satisfaction surveys;
(6) Records and documents which only indicate the number of patients treated by a practitioner, either by diagnosis or in aggregate, or number of procedures performed by a practitioner, either by procedure or in aggregate;
(7) Records and documents developed during or as a result of reviews performed to satisfy the requirements of a governmental body or a professional healthcare organization.
which is licensing practitioners or monitoring their professional performance, e.g., National Practitioner Data Bank, Federation of State Medical Boards, and National Council of State Boards of Nursing;
(8) Documents and reports developed during or as a result of site visits by the Office of the Medical Inspector except to the extent that the documents and reports contain information that meets the criteria described in this section and are produced by or for VA by other than the Office of Medical Inspector;
(9) External reviews conducted by VA Central Office or a Region other than those designated by the reviewing office under paragraph (a)(2) or (a)(3) of this section as protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511;
(10) Documents and reports of Professional Standards Boards, Credentialing Committees, Executive Committees of Medical Staff, and similar bodies, insofar as the documents relate to the credentialing and privileging of practitioners;
(11) Documents and reports developed during or as a result of data validation activities;
(12) Documents and reports developed during or as a result of occupational health monitoring;
(13) Documents and reports developed during or as a result of safety monitoring not directly related to the care of specified individual patients;
(14) Documents and reports developed during or as a result of resource management activities not directly related to the care of specified individual patients; and
(15) Information and records derived from patient medical records or facility administrative records, which are not protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511, may be sent or communicated to a third party payor who has asked for this information in response to a VA request for reimbursement based on Public Law 99-272 and Public Law 101-508. Reviews conducted at the request of the third party payor do not generate records protected by 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511 since the reviews are not undertaken as part of the VA's quality assurance program.


(38 U.S.C. 5705)

§ 17.502 Applicability of other statutes.
(a) Disclosure of quality assurance records and documents which are not confidential and privileged under 38 U.S.C. 5705 and the confidentiality regulations in §§ 17.500 through 17.511 will be governed by the provisions of the Freedom of Information Act, and, if applicable, the Privacy Act and any other VA or federal confidentiality statutes.
(b) When included in a quality assurance review, confidential records protected by other confidentiality statutes such as 5 U.S.C. 552a (the Privacy Act), 38 U.S.C. 7332 (drug and alcohol abuse, sickle cell anemia, HIV infection), and 38 U.S.C. 5701 (veterans' names and addresses) retain whatever confidentiality protection they have under these laws and applicable regulations and will be handled accordingly. To the extent that information protected by 38 U.S.C. 5701 or 7332 or the Privacy Act is incorporated into quality assurance records, the information in the quality assurance records is still protected by these statutes.

[59 FR 53357, Oct. 24, 1994]
§ 17.503 Improper disclosure.
(a) Improper disclosure is the disclosure of confidential and privileged healthcare quality assurance review records or documents (or information contained therein), as defined in §17.501, to any person who is not authorized access to the records or documents under the statute and the regulations in §§17.500 through 17.511.
(b) "Disclosure" means the communication, transmission, or conveyance in any way of any confidential and privileged quality assurance records or documents or information contained in them to any individual or organization in any form by any means.

§ 17.504 Disclosure methods.
(a) Disclosure of confidential and privileged quality assurance records and documents or the information contained therein outside VA, where permitted by the statute and the regulations in §§17.500 through 17.511, will always be by copies, abstracts, summaries, or similar records or documents prepared by the Department of Veterans Affairs and released to the requestor. The original confidential and privileged quality assurance records and documents will not be removed from the VA facility by any person, VA employee or otherwise, except in accordance with §17.508(c) or where otherwise legally required.
(b) Disclosure of confidential and privileged quality assurance records and documents to authorized individuals under either §17.508 or §17.509 shall bear the following statement: "These documents or records (or information contained herein) are confidential and privileged under the provisions of 38 U.S.C. 5705, which provide for fines up to $ 20,000 for unauthorized disclosures thereof, and the implementing regulations. This material shall not be disclosed to anyone without authorization as provided for by that law or the regulations in §§ 17.500 through 17.511."

§ 17.505 Disclosure authorities.
The VA medical facility Director, Regional Director, Under Secretary for Health, or their designees are authorized to disclose any confidential and privileged quality assurance records or documents under their control to other agencies, organizations, or individuals where 38 U.S.C. 5705 or the regulations in §§17.500 through 17.511 expressly provide for disclosure.

§ 17.506 Appeal of decision by Veterans Health Administration to deny disclosure.
When a request for records or documents subject to the regulations in §§ 17.500 through 17.511 is denied in whole or in part by the VA medical facility Director, Regional Director or Under Secretary for Health, the VA official denying the request in whole or in part will notify the requestor in writing of the right to appeal this decision to the General Counsel of the Department of Veterans Affairs within 60 days of the date of the denial letter. The final Department decision will be made by the General Counsel or the Deputy General Counsel.

(38 U.S.C. 5705)

§ 17.507 Employee responsibilities.
(a) All VA employees and other individuals who have access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511 will treat the findings, views, and actions relating to quality assurance in a confidential manner.
(b) All individuals who have had access to records designated as confidential and privileged under 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511 will not disclose such records or information therein to any person or organization after voluntary or involuntary termination of their relationship to the VA.

(38 U.S.C. 5705)

§ 17.508 Access to quality assurance records and documents within the agency.
(a) Access to confidential and privileged quality assurance records and documents within the Department pursuant to this section is restricted to VA employees (including consultants and contractors of VA) who have a need for such information to perform their government duties or contractual responsibilities and who are authorized access by the VA medical facility Director, Regional Director, the Under Secretary for Health, or their designees or by the regulations in §§ 17.500 through 17.511.
(b) To foster continuous quality improvement, practitioners on VA rolls, whether paid or not, will have access to confidential and privileged quality assurance records and documents relating to evaluation of the care they provided.
(c) Any quality assurance record or document, whether confidential and privileged or not, may be provided to the General Counsel or any attorney within the Office of General Counsel, wherever located. These documents may also be provided to a Department of Justice (DOJ) attorney who is investigating a claim or potential claim against the VA or who is preparing for litigation involving the VA. If necessary, such a record or document may be removed from the VA medical facility to the site where the General Counsel or any attorney within the Office of General Counsel or the DOJ attorney is conducting an investigation or preparing for litigation.
(d) Any quality assurance record or document or the information contained therein, whether confidential and privileged or not, will be provided to the Department of
Veterans Affairs Office of Inspector General upon request. A written request is not required.

(e) To the extent practicable, documents accessed under paragraph (b) of this section will not include the identity of peer reviewers. Reasonable efforts will be made to edit documents so as to protect the identities of reviewers, but the inability to completely do so will not bar access under paragraph (b).

(f) No individual shall be permitted access to confidential and privileged quality assurance records and documents identified in § 17.501 unless such individual has been informed of the penalties for unauthorized disclosure. Any misuse of confidential and privileged quality assurance records or documents shall be reported to the appropriate VHA official, e.g., Service Chief, Medical Center Director.

(g) In general, confidential and privileged quality assurance records and documents will be maintained for a minimum of 3 years and may be held longer if needed for research studies or quality assurance or legal purposes.


(38 U.S.C. 5705)

§ 17.509 Authorized disclosure: Non-Department of Veterans Affairs requests.

(a) Requests for confidential and privileged quality assurance records and documents from organizations or individuals outside VA must be made to the Department and must specify the nature and content of the information requested, to whom the information should be transmitted or disclosed, and the purpose listed in paragraphs (b) through (j) of this section for which the information requested will be used. In addition, the requestor will specify to the extent possible the beginning and final dates of the period for which disclosure or access is requested. The request must be in writing and signed by the requestor. Except as specified in paragraphs (b) and (c) of this section, these requests should be forwarded to the Director of the facility in possession of the records or documents for response. The procedures outlined in 38 CFR 1.500 through 1.584 will be followed where applicable.

(b) Disclosure shall be made to Federal agencies upon their written request to permit VA's participation in healthcare programs including healthcare delivery, research, planning, and related activities with the requesting agencies. Any Federal agency may apply to the Under Secretary for Health for approval. If the VA decides to participate in the healthcare program with the requestor, the requesting agency will enter into an agreement with VA to ensure that the agency and its staff will ensure the confidentiality of any quality assurance records or documents shared with the agency.

(c) Qualified persons or organizations, including academic institutions, engaged in healthcare program activities shall, upon request to and approval by the Under Secretary for Health, Regional Director, medical facility Director, or their designees, have access to confidential and privileged medical quality assurance records and documents to permit VA participation in a healthcare activity with the requestor, provided that no records or documents are removed from the VA facility in possession of the records.

(d) When a request under paragraphs (b) or (c) of this section concerns access for research purposes, the request, together with the research plan or protocol, shall first be submitted to and approved by an appropriate VA medical facility Research and
Development Committee and then approved by the Director of the VA medical facility. The VA medical facility staff together with the qualified person(s) conducting the research shall be responsible for the preservation of the anonymity of the patients, clients, and providers and shall not disseminate any records or documents which identify such individuals directly or indirectly without the individual's consent. This applies to the handling of data or information as well as reporting or publication of findings. These requirements are in addition to other applicable protections for the research.

(c) Individually identified patient medical record information which is protected by another statute as provided in § 17.502 may not be disclosed to a non-VA person or organization, including disclosures for research purposes under paragraph (d), except as provided in that statute.

(f) Under paragraph (b), the Under Secretary for Health or designee or under paragraph (c), the Under Secretary for Health, Regional Director, medical facility Director, or their designees may approve a written request if it meets the following criteria:

(1) Participation by VA will benefit VA patient care; or
(2) Participation by VA will enhance VA medical research; or
(3) Participation by VA will enhance VA health services research; or
(4) Participation by VA will enhance VA healthcare planning or program development activities; or
(5) Participation by VA will enhance related VA healthcare program activities; and

(h) Federal agencies charged with protecting the public health and welfare, federal and private agencies which engage in various monitoring and quality control activities, agencies responsible for licensure of individual health care facilities or programs, and similar organizations will be provided confidential and privileged quality assurance records and documents if a written request for such records or documents is received from an official of such an organization. The request must state the purpose authorized by law for which the records will be used. The Under Secretary for Health, Regional Director, medical facility Director, or their designees will determine the extent to which the information is disclosable.

(i) JCAHO (Joint Commission on Accreditation of Healthcare Organizations) survey teams and similar national accreditation agencies or boards and other organizations requested by VA to assess the effectiveness of quality assurance program activities or to consult regarding these programs are entitled to disclosure of confidential and privileged quality assurance documents with the following qualifications:
(1) Accreditation agencies which are charged with assessing all aspects of medical facility patient care, e.g., JCAHO, may have access to all confidential and privileged quality assurance records and documents.

(2) Accreditation agencies charged with more narrowly focused review (e.g., College of American Pathologists, American Association of Blood Banks, Nuclear Regulatory Commission, etc.) may have access only to such confidential and privileged records and documents as are relevant to their respective focus.

(j) Confidential and privileged quality assurance records and documents shall be released to the General Accounting Office if such records or documents pertain to any matter within its jurisdiction.

(k) Confidential and privileged quality assurance records and documents shall be released to both VA and non-VA healthcare personnel upon request to the extent necessary to meet a medical emergency affecting the health or safety of any individual.

(l) For any disclosure made under paragraphs (a) through (i) of this section, the name of and other identifying information regarding any individual VA patient, employee, or other individual associated with VA shall be deleted from any confidential and privileged quality assurance record or document before any disclosure under these quality assurance regulations in §§ 17.500 through 17.511 is made, if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy.

(m) Disclosure of the confidential and privileged quality assurance records and documents identified in § 17.501 will not be made to any individual or agency until that individual or agency has been informed of the penalties for unauthorized disclosure or redisclosure.


(38 U.S.C. 5705)

§ 17.510 Redisclosure.

No person or entity to whom a quality assurance record or document has been disclosed under § 17.508 or § 17.509 shall make further disclosure of such record or document except as provided for in 38 U.S.C. 5705 and the regulations in §§ 17.500 through 17.511.


(38 U.S.C. 5705)

§ 17.511 Penalties for violations.

Any person who knows that a document or record is a confidential and privileged quality assurance document or record described in §§ 17.500 through 17.511 and willfully discloses such confidential and privileged quality assurance record or document or information contained therein, except as authorized by 38 U.S.C. 5705 or the regulations in §§ 17.500 through 17.511, shall be fined not more than $ 5,000 in the case of a first offense and not more than $ 20,000 in the case of each subsequent offense.

[59 FR 53359, Oct. 24, 1994]

(38 U.S.C. 5705)
VA HEALTH PROFESSIONAL SCHOLARSHIP PROGRAM

§ 17.600 Purpose.
§ 17.601 Definitions.
§ 17.602 Eligibility.
§ 17.603 Availability of scholarships.
§ 17.604 Application for the scholarship program.
§ 17.605 Selection of participants.
§ 17.606 Award procedures.
§ 17.607 Obligated service.
§ 17.608 Deferment of obligated service.
§ 17.609 Pay during period of obligated service.
§ 17.610 Failure to comply with terms and conditions of participation.
§ 17.611 Bankruptcy.
§ 17.612 Cancellation, waiver, or suspension of obligation.

§ 17.600 Purpose.
The purpose of §§ 17.600 through 17.612 is to set forth the requirements for the award of scholarships under the Department of Veterans Affairs Health Professional Scholarship Program to students receiving education or training in a direct or indirect health-care services discipline to assist in providing an adequate supply of such personnel for VA and for the Nation. Disciplines include nursing, physical therapy, occupational therapy, and other specified direct or indirect health-care disciplines if needed by VA.
[55 FR 40170, Oct. 2, 1990]

(38 U.S.C. 7601-7655)

§ 17.601 Definitions.
For the purpose of these regulations:
(a) Acceptable level of academic standing means the level at which a student retains eligibility to continue in attendance in school under the school's standards and practices in the course of study for which the scholarship was awarded.
(c) Affiliation agreement means a Memorandum of Affiliation between a Department of Veterans Affairs health care facility and a school of medicine or osteopathy.
(d) Advanced clinical training means those programs of graduate training in medicine including osteopathy which (1) lead to eligibility for board certification or which provide other evidence of completion, and (2) have been approved by the appropriate body as determined by the Administrator.
(e) Secretary means the Secretary of Veterans Affairs or designee.
(f) Under Secretary for Health means the Under Secretary for Health for Veterans Health Administration or designee.

(g) Citizen of the United States means any person born, or lawfully naturalized in the United States, subject to its jurisdiction and protection, and owing allegiance thereto.

(h) Degree means a course of study leading to a doctor of medicine, doctor of osteopathy, doctor of dentistry, doctor of optometry, doctor of podiatry, or an associate degree, baccalaureate degree, or master's degree in a nursing specialty needed by VA; or a baccalaureate or master's degree in another direct or indirect health-care service discipline needed by VA.

(i) Full-time student means an individual pursuing a course of study leading to a degree who is enrolled for a sufficient number of credit hours in any academic term to complete the course of study within not more than the number of academic terms normally required by the school, college or university. If an individual is enrolled in a school and is pursuing a course of study which is designed to be completed in more than 4 years, the individual will be considered a full-time student for only the last 4 years of the course study.

(j) Other educational expenses means a reasonable amount of funds determined by the Secretary to cover expenses such as books, and laboratory equipment.

(k) Required educational equipment means educational equipment which must be rented or purchased by all students pursuing a similar curriculum in the same school.

(l) Required fees means those fees which are charged by the school to all students pursuing a similar curriculum in the same school.

(m) Scholarship Program or Scholarship means the Department of Veterans Affairs Health Professional Scholarship Program authorized by section 216 of the Act.

(n) Participant or Scholarship Program Participant means an individual whose application to the Scholarship Program has been approved and whose contract has been accepted by the Secretary and who has yet to complete the period of obligated service or otherwise satisfy the obligation or financial liabilities of the Scholarship Contract.

(o) School means an academic institution which (1) provides training leading to a degree in a direct or indirect health-care service discipline needed by the Department of Veterans Affairs, and (2) which is accredited by a body or bodies recognized for accreditation by the Secretary.

(Authority: 38 U.S.C. 7602(a))

(p) School year means, for purposes of the stipend payment, all or part of the 12-month period from September 1 through August 31 during which a participant is enrolled in the school as a full-time student.

(q) State means one of the several States, Territories and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(r) Part-time student means an individual who is a Department of Veterans Affairs employee permanently assigned to a Department of Veterans Affairs health care facility who has been accepted for enrollment or enrolled for study leading to a degree on a less than full-time but not less than half-time basis.

(s) Department of Veterans Affairs employee means an individual employed and permanently assigned to a VA health care facility.

(t) Degree completion date means the date on which a participant completes all requirements of the degree program.
(Authority: 38 U.S.C. 7452)
(u) VA health care facility means Department of Veterans Affairs medical centers, medical and regional office centers, domiciliaries, independent outpatient clinics, and outpatient clinics in regional offices.
(Authority: 38 U.S.C. 7633)
(Approved by the Office of Management and Budget under control number 2900-0352)

§ 17.602 Eligibility.
(a) To be eligible for a scholarship under this program an applicant must --
(1) Be accepted for enrollment or be enrolled as a full-time student in an accredited school located in a State;
(2) Be pursuing a degree annually designated by the Secretary for participation in the Scholarship Program;
(Authority: 38 U.S.C. 7602(a)(1), 7612(b)(1))
(3) Be in a discipline or program annually designated by the Secretary for participation in the Scholarship Program;
(4) Be a citizen of the United States; and
(5) Submit an application to participate in the Scholarship Program together with a signed contract.
(Authority: 38 U.S.C. 7602(a))
(b) To be eligible for a scholarship as a part-time student under this program, an applicant must satisfy requirements of paragraph (a) of this section and in addition must --
(1) Be a full-time VA employee permanently assigned to a VA health care facility at the time of application and on the date when the scholarship is awarded;
(2) Remain a VA employee for the duration of the scholarship award.
(Authority: 38 U.S.C. 7612(c)(3)(B))
(c) Any applicant who, at the time of application, owes a service obligation to any other entity to perform service after completion of the course of study is ineligible to receive a scholarship under the Department of Veterans Affairs Scholarship Program.
(Authority: 38 U.S.C. 7602(b))
(Approved by the Office of Management and Budget under control number 2900-0352)

§ 17.603 Availability of scholarships.
Scholarships will be awarded only when necessary to assist the Department of Veterans Affairs in alleviating shortages or anticipated shortages of personnel in particular health professions. The existence of a shortage of personnel will be determined in accordance with specific criteria for each health profession, promulgated by the Under Secretary for Health. The Secretary has the authority to determine the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.
§ 17.604 Application for the scholarship program.
Each individual desiring a scholarship under this program must submit an accurate and complete application in the form and at the time prescribed by the Secretary. Included with the application will be a signed written contract to accept payment of a scholarship and to serve a period of obligated service (as defined in § 17.607) if the application is approved and if the contract is accepted by the Secretary.
[47 FR 10810, Mar. 12, 1982]

(38 U.S.C. 7612(c)(1)(B))

§ 17.605 Selection of participants.
(a) General. In deciding which Scholarship Program applications will be approved by the Secretary, priority will be given to applicants entering their final year of education or training and priority will be given to applicants who previously received scholarship awards and who meet the conditions of paragraph (d) of this section. Except for continuation awards (see paragraph (d) of this section), applicants will be evaluated under the criteria specified in paragraph (b) of this section. A situation may occur in which there are a larger number of equally qualified applicants than there are awards to be made. In such cases, a random method may be used as the basis for selection. In selecting participants to receive awards as part-time students, the Secretary may, at the Secretary's discretion --
(Authority: 38 U.S.C. 7612(b)(5))
(1) Award scholarships geographically to part-time students so that available scholarships may be distributed on a relatively equal basis to students working throughout the VA health care system, and/or
(2) Award scholarships on the basis of retention needs within the VA health care system.
(Authority: 38 U.S.C. 7603(d))
(b) Selection. In evaluating and selecting participants, the Secretary will take into consideration those factors determined necessary to assure effective participation in the Scholarship Program. The factors may include, but not be limited to --
(1) Work/volunteer experience, including prior health care employment and Department of Veterans Affairs employment;
(2) Faculty and employer recommendations;
(3) Academic performance; and
(4) Career goals.
(Authority: 38 U.S.C. 7633)
(c) Selection of part-time students. Factors in addition to those specified in paragraph (b) of this section, which may be considered in awarding scholarships to part-time students may include, but are not limited to:
(1) Length of service of a VA employee in a health care facility;
(2) Honors and awards received from VA, and other sources;
(3) VA work performance evaluation;
(4) A recommendation for selection for a part-time scholarship from a VA Medical District.
(Authority: 38 U.S.C. 7452(d)(1))
(d) Duration of scholarship award. Subject to the availability of funds for the Scholarship Program, the Secretary will award a participant a full-time scholarship under these regulations for a period of from 1 to 4 school years and a participant of a part-time scholarship for a period of 1 to 6 school years.
(Authority: 38 U.S.C. 7612(c)(1)(A) and 7614(3))
(e) Continuation awards. Subject to the availability of funds for the Scholarship Program and selection, the Secretary will award a continuation scholarship for completion of the degree for which the scholarship was awarded if --
(1) The award will not extend the total period of Scholarship Program support beyond 4 years for a full-time scholarship, and beyond 6 years for a part-time scholarship; and
(2) The participant remains eligible for continued participation in the Scholarship Program.
(Authority: 38 U.S.C. 7603(d))
(Approved by the Office of Management and Budget under control number 2900-0352)

§ 17.606 Award procedures.
(a) Amount of scholarship. (1) A scholarship award will consist of (i) tuition and required fees, (ii) other educational expenses, including books and laboratory equipment, and (iii) except as provided in paragraph (a)(2) of this section, a monthly stipend, for the duration of the scholarship award. All such payments to scholarship participants are exempt from Federal taxation.
(Authority: 38 U.S.C. 7636)
(2) No stipend may be paid to a participant who is a full-time VA employee.
(3) The Secretary may determine the amount of the stipend paid to participants, whether part-time students or full-time students, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 7613(b).
(4) In the case of a part-time student who is a part-time employee, the maximum stipend, if more than a nominal stipend is paid, will be reduced in accordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant.
(5) A full stipend may be paid only for the months the part-time student is attending classes.
(Authority: 38 U.S.C. 7614(2))
(6) The Secretary may make arrangements with the school in which the participant is enrolled for the direct payment of the amount of tuition and/or reasonable educational expenses on the participant's behalf.
(Authority: 38 U.S.C. 7613(c))
(7) A participant's eligibility for a stipend ends at the close of the month in which degree requirements are met.
(b) Leave-of-absence, repeated course work. The Secretary may suspend scholarship payments to or on behalf of a participant if the school (1) approves a leave-of-absence for the participant for health, personal, or other reasons, or (2) requires the participant to repeat course work for which the Secretary previously has made payments under the
Scholarship Program. Additional costs relating to the repeated course work will not be paid under this program. Any scholarship payments suspended under this section will be resumed by the Secretary upon notification by the school that the participant has returned from the leave-of-absense or has satisfactorily completed the repeated course work and is proceeding as a full-time student in the course of study for which the scholarship was awarded.

(Authority: 38 U.S.C. 7633)


§ 17.607 Obligated service.

(a) General. Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Secretary.

(Authority: 38 U.S.C. 7616(a))

(b) Beginning of service. (1) Except as provided in paragraph (b)(2) of this section, a participant's obligated service shall begin on the date the Secretary appoints the participant as a full-time VA employee in the Department of Veterans Affairs Veterans Health Administration in a position for which the degree program prepared the participant. The Secretary shall appoint the participant to such position within 60 days after the participant's degree completion date, or the date the participant becomes licensed in a State to practice in the discipline for which the degree program prepared the participant, whichever is later. At least 60 days prior to the appointment date, the Secretary shall notify the participant of the work assignment, its location, and the date work must begin.

(2) Obligated service shall begin on the degree completion date for a participant who, on that date, is a full-time VA employee working in a capacity for which the degree program prepared the participant.

(Authority: 38 U.S.C. 7616(b) and (c))

(c) Duration of service. The period of obligated service for a participant who attended school as a full-time student shall be 1 year for each school year or part thereof for which the participant received a scholarship award under these regulations. The period of obligated service for a participant who attended school as a part-time student shall be reduced from that which a full-time student must serve in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student, whichever is the greater, but shall be a minimum of 1 year of full-time employment.

(Authority: 38 U.S.C. 7612(c)(1)(B) and (3)(A))

(d) Location for service. The Secretary reserves the right to make final decisions on location for service obligation. A participant who received a scholarship as a full-time student must be willing to move to another geographic location for service obligation. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized.

(Authority: 38 U.S.C. 7616(a))
(e) Creditability of advanced clinical training. No period of advanced clinical training will be credited toward satisfying the period of obligated service incurred under the Scholarship Program.


§ 17.608 Deferment of obligated service.

(a) Request for deferment. A participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Secretary may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training.

(Authority: 38 U.S.C. 7616(a)(A)(i))

(b) Deferment requirements. Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an Affiliation Agreement with a Department of Veterans Affairs health care facility, and such training will be undertaken in a Department of Veterans Affairs health-care facility.

(Authority: 38 U.S.C. 7616(b)(4))

(c) Additional service obligation. A participant who has requested and received deferment for approved advanced clinical training may, at the time of approval of such deferment and at the discretion of the Secretary and upon the recommendation of the Under Secretary for Health, incur an additional period of obligated service --

1) At the rate of one-half of a calendar year for each year of approved clinical training (or a proportionate ratio thereof) if the training is in a specialty determined to be necessary to meet health care requirements of the Veterans Health Administration; Department of Veterans Affairs; or

2) At the rate of three-quarters of a calendar year for each year of approved graduate training (or a proportionate ratio thereof) if the training is in a medical specialty determined not to be necessary to meet the health care requirements of the Veterans Health Administration. Specialties necessary to meet the health care requirements of the Veterans Health Administration will be prescribed periodically by the Secretary when, and if, this provision for an additional period of obligated service is to be used.

(Authority: 38 U.S.C. 7616(b)(4)(B))

(d) Altering deferment. Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Secretary's written approval of the alteration.

(Authority: 38 U.S.C. 7633)

(e) Beginning of service after deferment. Any participant whose period of obligated service has been deferred under paragraph (a) or (b) of this section must begin the obligated service effective on the date of appointment under title 38 in full-time clinical practice in an assignment or location in a Department of Veterans Affairs health care facility as determined by the Secretary. The assignment will be made by the Secretary.
within 120 days prior to or no later than 30 days following the completion of the requested graduate training for which the deferment was granted. Travel and relocation regulations will apply.

(Authority: 38 U.S.C. 7616(b)(2))


§ 17.609 Pay during period of obligated service.
The initial appointment of physicians for obligated service will be made in a grade commensurate with qualifications as determined in section 7404(b)(1) of title 38 U.S.C. A physician serving a period of obligated service is not eligible for incentive special pay during the first three years of such obligated service. A physician may be paid primary special pay at the discretion of the Secretary upon the recommendation of the Under Secretary for Health.


(Pub. L. 96-330, Sec. 202; 38 U.S.C. 7431-7440)

§ 17.610 Failure to comply with terms and conditions of participation.
(a) If a participant, other than one described in paragraph (b) of this section fails to accept payment or instructs the school not to accept payment of the scholarship provided by the Secretary, the participant must, in addition to any service or other obligation incurred under the contract, pay to the United States the amount of $1,500 liquidated damages. Payment of this amount must be made within 90 days of the date on which the participant fails to accept payment of the scholarship award or instructs the school not to accept payment.

(Authority: 38 U.S.C. 7617(a))

(b) If a participant:

(1) Fails to maintain an acceptable level of academic standing;

(2) Is dismissed from the school for disciplinary reasons;

(3) Voluntarily terminates the course of study or program for which the scholarship was awarded including in the case of a full-time student, a reduction of course load from full-time to part-time before completing the course of study or program;

(4) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or

(Authority: 38 U.S.C. 7617(b)(4))

(5) Is a part-time student and fails to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued; the participant must instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under the written contract executed in accordance with §17.602. Payment of this amount must be made within 1 year from the date academic training terminates unless a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness.

(Authority: 38 U.S.C. 7617(b))
(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

\[
\text{Recovery Amount} = \text{Scholarship Funds} \times 3 - \text{Months Served}
\]

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary.

(Authority: 38 U.S.C. 7617(c)(1)(2))

(Approved by the Office of Management and Budget under control number 2900-0352)


§ 17.611 Bankruptcy.

Any payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due.

[47 FR 10810, Mar. 12, 1982]

(38 U.S.C. 7634(c))

§ 17.612 Cancellation, waiver, or suspension of obligation.

(a) Any obligation of a participant for service or payment will be canceled upon the death of the participant.

(Authority: 38 U.S.C. 7634(a))

(b)(1) A participant may seek a waiver or suspension of the service or payment obligation incurred under this program by written request to the Secretary setting forth the basis, circumstances, and causes which support the requested action. The Secretary may approve an initial request for a suspension for a period of up to 1 year. A renewal of this suspension may also be granted.

(2) The Secretary may waive or suspend any service or payment obligation incurred by a participant whenever compliance by the participant (i) is impossible, due to circumstances beyond the control of the participant or (ii) whenever the Secretary concludes that a waiver or suspension of compliance would be in the best interest of the Department of Veterans Affairs.

(Authority: 38 U.S.C. 7634(b))

(c) Compliance by a participant with a service or payment obligation will be considered impossible due to circumstances beyond the control of the participant if the Secretary determines, on the basis of such information and documentation as may be required, that the participant suffers from a physical or mental disability resulting in permanent inability to perform the service or other activities which would be necessary to comply with the obligation.

(Authority: 38 U.S.C. 7634(b))
(d) Waivers or suspensions of service or payment obligations, when not related to paragraph (c) of this section, and when considered in the best interest of the Department of Veterans Affairs, will be determined by the Secretary on an individual basis.

(Authority: 38 U.S.C. 7634(b))

[47 FR 10810, Mar. 12, 1982]
TRANSITIONAL HOUSING LOAN PROGRAM

§ 17.800 Purpose.
§ 17.801 Definitions.
§ 17.802 Application provisions.
§ 17.803 Order of consideration.
§ 17.804 Loan approval criteria.
§ 17.805 Additional terms of loans.

§ 17.800 Purpose.
The purpose of the Transitional Housing Loan Program regulations is to establish application provisions and selection criteria for loans to non-profit organizations for use in initial startup costs for transitional housing for veterans who are in (or have recently been in) a program for the treatment of substance abuse. This program is intended to increase the amount of transitional housing available for such veterans who need a period of supportive housing to encourage sobriety maintenance and reestablishment of social and community relationships.

[59 FR 49579, Sept. 29, 1994]

§ 17.801 Definitions.
(a) Applicant: A non-profit organization making application for a loan under this program.
(b) Non-profit organization: A secular or religious organization, no part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual. The organization must include a voluntary board and must either maintain or designate an entity to maintain an accounting system which is operated in accordance with generally accepted accounting principles. If not named in, or approved under Title 38 U.S.C. (United States Code), Section 5902, a non-profit organization must provide VA with documentation which demonstrates approval as a non-profit organization under Internal Revenue Code, Section 501.c(3).
(c) Recipient: A non-profit organization which has received a loan from VA under this program.
(d) Veteran: A person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

[59 FR 49580, Sept. 29, 1994]

(Sec. 8 of Pub. L. 102-54, 105 Stat 271, 38 U.S.C. 501)

§ 17.802 Application provisions.
(a) To obtain a loan under these Transitional Housing Loan Program regulations, an application must be submitted by the applicant in the form prescribed by VA in the application package. The completed application package must be submitted to the Deputy Associate Director for Psychiatric Rehabilitation Services, (302/111C), VA Medical Center, 100 Emancipation Drive, Hampton, VA 23667. An application package may be
obtained by writing to the proceeding address or telephoning (804) 722-9961 x3628. (This is not a toll-free number)

(b) The application package includes exhibits to be prepared and submitted, including:
(1) Information concerning the applicant's income, assets, liabilities and credit history,
(2) Information for VA to verify the applicant's financial information,
(3) Identification of the official(s) authorized to make financial transactions on behalf of the applicant,
(4) Information concerning:
   (i) The history, purpose and composition of the applicant,
   (ii) The applicant's involvement with recovering substance abusers, including:
      (A) Type of services provided,
      (B) Number of persons served,
      (C) Dates during which each type of service was provided,
      (D) Names of at least two references of government or community groups whom the organization has worked with in assisting substance abusers,
   (iii) The applicant's plan for the provision of transitional housing to veterans including:
      (A) Means of identifying and screening potential residents,
      (B) Number of occupants intended to live in the residence for which the loan assistance is requested,
      (C) Residence operating policies addressing structure for democratic self-government, expulsion policies for nonpayment, alcohol or illegal drug use or disruptive behavior,
      (D) Type of technical assistance available to residents in the event of house management problems,
      (E) Anticipated cost of maintaining the residence, including rent and utilities,
      (F) Anticipated charge, per veteran, for residing in the residence,
      (G) Anticipated means of collecting rent and utilities payments from residents,
      (H) A description of the housing unit for which the loan is sought to support, including location, type of neighborhood, brief floor plan description, etc., and why this residence was selected for this endeavor.
   (iv) The applicant's plans for use of the loan proceeds.
[59 FR 49580, Sept. 29, 1994]

(§ 17.803 Order of consideration.
Loan applications will be considered on a first-come-first-serve basis, subject to availability of funds for loans and awards will be made on a first-come-first-serve basis to applicants who meet the criteria for receiving a loan. If no funds are available for loans, applications will be retained in the order of receipt for consideration as funds become available.
[59 FR 49580, Sept. 29, 1994]

(§ 17.804 Loan approval criteria.
Upon consideration of the application package, loan approval will be based on the following:
(a) Favorable financial history and status,
   (1) A minimum of a two-year credit history,
   (2) No open liens, judgments, and no unpaid collection accounts,
   (3) No more than two instances where payments were ever delinquent beyond 60 days,
   (4) Net ratio: (monthly expenses divided by monthly cash flow) that does not exceed 40%,
   (5) Gross ratio: (total indebtedness divided by gross annual cash flow) that does not exceed 35%,
   (6) At least two favorable credit references,
(b) Demonstrated ability to successfully address the needs of substance abusers as determined by a minimum of one year of successful experience in providing services, such as, provision of housing, vocational training, structured job seeking assistance, organized relapse prevention services, or similar activity. Such experience would involve at least twenty-five substance abusers, and would be experience which could be verified by VA inquiries of government or community groups with whom the applicant has worked in providing these services.
(c) An acceptable plan for operating a residence designed to meet the conditions of a loan under this program, which will include:
   (1) Measures to ensure that residents are eligible for residency, i.e., are veterans, are in (or have recently been in) a program for the treatment of substance abuse, are financially able to pay their share of costs of maintaining the residence, and agree to abide by house rules and rent/utilities payment provisions,
   (2) Adequate rent/utilities collections to cover cost of maintaining the residence,
   (3) Policies that ensure democratic self-run government, including expulsion policies, and
   (4) Available technical assistance to residents in the event of house management problems.
(d) Selection of a suitable housing unit for use as a transitional residence in a neighborhood with no known illegal drug activity, and with adequate living space for number of veterans planned for residence (at least one large bedroom for every three veterans, at least one bathroom for every four veterans, adequate common space for entire household)
(e) Agreements, signed by an official authorized to bind the recipient, which include:
   (1) The loan payment schedule in accordance with the requirements of Pub. L. 102-54, with the interest rate being the same as the rate the VA is charged to borrow these funds from the U.S. Department of Treasury and with a penalty of 4% of the amount due for each failure to pay an installment by the date specified in the loan agreement involved, and
   (2) The applicant's intent to use proceeds of loan only to cover initial startup costs associated with the residence, such as security deposit, furnishings, household supplies, and any other initial startup costs.

[59 FR 49580, Sept. 29, 1994]


§ 17.805 Additional terms of loans.
In the operation of each residence established with the assistance of the loan, the recipient must agree to the following:
(a) The use of alcohol or any illegal drugs in the residence will be prohibited;
(b) Any resident who violates the prohibition of alcohol or any illegal drugs will be expelled from the residence;
(c) The cost of maintaining the residence, including fees for rent and utilities, will be paid by residents;
(d) The residents will, through a majority vote of the residents, otherwise establish policies governing the conditions of the residence, including the manner in which applications for residence are approved;
(e) The residence will be operated solely as a residence for not less than six veterans.

[59 FR 49581, Sept. 29, 1994]

Health Care Benefits for Certain Children of Vietnam Veterans -- Spina Bifida and Covered Birth Defects

§ 17.900 Definitions
§ 17.901 Provision of health care.
§ 17.902 Preauthorization.
§ 17.903 Payment.
§ 17.904 Review and appeal process.
§ 17.905 Medical records.

§ 17.900 Definitions

For purposes of §§ 17.900 through 17.905 --

Approved health care provider means a health care provider currently approved by the Center for Medicare and Medicaid Services (CMS), Department of Defense TRICARE Program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or currently approved for providing health care under a license or certificate issued by a governmental entity with jurisdiction. An entity or individual will be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child for purposes of spina bifida means the same as individual as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as individual as defined at § 3.815(c)(2) of this title.

Covered birth defect means the same as defined at § 3.815(c)(3) of this title and also includes complications or medical conditions that are associated with the covered birth defect(s) according to the scientific literature.

Habilitative and rehabilitative care means such professional, counseling, and guidance services and such treatment programs (other than vocational training under 38 U.S.C. 1804 or 1814) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual that furnishes health care, including specialized clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to a child in the child's home or other place of residence.
Hospital care means care and treatment furnished to a child who has been admitted to a hospital as a patient.
Nursing home care means care and treatment furnished to a child who has been admitted to a nursing home as a resident.
Outpatient care means care and treatment, including preventive health services, furnished to a child other than hospital care or nursing home care.
Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.
Respite care means care furnished by an approved health care provider on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.
Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or medical conditions that are associated with spina bifida according to the scientific literature).
Vietnam veteran for purposes of spina bifida means the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and for purposes of covered birth defects means the same as defined at § 3.815(c)(1) of this title.

(Authority: 38 U.S.C. 101(2), 1802-1803, 1811-1813, 1821)

[EFFECTIVE DATE NOTE: 68 FR 1009, 1010, Jan. 8, 2003, revised this section, effective Jan. 8, 2003.]

§ 17.901 Provision of health care.

Discussion and Analysis in the Veterans Benefits Manual
(a) Spina bifida. VA will provide a Vietnam veteran's child who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for spina bifida. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.
(b) Covered birth defects. VA will provide a woman Vietnam veteran's child who has been determined under § 3.815 of this title to suffer from spina bifida or other covered birth defects with such health care as the Secretary determines is needed by the child for the covered birth defects. However, if VA has determined for a particular covered birth defect that § 3.815(a)(2) of this title applies (concerning affirmative evidence of cause other than the mother's service during the Vietnam era), no benefits or assistance will be provided under this section with respect to that particular birth defect.
(c) Providers of care. Health care provided under this section will be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider.
(d) Submission of information. For purposes of §§ 17.900 through 17.905:
(1) The telephone number of the Health Administration Center is (888) 820-1756;
(2) The facsimile number of the Health Administration Center is (303) 331-7807;
(3) The hand-delivery address of the Health Administration Center is 300 S. Jackson Street, Denver, CO 80209; and

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(4) The mailing address of the Health Administration Center --
(i) For spina bifida is P.O. Box 65025, Denver, CO 80206-9025; and
(ii) For covered birth defects is P.O. Box 469027, Denver, CO 80246-0027.
(Authority: 38 U.S.C. 101(2), 1802-1803, 1811-1813, 1821)

Note to § 17.901: This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida or unrelated to covered birth defects. VA is the exclusive payer for services paid under §§ 17.900 through 17.905 regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.


[EFFECTIVE DATE NOTE: 68 FR 1009, 1011, Jan. 8, 2003, revised this section, effective Jan. 8, 2003.]

§ 17.902 Preauthorization.

(a) Preauthorization from a benefits advisor of the Health Administration Center is required for the following services or benefits under §§ 17.900 through 17.905: rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (other than mileage at the General Services Administration rate for privately owned automobiles). Authorization will only be given in those cases where there is a demonstrated medical need related to the spina bifida or covered birth defects. Requests for provision of health care requiring preauthorization shall be made to the Health Administration Center and may be made by telephone, facsimile, mail, or hand delivery. The application must contain the following:

(1) Name of child,
(2) Child's Social Security number,
(3) Name of veteran,
(4) Veteran's Social Security number,
(5) Type of service requested,
(6) Medical justification,
(7) Estimated cost, and
(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization is not required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone to the Health Administration Center within 72 hours of the emergency.

(Authority: 38 U.S.C. 101(2), 1802-1803, 1811-1813, 1821)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0578.)
§ 17.903 Payment.

(a)(1) Payment for services or benefits under §§ 17.900 through 17.905 will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see § 17.270).

(2) As a condition of payment, the services must have occurred:
   (i) For spina bifida, on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title.
   (ii) For covered birth defects, on or after December 1, 2001, and must have occurred on or after the date the child was determined eligible for benefits under § 3.815 of this title.

(3) Claims from approved health care providers must be filed with the Health Administration Center in writing (facsimile, mail, hand delivery, or electronically) no later than:
   (i) One year after the date of service; or
   (ii) In the case of inpatient care, one year after the date of discharge; or
   (iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility.

(4) Claims for health care provided under the provisions of §§ 17.900 through 17.905 must contain, as appropriate, the information set forth in paragraphs (a)(4)(i) through (a)(4)(v) of this section.
   (i) Patient identification information:
      (A) Full name,
      (B) Address,
      (C) Date of birth, and
      (D) Social Security number.
   (ii) Provider identification information (inpatient and outpatient services):
      (A) Full name and address (such as hospital or physician),
      (B) Remittance address,
      (C) Address where services were rendered,
      (D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and
      (E) Provider tax identification number (TIN) or Social Security number.
   (iii) Patient treatment information (long-term care or institutional services):
      (A) Dates of service (specific and inclusive),
      (B) Summary level itemization (by revenue code),
      (C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,
      (D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,
      (E) All secondary diagnoses,
      (F) All procedures performed,
(G) Discharge status of the patient, and
(H) Institution's Medicare provider number.
(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites, and independent laboratories:
(A) Diagnosis,
(B) Procedure code for each procedure, service, or supply for each date of service, and
(C) Individual billed charge for each procedure, service, or supply for each date of service.
(v) Prescription drugs and medicines and pharmacy supplies:
(A) Name and address of pharmacy where drug was dispensed,
(B) Name of drug,
(C) National Drug Code (NDC) for drug provided,
(D) Strength,
(E) Quantity,
(F) Date dispensed,
(G) Pharmacy receipt for each drug dispensed (including billed charge), and
(H) Diagnosis for which each drug is prescribed.
(b) Health care payment will be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:
(1) Care as part of a grant study or research program,
(2) Care considered experimental or investigational,
(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,
(4) Services, procedures, or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,
(5) Services provided outside the scope of the provider's license or certification, and
(6) Services rendered by providers suspended or sanctioned by a Federal agency.
(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.
(d) Explanation of benefits (EOB). -- (1) When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides, at a minimum, the following information:
(i) Name and address of recipient,
(ii) Description of services and/or supplies provided,
(iii) Dates of services or supplies provided,
(iv) Amount billed,
(v) Determined allowable amount,
(vi) To whom payment, if any, was made, and
(vii) Reasons for denial (if applicable).
(2) [Reserved]
(Authority: 38 U.S.C. 101(2), 1802-1803, 1811-1813, 1821)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0578.)
§ 17.904 Review and appeal process.

For purposes of §§ 17.900 through 17.905, if a health care provider, child, or representative disagrees with a determination concerning provision of health care or with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing (by facsimile, mail, or hand delivery) within one year of the date of the initial determination to the Health Administration Center (Attention: Chief, Benefit and Provider Services). The request must state why it is believed that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses, or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may submit in writing (by facsimile, mail, or hand delivery) to the Health Administration Center (Attention: Director) a request for review by the Director, Health Administration Center. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses, or modifies the previous decision. An appeal under this section would be considered as filed at the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

Note to § 17.904: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals. (Authority: 38 U.S.C. 101(2), 1802-1803, 1811-1813, 1821)

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no cost. (Authority: 38 U.S.C. 101(2), 1801-1806)

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PAYMENT OR REIMBURSEMENT FOR EMERGENCY SERVICES FOR NONSERVICE-CONNECTED CONDITIONS IN NON-VA FACILITIES

§ 17.1000 Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities.
§ 17.1001 Definitions.
§ 17.1002 Substantive conditions for payment or reimbursement.
§ 17.1003 Emergency transportation.
§ 17.1004 Filing claims.
§ 17.1005 Payment limitations.
§ 17.1006 Decisionmakers.
§ 17.1007 Independent right of recovery.
§ 17.1008 Balance billing prohibited.

§ 17.1000 Payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities.

Sections 17.1000 through 17.1008 constitute the requirements under 38 U.S.C. 1725 that govern VA payment or reimbursement for non-VA emergency services furnished to a veteran for nonservice-connected conditions.

NOTE TO § 17.1000: In cases where a patient is admitted for inpatient care, health care providers furnishing emergency treatment who believe they may have a basis for filing a claim with VA for payment under 38 U.S.C. 1725 should contact VA within 48-hours after admission for emergency treatment. Such contact is not a condition of VA payment. However, the contact will assist the provider in understanding the conditions for payment. The contact may also assist the provider in planning for transfer of the veteran after stabilization.

[66 FR 36467, 36470, July 12, 2001, as confirmed and amended at 68 FR 3401, 3404, Jan. 24, 2003]

(38 U.S.C. 1725)

[EFFECTIVE DATE NOTE: 68 FR 3401, 3404, Jan. 24, 2003, amended the note to this section, effective Mar. 25, 2003.]

§ 17.1001 Definitions.

For purposes of §§ 17.1000 through 17.1008:
(a) The term health-plan contract means any of the following:
(1) An insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement under which health services for individuals are provided or the expenses of such services are paid;
(2) An insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);
(3) A State plan for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);
(4) A workers' compensation law or plan described in section 38 U.S.C. 1729(a)(2)(A); or
(5) A law of a State or political subdivision described in 38 U.S.C. 1729(a)(2)(B) (concerning motor vehicle accidents).

(b) The term third party means any of the following:
(1) A Federal entity;
(2) A State or political subdivision of a State;
(3) An employer or an employer's insurance carrier;
(4) An automobile accident reparations insurance carrier; or
(5) A person or entity obligated to provide, or to pay the expenses of, health services under a health-plan contract.

(c) The term duplicate payment means payment made, in whole or in part, for the same emergency services for which VA reimbursed or made payment.

(d) The term stabilized means that no material deterioration of the emergency medical condition is likely, within reasonable medical probability, to occur if the veteran is discharged or transferred to a VA or other Federal facility.

(e) The term VA medical facility of jurisdiction means the nearest VA medical facility to where the emergency service was provided.

[66 FR 36467, 36470, July 12, 2001, as confirmed at 68 FR 3401, 3404, Jan. 24, 2003]

(38 U.S.C. 1725)

§ 17.1002 Substantive conditions for payment or reimbursement.

cclii

Payment or reimbursement under 38 U.S.C. 1725 for emergency services may be made only if all of the following conditions are met:

(a) The emergency services were provided in a hospital emergency department or a similar facility held out as providing emergency care to the public;

(b) The claim for payment or reimbursement for the initial evaluation and treatment is for a condition of such a nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health (this standard would be met if there were an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part);

(c) A VA or other Federal facility/provider was not feasibly available and an attempt to use them beforehand would not have been considered reasonable by a prudent layperson (as an example, these conditions would be met by evidence establishing that a veteran was brought to a hospital in an ambulance and the ambulance personnel determined that the nearest available appropriate level of care was at a non-VA medical center);

(d) The claim for payment or reimbursement for any medical care beyond the initial emergency evaluation and treatment is for a continued medical emergency of such a nature that the veteran could not have been safely discharged or transferred to a VA or other Federal facility (the medical emergency lasts only until the time the veteran becomes stabilized);
At the time the emergency treatment was furnished, the veteran was enrolled in the VA health care system and had received medical services under authority of 38 U.S.C. chapter 17 within the 24-month period preceding the furnishing of such emergency treatment;

The veteran is financially liable to the provider of emergency treatment for that treatment;

The veteran has no coverage under a health-plan contract for payment or reimbursement, in whole or in part, for the emergency treatment (this condition cannot be met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract, e.g., failure to submit a bill or medical records within specified time limits, or failure to exhaust appeals of the denial of payment);

If the condition for which the emergency treatment was furnished was caused by an accident or work-related injury, the claimant has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such treatment; and the veteran has no contractual or legal recourse against a third party that could reasonably be pursued for the purpose of extinguishing, in whole or in part, the veteran's liability to the provider; and

The veteran is not eligible for reimbursement under 38 U.S.C. 1728 for the emergency treatment provided (38 U.S.C. 1728 authorizes VA payment or reimbursement for emergency treatment to a limited group of veterans, primarily those who receive emergency treatment for a service-connected disability).

[66 FR 36467, 36471, July 12, 2001, as confirmed and amended at 68 FR 3401, 3404, Jan. 24, 2003]

(38 U.S.C. 1725)

[EFFECTIVE DATE NOTE: 68 FR 3401, 3404, Jan. 24, 2003, substituted "safely discharged or" for "safely" in paragraph (d), effective Mar. 25, 2003.]

§ 17.1003 Emergency transportation.

Notwithstanding the provisions of § 17.1002, payment or reimbursement under 38 U.S.C. 1725 for ambulance services, including air ambulance services, may be made for transporting a veteran to a facility only if the following conditions are met:

(a) Payment or reimbursement is authorized under 38 U.S.C. 1725 for emergency treatment provided at such facility (or payment or reimbursement could have been authorized under 38 U.S.C. 1725 for emergency treatment if death had not occurred before emergency treatment could be provided);

(b) The veteran is financially liable to the provider of the emergency transportation;

(c) The veteran has no coverage under a health-plan contract for reimbursement or payment, in whole or in part, for the emergency transportation or any emergency treatment authorized under 38 U.S.C. 1728 (this condition is not met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract); and

(d) If the condition for which the emergency transportation was furnished was caused by an accident or work-related injury, the claimant has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such transportation; and the veteran has no contractual or legal recourse
against a third party that could reasonably be pursued for the purpose of extinguishing, in whole or in part, the veteran's liability to the provider.

[66 FR 36467, 36471, July 12, 2001, as confirmed at 68 FR 3401, 3404, Jan. 24, 2003]

(38 U.S.C. 1725)

§ 17.1004 Filing claims.

ccliii Discussion and Analysis in the Veterans Benefits Manual

(a) A claimant for payment or reimbursement under 38 U.S.C. 1725 must be the entity that furnished the treatment, the veteran who paid for the treatment, or the person or organization that paid for such treatment on behalf of the veteran.

(b) To obtain payment or reimbursement for emergency treatment under 38 U.S.C. 1725, a claimant must submit to the VA medical facility of jurisdiction a completed standard billing form (such as a UB92 or a HCFA 1500). Where the form used does not contain a false claims notice, the completed form must also be accompanied by a signed, written statement declaring that "I hereby certify that this claim meets all of the conditions for payment by VA for emergency medical services under 38 CFR 17.1002 (except for paragraph (e)) and 17.1003. I am aware that 38 U.S.C. 6102(b) provides that one who obtains payment without being entitled to it and with intent to defraud the United States shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both."

NOTE TO § 17.1004(b): These regulations regarding payment or reimbursement for emergency services for nonservice-connected conditions in non-VA facilities also can be found on the internet at http://www.va.gov/health/elig.

(c) Notwithstanding the provisions of paragraph (b) of this section, no specific form is required for a claimant (or duly authorized representative) to claim payment or reimbursement for emergency transportation charges under 38 U.S.C. 1725. The claimant need only submit a signed and dated request for such payment or reimbursement to the VA medical facility of jurisdiction, together with a bill showing the services provided and charges for which the veteran is personally liable and a signed statement explaining who requested such transportation services and why they were necessary.

(d) To receive payment or reimbursement for emergency services, a claimant must file a claim within 90 days after the latest of the following:


(2) The date that the veteran was discharged from the facility that furnished the emergency treatment;

(3) The date of death, but only if the death occurred during transportation to a facility for emergency treatment or if the death occurred during the stay in the facility that included the provision of the emergency treatment; or

(4) The date the veteran finally exhausted, without success, action to obtain payment or reimbursement for the treatment from a third party.

(e) If after reviewing a claim the decisionmaker determines that additional information is needed to make a determination regarding the claim, such official will contact the claimant in writing and request additional information. The additional information must be submitted to the decisionmaker within 30 days of receipt of the request or the claim will be treated as abandoned, except that if the claimant within the 30-day period requests
§ 17.1005 Payment limitations.
(a) Payment or reimbursement for emergency treatment under 38 U.S.C. 1725 shall be the lesser of the amount for which the veteran is personally liable or 70 percent of the amount under the applicable Medicare fee schedule for such treatment.
(b) Reimbursement or payment for emergency treatment may be made only for the period from the beginning of the initial evaluation treatment until such time as the veteran could be safely discharged or transferred to a VA facility or other Federal facility. For purposes of payment or reimbursement under 38 U.S.C. 1725, VA deems it safe for the veteran to be transferred once the veteran has become stabilized.

§ 17.1006 Decisionmakers.
The Chief of the Health Administration Service or an equivalent official at the VA medical facility of jurisdiction will make all determinations regarding payment or reimbursement under 38 U.S.C. 1725, except that the Fee Service Review Physician or equivalent officer at the VA medical facility of jurisdiction will make determinations regarding § 17.1002(b), (c), and (d). Any decision denying a benefit must be in writing and inform the claimant of VA reconsideration and appeal rights.

§ 17.1007 Independent right of recovery.
(a) VA has the right to recover its payment under this section when, and to the extent that, a third party makes payment for all or part of the same emergency treatment for which VA reimbursed or made payment under this section.
(1) Under 38 U.S.C. 1725(d)(4), the veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran. The veteran (or the veteran's personal representative, successor, dependents, or survivors) or claimant shall immediately forward all documents relating to such payment, cooperate with the Secretary in the investigation of such payment and assist the Secretary in enforcing the United States' right to recover any payment made and accepted under this section. The required notification and submission of documentation
must be provided by the veteran or claimant to the VA medical facility of jurisdiction within three working days of receipt of notice of the duplicate payment.

(2) If the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction concludes that payment from a third party was made for all or part of the same emergency treatment for which VA reimbursed or made payment under this section, such VA official shall, except as provided in paragraph (c) of this section, initiate action to collect or recover the amount of the duplicate payment in the same manner as for any other debt owed the United States.

(b)(1) Any amount paid by the United States to the veteran (or the veteran's personal representative, successor, dependents, or survivors) or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

(2) Any amount paid by the United States, and accepted by the provider that furnished the veteran's emergency treatment, shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

(c) If it is determined that a duplicate payment was made, the Chief Financial Officer or equivalent official at the VA medical facility of jurisdiction may waive recovery of a VA payment made under this section to a veteran upon determining that the veteran has substantially complied with the provisions of paragraph (a)(1) of this section and that actions to recover the payment would not be cost-effective or would conflict with other litigative interests of the United States.

[66 FR 36467, 36472, July 12, 2001, as confirmed at 68 FR 3401, 3404, Jan. 24, 2003]

(38 U.S.C. 1725)

§ 17.1008 Balance billing prohibited.
Payment by VA under 38 U.S.C. 1725 on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish all liability on the part of the veteran for that emergency treatment. Neither the absence of a contract or agreement between VA and the provider nor any provision of a contract, agreement, or assignment to the contrary shall operate to modify, limit, or negate this requirement.

[66 FR 36467, 36472, July 12, 2001, as confirmed at 68 FR 3401, 3404, Jan. 24, 2003]

(38 U.S.C. 1725)
PART 18 -- NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS -- EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

SUBPART A -- GENERAL
Subpart D -- Nondiscrimination on the Basis of Handicap
SUBPART E -- NONDISCRIMINATION ON THE BASIS OF AGE
SUBPART A -- GENERAL

§ 18.1 Purpose.
§ 18.2 Application of this part.
§ 18.3 Discrimination prohibited.
§ 18.4 Assurances required.
§ 18.6 Compliance information.
§ 18.7 Conduct of investigations.
§ 18.8 Procedure for effecting compliance.
§ 18.9 Hearings.
§ 18.10 Decisions and notices.
§ 18.11 Judicial review.
§ 18.12 Effect on other regulations, forms and instructions.
§ 18.13 Definitions.

APPENDIX A TO SUBPART A OF PART 18 -- STATUTORY PROVISIONS TO WHICH THIS SUBPART APPLIES

APPENDIX B TO SUBPART A OF PART 18 -- ILLUSTRATIVE APPLICATION

§ 18.1 Purpose.
The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Veterans Affairs.


Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1) and the laws referred to in Appendix A.

§ 18.2 Application of this part.
This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department of Veterans Affairs, including the types of Federal financial assistance listed in appendix A to this subpart. It applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved prior to such effective date. This part does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended before the effective date of this part, (c) any assistance to any individual who is the ultimate beneficiary, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 18.3. The fact that a type of Federal financial assistance is not listed in appendix A to this subpart shall not mean, if Title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this subpart by notice published in the FEDERAL REGISTER.
§ 18.3 Discrimination prohibited.
(a) General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.
(b) Specific discriminatory actions prohibited. (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on grounds of race, color, or national origin:
(i) Deny an individual any service, financial aid, or other benefit provided under the program;
(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
(iii) Subject an individual to segregation or separate treatment in any matter related to receipt of any service, financial aid, or other benefit under the program;
(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
(v) Treat an individual differently from others in determining whether is satisfied any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.
(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford an opportunity to do so which is different from that afforded others under the program.
(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.
(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.
(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies on the grounds of race, color or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.
(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) Medical emergencies. Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with paragraph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his or her death or serious impairment of his or her health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

(d) Employment practices. (1) Whenever a primary objective of the Federal financial assistance to a program to which part 18 applies, is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities). The requirements applicable to construction employment under any such program shall be those specified in or pursuant to part III of Executive Order 11246 (3 CFR Chapter IV) or any Executive order which supersedes it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (d)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (d)(1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.


§ 18.4 Assurances required.
(a) General. (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which the recipient retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR subpart 101-6.2).

(b) Continuing Federal financial assistance. Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in appendix A to this subpart) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible agency official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part. In any case in which the recipient is claiming financial assistance pursuant to arrangements entered into prior to the effective date of this part, the assurances provided by this paragraph shall be included in the first application or claim for assistance on or after the effective date of this part.

(c) Elementary and secondary schools. The requirements of paragraph (a) or (b) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible agency official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to
redetermine, after such period as may be specified by the official, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

(d) Extent of application to institution or facility. In the case where any assurances are required from an academic, a medical care, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.


Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1) and the laws referred to in Appendix A. [EFFECTIVE DATE NOTE: 68 FR 51334, 51369, Aug. 26, 2003, amended paragraphs (a) and (b) and revised paragraph (d), effective Sept. 25, 2003.]

§ 18.6 Compliance information.

(a) Cooperation and assistance. Each responsible agency official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the responsible agency official or designee, timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or designee may determine to be necessary to enable the official to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for the agency racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) Access to sources of information. Each recipient shall permit access by the responsible agency official or designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.
§ 18.7 Conduct of investigations.

(a) Periodic compliance reviews. The responsible agency official or designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person or any specific class of individuals who believe they have been subjected to discrimination prohibited by this part may themselves, or by a representative, file with the responsible agency official or designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination unless the time for filing is extended by the responsible agency official or designee.

(c) Investigations. The responsible agency official or designee will initiate a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible agency official or designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 18.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible agency official or designee will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 18.8 Procedure for effecting compliance.
(a) General. If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Noncompliance with § 18.4. If an applicant fails or refuses to furnish an assurance required under § 18.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department of Veterans Affairs shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department of Veterans Affairs shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating or refusing to grant or to continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to § 18.10(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken by the Department of Veterans Affairs until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.


Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1) and the laws referred to in Appendix A.
§ 18.9 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by § 18.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 18.8(c) of this part and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the offices of the Department of Veterans Affairs in Washington, D.C., at a time fixed by the responsible agency official unless the official determines that the convenience of the applicant or recipient or of the Department of Veterans Affairs requires that another place be selected. Hearings shall be held before the responsible agency official or, at the official's discretion, before an administrative law judge appointed in accordance with section 3105 of Title 5, U.S.C., or detailed under section 3344 of Title 5, U.S.C.

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department of Veterans Affairs shall have the right to be represented by counsel.

(d) Procedures, evidence, and record. (1) The hearing decision and any administrative review thereof shall be conducted in conformity with the procedures contained in 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act) and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department of Veterans Affairs and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.
(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 18.10.


§ 18.10 Decisions and notices.
(a) Procedure on decisions by an administrative law judge. If the hearing is held by an administrative law judge such administrative law judge shall either make an initial decision, if so authorized, or certify the entire record including recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the administrative law judge the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official exceptions to the initial decision with reasons therefor. In the absence of exceptions, the responsible agency official may within 45 days after the initial decision serve on the applicant or recipient a notice that the decision will be reviewed. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue a decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) Decisions on record or review by the responsible agency official. Whenever a record is certified to the responsible agency official for decision or the official reviews the decision of an administrative law judge pursuant to paragraph (a) of this section, or whenever the responsible agency official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with the official briefs or other written statements of its contentions, and a written copy of the final decision of the responsible agency official shall be sent to the applicant or recipient and to the complainant, if any.

(c) Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to § 18.9(a) a decision shall be made by the responsible agency official on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of an administrative law judge or responsible agency official shall set forth a ruling on each finding, conclusion, or exception presented, and shall identify the requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.
(e) Approval by Secretary. Any final decision by an administrative law judge which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part of the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the responsible agency official that it will fully comply with this part.

(g) Post termination proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this section and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible agency official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible agency official determines that those requirements have been satisfied, the official shall restore such eligibility.

(3) If the responsible agency official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.


§ 18.11 Judicial review.
Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.
§ 18.12 Effect on other regulations, forms and instructions.

(a) Effect on other regulations. All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department of Veterans Affairs which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(1) Executive Orders 10925 (3 CFR, 1959-1963 Comp., p. 448), 11114 (3 CFR, 1959-1963, p. 774), and 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder, or

(2) Executive Order 11063 (3 CFR, 1959-1963 Comp., p. 652) and regulations issued thereunder, or any other orders, regulations or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the grounds of race, color or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) Forms and instructions. Each responsible agency officials shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) Supervision and coordination. The Secretary may from time to time assign to officials of the Department of Veterans Affairs or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 18.10) including the achievement of effective coordination and maximum uniformity within the Department of Veterans Affairs and within the executive branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action has been taken by the responsible official of this Agency.
§ 18.13 Definitions.
As used in this part:
(a) The term agency means the Department of Veterans Affairs, and includes each of its operating agencies and other organization units.
(b) The term Secretary means the Secretary of Veterans Affairs.
(c) The term responsible agency official with respect to any program receiving Federal financial assistance means the Secretary or other official of the Department of Veterans Affairs or an official of another department or agency to the extent the Secretary has delegated authority to such official.
(d) The term United States means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term State means any one of the foregoing.
(e) The term Federal financial assistance includes (1) grants of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.
(f) The terms program or activity and program mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:
(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship --
(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.
(g) The term facility includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities. 

(h) The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in the United States, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(i) The term applicant means a person who submits an application, request, or plan required to be approved by the Secretary, or by a recipient, as a condition to eligibility for Federal financial assistance, and application means such an application, request, or plan.

Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1) and the laws referred to in Appendix A. [EFFECTIVE DATE NOTE: 68 FR 51334, 51369, Aug. 26, 2003, revised paragraph (f), and amended paragraph (h), effective Sept. 25, 2003.]
APPENDIX A TO SUBPART A OF PART 18 – STATUTORY PROVISIONS TO WHICH THIS SUBPART APPLIES

3. Space and office facilities for representatives of recognized national organizations (38 U.S.C. 5902(a)(2)).
4. All-volunteer force educational assistance, vocational rehabilitation, post-Vietnam era veterans' educational assistance, survivors' and dependents' educational assistance, and administration of educational benefits (38 U.S.C. Chapters 30, 31, 32, 34, 35 and 36, respectively).
6. Approval of educational institutions (38 U.S.C. 104).
7. Space and office facilities for representatives of State employment services (38 U.S.C. 7725(1)).
10. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 1720A).
11. Aid to States for establishment, expansion, and improvement of veterans cemeteries (38 U.S.C. 2408).
12. Assistance in establishing new medical schools; grants to affiliated medical schools; assistance to health manpower training institutions (38 U.S.C. Chapter 82).

[51 FR 10385, Mar. 26, 1986]

Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1) and the laws referred to in Appendix A.
The following examples, without being exhaustive, will illustrate the application of the nondiscrimination provisions to certain grants of the Department of Veterans Affairs. (In all cases the discrimination prohibited is discrimination on the grounds of race, color, or national origin prohibited by title VI of the Act and this part, as a condition of the receipt of Federal financial assistance.)

(a) In grants which support the provision of health or welfare services for veterans in State homes, discrimination in the selection or eligibility of individuals to receive the services, and segregation or other discriminatory practices in the manner of providing them, are prohibited. This prohibition extends to all facilities and services provided by the State as grantee under the program or by a political subdivision of the State. It extends also to services purchased or otherwise obtained by the grantee (or political subdivision) from hospitals, nursing homes, schools, and similar institutions for beneficiaries of the program, and to the facilities in which such services are provided, subject, however, to the provisions of § 18.3(c).

(b) In grants to assist in the construction of facilities for the provision of health or welfare services assurances will be required that services will be provided without discrimination, to the same extent that discrimination would be prohibited as a condition of Federal operating grants for the support of such services. Thus, as a condition of grants for the construction of a State home for furnishing nursing home care, assurances will be required that there will be no discrimination in the admission or treatment of patients. In the case of such grants the assurance will apply to patients, to interns, residents, student nurses, and other trainees, and to the privilege of physicians, dentists, and other professionally qualified persons to practice in the nursing home, and will apply to the entire facility for which, or for a part of which, the grant is made, and to facilities operated in connection therewith.

(c) Upon transfers of real or personal surplus property for health or educational uses, discrimination is prohibited to the same extent as in the case of grants for the construction of facilities or the provision of equipment for like purposes.

(d) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly. Thus a State, in selecting or approving projects or sites for the construction of a nursing home which will receive Federal financial assistance, may not base its selections or approvals on criteria which have the effect of defeating or of substantially impairing accomplishment of the objectives of the Federal assistance program with respect to individuals of a particular race, color, or national origin.


(38 U.S.C. 1741, 1744, 8131-8137, 8155, 5902(a)(2), Chapters 31, 34, 35 and 36)
Subpart D -- Nondiscrimination on the Basis of Handicap

GENERAL PROVISIONS
EMPLOYMENT PRACTICES
ACCESSIBILITY
ELEMENTARY, SECONDARY, AND ADULT EDUCATION
POSTSECONDARY EDUCATION
HEALTH AND SOCIAL SERVICES
PROCEDURES
GENERAL PROVISIONS

§ 18.401 Purpose.
§ 18.402 Application.
§ 18.403 Definitions.
§ 18.404 Discrimination prohibited.
§ 18.405 Assurances required.
§ 18.406 Remedial action, voluntary action and self-evaluation.
§ 18.407 Designation of responsible employee and adoption of grievance procedures.
§ 18.408 Notice.
§ 18.409 Administrative requirements for certain recipients.
§ 18.410 Effect of State or local law or other requirements and effect of employment opportunities.

§ 18.401 Purpose.
The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

[45 FR 63268, Sept. 24, 1980]


§ 18.402 Application.
This part applies to each recipient of Federal financial assistance from the Department of Veterans Affairs and to each program or activity that receives such assistance.


§ 18.403 Definitions.
As used in this part, the term:
(b) Section 504 means section 504 of the Act.
(d) Agency means the Department of Veterans Affairs.
(e) Secretary means the Secretary of Veterans Affairs.
(f) Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient but excluding the ultimate beneficiary of the assistance.
(g) Applicant for assistance means one who submits an application, request, or plan required to be approved by an Agency official or by a recipient as a condition to eligibility for Federal financial assistance.

(h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Agency provides or otherwise makes available assistance in the form of:

(1) Funds, including funds extended to any entity for payment to or on behalf of students admitted to that entity, extended directly to those students for payment to that entity, or extended directly to those students contingent upon their participation in education or training of that entity;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of property, including;

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped person. (1) Handicapped person means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal; special sense organs including speech organs; respiratory; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(C) The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;
(C) Has none of the impairments defined in paragraph (j)(2)(i) of this section, but is treated by a recipient as having such an impairment.

(k) Qualified handicapped person means:
(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;
(2) With respect to public elementary, secondary, or adult educational services, a handicapped person:
   (i) Of an age during which nonhandicapped persons are provided such services;
   (ii) Of any age during which it is mandatory under State laws to provide such services to handicapped persons; or
   (iii) To whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and
(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and
(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

(m) Program or activity means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:
(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
   (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
   (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship --
   (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
   (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
   (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
(4) Any other entity that is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.


[EFFECTIVE DATE NOTE: 68 FR 51334, 51370, Aug. 26, 2003, amended paragraph (h)(1) and added paragraph (m), effective Sept. 25, 2003.]
§ 18.404 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing an aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must give handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap,

(ii) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections that:
(i) Have the effect of excluding handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives Federal financial assistance, or
(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objective of the program or activity with respect to handicapped persons.
(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.
(c) Aid, benefits, or services limited by Federal law. The exclusion of nonhandicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.
(d) Special communication. Recipients shall take appropriate action to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.


§ 18.405 Assurances required.
(a) Assurances. An applicant for Federal financial assistance to which this part applies shall submit an assurance on a form specified by the Secretary, that the program or activity will be operated in compliance with this part.
(b) Duration of obligation. (1) When Federal financial assistance is extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.
(2) Where Federal financial assistance is extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.
(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.
(c) Extent of application to institution or facility. An assurance shall apply to the entire institution or facility.
(d) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.
(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of property.
(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the covenant shall also include a condition coupled with a right to be reserved by the Agency to revert title to the property if there is a breach of the covenant. If a transferree of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purpose for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as considered appropriate, agree to forbear the exercise of the right to revert title for as long as the lien of the mortgage or other encumbrance remains effective.

(e) Other methods of enforcement. (1) Recipients are required to keep such records as the responsible VA official deems necessary for complete and accurate compliance reports. VA can specify intervals for reporting and prescribe the form and content of information required to ascertain whether the recipient has complied or is complying with the law.

(2) Periodic compliance reviews of training establishments will be conducted by VA compliance officers. During these reviews recipients are required to permit access by VA compliance officers during normal business hours to such of their books, records, accounts, facilities and other sources of information including interviews with personnel and trainees as may be pertinent to ascertain compliance with the law.

(3) From study of documentation, results of interviews, and observation of activities during tours of facilities, compliance officers will evaluate recipients' compliance status.


[EFFECTIVE DATE NOTE: 68 FR 51334, 51370, Aug. 26, 2003, amended paragraph (a) and revised paragraph (c), effective Sept. 25, 2003.]

§ 18.406 Remedial action, voluntary action and self-evaluation.

(a) Remedial action. (1) If the Secretary finds that a recipient has discriminated against qualified persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Secretary considers necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against qualified persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action with respect to:

(i) Handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred;

(ii) Handicapped persons who would have been participants in the program or activity had the discrimination not occurred; or

(iii) Handicapped persons presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program or activity.
(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part:
   (i) Evaluate with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects of the policies and practices that do not or may not meet the requirements of this part;
   (ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and
   (iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request:
   (i) A list of the interested persons consulted;
   (ii) A description of areas examined and any problems identified; and
   (iii) A description of any modifications made and of any remedial steps taken.

(3) Recipients who become such more than one year after the effective date of these regulations shall complete these self-evaluation requirements within one year after becoming recipients of Federal financial assistance.

(The information collection requirements contained in paragraph (c) have been approved by the Office of Management and Budget under control number 2900-0415)


§ 18.407 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

[45 FR 63268, Sept. 24, 1980]
§ 18.408 Notice.
(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment, or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated under § 18.407. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient’s publication, and distribution of memorandums or other written communications.
(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this section either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.


§ 18.409 Administrative requirements for certain recipients.
The Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 18.407 and 18.408 in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.
[45 FR 63268, Sept. 24, 1980]

§ 18.410 Effect of State or local law or other requirements and effect of employment opportunities.
(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.
(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.
[45 FR 63268, Sept. 24, 1980]
EMPLOYMENT PRACTICES

§ 18.411 Discrimination prohibited.
§ 18.412 Reasonable accommodation.
§ 18.413 Employment criteria.
§ 18.414 Preemployment inquiries.

§ 18.411 Discrimination prohibited.
(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.
(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.
(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination in employment. The relationships referred to in this section include relationships with employment and referral agencies, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.
(b) Specific activities. Nondiscrimination in employment applies to:
(1) Recruitment, advertising, and the processing of applications for employment;
(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
(3) Rates of pay or other forms of compensation and changes in compensation;
(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(5) Leaves of absence, sick leave, or any other leave;
(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
(8) Employer sponsored activities, including those that are social or recreational; and
(9) Any other term, condition, or privilege of employment.
(c) Collective bargaining agreements. A recipient’s obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

[EFFECTIVE DATE NOTE: 68 FR 51334, 51370, Aug. 26, 2003, amended paragraphs (a)(3) and (b)(8), effective Sept. 25, 2003.]

§ 18.412 Reasonable accommodation.
(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee if such accommodation would enable that person to perform the essential functions of the job unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.
(b) Reasonable accommodation may include:
(1) Making facilities used by employees readily accessible to and usable by handicapped persons; and
(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters and other similar actions.
(c) In determining under paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:
(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;
(2) The type of the recipient's operation, including the composition and structure of the recipient's work force; and
(3) The nature and cost of the accommodation needed.
(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[EFFECTIVE DATE NOTE: 68 FR 51334, 51370, Aug. 26, 2003, amended paragraphs (a) and (c), effective Sept. 25, 2003.]
[PUBLISHER'S NOTE: FEDERAL CASES CITING THIS SECTION -- Johnston v. Henderson, 144 F. Supp. 2d 1341]

§ 18.413 Employment criteria.
(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:
(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and
(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Secretary to be available.
(b) A recipient shall select and administer tests concerning employment to best ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflect the applicant's or employee's impaired sensory, manual, or speaking skills (except when those skills are the factors that the test purports to measure).
[45 FR 63268, Sept. 24, 1980]

§ 18.414 Preemployment inquiries.
(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into the applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 18.406(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 18.406(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;
(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;
(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

[45 FR 63268, Sept. 24, 1980]
ACCESSIBILITY

§ 18.421 Discrimination prohibited.
§ 18.422 Existing facilities.
§ 18.423 New construction.

§ 18.421 Discrimination prohibited.
No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.
[45 FR 63268, Sept. 24, 1980]

§ 18.422 Existing facilities.
(a) Accessibility. A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.
(b) Methods. A recipient may comply with the requirement of paragraph (a) of this section through such measures as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of health, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with § 18.423 or any other methods that make its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in making its programs or activities readily accessible to handicapped persons. In choosing among available methods for complying with paragraph (a) of this section, a recipient shall give priority to methods that serve handicapped persons in the most integrated setting appropriate.
(c) Small health, welfare or other social service providers, and recipients that operate other than educational programs or activities. If a recipient with fewer than fifteen employees finds after consultation with a handicapped person seeking its services that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the qualified handicapped person to other providers whose services are accessible. Where referrals are necessary, transportation costs shall not exceed costs to and from recipients' programs or activities.
(d) Time period. A recipient shall comply with paragraph (a) of this section within 60 days of the effective date of this part except that when structural changes in facilities are necessary, these changes shall be made as soon as practicable, but not later than three years after the effective date of this part.
(e) Transition plan. If structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop a transition plan within six months of the effective date of this part setting forth the steps necessary to
complete such change. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be available for public inspection. The plan shall, at a minimum:

1. Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;
2. Describe in detail the methods that will be used to make the facilities accessible;
3. Specify the schedule for taking the steps necessary to achieve full accessibility under paragraph (a) of this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
4. Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

(The information collection requirements contained in paragraph (e) have been approved by the Office of Management and Budget under control number 2900-0414)


§ 18.423 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed so that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) Alteration. Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.
ELEMENTARY, SECONDARY, AND ADULT EDUCATION

§ 18.431 Application.
§ 18.432 Location and notification.
§ 18.433 Free appropriate public education.
§ 18.434 Education setting.
§ 18.435 Evaluation and placement.
§ 18.436 Procedural safeguards.
§ 18.437 Nonacademic services.
§ 18.438 Adult education.
§ 18.439 Private education.

§ 18.431 Application.
Sections 18.431 through 18.439 apply to elementary, secondary, and adult education programs or activities that receive Federal financial assistance from the Department of Veterans Affairs and to recipients that operate or receive Federal financial assistance for the operation of such programs or activities.


§ 18.432 Location and notification.
A recipient that operates a public elementary or secondary educational program shall annually:
(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
(b) Take appropriate steps to notify handicapped persons their parents or guardians of the recipient's duty under §§ 18.431 through 18.439.
[45 FR 63268, Sept. 24, 1980]

§ 18.433 Free appropriate public education.
(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.
(b) Appropriate education. (1) The provision of an appropriate education is the provision of regular or special education and related aids and services that:
(i) Are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; and
(ii) Are based upon adherence to procedures that satisfy the requirements of §§ 18.434, 18.435, and 18.436.
(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.
(3) A recipient may place a qualified handicapped person or refer that person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of §§ 18.431 through 18.439. The recipients remain responsible for ensuring that the requirements of §§ 18.431 through 18.439 are met with respect to any qualified handicapped person so placed or referred.

(c) Free education. (1) The provision of a free education is the provision of educational and related services without cost to the handicapped person, parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers that person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of §§ 18.431 through 18.439, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) If a recipient places a handicapped person or refers that person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person, parents or guardian if the person were placed in the aid, benefits, or services operated or provided by the recipient.

(3) If placement in a public or private residential program is necessary to provide free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person, parents or guardian.

(4) If a recipient has made available, in conformance with this section and § 18.434, a free appropriate public education to a handicapped person and the person's parents or guardian chooses to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate public education available or regarding the question of financial responsibility are subject to the due process procedures of § 18.436.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this part, in full compliance with the requirements of paragraphs (a) through (c) of this section shall meet those requirements at the earliest practicable time, but not later than October 1, 1981.


§ 18.434 Education setting.

(a) Academic setting. A recipient shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall
place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. In deciding whether to place a person in a setting other than the regular educational environment, a recipient shall consider the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, a recipient shall ensure that handicapped persons participate with nonhandicapped persons in those activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient in compliance with paragraph (a) of this section operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided in that facility are comparable to the other facilities, services, and activities of the recipient.

[45 FR 63268, Sept. 24, 1980]

§ 18.435 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any qualified person who, because of handicap, needs or is believed to need special education or related services before taking any action concerning the initial placement of the person in regular or program special education and any subsequent change in placement.

(b) Evaluation procedures. Elementary, secondary, and adult education programs or activities that receive Federal financial assistance shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflect the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure.)

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior;

(2) Establish procedures to ensure that information obtained from all sources is documented and carefully considered;
(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options; and
(4) Ensure that the placement decision is made in accordance with § 18.434.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.


[EFFECTIVE DATE NOTE: 68 FR 51334, 51370, Aug. 26, 2003, amended paragraph (a) and the introductory text of paragraph (b), effective Sept. 25, 2003.]

§ 18.436 Procedural safeguards.
(a) A recipient that operates a public elementary or secondary education program shall implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services. The system shall include:
(1) Notice;
(2) An opportunity for the parents or guardian of the person to examine relevant records;
(3) An impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel; and
(4) Review procedure.
(b) Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

[45 FR 63268, Sept. 24, 1980]

§ 18.437 Nonacademic services.
(a) General. (1) Elementary, secondary, and adult education programs that receive Federal financial assistance shall provide nonacademic and extracurricular services and activities in a manner which gives handicapped students an equal opportunity for participation in these services and activities.
(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.
(b) Counseling services. Elementary, secondary, and adult education programs that receive Federal financial assistance and that provide personal, academic, or vocational counseling, guidance, or placement services to their students shall provide these services without discrimination on the basis of handicap and shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.
(c) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, an elementary, secondary, or adult education program or activity that receives Federal financial assistance may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural activities shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 18.434 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.


§ 18.438 Adult education.
A recipient that provides adult education may not, on the basis of handicap, exclude qualified handicapped persons. The recipient shall take into account the needs of these persons in determining the aid, benefits, or services to be provided.


§ 18.439 Private education.
(a) A recipient that provides private elementary or secondary education may not on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined in § 18.433(b)(1), within that recipient's program or activity.

(b) A recipient may not charge more for providing an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that provides special education shall do so in accordance with §§ 18.435 and 18.436. Each recipient to which this section applies is subject to §§ 18.434, 18.437, and 18.438.


[EFFECTIVE DATE NOTE: 68 FR 51334, 51370, Aug. 26, 2003, amended paragraphs (a) and (c), effective Sept. 25, 2003.]
§ 18.441 Application.
§ 18.442 Admissions and recruitment.
§ 18.443 General treatment of students.
§ 18.444 Academic adjustments.
§ 18.445 Housing.
§ 18.446 Financial and employment assistance to students.
§ 18.447 Nonacademic services.

§ 18.441 Application.
Sections 18.441 through 18.447 apply to postsecondary education programs or activities that receive Federal financial assistance from the Department of Veterans Affairs and to recipients that operate or receive Federal financial assistance for the operation of such programs or activities.

§ 18.442 Admissions and recruitment.
(a) General. Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient. 
(b) Admission. In administering its admission policies, a recipient;
(1) May not apply limitations on the number or proportion of handicapped persons who may be admitted;
(2) May not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless:
   (i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and
   (ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available;
(3) Shall assure itself that:
   (i) Admissions tests are selected and administered to best ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflect the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);
   (ii) Admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and
   (iii) Admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and
(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiries as to whether an applicant for admission is a handicapped person. After
admission, the recipient may inquire on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination under § 18.406(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity under § 18.406(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped.

(1) The recipient shall state clearly on any written questionnaire used for this purpose or make clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient shall state clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) Validity studies. For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question to monitor the general validity of the test scores.

[45 FR 63268, Sept. 24, 1980]

§ 18.443 General treatment of students.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other aid, benefits, or services operated by a recipient to which this subpart applies.

(b) A recipient that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient shall operate its program or activity in the most integrated setting appropriate.


[EFFECTIVE DATE NOTE: 68 FR 51334, 51370, Aug. 26, 2003, amended paragraphs (a) and (d), effective Sept. 25, 2003.]

§ 18.444 Academic adjustments.
(a) Academic requirements. A recipient shall make necessary modifications to its academic requirements to ensure that these requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by the student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section.

(b) Other rules. A recipient may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or guide dogs in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement, a recipient shall provide methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills that will best ensure that the results of the evaluation represent the students' achievement in the course, rather than reflect the students' impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) Auxiliary aids. (1) A recipient shall ensure that no qualified handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 18.445 Housing.

(a) Housing provided by a recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to qualified handicapped students at the same cost as to others. At the end of the transition period provided for in § 18.422(e), this housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) Other housing. A recipient that assists any agency, organization, or person in making housing available to any of its students shall assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.
§ 18.446 Financial and employment assistance to students.
(a) Provision of financial assistance. (1) In providing financial assistance to qualified handicapped persons, a recipient may not:
   (i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or
   (ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.
(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.
(b) Assistance in making available outside employment. A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that these employment opportunities, as a whole, are made available in a manner that would not violate §§ 18.411 through 18.414 if the opportunities were provided by the recipient.
(c) Employment of students by recipients. A recipient that employs any of its students may not do so in a manner that violates §§ 18.411 through 18.414.

§ 18.447 Nonacademic services.
(a) Physical education and athletics. (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.
(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of § 18.443(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.
(b) Counseling and placement services. A recipient that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.
(c) Social organizations. A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of these organizations do not permit discrimination otherwise prohibited by §§ 18.441 through 18.447.


HEALTH AND SOCIAL SERVICES

§ 18.451 Application.
§ 18.452 Health and other social services.
§ 18.453 Drug and alcohol addicts.
§ 18.454 Education of institutionalized persons.

§ 18.451 Application.
Subpart F applies to health, and other social service programs or activities that receive Federal financial assistance from the Department of Veterans Affairs and to recipients that operate or receive Federal financial assistance for the operation of such programs or activities.


§ 18.452 Health and other social services.
(a) General. In providing health, or other social services or benefits, a recipient may not, on the basis of handicap:
(1) Deny a qualified handicapped person these benefits or services;
(2) Give a qualified handicapped person the opportunity to receive benefits or services that are not equal to those offered nonhandicapped persons.
(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 18.404(b)(2)) as the benefits or services provided to others;
(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.
(b) Notice. A recipient that provides notice concerning benefits or services or written material concerning waivers of rights of consent to treatment shall ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.
(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency care.
(d) Auxiliary aids. (1) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to give these persons an equal opportunity to benefit from the service in question.
(2) The Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.
(3) Auxiliary aids may include brailled and taped material, interpreters, and aids for persons with impaired hearing or vision.

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§ 18.453 Drug and alcohol addicts.
A recipient that operates a general hospital or outpatient facility may not discriminate, with regard to a drug or alcohol abuser or alcoholic who is suffering from a medical condition, in the admission of that person for treatment of the medical condition, or in the treatment of the medical condition because of the person's drug or alcohol abuse or alcoholism.
[45 FR 63268, Sept. 24, 1980]

§ 18.454 Education of institutionalized persons.
A recipient that operates or supervises a program or activity that provides aid, benefits, or services for persons who are institutionalized because of handicap and is responsible for providing training shall ensure that each qualified handicapped person, as defined in §18.403(k)(2), in its program or activity that provides aid, benefits, or services is provided an appropriate education, as defined in §18.433(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under §§18.431 through 18.439.

PROCEDURES

§ 18.461 Procedures.
APPENDIX A TO SUBPART D OF PART 18 -- STATUTORY PROVISIONS TO WHICH THIS PART APPLIES

§ 18.461 Procedures.
The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§ 18.6 through 18.11 and part 18b of this chapter.
[45 FR 63268, Sept. 24, 1980]
APPENDIX A TO SUBPART D OF PART 18 – STATUTORY PROVISIONS TO WHICH THIS PART APPLIES

3. Transfers for nursing home care; adult day health care (38 U.S.C. 1720).
5. Assistance in establishing new state medical schools, grants to affiliated medical schools; assistance to health manpower training institutions (38 U.S.C. Chapter 82).
6. Approval of educational institutions (38 U.S.C. 104).
8. Space and office facilities for representatives of State employment service (38 U.S.C. 7725(4)).
9. Space and office facilities for representatives of recognized national service organizations (38 U.S.C. 5902(a)(2)).
10. All-volunteer force educational assistance, vocational rehabilitation post-Vietnam era veterans educational assistance; veterans educational assistance, survivors' and dependents' educational assistance, and administration of educational benefits (38 U.S.C. Chapters 30, 31, 32, 34, 35 and 36 respectively).
11. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 1720A).


SUBPART E -- NONDISCRIMINATION ON THE BASIS OF AGE

GENERAL
STANDARDS FOR DETERMINING AGE DISCRIMINATION
RESPONSIBILITIES OF DEPARTMENT OF VETERANS AFFAIRS
RECIPIENTS
INVESTIGATION, CONCILIATION AND ENFORCEMENT PROCEDURES
GENERAL

§ 18.501 Purpose.
§ 18.502 Application.
§ 18.503 Definitions.

§ 18.501 Purpose.
The purpose of these regulations is to set out Department of Veterans Affairs (VA) policies and procedures under the Age Discrimination Act of 1975 and the governmentwide age discrimination regulations at 45 CFR part 90. The Act and the governmentwide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs or activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.


(42 U.S.C. 6101-6107)

§ 18.502 Application.
(a) These regulations apply to any program or activity receiving Federal financial assistance provided by VA directly or through another recipient.
(b) These regulations do not apply to:
(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:
(i) Provides any benefits or assistance to persons based on age; or
(ii) Establishes criteria for participation in age-related terms; or
(iii) Describes intended beneficiaries or target groups in age-related terms.
(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act, 29 U.S.C. 1501, et seq.


(42 U.S.C. 6101-6107)

§ 18.503 Definitions.
As used in these regulations:
(b) Action means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.
(c) Secretary means the Secretary of Veterans Affairs or designees.
(d) Age means how old a person is, or the number of elapsed years from the date of a person's birth.
(e) Age discrimination means unlawful treatment based on age.
(f) Age distinction means any action using age or an age-related term.
(g) Age-related term means a word or words which necessarily imply a particular age or range of ages (for example, children, adult, older persons, but not student).
(h) Day means calendar day.
(i) Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which a Federal agency or department provides or otherwise makes available assistance in the form of:

(1) Funds; or
(2) Services of Federal personnel; or
(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its market value is not returned to the Federal Government.
(j) Program or activity means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship --

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.
(k) Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.
(l) Subrecipient means any of the entities in the definition of recipient to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) United States means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, the Trust Territories of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.


(42 U.S.C. 6101-6107)
STANDARDS FOR DETERMINING AGE DISCRIMINATION

§ 18.511 Rules against age discrimination.
§ 18.512 Definitions of 'normal operation' and 'statutory objective.'
§ 18.513 Exceptions to the rules against age discrimination; normal operation or statutory objective of any program or activity.
§ 18.514 Exceptions to the rules against age discrimination; reasonable factors other than age.
§ 18.515 Burden of proof.
§ 18.516 Affirmative action by recipients.

§ 18.511 Rules against age discrimination.
The rules in this section are limited by the exceptions contained in §§ 18.513 and 18.514 of these regulations.
(a) General rule. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.
(b) Specific rules. A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:
   (1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or
   (2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.
(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

(42 U.S.C. 6101-6107)

§ 18.512 Definitions of 'normal operation' and 'statutory objective.'
For the purpose of these regulations, the terms normal operation and statutory objective shall have the following meaning:
(a) Normal operation means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.
(b) Statutory objective means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(42 U.S.C. 6101-6107)

§ 18.513 Exceptions to the rules against age discrimination; normal operation or statutory objective of any program or activity.
A recipient is permitted to take an action, otherwise prohibited by § 18.511, if the action reasonably takes into account age as a factor necessary to the normal operation or the
achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:
(a) Age is used as a measure or approximation of one or more other characteristics; and
(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and
(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and
(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 18.514 Exceptions to the rules against age discrimination; reasonable factors other than age.
A recipient is permitted to take an action otherwise prohibited by § 18.511 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 18.515 Burden of proof.
The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 18.513 and 18.514 is on the recipient of Federal financial assistance.

§ 18.516 Affirmative action by recipients.
Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(42 U.S.C. 6101-6107)
§ 18.531 General responsibilities.
Each VA recipient must ensure that its programs or activities are in compliance with the Act and these regulations.

(42 U.S.C. 6101-6107)

§ 18.532 Notice of subrecipients.
Where a recipient passes on Federal financial assistance from VA to programs or activities of subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations with respect to such programs or activities.
(Approved by the Office of Management and budget under control number 2900-0400)

(42 U.S.C. 6101-6107)

§ 18.533 Assurance of compliance and recipient assessment of age distinctions.
(a) Each recipient of Federal financial assistance from VA shall sign a written assurance as specified by the Secretary that it will comply with the Act and these regulations.
(b) Recipient assessment of age distinctions. (1) As part of a compliance review under § 18.541 or complaint investigation under § 18.544, the Secretary may require a recipient employing the equivalent of 15 of more employees to complete a written self-evaluation, in a manner specified by the responsible agency official, of any age distinction imposed in its programs or activities receiving Federal financial assistance from VA to assess the recipient's compliance with the Act.
(2) Whenever an assessment indicates a violation of the Act or these regulations, the recipient shall take corrective action.

(42 U.S.C. 6101-6107)

§ 18.534 Information requirements.
Each recipient shall:
(a) Make available upon request to VA information necessary to determine whether the recipient is complying with the Act and these regulations.
(b) Permit reasonable access by VA to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act and these regulations.

(42 U.S.C. 6101-6107)
§ 18.541 Compliance reviews.
§ 18.542 Complaints.
§ 18.543 Mediation.
§ 18.544 Investigation.
§ 18.545 Prohibition against intimidation or retaliation.
§ 18.546 Compliance procedure.
§ 18.547 Hearings, decisions, post-termination proceedings.
§ 18.548 Remedial action by recipient.
§ 18.549 Alternate funds disbursal procedure.
§ 18.550 Exhaustion of administrative remedies.

APPENDIX A TO SUBPART E OF PART 18 -- STATUTORY PROVISIONS TO WHICH THIS SUBPART APPLIES

APPENDIX B TO SUBPART E OF PART 18 -- LIST OF AGE DISTINCTIONS CONTAINED IN STATUTES AND REGULATIONS GOVERNING FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF VETERANS AFFAIRS

§ 18.541 Compliance reviews.

(a) VA may conduct compliance reviews and preaward reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. VA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.
(b) If a compliance review or preaward review indicates a violation of the Act or these regulations, VA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, VA may institute enforcement proceedings as described in § 18.546.


(42 U.S.C. 6101-6107)

§ 18.542 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with VA alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, VA may extend this time limit. Complaints may be submitted to the Director, Office of Equal Opportunity (06B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.
(b) VA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:
(1) Acknowledging receipt and acceptance of a complaint in writing.
(2) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation,
describes generally the action or practice complained of, and is signed by the complainant.

(3) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(4) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(5) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(6) Notifying the complainant and the recipient (or their representatives) of their right to contact VA for information and assistance regarding the complaint resolution process.

(c) VA will refer a complaint of discrimination based on age to another appropriate Federal agency when the complaint is outside the jurisdiction of VA. VA will notify the complainant in writing that the complaint has been referred; explain the reason why the complaint is not within the jurisdiction of VA; and give the complainant the name, agency, and address of the official to whom the complaint was referred.

(Approved by the Office of Management and Budget under control number 2900-0401)

§ 18.543 Mediation.

(a) Referral of complaints for mediation. VA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to VA. VA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjunctive proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) VA will use the mediation process for a maximum of 60 days after the responsible agency official receives a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time the responsible agency official receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to VA.
§ 18.544 Investigation.
(a) Informal investigation. (1) VA will investigate complaints that are reopened because of a violation of a mediation agreement.
(2) As part of the initial investigation VA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. VA may seek the assistance of any involved State agency.
(3) VA will put any agreement in writing and have it signed by the parties and an authorized official from the VA.
(4) The settlement shall not affect the operation of any other enforcement effort of VA, including compliance reviews and investigation of other complaints which may involve the recipient.
(5) A settlement need not contain an admission of discrimination or other wrongdoing by the recipient nor should it be considered a finding of discrimination against the recipient.
(b) Formal investigation. If VA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, VA will attempt to obtain voluntary compliance. If voluntary compliance cannot be achieved, VA may institute enforcement proceedings as described in § 18.546.

§ 18.545 Prohibition against intimidation or retaliation.
A recipient may not engage in acts of intimidation or retaliation against any person who:
(a) Attempts to assert a right protected by the Act or these regulations; or
(b) Cooperates in any mediation, investigation, hearing, or other part of VA's investigation, conciliation, and enforcement process.

§ 18.546 Compliance procedure.
(a) VA may enforce the Act and these regulations through:
(1) Termination of Federal financial assistance from VA with respect to a recipient's program or activity that has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from VA.
(2) Any other means authorized by law including but not limited to:
(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) VA will limit any termination under paragraph (a)(1) of this section to the particular program or activity or part of such program or activity of a recipient that VA finds to be in violation of the Act or these regulations. VA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from VA.

(c) VA will take no action under paragraph (a) of this section until:

(1) The Secretary has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a) of this section.

(d) VA also may defer granting new Federal financial assistance from VA to a recipient when a hearing under paragraph (a)(1) of this section is initiated.

(1) New Federal financial assistance from VA includes all assistance for which VA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities during the deferral period. New Federal financial assistance from VA does not include increases in funding resulting solely from a change in the formula or method of computing awards, nor does it include assistance approved prior to the beginning of a hearing under paragraph (a)(1) of this section.

(2) VA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under paragraph (a)(1) of this section. VA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. VA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.


(42 U.S.C. 6101-6107)

[EFFECTIVE DATE NOTE: 68 FR 51334, 51372, Aug. 26, 2003, amended the first sentence of paragraphs (b) and (c)(2), effective Sept. 25, 2003.]

§ 18.547 Hearings, decisions, post-termination proceedings.

Certain VA procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to VA enforcement of these regulations. They are found at §§ 18.9 through 18.11 and part 18b of this title.


(42 U.S.C. 6101-1607)

§ 18.548 Remedial action by recipient.

Where VA finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that VA may require to overcome the effects of the
discrimination. If another recipient exercises control over the recipient that has discriminated, VA may require both recipients to take remedial action.

(42 U.S.C. 6101-1607)

§ 18.549 Alternate funds disbursal procedure.
(a) When VA withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or State or political subdivision of the State.
(b) The Secretary will require any alternate recipient to demonstrate;
(1) The ability to comply with these regulations; and
(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

(42 U.S.C. 6101-1607)

§ 18.550 Exhaustion of administrative remedies.
(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:
(1) 180 days have elapsed since the complainant filed the complaint and VA has made no finding with regard to the complaint; or
(2) VA issues any finding in favor of the recipient.
(b) If VA fails to make a finding within 180 days or issues a finding in favor of the recipient, VA will:
(1) Promptly advise the complainant of this fact; and
(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and
(3) Inform the complainant that:
(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;
(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but the complainant must demand these costs in the complaint;
(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and the recipient;
(iv) The notice must state: The alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and
(v) The complainant may not bring action if the same alleged violations of the Act by the same recipient is the subject of a pending action in any court of the United States.

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(42 U.S.C. 6101-6107)
APPENDIX A TO SUBPART E OF PART 18 -- STATUTORY PROVISIONS TO WHICH THIS SUBPART APPLIES

1. Approval of educational institutions (38 U.S.C. 104).
2. Space and office facilities for representatives of State employment services (38 U.S.C. 7725(1)).
4. Transfers for nursing home care; adult day health care (38 U.S.C. 1720).
5. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 1720A).
7. Aid to States for establishment, expansion, and improvement of veterans' cemeteries (38 U.S.C. 2408).
8. Vocational Rehabilitation; Post-Vietnam Era Veterans' Educational Assistance; Survivors' and Dependent's Educational Assistance; and Administration of Educational Benefits (38 U.S.C. Chapters 31, 32, 34, 35 and 36 respectively).
9. Space and office facilities for representatives of recognized national organizations (38 U.S.C. 5902(a)(2)).
13. Assistance in Establishing New State Medical Schools; Grants to Affiliated Medical Schools; Assistance to Health Manpower Training Institutions (38 U.S.C. Chapter 82).


APPENDIX B TO SUBPART E OF PART 18 -- LIST OF AGE DISTINCTIONS CONTAINED IN STATUTES AND REGULATIONS GOVERNING FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF VETERANS AFFAIRS

Section 90.31(f) of the governmentwide regulations (45 CFR part 90) requires each Federal agency to publish an appendix to its final regulations containing a list of age distinctions in Federal statutes and regulations affecting financial assistance administered by the agency. This appendix is VA's list of age distinctions contained in Federal statutes and VA regulations which:

1. Provide benefits or assistance to persons based upon age; or
2. Establish criteria for participation in age-related terms; or
3. Describe intended beneficiaries or target groups in age-related terms.

Appendix B deals only with VA's programs of financial assistance covered by the Age Discrimination Act. It does not list age distinctions used by VA in its direct assistance programs, such as veterans' compensation. Also, this appendix contains only age distinctions in Federal statutes and VA regulations in effect on January 1, 1985.

This appendix has two sections: A list of age distinctions in Federal statutes, and a list of age distinctions in VA regulations. The first column contains the name of the program; the second column has the statute name and U.S. Code citation for statutes, or the regulation name and Code of Federal Regulations citation for regulations; the third column contains the section number of the statute or regulation and the description of the age distinction; and the fourth column cites the Catalog of Federal Domestic Assistance number for the program(s) affected where it is available.

### Age Distinctions in Statutes Governing Federal Financial Assistance Programs of the Department of Veterans Affairs

<table>
<thead>
<tr>
<th>Program</th>
<th>Statute</th>
<th>Section and Age Distinction</th>
<th>CFDA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterans' Benefits Act of 1957, as amended; 38 U.S.C. 101</td>
<td>Section 101</td>
<td>Section 101(4)(A) defines the term &quot;child&quot; for the purposes of Title 38, U.S.C. (except for chapter 19 and section 8502(b) of Title 38) as &quot;a person who is unmarried and -- (i) who is under the age of eighteen years; (ii) who, before attaining the age of eighteen years, became permanently incapable of self-support; or (iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution; and who is a legitimate child, a legally adopted child, a</td>
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stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Secretary to be the father or such child. . . ."

Section 101(4)(B) provides that for the purposes of section 101(4)(A) of Title 38, in the case of an adoption under the laws of any jurisdiction other than a State, a person residing outside any of the States shall not be considered a legally adopted child of a veteran during the lifetime of that veteran, unless, among other things, such a person was less than eighteen years of age at the time of the adoption.

Approval of Educational Institutions

Section 104 of the Veteran's Benefits Act of 1957, as amended, 38 U.S.C. 104 authorizes the Secretary to approve or disapprove an educational institution for the purpose of determining whether or not benefits are payable under Title 38, U.S.C. (except chapter 15 of title 38) for a child over the age of eighteen years and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institution, university, or other educational institution

Section 104(b) provides that the Secretary may not approve an educational institution under section 104 of Title 38, unless the institution has agreed to report the termination of attendance of any child. If the educational institution fails to report any such termination promptly, the approval of the Secretary shall be withdrawn.
Civilian Health and the Environmental Program of Veterans' Affairs Section 103(b) Section 1713(a) authorizes the Secretary to provide medical care to: "(1) The spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, (2) the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, and (3) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct, who are not otherwise eligible for medical care under Chapter 55 of Title 10, U.S.C.; (CHAMPUS)"

Section 1713(c) provides that for the purposes of this program, "a child between the ages of eighteen and twenty-three (1) who is eligible for benefits under subsection (a) of this section, (2) who is pursuing a full-time course of instruction at an educational institution, approved under Chapter 36 of this title, and (3) who while pursuing such course of instruction, incurs a disabling illness or injury . . . which results in such child's inability to continue or resume such child's chosen program of education . . . shall remain eligible for benefits under this section until the end of the six-month period beginning on the date the disability is removed, the end of the two-year period beginning on the date of the onset of the disability, or the twenty-third birthday of the child, whichever occurs first."

VA Hospital, Section 510 Section 1710 authorizes the Secretary, within the limits of VA facilities, to furnish hospital care or nursing home care. Among the persons eligible for such care are veterans with a nonservice-connected disability if they are sixty-five years of age or older.

Post-Vietnam Era Veterans' Educational Assistance. Section 3201 states that the purpose of Chapter 32 of Title 38, U.S.C. is: "(1) To provide educational assistance to those men and women who enter the Armed Forces after December 31, 1976, (2) to assist young men and women in obtaining an education they might not otherwise be able to afford, and (3) to promote and assist the all . . ."
volunteer military program of the United States by attracting qualified men and women to serve in the Armed Forces'.

Veterans' Educational Assistance Section 2 of Section 3451 states that the education program created by this chapter is for the purpose of: ... (1) Enhancing and making more attractive service in the Armed Forces of the United States, (2) extending the benefits of higher education to qualified and deserving young persons who might not otherwise be able to afford such an education, (3) providing vocational readjustment and restoring lost educational opportunities to those service men and women whose careers have been interrupted or impeded by reason of active duty after January 31, 1955, and (4) aiding such persons in attaining the vocational and educational status which they might normally have aspired to and obtained had they not served their country

Section 3492(b) authorizes the Secretary to pay to an eligible veteran receiving tutorial assistance pursuant to section 3492(a) of this chapter, the cost of such tutorial assistance, subject to certain limits, upon certification by the educational institution that ... (2) the tutor chosen to perform such assistance is qualified and is not the eligible veteran's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and (3) the charges for such assistance do not exceed the customary charges for such tutorial assistance

Survivors' and War Orphans' Educational Assistance Section 3500 states that "the educational program established by this chapter is for the purpose of providing opportunities for education to children whose education would otherwise be impeded or interrupted by reason of the disability or death of a parent from a disease or injury incurred or aggravated in the Armed Forces after the beginning of the Spanish-American War, and for the purpose of aiding such children in attaining the educational status which they might have aspired to and attained but for the disability or death of such parent. The Congress further declares that the educational program extended to the surviving spouses of veterans who died of service-connected total disabilities and to spouses of veterans with a service-
connected total disability permanent in nature is for the purpose of assisting them in preparing to support themselves and their families at a standard of living level which the veteran, but for the veteran's death or service disability, could have expected to provide for the veteran's family.

Section 3501 defines the term "eligible person" as: "(A) a child of a person who -- (i) died of a service-connected disability, (ii) has a total disability permanent in nature resulting from a service-connected disability, or who died while a disability so evaluated was in existence or (iii) at the time of application for benefits under this chapter is a member of the Armed Forces serving on active duty listed, pursuant to section 556 of Title 37 [U.S.C.] and regulations issued thereunder, by the Secretary concerned in one or more of the following categories . . . for a total of ninety days: (A) missing in action, (B) captured in line of duty by a hostile force, or (C) forcibly detained or interned in line of duty by a foreign government or power, . . ."

Subparagraph (a)(2) of this section provides that the term "child" includes individuals who are married and individuals who are above the age of twenty-three years.

Section 3512 establishes periods of eligibility. Provides that the educational program to which an eligible child within the meaning of this chapter is entitled to may be afforded, " . . . during the period beginning on the person's eighteenth birthday, or on the successful completion of the person's secondary schooling, whichever first occurs, and ending on the person's twenty-sixth birthday, except that -- (1) if the person is above the age of compulsory school attendance under applicable State law, and the Secretary determines that the person's best interests will be served thereby, such period may begin before the person's eighteenth birthday; (2) if the person has a mental or physical handicap, and . . . the person's best interests will be served by pursuing a program of special restorative training or a specialized course of vocational training approved under section 3536 of this title, such
period may begin before the person's fourteenth birthday; (3) if the Secretary finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or if the death of the parent from whom eligibility is derived occurs, after the eligible person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless paragraph (4) applies) such period shall end 8 years after, whichever date last occurs: (A) the date on which the Secretary first finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or (B) the date of death of the parent from whom eligibility is derived; (4) if the person serves on duty with the Armed Forces as an eligible person after the person's eighteenth birthday but before the person's twenty-sixth birthday, then such period shall end 8 years after the person's first discharge or release from such duty with the Armed Forces . . . in no event shall such period be extended beyond the person's thirty-first birthday by reason of this paragraph; and (5) (A) if the person becomes eligible by reason of the provisions of section 3501(a)(1)(A)(ii) of this title after the person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless clause (4) of this section applies) such period shall end eight years after the date on which the person becomes eligible by reason of such provisions, but in no event shall such period be extended beyond the person's thirty-first birthday by reason of this clause. . . ."

Section 3513 provides that the parent or guardian of a person or the eligible person (if such person has attained legal majority) for whom the educational assistance is sought under Chapter 35 shall submit an application to the Secretary, which shall be in such form and contain such information as the Secretary shall prescribe.

Section 3562 provides that the commencement of a program of education or special restorative training under Chapter 35 shall be a bar, "(1) to subsequent payments of compensation, dependency and indemnity compensation, or pension based on a death of a parent to an eligible person over the
Section 3563 states that "The Secretary shall notify the parent or guardian of each eligible person as defined in section 3501(a)(1)(A) of this title of the educational assistance available to such person under Chapter 35. Such notification shall be provided not later than the month in which such eligible person attains such person's thirteenth birthday or as soon thereafter as feasible"
a stepchild of a veteran between the ages of 18 or 23 years and who is a member of the veteran's household at the time of the veteran's death. . . ."

Section 3.807(d) sets forth basic eligibility criteria for the program of educational assistance under 38 U.S.C. Chapter 35. Chapter 35. Defines the term "child" as the son or daughter of a veteran who meets the requirements of 38 CFR 3.57, except as to age or marital status.

Survivors' and Section 21.3021 describes beneficiaries of the Dependent's Educational program. Paragraph (a) defines the term "eligible person" as, (1) A child of a: (i) Veteran who died of a service-connected disability. . . ." Paragraph (b) defines the term "child" as a son or daughter of a veteran as defined in 38 CFR 3.807(d).

Section 21.3023 states that: "(a) Child; age 18. A child who is eligible for educational assistance and who is also eligible for pension, compensation dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation. (1) An election of education assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of a child based on school attendance on or after the age of 18 years. . . . (2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance. . . . (b) Child; under 18 or helpless Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9,
1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line. . . ."

Section 21.3040 sets forth criteria for the commencement and termination of the program of education or special restorative training for an eligible child under 38 U.S.C. Chapter 35. Paragraph (a) of this section provides that a program of education or special restorative training may not be afforded prior to the eligible persons' 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed: (1) Compulsory school attendance age under State law; or (2) his or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training. Paragraph (c) of this section provides that no person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces or whose service eligibility is claimed as being is one of the missing categories identified in 38 CFR 21.3021(a) (1)(iii) and (3)(ii). Paragraph (d) provides that no person is eligible for educational assistance beyond his or her 31st birthday, except in certain exceptional cases.

Section 21.3041 sets forth periods of eligibility for an eligible child. Paragraph (a) of this section provides the basic beginning date for the educational assistance as the person's 18th birthday or successful completion of secondary schooling, whichever occurs first. Paragraph (b) authorizes certain exceptions to the basic beginning date, if: (1) A person has passed compulsory school attendance
Paragraph (c) provides the basic ending date as the person's 26th birthday. Paragraphs (d) and (e) set forth criteria for modifying or extending the ending date.

Administration Section 21.3300 provides that VA may of Educational prescribe special restorative training
38 U.S.C. for the purpose of enabling an
Chapter 34, eligible child to pursue a program of
35, and 36 special vocational program,
(38 CFR part or other appropriate goal, where
21, subpart D) effects of a physical or mental
disability

Section 21.4102(a) requires VA to provide counseling for the purpose set forth in 38 CFR 21.4100 to an eligible child when: (1) The eligible child may require specialized vocational or special restorative training, or (2) the eligible child has reached compulsory school attendance age under State law, but has neither reached his or her 18th birthday nor completed secondary schooling, or (3) if requested by the eligible child or his or her parent or guardian for the purpose of preparing an educational plan.

Section 21.4139(b) provides that VA will make payment of educational assistance under 38 U.S.C. Chapter 35 to the eligible person if: (1) He or she has attained majority and has no known legal disability or (2) is in the eligible person's best interests, and there is no reason not to designate the eligible person as payee. VA may pay minors under this provision.

Section 21.4141 provides that payment of educational assistance allowance under 38 U.S.C. Chapter 35 will be subject to offsets of amounts of pension, compensation, or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.

VA Hospital, Eligibility for Section 17.47(e) provides that within
Domiciliary hospital, the limits of VA facilities, hospital
Nursing domiciliary or nursing home care may be provided
Home Care or nursing to any veteran with a nonservice-
home care connected disability if such a veteran
of persons discharged is 65 years of age or older
or released
from active military, naval, or air service (38 CFR 17.47).

Civilian Medical Care Section 17.54 states that medical care may be provided for: "(1) The spouse and Dependents or child of a veteran who has a total disability, permanent in nature, (2) the surviving spouse or child of a veteran who --

Veterans Affairs (38 CFR 17.54) disability, and (2) the surviving spouse or child of a veteran who --

Veterans of Certain disability, permanent in nature, resulting from a service-connected disability and --

(3) the surviving spouse or child of a person who died in the active military, naval or air service . . . Who are not otherwise eligible for medical care as beneficiaries of the Armed Forces under the provisions of Chapter 55 of Title 10, United States Code (CHAMPUS) . . . and (4) An eligible child who is pursuing a full-time course of instruction approved under 38 U.S.C. Chapter 36, and who incurs a disabling illness or injury while pursuing such course; . . . shall remain eligible for medical care until:

(a) The end of the 6-month period beginning on the date the disability is removed, or (b) the end of the 2-year period beginning on the date of the onset of the disability; or (c) the 23d birthday of the child, whichever occurs first. . . ."

Veterans' Administration Section 21.4135(d) sets forth the following dates for the discontinuance of the educational assistance allowance provided for a dependent child, under Chapter 34 of Title 38: `. . . (1) Last day of the

21, subpart D) in calendar year in which marriage occurred unless discontinuance is required at an earlier date under other provisions. (2) Age 18. Day preceding 18th birthday. (3) School attendance. Last day of month in which 23rd birthday, whichever is earlier. (4) Helplessness ceased. Last day of month school attendance ceased or day preceding following 60 days after notice to payee that helplessness has ceased.''

Section 21.4136 sets forth monthly rates for the payment of educational assistance allowance under 38 U.S.C. Chapter 34. Paragraph (f) defines the term "dependent" as a spouse, child or dependent parent who meets the definitions of relationship specified in 38 CFR 3.50, 3.51, 3.57 and 3.59.
PART 18A -- DELEGATION OF RESPONSIBILITY IN CONNECTION WITH TITLE VI, CIVIL RIGHTS ACT OF 1964

§ 18a.1 Delegations of responsibility between the Secretary of Veterans Affairs and the Secretary, Department of Health and Human Services, and the Secretary, Department of Education.

§ 18a.2 Delegation to the Under Secretary for Benefits.

§ 18a.3 Delegation to the Chief Medical Director.

§ 18a.4 Duties of the Director, Contract Compliance Service.

§ 18a.5 Delegation to the General Counsel.

§ 18a.1 Delegations of responsibility between the Secretary of Veterans Affairs and the Secretary, Department of Health and Human Services, and the Secretary, Department of Education.

(a) Authority has been delegated to the Secretary of Veterans Affairs by the Secretary, Department of Health and Human Services, and the Secretary, Department of Education to perform responsibilities of those Departments and of the responsible Departmental officials under Title VI of the Civil Rights Act of 1964 and the Departments' regulations issued thereunder (45 CFR part 80 and 34 CFR part 100) with respect to: Proprietary (i.e., other than public or nonprofit) educational institutions, except if operated by a hospital; and post secondary, nonprofit, educational institutions other than colleges and universities, except if operated by a college or university, a hospital, or a unit of State or local government (i.e., those operating such institutions as an elementary or secondary school, an area vocational school, a school for the handicapped, etc.)

(1) The compliance responsibilities so delegated include:
(i) Soliciting, receiving, and determining the adequacy of assurances of compliance under 45 CFR 80.4 and 34 CFR 100.4;
(ii) All actions under 45 CFR 80.6 including mailing, receiving, and evaluating compliance reports under § 80.6(b) and 34 CFR 100.6(b); and
(iii) All other actions related to securing voluntary compliance, or related to investigations, compliance reviews, complaints, determinations of apparent failure to comply, and resolutions of matters by informal means.

(2) The Department of Health and Human Services and the Department of Education specifically reserve to themselves the responsibilities for the effectuation of compliance under 45 CFR 80.8, 80.9, 80.10 and 34 CFR 100.8, 100.9 and 100.10.

(b) Authority has been delegated to the Secretary, Department of Health and Human Services and the Secretary, Department of Education, to perform responsibilities of the Department of Veterans Affairs and of the responsible Department of Veterans Affairs official under Title VI of the Civil Rights Act of 1964 and the Department of Veterans Affairs regulations issued thereunder (part 18 of this chapter) with respect to institutions of higher learning, including post-high school institutions which offer nondegree courses for which credit is given and which would be accepted on transfer by a degree-granting institution toward a baccalaureate or higher degree; hospitals and other health facilities and elementary and secondary schools and school systems including, but not limited to, their activities in connection with providing or seeking approval to provide vocational
rehabilitation to eligible persons under Chapter 31 of Title 38 U.S.C., or education or training to eligible persons under Chapters 34, 35, or 36 of Title 38 U.S.C.

(1) The compliance responsibilities so delegated include:

(i) Soliciting, receiving, and determining the adequacy of assurances of compliance under § 18.4 of this chapter;

(ii) Mailing, receiving, and evaluating compliance reports under § 18.6(b) of this chapter; and

(iii) All other actions related to securing voluntary compliance or related investigations, compliance reviews, complaints, determinations of apparent failure to comply and resolutions of matters by informal means.

(2) The Department of Veterans Affairs specifically reserves to itself responsibilities for effectuation of compliance under §§ 18.8, 18.9, and 18.10 of this chapter. Not included in the delegation to the Secretary, Department of Health and Human Services and the Secretary, Department of Education and specifically reserved to the Department of Veterans Affairs is the exercise of compliance responsibilities with respect to:

(i) Postsecondary schools which do not offer a program or courses leading, or creditable, towards the granting of at least a bachelor's degree, or its equivalent;

(ii) Privately-owned and operated proprietary technical, vocational, and other private schools at the elementary or secondary level; and

(iii) Those institutions of higher learning and secondary schools and school systems which, as of January 3, 1969, have already been subjected to formal noncompliance proceedings by the Department of Health and Human Services or the Department of Education and have had their right to receive Federal financial assistance from that agency terminated for noncompliance with Title VI of the Civil Rights Act of 1964.

The Department of Veterans Affairs also retains the right to exercise delegated compliance responsibilities itself in special cases with the agreement of the appropriate official in the Department of Health and Human Services or the Department of Education.

(c) Any institution of higher learning or a hospital or other health facility which is listed by the Department of Health and Human Services or the Department of Education as having filed an assurance of compliance will be accepted as having met the requirements of the law for the purpose of payment under 38 U.S.C. Chapters 31, 34, 35, or 36 and 38 U.S.C. sections 1741, 8131-8137 and 8155.

(d) If the Department of Health and Human Services or the Department of Education finds that a school, hospital or other health facility which has signed an assurance of compliance is apparently in noncompliance, action will be initiated by that Department to obtain compliance by voluntary means. If voluntary compliance is not achieved, the Department of Veterans Affairs will join in subsequent proceedings.

(e) An institution which is on the Department of Health and Human Services or the Department of Education list of noncomplying institutions will be considered to be in a status of compliance for Department of Veterans Affairs purposes if an assurance of compliance is filed with the Department of Veterans Affairs and actual compliance is confirmed. Certificates of eligibility may be issued and enrollments approved and other appropriate payments made until such time as the Department of Veterans Affairs has made an independent determination that the institution is not in compliance.
§ 18a.2 Delegation to the Under Secretary for Benefits.
The Under Secretary for Benefits is delegated responsibility for obtaining evidence of voluntary compliance for vocational rehabilitation, education, and special restorative training to implement Title VI, Civil Rights Act of 1964. Authority is delegated to the Under Secretary for Benefits and designee to take any necessary action as to programs of vocational rehabilitation, education, or special restorative training under 38 U.S.C. Chapters 31, 34, 35, and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Secretary of Veterans Affairs has delegated responsibility for various schools or training establishments to implement part 18 of this chapter. The Under Secretary for Benefits also is delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in field facilities under jurisdiction of the Under Secretary for Benefits.

§ 18a.3 Delegation to the Chief Medical Director.
The Chief Medical Director is delegated responsibility for obtaining evidence of voluntary compliance implementing the provisions of Title VI, Civil Rights Act of 1964, in connection with payments to State homes, with State home facilities for furnishing nursing home care, and from recognized national organizations whose representatives are afforded space and office facilities in field facilities under jurisdiction of the Chief Medical Director.

§ 18a.4 Duties of the Director, Contract Compliance Service.
Upon referral by the Chief Medical Director or the Under Secretary for Benefits, the Director, Contract Compliance Service will:
(a) Investigate and process all complaints arising under Title VI of the Civil Rights Act of 1964;
(b) Conduct periodic audits, reviews and evaluations;
(c) Attempt to secure voluntary compliance by conciliatory or other informal means whenever investigation of a complaint, compliance review, failure to furnish assurance of compliance, or other source indicates noncompliance with Title VI; and report to the Chief Medical Director or the Under Secretary for Benefits, whichever is appropriate, the results of investigations, audits, reviews and evaluations or the results of attempts to secure voluntary compliance.
§ 18a.5 Delegation to the General Counsel.
The General Counsel is delegated the responsibility, upon receipt of information from the Under Secretary for Benefits, the Chief Medical Director, or the designee of either of them, that compliance cannot be secured by voluntary means, of forwarding to the recipient or other person the notice required by § 18.9(a) of this chapter, and also is delegated the responsibility of representing the agency in all proceedings resulting from such notice.
[35 FR 10759, July 2, 1970]

PART 18B -- PRACTICE AND PROCEDURE UNDER TITLE VI OF
THE CIVIL RIGHTS ACT OF 1964 AND PART 18 OF THIS
CHAPTER

GENERAL RULES
APPEARANCE AND PRACTICE
PARTIES
DOCUMENTS
TIME
PROCEEDINGS BEFORE HEARING
RESPONSIBILITIES AND DUTIES OF PRESIDING OFFICER
HEARING PROCEDURES
THE RECORD
POSTHEARING PROCEDURES; DECISIONS
POSTHEARING DEPARTMENT ACTIONS
JUDICIAL STANDARDS OF PRACTICE
GENERAL RULES

§ 18b.1 Scope of rules.
§ 18b.2 Reviewing authority.
§ 18b.9 Definitions.
§ 18b.10 Records to be public.
§ 18b.11 Use of number.
§ 18b.12 Suspension of rules.

§ 18b.1 Scope of rules.
The rules of procedure in this part supplement §§ 18.9 and 18.10 of this chapter and govern the practice for hearings, decisions, and administrative review conducted by the Department of Veterans Affairs pursuant to Title VI of the Civil Rights Act of 1964 (section 602, 78 Stat. 252) and part 18 of this chapter.
35 FR 10760, July 2, 1970.


§ 18b.2 Reviewing authority.
The term reviewing authority means the Secretary of Veterans Affairs, or any person or persons acting pursuant to authority delegated by the Secretary to carry out responsibility under § 18.10 of this chapter. The term includes the Secretary with respect to action under § 18b.75.


§ 18b.9 Definitions.
The definitions contained in § 18.13 of this chapter apply to this part, unless the context otherwise requires.
35 FR 10760, July 2, 1970.


§ 18b.10 Records to be public.
All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Civil Rights hearing clerk. Inquiries may be made at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420.
35 FR 10760, July 2, 1970.


§ 18b.11 Use of number.
As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa.
§ 18b.12 Suspension of rules.
Upon notice to all parties, the reviewing authority or the presiding officer, with respect to matters pending before them, may modify or waive any rule upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.
35 FR 10760, July 2, 1970.
§ 18b.13 Appearance.

§ 18b.14 Authority for representation.

§ 18b.15 Exclusion from hearing for misconduct.

§ 18b.13 Appearance.
A party may appear in person or by counsel and participate fully in any proceeding. A State agency or a corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf. Counsel must be members in good standing of the bar of a State, territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.
35 FR 10760, July 2, 1970.


§ 18b.14 Authority for representation.
Any individual acting in any proceeding may be required to show authority to act in such capacity.


§ 18b.15 Exclusion from hearing for misconduct.
Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.
35 FR 10760, July 2, 1970.

PARTIES

§ 18b.16 Parties.
§ 18b.17 Amici curiae.
§ 18b.18 Complainants not parties.

§ 18b.16 Parties.
The term party shall include an applicant or recipient or other person to whom a notice of hearing or opportunity for hearing has been mailed naming that person as respondent. The Department shall also be deemed a party to all proceedings and shall be represented by the General Counsel.


§ 18b.17 Amici curiae.
(a) Any interested person or organization may file a petition to participate in a proceeding as an amicus curiae. Such petition shall be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The presiding officer may grant the petition if the officer finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and may contribute materially to the proper disposition thereof. An amicus curiae is not a party and may not introduce evidence at a hearing.
(b) An amicus curiae may submit a statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. The amicus curiae may submit a brief on each occasion a decision is to be made or a prior decision is subject to review. The brief shall be filed and served on each party within the time limits applicable to the party whose position the amicus curiae deems to support; or if the amicus curiae does not deem to support the position of any party, within the longest time limit applicable to any party at that particular stage of the proceedings.
(c) When all parties have completed their initial examination of a witness, any amicus curiae may request the presiding officer to propound specific questions to the witness. The presiding officer, in the officer's discretion, may grant any such request if the officer believes the proposed additional testimony may assist materially in elucidating factual matters at issue between the parties and will not expand the issues.


§ 18b.18 Complainants not parties.
A person submitting a complaint pursuant to § 18.7(b) of this chapter is not a party to the proceedings governed by this part, but may petition, after proceedings are initiated, to become an amicus curiae.
35 FR 10760, July 2, 1970.

§ 18b.20 Form of documents to be filed.

Documents to be filed shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8 1/2 inches wide and 12 inches long.

35 FR 10760, July 2, 1970.


§ 18b.21 Signature of documents.

The signature of a party, authorized officer, employee, or attorney constitutes a certificate that one of them has read the document, that to the best of that person's knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed. Similar action may be taken if scandalous or indecent matter is inserted.


§ 18b.22 Filing and service.

All notices by a Department of Veterans Affairs official, and all written motions, requests, petitions, memoranda, pleadings, exceptions, briefs, decisions, and correspondence to a Department of Veterans Affairs official from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties. Parties shall supply the original and two copies of documents submitted for filing. Filings shall be made with the Civil Rights hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 8 a.m. to 4:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time. Originals only of exhibits and transcripts of testimony need be filed. For requirements of service on amici curiae, see § 18b.76.

35 FR 10760, July 2, 1970.

§ 18b.23 Service; how made.
Service shall be made by personal delivery of one copy to each person to be served or by mailing by first-class mail, properly addressed with postage prepaid. When a party or amicus has appeared by attorney or other representative, service upon such attorney or representative, will be deemed service upon the party or amicus. Documents served by mail preferably should be mailed in sufficient time to reach the addressee by the date on which the original is due to be filed, and should be airmailed if the addressee is more than 300 miles distant.
35 FR 10760, July 2, 1970.


§ 18b.24 Date of service.
The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or of its attempted delivery if refused.
35 FR 10760, July 2, 1970.


§ 18b.25 Certificate of service.
The original of every document filed and required to be served upon parties to a proceeding shall be endorsed with a certificate of service signed by the party making service or by the party's attorney or representative, stating that such service has been made, the date of service, and the manner of service, whether by mail or personal delivery.

§ 18b.26 Computation.
§ 18b.27 Extension of time or postponement.
§ 18b.28 Reduction of time to file documents.

§ 18b.26 Computation.
In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.
35 FR 10760, July 2, 1970.


§ 18b.27 Extension of time or postponement.
Requests for extension of time should be served on all parties and should set forth the reasons for the application. Applications may be granted upon a showing of good cause by the applicant. From the designation of a presiding officer until the issuance of a decision such requests should be addressed to the presiding officer. Answers to such requests are permitted, if made promptly.


§ 18b.28 Reduction of time to file documents.
For good cause, the reviewing authority or the presiding officer, with respect to matters pending before them, may reduce any time limit prescribed by the rules in this part, except as provided by law or in part 18 of this chapter.
35 FR 10760, July 2, 1970.

PROCEEDINGS BEFORE HEARING

§ 18b.30 Notice of hearing or opportunity for hearing.
§ 18b.31 Answer to notice.
§ 18b.32 Amendment of notice or answer.
§ 18b.33 Request for hearing.
§ 18b.34 Consolidation.
§ 18b.35 Motions.
§ 18b.36 Responses to motions and petitions.
§ 18b.37 Disposition of motions and petitions.

§ 18b.30 Notice of hearing or opportunity for hearing.
Proceedings are commenced by mailing a notice of hearing or opportunity for hearing to an affected applicant or recipient, pursuant to §§ 18.9 and 18a.5 of this chapter.
35 FR 10760, July 2, 1970.


§ 18b.31 Answer to notice.
The respondent, applicant or recipient may file an answer to the notice within 20 days after service thereof. Answers shall admit or deny specifically and in detail each allegation of the notice, unless the respondent party is without knowledge, in which case the answer should so state, and the statement will be deemed a denial. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the respondent to file an answer within the 20-day period following service of the notice may be deemed an admission of all matters of fact recited in the notice.


§ 18b.32 Amendment of notice or answer.
The General Counsel may amend the notice of hearing or opportunity for hearing once as a matter of course before an answer thereto is served, and each respondent may amend the answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of the original answer. Otherwise a notice or answer may be amended only by leave of the presiding officer. A respondent shall file the answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the presiding officer otherwise orders.


§ 18b.33 Request for hearing.
Within 20 days after service of a notice of opportunity for hearing which does not fix a date for hearing the respondent, either in the answer or in a separate document, may
request a hearing. Failure of the respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.


§ 18b.34 Consolidation.
The reviewing authority may provide for proceedings in the Department of Veterans Affairs to be joined or consolidated for hearing with proceedings in other Federal departments or agencies, by agreement with such other departments or agencies. All parties to any proceeding consolidated subsequent to service of the notice of hearing or opportunity for hearing shall be served with notice of such consolidation.

35 FR 10760, July 2, 1970.


§ 18b.35 Motions.
Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally; but the presiding officer may require that they be reduced to writing and filed and served on all parties in the same manner as a formal motion. Motions, answers, and replies shall be addressed to the presiding officer, if the case is pending before the officer. A repetitious motion will not be entertained.


§ 18b.36 Responses to motions and petitions.
Within 8 days after a written motion or petition is served, or such other period as the reviewing authority or the presiding officer may fix, any party may file a response thereto. An immediate oral response may be made to an oral motion.

35 FR 10760, July 2, 1970.


§ 18b.37 Disposition of motions and petitions.
The reviewing authority or the presiding officer may not sustain or grant a written motion or petition prior to expiration of the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response: Provided, however, That prehearing conferences, hearings and decisions need not be delayed pending disposition of motions or petitions. Oral motions and petitions may be ruled on immediately. Motions and petitions submitted to the reviewing authority or the presiding officer, respectively, and not disposed of in separate rulings or in their respective decisions will be deemed denied. Oral arguments shall not be held on written motions or petitions unless the presiding officer in the officer's discretion expressly so orders.

RESPONSIBILITIES AND DUTIES OF PRESIDING OFFICER

§ 18b.40 Who presides.
§ 18b.41 Designation of an administrative law judge.
§ 18b.42 Authority of presiding officer.

§ 18b.40 Who presides.
An administrative law judge assigned under 5 U.S.C. 3105 or 3344 (formerly section 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules or procedure apply.

§ 18b.41 Designation of an administrative law judge.
The designation of the administrative law judge as presiding officer shall be in writing, and shall specify whether the administrative law judge is to make an initial decision or to certify the entire record including recommended findings and proposed decision to the reviewing authority, and may also fix the time and place of hearing. A copy of such order shall be served on all parties. After service of an order designating an administrative law judge to preside, and until such administrative law judge makes a decision, motions and petitions shall be submitted to the administrative law judge. In the case of the death, illness, disqualification or unavailability of the designated administrative law judge, another administrative law judge may be designated to take that person's place.
[51 FR 10386, Mar. 26, 1986]

§ 18b.42 Authority of presiding officer.
The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. The presiding officer shall have all powers necessary to these ends, including (but not limited to) the power to:
(a) Arrange and issue notice of the date, time, and place of hearings, or, upon due notice to the parties, to change the date, time, and place of hearings previously set.
(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.
(c) Require parties and amici curiae to state their position with respect to the various issues in the proceeding.
(d) Administer oaths and affirmations.
(e) Rule on motions, and other procedural items on matters pending before the presiding officer.
(f) Regulate the course of the hearing and conduct of counsel therein.
(g) Examine witnesses and direct witnesses to testify.
(h) Receive, rule on, exclude or limit evidence.
(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before the presiding officer.
(j) Issue initial or recommended decisions.
(k) Take any action authorized by the rules in this part, or in conformance with the provisions of 5 U.S.C. 551-559 (the Administrative Procedure Act).


HEARING PROCEDURES

§ 18b.50 Statements of position and trial briefs.
§ 18b.51 Evidentiary purpose.
§ 18b.52 Testimony.
§ 18b.53 Exhibits.
§ 18b.54 Affidavits.
§ 18b.55 Depositions.
§ 18b.56 Admissions as to facts and documents.
§ 18b.57 Evidence.
§ 18b.58 Cross-examination.
§ 18b.59 Unponsored written material.
§ 18b.60 Objections.
§ 18b.61 Exceptions to rulings of presiding officer unnecessary.
§ 18b.62 Official notice.
§ 18b.63 Public document items.
§ 18b.64 Offer of proof.
§ 18b.65 Appeals from ruling of presiding officer.

§ 18b.50 Statements of position and trial briefs.
The presiding officer may require parties and amici curiae to file written statements of position prior to the beginning of a hearing. The presiding officer may also require the parties to submit trial briefs.
35 FR 10760, July 2, 1970.


§ 18b.51 Evidentiary purpose.
(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.
(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of part 18 of this chapter. In any case where it appears from the respondent's answer to the notice of hearing or opportunity for hearing, from failure timely to answer, or from admissions or stipulations in the record, that there are no matters of material fact in dispute, the reviewing authority or presiding officer may enter an order so finding, vacating the hearing date if one has been set, and fixing the time for filing briefs under § 18b.70. Thereafter the proceedings shall go to conclusion in accordance with §§ 18b.70 through 18b.76. The presiding officer may allow an appeal from such order in accordance with § 18b.65.

§ 18b.52 Testimony.
Testimony shall be given orally under oath or affirmation by witnesses at the hearing; but the presiding officer, in the officer's discretion, may require or permit that the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record thereof. Unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 18b.54 and 18b.55, witnesses shall be available at the hearing for cross-examination.


§ 18b.53 Exhibits.
Proposed exhibits shall be exchanged at the prehearing conference, or otherwise prior to the hearing if the presiding officer so requires. Proposed exhibits not so exchanged may be denied admission as evidence. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.
35 FR 10760, July 2, 1970.


§ 18b.54 Affidavits.
An affidavit is not inadmissible as such. Unless the presiding officer fixes other time periods affidavits shall be filed and served on the parties not later than 15 days prior to the hearing; and not less than 7 days prior to hearing a party may file and serve written objection to any affidavit on the ground that it is believed necessary to test the truth of assertions therein at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the presiding officer determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.


§ 18b.55 Depositions.
Upon such terms as may be just, for the convenience of the parties or of the Department of Veterans Affairs, the presiding officer may authorize or direct the testimony of any witness to be taken by deposition.
35 FR 10760, July 2, 1970.


§ 18b.56 Admissions as to facts and documents.
Not later than 15 days prior to the scheduled date of the hearing except for good cause shown or prior to such earlier date as the presiding officer may order, any party may
serve upon an opposing party a written request for the admission of the genuineness and
authenticity of any relevant documents described in and exhibited with the request, or for
the admission of the truth of any relevant matters of fact stated in the request. Each of the
matters of which an admission is requested shall be deemed admitted, unless within a
period designated in the request (not less than 10 days after service thereof, or within
such further time as the presiding officer or the reviewing authority if no presiding officer
has yet been designated may allow upon motion and notice) the party to whom the
request is directed serves upon the requesting party a sworn statement either denying
specifically the matters of which an admission is requested or setting forth in detail the
reasons why the party cannot truthfully either admit or deny such matters. Copies of
requests for admission and answers thereto shall be served on all parties. Any admission
made by a party to such request is only for the purposes of the pending proceeding, or
any proceeding or action instituted for the enforcement of any order entered therein, and
shall not constitute an admission by the party for any other purpose or be used against the
party in any other proceeding or action.

§ 18b.57 Evidence.
Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.
35 FR 10760, July 2, 1970.

§ 18b.58 Cross-examination.
A witness may be cross-examined on any matter material to the proceeding without
regard to the scope of his direct examination.
35 FR 10760, July 2, 1970.

§ 18b.59 Unsponsored written material.
Letters expressing views or urging action and other unsponsored written material
regarding matters in issue in a hearing will be placed in the correspondence section of the
docket of the proceeding. These data are not deemed part of the evidence or record in the
hearing.
35 FR 10760, July 2, 1970.

§ 18b.60 Objections.
Objections to evidence shall be timely and briefly state the ground relied upon.
35 FR 10760, July 2, 1970.

§ 18b.61 Exceptions to rulings of presiding officer unnecessary.

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action which the party desires the presiding officer to take, or the party's objection to an action taken, and the party's grounds therefor.


§ 18b.62 Official notice.
Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.
35 FR 10760, July 2, 1970.


§ 18b.63 Public document items.
Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.
35 FR 10760, July 2, 1970.


§ 18b.64 Offer of proof.
An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.
35 FR 10760, July 2, 1970.


§ 18b.65 Appeals from ruling of presiding officer.
Rulings of the presiding officer may not be appealed to the reviewing authority prior to consideration of the entire proceeding except with the consent of the presiding officer and where the reviewing authority certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the reviewing authority within such period as the
presiding officer directs. No oral argument will be heard unless the reviewing authority directs otherwise. At any time prior to submission of the proceeding to the reviewing authority for decision, the reviewing authority may direct the presiding officer to certify any question or the entire record to the reviewing authority for decision. Where the entire record is so certified, the presiding officer shall recommend a decision.

THE RECORD

§ 18b.66 Official transcript.
§ 18b.67 Record for decision.

§ 18b.66 Official transcript.
The Department of Veterans Affairs will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department of Veterans Affairs. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department of Veterans Affairs and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.
35 FR 10760, July 2, 1970.

5 U.S.C. 301, 38 U.S.C. 501 and

§ 18b.67 Record for decision.
The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.
35 FR 10760, July 2, 1970.

5 U.S.C. 301, 38 U.S.C. 501 and
POSTHEARING PROCEDURES; DECISIONS

§ 18b.70 Posthearing briefs; proposed findings and conclusions.
§ 18b.71 Decisions following hearing.
§ 18b.72 Exceptions to initial or recommended decisions.
§ 18b.73 Final decisions.
§ 18b.74 Oral argument to the reviewing authority.
§ 18b.75 Review by the Secretary.
§ 18b.76 Service on amici curiae.

§ 18b.70 Posthearing briefs; proposed findings and conclusions.
(a) The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs. (b) Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of authorities relied upon.

35 FR 10760, July 2, 1970.


§ 18b.71 Decisions following hearing.
When the time for submission of posthearing briefs has expired, the presiding officer shall certify the entire record, including recommended findings and proposed decision, to the reviewing authority; or if so authorized shall make an initial decision. A copy of the recommended findings and proposed decision, or of the initial decision, shall be served upon all parties, and amici, if any.


§ 18b.72 Exceptions to initial or recommended decisions.
Within 20 days after the mailing of an initial or recommended decision, any party may file exceptions to the decision, stating reasons therefor, with the reviewing authority. Any other party may file a response thereto within 30 days after the mailing of the decision. Upon the filing of such exceptions, the reviewing authority shall review the decision and issue its own decision thereon.

35 FR 10760, July 2, 1970.


§ 18b.73 Final decisions.
(a) Where the hearing is conducted by a hearing examiner who makes an initial decision, if no exceptions thereto are filed within the 20-day period specified in § 18b.72, such decision shall become the final decision of the Department of Veterans Affairs, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedure Act), subject to the provisions of § 18b.75. (b) Where the hearing is conducted by an administrative law judge who makes a recommended decision or upon the filing of exceptions to an administrative law judge's
initial decision, the reviewing authority shall review the recommended or initial decision and shall issue a decision thereon, which shall become the final decision of VA, and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 (formerly section 10(c) of the Administrative Procedures Act), subject to the provisions of § 18b.75.

(c) All final decisions shall be promptly served on all parties, and amici, if any.


§ 18b.74 Oral argument to the reviewing authority.

(a) If any party desires to argue a case orally on exceptions or replies to exceptions to an initial or recommended decision, the party shall make such request in writing. The reviewing authority may grant or deny such requests in his or her discretion. If granted, the reviewing authority will serve notice of oral argument on all parties. The notice will set forth the order of presentation, the amount of time allotted, and the time and place for argument. The names of persons who will argue should be filed with the agency hearing clerk not later than 7 days before the date set for oral argument.

(b) The purpose of oral argument is to emphasize and clarify the written argument in the briefs. Reading at length from the brief or other texts is not favored. Participants should confine their arguments to points of controlling importance and to points upon which exceptions have been filed. Consolidations of appearances at oral argument by parties taking the same side will permit the parties' interests to be presented more effectively in the time allotted.

(c) Pamphlets, charts, and other written material may be presented at oral argument only if such material is limited to facts already in the record and is served on all parties and filed with the Department hearing clerk at least 7 days before the argument.


§ 18b.75 Review by the Secretary.

Within 20 days after an initial decision becomes a final decision pursuant to § 18b.73(a), or within 20 days of the mailing of a final decision referred to in § 18b.73(b), as the case may be, a party may request the Secretary to review the final decision. The Secretary may grant or deny such request, in whole or in part, or serve notice of intent to review the decision in whole or in part upon motion. If the Secretary grants the requested review, or serves notice of intent to review upon motion, each party to the decision shall have 20 days following notice of the Secretary's proposed action within which to file exceptions to the decision and supporting briefs and memoranda, or briefs and memoranda in support of the decision. Failure of a party to request review under this section shall not be deemed a failure to exhaust administrative remedies for the purpose of obtaining judicial review.


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§ 18b.76 Service on amici curiae.
All briefs, exceptions, memoranda, requests, and decisions referred to in §§ 18b.70 through 18b.76 shall be served upon amici curiae at the same times and in the same manner required for service on parties. Any written statements of position and trial briefs required of parties under § 18b.50 shall be served on amici.
35 FR 10760, July 2, 1970.

§ 18b.77 Final Department action.

§ 18b.77 Final Department action.
(a) The final decision of the administrative law judge or reviewing authority that a school or training establishment is not in compliance will be referred by the reviewing authority to the Secretary for approval as required by § 18.10(e) of this chapter. The finding will be accompanied by letters from the Secretary to the House Veterans’ Affairs Committee and the Senate Veterans Affairs Committee containing a full report on the circumstances as required by § 18.8(c) of this chapter, the reasons for the proposed action and a statement that the proposed action will become the final Department action 30 days after the date of the letter.
(b) A copy of the letters to the congressional committees will be sent to all parties to the proceedings.

§ 18b.90 Conduct.
Parties and their representatives are expected to conduct themselves with honor and dignity and observe judicial standards of practice and ethics in all proceedings. They should not indulge in offensive personalities, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party whether or not a lawyer shall observe the traditional responsibilities of lawyers as officers of the court and use best efforts to restrain the principal represented from improprieties in connection with a proceeding.


§ 18b.91 Improper conduct.
With respect to any proceeding it is improper for any interested person to attempt to sway the judgment of the reviewing authority by undertaking to bring pressure or influence to bear upon the reviewing authority or any officer having a responsibility for a decision in the proceeding, or decisional staff. It is improper that such interested persons or any members of the Department of Veterans Affairs's staff or the presiding officer give statements to communications media, by paid advertisement or otherwise, designed to influence the judgment of any officer having a responsibility for a decision in the proceeding, or decisional staff. It is improper for any person to solicit communications to any such officer, or decisional staff, other than proper communications by parties or amici curiae.


§ 18b.92 Ex parte communications.
Only persons employed by or assigned to work with the reviewing authority who perform no investigative or prosecuting function in connection with a proceeding shall communicate ex parte with the reviewing authority or the presiding officer, or any employee or person involved in the decisional process in such proceedings with respect to the merits of that or a factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate ex parte with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.
Requests for expeditious treatment of matters pending before the reviewing authority or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

35 FR 10760, July 2, 1970.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an ex parte communication. Such requests should be directed to the civil rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed ex parte communications prohibited by § 18b.92. Where feasible, however, such communications should be by letter with copies to all parties. Ex parte communications between a respondent and the responsible agency official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of part 18 of this chapter are not prohibited.

35 FR 10760, July 2, 1970.

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally, a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person referred to in such memorandum may file a comment for inclusion in the docket if the memorandum is considered to be incorrect.

PART 19 -- BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

SUBPART A -- OPERATION OF THE BOARD OF VETERANS' APPEALS
SUBPART B -- APPEALS PROCESSING BY AGENCY OF ORIGINAL JURISDICTION
SUBPART C -- ADMINISTRATIVE APPEALS
Subpart D -- Hearings Before the Board of Veterans' Appeals at Department of Veterans Affairs Field Facilities
SUBPART E -- SIMULTANEously CONTESTED CLAIMS
APPENDIX A TO PART 19 -- CROSS-REFERENCES
SUBPART A – OPERATION OF THE BOARD OF VETERANS' APPEALS

§ 19.1 Establishment of the Board.
§ 19.2 Composition of the Board; Titles.
§ 19.3 Assignment of proceedings.
§ 19.4 Principal functions of the Board.
§ 19.5 Criteria governing disposition of appeals.
§ 19.6 [Reserved]
§ 19.7 The decision.
§ 19.8 Content of Board decision, remand, or order in simultaneously contested claims.
§ 19.9 Remand for further development.
§ 19.10 [Reserved]
§ 19.11 Reconsideration panel.
§ 19.12 Disqualification of Members.
§ 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.
§ 19.15 -- 19.24 [Reserved]

§ 19.1 Establishment of the Board.

The Board of Veterans' Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.


§ 19.2 Composition of the Board; Titles.

(a) The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(b) A member of the Board (other than the Chairman) may also be known as a Veterans Law Judge. An individual designated as an acting member pursuant to 38 U.S.C. 7101(c)(1) may also be known as an acting Veterans Law Judge.


(38 U.S.C. 501(a), 512, 7101(a))

[EFFECTIVE DATE NOTE: 68 FR 6621, 6625, Feb. 10, 2003, revised this section, effective Feb. 10, 2003.]

§ 19.3 Assignment of proceedings.
(a) Assignment. The Chairman may assign a proceeding instituted before the Board, including any motion, to an individual Member or to a panel of three or more Members for adjudication or other appropriate action. The Chairman may participate in a proceeding assigned to a panel of Members.

(Authority: 38 U.S.C. 7102)

(b) Inability to serve. If a Member is unable to participate in the disposition of a proceeding or motion to which the Member has been assigned, the Chairman may assign the proceeding or motion to another Member or substitute another Member (in the case of a proceeding or motion assigned to a panel).

Authority: 38 U.S.C. 7101(a), 7102)

[57 FR 4104, Feb. 3, 1992; 61 FR 20447, 20448, May 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20447, 20448, May 7, 1996, revised this section, effective May 7, 1996.]

§ 19.4 Principal functions of the Board.
The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

[57 FR 4104, Feb. 3, 1992; 61 FR 20447, 20448, May 7, 1996]

(38 U.S.C. 7102, 7104, 7107)

§ 19.5 Criteria governing disposition of appeals.
In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.


(38 U.S.C. 501(a), 7104(c))

§ 19.6 [Reserved]

§ 19.7 The decision.

(a) Decisions based on entire record. The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 501(a), 7104(c))

(b) Content. The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases
for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.
(Authority: 38 U.S.C. 7104(d))

(c) A decision by a panel of Members will be by a majority vote of the panel Members.
[57 FR 4104, Feb. 3, 1992; 61 FR 20447, 20448, May 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20447, 20448, May 7, 1996, which added paragraph (c), became effective May 7, 1996.]

§ 19.8 Content of Board decision, remand, or order in simultaneously contested claims.
The content of the Board's decision, remand, or order in appeals involving a simultaneously contested claim will be limited to information that directly affects the issues involved in the contested claim. Appellate issues that do not involve all of the contesting parties will be addressed in one or more separate written decisions, remands, or orders that will be furnished only to the appellants concerned and their representatives, if any.

(5 U.S.C. 552a(b), 38 U.S.C. 5701(a))

§ 19.9 Remand for further development.
(a) General. If further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge or panel of Veterans Law Judges shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.
(b) Exceptions. A remand to the agency of original jurisdiction is not necessary for the purposes of:
(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;
(2) Consideration of an appeal, in accordance with Sec. 20.903(b) of this chapter, with respect to law not already considered by the agency of original jurisdiction. This includes, but is not limited to, statutes, regulations, and court decisions; or
(3) Reviewing additional evidence received by the Board, if, pursuant to Sec. 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal.
(c) Scope. This section does not apply to:
(1) The Board's request for an opinion under Rule 901 (§ 20.901 of this chapter);
(2) The Board's supplementation of the record with a recognized medical treatise; and
(3) Matters over which the Board has original jurisdiction described in Rules 609 and 610 (§§ 20.609 and 20.610 of this chapter).
§ 19.11 Reconsideration panel.

(a) Assignment of Members. When a motion for reconsideration is allowed, the Chairman will assign a panel of three or more Members of the Board, which may include the Chairman, to conduct the reconsideration.

(b) Number of Members constituting a reconsideration panel. In the case of a matter originally heard by a single Member of the Board, the case shall be referred to a panel of three Members of the Board. In the case of a matter originally heard by a panel of Members of the Board, the case shall be referred to an enlarged panel, consisting of three or more Members than the original panel. In order to obtain a majority opinion, the number of Members assigned to a reconsideration panel may be increased in successive increments of three.

(c) Members included in the reconsideration panel. The reconsideration panel may not include any Member who participated in the decision that is being reconsidered. Additional Members will be assigned in accordance with paragraph (b) of this section.

§ 19.12 Disqualification of Members.

(a) General. A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(b) Appeal on same issue subsequent to decision on administrative appeal. Any Member of the Board who made the decision on an administrative appeal will disqualify himself or herself from acting on a subsequent appeal by the claimant on the same issue.

(c) Disqualification of Members by the Chairman. The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in paragraphs (a) and (b) of this section and in those cases where a Member is unable or unwilling to act.

(EFFECTIVE DATE NOTE: 61 FR 20447, 20449, May 7, 1996, which revised this section, became effective May 7, 1996.)
§ 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.
The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:
(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit, and
(b) Order VA Central Office investigations of matters before the Board.
(38 U.S.C. 303, 512(a))

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(b) and 19.12(c) of this part may also be exercised by the Vice Chairman of the Board.
(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in § 19.11 of this part may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.
(38 U.S.C. 512(a), 7102, 7104)

§ 19.15 -- 19.24 [Reserved]
SUBPART B -- APPEALS PROCESSING BY AGENCY OF ORIGINAL JURISDICTION

§ 19.25 Notification by agency of original jurisdiction of right to appeal.
§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.
§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.
§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.
§ 19.29 Statement of the Case.
§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.
§ 19.31 Supplemental statement of the case.
§ 19.32 Closing of appeal for failure to respond to Statement of the Case.
§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.
§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.
§ 19.35 Certification of appeals.
§ 19.36 Notification of certification of appeal and transfer of appellate record.
§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.
§ 19.38 Action by agency of original jurisdiction when remand received.
§§ 19.39 -- 19.49 [Reserved]

§ 19.25 Notification by agency of original jurisdiction of right to appeal.
The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.


(38 U.S.C. 7105(a))

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.
When a Notice of Disagreement is timely filed, the agency of original jurisdiction must reexamine the claim and determine if additional review or development is warranted. When a Notice of Disagreement is received following a multiple-issue determination and it is not clear which issue, or issues, the claimant desires to appeal, clarification sufficient to identify the issue, or issues, being appealed should be requested from the claimant or his or her representative. If no preliminary action is required, or when it is completed, the agency of original jurisdiction must prepare a Statement of the Case pursuant to § 19.29 of this part, unless the matter is resolved by granting the benefits sought on appeal or the Notice of Disagreement is withdrawn by the appellant or his or her representative.
§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.
If, within the agency of original jurisdiction, there is a question as to the adequacy of a Notice of Disagreement, the procedures for an administrative appeal must be followed. 57 FR 4104, Feb. 3, 1992.

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.
Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case. 57 FR 4104, Feb. 3, 1992.

§ 19.29 Statement of the Case.
The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:
(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;
(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and
(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed. 57 FR 4104, Feb. 3, 1992.

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.
(a) To whom the Statement of the Case is furnished. The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).
(b) Information furnished with the Statement of the Case. With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, a Substantive Appeal; information on hearing and representation rights; and a VA Form 9, "Appeal to Board of Veterans' Appeals."
§ 19.31 Supplemental statement of the case.

(a) Purpose and limitations. A "Supplemental Statement of the Case," so identified, is a document prepared by the agency of original jurisdiction to inform the appellant of any material changes in, or additions to, the information included in the Statement of the Case or any prior Supplemental Statement of the Case. In no case will a Supplemental Statement of the Case be used to announce decisions by the agency of original jurisdiction on issues not previously addressed in the Statement of the Case, or to respond to a notice of disagreement on newly appealed issues that were not addressed in the Statement of the Case. The agency of original jurisdiction will respond to notices of disagreement on newly appealed issues not addressed in the Statement of the Case using the procedures in §§ 19.29 and 19.30 of this part (relating to statements of the case).

(b) When furnished. The agency of original jurisdiction will furnish the appellant and his or her representative, if any, a Supplemental Statement of the Case if:

(1) The agency of original jurisdiction receives additional pertinent evidence after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued and before the appeal is certified to the Board of Veterans' Appeals and the appellate record is transferred to the Board;

(2) A material defect in the Statement of the Case or a prior Supplemental statement of the Case is discovered; or

(3) For any other reason the Statement of the Case or a prior Supplemental Statement of the Case is inadequate.

(c) Pursuant to remand from the Board. The agency of original jurisdiction will issue a Supplemental Statement of the Case if, pursuant to a remand by the Board, it develops the evidence or cures a procedural defect, unless:

(1) The only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case; or

(2) The Board specifies in the remand that a Supplemental Statement of the Case is not required.

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the

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1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(38 U.S.C. 7105(d)(3))

§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.
If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(38 U.S.C. 7105, 7106)

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.
Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(38 U.S.C. 7105)

§ 19.35 Certification of appeals.
Following receipt of a timely Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals. Certification is accomplished by the completion of VA Form 8, "Certification of Appeal." The certification is used for administrative purposes and does not serve to either confer or deprive the Board of Veterans' Appeals of jurisdiction over an issue.

(38 U.S.C. 7105)
[EFFECTIVE DATE NOTE: 66 FR 53339, Oct. 22, 2001, revised the first sentence, effective Nov. 21, 2001.]

§ 19.36 Notification of certification of appeal and transfer of appellate record.
When an appeal is certified to the Board of Veterans' Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in Rule of Practice 1304 (§ 20.1304 of this chapter).
§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

(a) Evidence received prior to transfer of records to Board of Veterans' Appeals. Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans' Appeals after an appeal has been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

(b) Evidence received after transfer of records to the Board of Veterans' Appeals. Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans' Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.


§ 19.38 Action by agency of original jurisdiction when remand received.

When a case is remanded by the Board of Veterans' Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development, together with the evidence which was previously of record, supports the allowance of all benefits sought on appeal. If so, the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 60-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

§§ 19.39 -- 19.49 [Reserved]
SUBPART C -- ADMINISTRATIVE APPEALS

§ 19.50 Nature and form of administrative appeal.
§ 19.51 Officials authorized to file administrative appeals and time limits for filing.
§ 19.52 Notification to claimant of filing of administrative appeal.
§ 19.53 Restriction as to change in payments pending determination of administrative appeals.
§§ 19.54 -- 19.74 [Reserved]

§ 19.50 Nature and form of administrative appeal.

(a) General. An administrative appeal from an agency of original jurisdiction determination is an appeal taken by an official of the Department of Veterans Affairs authorized to do so to resolve a conflict of opinion or a question pertaining to a claim involving benefits under laws administered by the Department of Veterans Affairs. Such appeals may be taken not only from determinations involving dissenting opinions, but also from unanimous determinations denying or allowing the benefit claimed in whole or in part.

(b) Form of Appeal. An administrative appeal is entered by a memorandum entitled "Administrative Appeal" in which the issues and the basis for the appeal are set forth. 57 FR 4104, Feb. 3, 1992.

(38 U.S.C. 7106)

§ 19.51 Officials authorized to file administrative appeals and time limits for filing.

The Secretary of Veterans Affairs authorizes certain officials of the Department of Veterans Affairs to file administrative appeals within specified time limits, as follows:

(a) Central Office -- (1) Officials. The Under Secretary for Benefits or a service director of the Veterans Benefits Administration, the Under Secretary for Health or a service director of the Veterans Health Administration, and the General Counsel.

(2) Time limit. Such officials must file an administrative appeal within 1 year from the date of mailing notice of such determination to the claimant.

(b) Agencies of original jurisdiction--(1) Officials. Directors, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

(2) Time limit. The Director or comparable official must file an administrative appeal within 6 months from the date of mailing notice of the determination to the claimant. Officials below the level of Director must do so within 60 days from such date.

(c) The date of mailing. With respect to paragraphs (a) and (b) of this section, the date of mailing notice of the determination to the claimant will be presumed to be the same as the date of the letter of notification to the claimant.


(38 U.S.C. 7106)
§ 19.52 Notification to claimant of filing of administrative appeal.
When an administrative appeal is entered, the claimant and his or her representative, if any, will be promptly furnished a copy of the memorandum entitled "Administrative Appeal," or an adequate summary thereof, outlining the question at issue. They will be allowed a period of 60 days to join in the appeal if they so desire. The claimant will also be advised of the effect of such action and of the preservation of normal appeal rights if he or she does not elect to join in the administrative appeal.

(38 U.S.C. 7106)

§ 19.53 Restriction as to change in payments pending determination of administrative appeals.
If an administrative appeal is taken from a review or determination by the agency of original jurisdiction pursuant to §§ 19.50 and 19.51 of this part, that review or determination may not be used to effect any change in payments until after a decision is made by the Board of Veterans' Appeals.

(38 U.S.C. 7106)

§§ 19.54 -- 19.74 [Reserved]
Subpart D -- Hearings Before the Board of Veterans' Appeals at Department of Veterans Affairs Field Facilities

§ 19.75 Field hearing docket.
§ 19.76 Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
§ 19.77 [Reserved]
§ 19.78 -- 19.99 [Reserved]

§ 19.75 Field hearing docket.

Hearings on appeal held at Department of Veterans Affairs field facilities will be scheduled for each area served by a regional office in accordance with the place of each case on the Board's docket, established under § 20.900 of this chapter, relative to other cases for which hearings are scheduled to be held within that area. Such scheduling is subject to § 20.704(f) of this chapter pertaining to advancement of a case on the hearing docket.


(38 U.S.C. 7107)

§ 19.76 Notice of time and place of hearing before the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility not less than 30 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility with good cause. The right to notice at least 30 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.


(38 U.S.C. 7107)

§ 19.77 [Reserved]
SUBPART E -- SIMULTANEOUSLY CONTESTED CLAIMS

§ 19.100 Notification of right to appeal in simultaneously contested claims.
§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.
§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.


(38 U.S.C. 7105A(a))

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The Statement of the Case so furnished will contain only information which directly affects the payment or potential payment of the benefit(s) which is (are) the subject of that contested claim. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 9, "Appeal to Board of Veterans' Appeals."


(38 U.S.C. 7105A(b))

[EFFECTIVE DATE NOTE: 61 FR 20447, 20449, May 7, 1996, which substituted "VA Form 9" for "VA Form 1-9," became effective May 7, 1996.]

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, the content of the Substantive Appeal will be furnished to the other contesting parties to the extent that it contains information which could directly affect the payment or potential payment of the benefit which is the subject of the contested claim.


(38 U.S.C. 7105A(b))
APPENDIX A TO PART 19 -- CROSS-REFERENCES

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Cross-reference</th>
<th>Title of cross-referenced material or comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.5</td>
<td>38 CFR 14.507(b)</td>
<td>See re &quot;precedent opinions&quot; of the General Counsel of the Department of Veterans Affairs.</td>
</tr>
<tr>
<td>19.7</td>
<td>38 CFR 20.905</td>
<td>Rule 905. Vacating a decision.</td>
</tr>
<tr>
<td>19.13</td>
<td>38 CFR 2.66</td>
<td>Contains similar provisions.</td>
</tr>
<tr>
<td>19.25</td>
<td>38 CFR 19.52</td>
<td>Notification to claimant of filing of administrative appeal.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 19.100</td>
<td>Notification of right to appeal in simultaneously contested claims.</td>
</tr>
<tr>
<td>19.27</td>
<td>38 CFR 19.50-19.53</td>
<td>See re administrative appeals.</td>
</tr>
<tr>
<td>19.50</td>
<td>38 CFR 19.53</td>
<td>Restriction as to change in payments pending determination of administrative appeals.</td>
</tr>
<tr>
<td>19.76</td>
<td>38 CFR 20.704</td>
<td>Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.</td>
</tr>
</tbody>
</table>


(38 U.S.C. 7105A(b))
PART 20 -- BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

SUBPART A -- GENERAL
SUBPART B -- THE BOARD
SUBPART C -- COMMENCEMENT AND PERFECTION OF APPEAL
SUBPART D -- FILING
SUBPART E -- ADMINISTRATIVE APPEALS
SUBPART F -- SIMULTANEOUSLY CONTESTED CLAIMS
SUBPART G -- REPRESENTATION
Subpart H -- Hearings on Appeal
SUBPART I -- EVIDENCE
SUBPART J -- ACTION BY THE BOARD
SUBPART K -- RECONSIDERATION
SUBPART L -- FINALITY
SUBPART M -- PRIVACY ACT
SUBPART N -- MISCELLANEOUS
SUBPART O -- REVISION OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR

APPENDIX A TO PART 20 -- CROSS-REFERENCES
38 U.S.C. 501(a) and as noted in specific sections.

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SUBPART A  --  GENERAL

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.
§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.
§ 20.3 Rule 3. Definitions.
§§ 20.4 -- 20.99 [Reserved]

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.
(a) Purpose. These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals.
(Authority: 38 U.S.C. 501(a), 7102, 7104)
(b) Construction. These rules are to be construed to secure a just and speedy decision in every appeal.

(38 U.S.C. 501(a), 5107, 7104)

§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.
Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.

(38 U.S.C. 501(a), 512(a), 7102, 7104)

§ 20.3 Rule 3. Definitions.
As used in these Rules:
(a) Agency of original jurisdiction means the Department of Veterans Affairs activity or administration, that is, the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, that made the initial determination on a claim.
(b) Agent means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of Rule 604 (§ 20.604 of this part). It does not include representatives recognized under Rules 602, 603, or 605 (§ 20.602, 20.603, or § 20.605 of this part).
(c) Appellant means a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 7105.
(d) Attorney-at-law means a member in good standing of a State bar.
(e) Benefit means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.
(f) Claim means application made under title 38, United States Code, and implementing directives for entitlement to Department of Veterans Affairs benefits or for the continuation or increase of such benefits, or the defense of a proposed agency adverse action concerning benefits.
(g) Claimant means a person who has filed a claim, as defined by paragraph (f) of this section.
(h) Electronic hearing means a hearing on appeal in which an appellant or a representative participates, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Member or Members sitting at the Board's principal location in Washington, DC.
(i) Hearing on appeal means a hearing conducted after a Notice of Disagreement has been filed in which argument and/or testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.
(j) Law student means an individual pursuing a Juris Doctor or equivalent degree at a school approved by a recognized accrediting association.
(k) Legal intern means a graduate of a law school, which has been approved by a recognized accrediting association, who has not yet been admitted to a State bar.
(l) Motion means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, the questions of whether a representative's fees are reasonable or whether additional evidence may be submitted more than 90 days after certification of an appeal to the Board are raised by motion (see Rule 609, paragraph (i), and Rule 1304, paragraph (b) §§ 20.609(i) and 20.1304(b) of this part). Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.
(m) Paralegal means a graduate of a course of paralegal instruction given by a school which has been approved by a recognized accrediting association, or an individual who has equivalent legal experience.
(n) Past-due benefits means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.
(o) Presiding Member means that Member of the Board who presides over a hearing, whether conducted as a single Member or panel hearing.
(p) Simultaneously contested claim refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.
(q) State includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

(38 U.S.C. 501(a))
[EFFECTIVE DATE NOTE: 67 FR 36102, 36104, May 23, 2002, amended this section, effective June 24, 2002.]

§§ 20.4 -- 20.99 [Reserved]
SUBPART B -- THE BOARD

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.
§§ 20.103 -- 20.199 [Reserved]

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.
(a) Name. The name of the Board is the Board of Veterans' Appeals.
(b) Business hours. The Board is open during business hours on all days except Saturday, Sunday and legal holidays. Business hours are from 8 a.m. to 4:30 p.m.
(c) Mailing address. Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.
(38 U.S.C. 7101(a))

(cclxx) Discussion and Analysis in the Veterans Benefits Manual
(a) General. All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans' Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:
(1) Entitlement to, and benefits resulting from, service-connected disability or death (38 U.S.C. chapter 11).
(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 1312) and certification and entitlement to death gratuity (38 U.S.C. 1323).
(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. chapter 15).
(10) Veterans' Job Training (Pub. L. 98-77, as amended; 38 CFR 21.4600 et seq.).
(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 1728).
(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 1151).
(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 5302).
(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 6102-6105).
(22) Determinations as to duty status (38 U.S.C. 101(21)-(24)).
(24) Determination of dependency status as parent or child (38 U.S.C. 101(4), (5)).
(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 5503).
(28) Benefits for surviving spouses and children of deceased veterans under Public Law 97-377, section 156 ((38 CFR 3.812(d)).

(b) Appellate jurisdiction of determinations of the Veterans Health Administration. The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) Appeals as to jurisdiction. All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular case. Jurisdictional questions which a claimant may appeal, include, but are not limited to, questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal.

(d) Authority to determine jurisdiction. The Board may address questions pertaining to its jurisdictional authority to review a particular case, including, but not limited to, determining whether Notices of Disagreement and Substantive Appeals are adequate and
timely, at any stage in a proceeding before it, regardless of whether the agency of original jurisdiction addressed such question(s). When the Board, on its own initiative, raises a question as to a potential jurisdictional defect, all parties to the proceeding and their representative(s), if any, will be given notice of the potential jurisdictional defect(s) and granted a period of 60 days following the date on which such notice is mailed to present written argument and additional evidence relevant to jurisdiction and to request a hearing to present oral argument on the jurisdictional question(s). The date of mailing of the notice will be presumed to be the same as the date stamped on the letter of notification. The Board may dismiss any case over which it determines it does not have jurisdiction.

(e) Application of 38 CFR 19.9 and 20.1304. Section 19.9 of this chapter shall not apply to proceedings to determine the Board's own jurisdiction. However, the Board may remand a case to an agency of original jurisdiction in order to obtain assistance in securing evidence of jurisdictional facts. The time restrictions on requesting a hearing and submitting additional evidence in § 20.1304 of this part do not apply to a hearing requested, or evidence submitted, under paragraph (d) of this section.


(38 U.S.C. 511(a), 7104, 7105, 7108)

[EFFECTIVE DATE NOTE: 66 FR 53339, Oct. 22, 2001, revised paragraph (c), and added paragraphs (d) and (e), effective Nov. 21, 2001.]


(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 717(d) and 1001(c) (§§ 20.717(d) and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 2 and 606(d) (§§ 20.2, and 20.606(d) of this part), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.


(38 U.S.C. 512(a), 7102, 7104)

[EFFECTIVE DATE NOTE: 61 FR 20447, 20449, May 7, 1996, which revised paragraph (c) and removed paragraph (d), became effective May 7, 1996.]

§§ 20.103 -- 20.199 [Reserved]
SUBPART C -- COMMENCEMENT AND PERFECTION OF APPEAL

§ 20.201 Rule 201. Notice of Disagreement.
§ 20.203 [Reserved]
§ 20.204 Rule 204. Withdrawal of Appeal.
§§ 20.205 -- 20.299 [Reserved]

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal. 57 FR 4109, Feb. 3, 1992.

(38 U.S.C. 7105)

§ 20.201 Rule 201. Notice of Disagreement.
A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear. 57 FR 4109, Feb. 3, 1992.

(38 U.S.C. 7105)

A Substantive Appeal consists of a properly completed VA Form 9, "Appeal to Board of Veterans' Appeals," or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal should set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of
determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are the last actions the appellant needs to take to perfect an appeal.

(Approved by the Office of Management and Budget under control number 2900-0085)
[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20450, May 7, 1996]

(38 U.S.C. 7105(d)(3)-(5))
[EFFECTIVE DATE NOTE: 61 FR 20447, 20450, May 7, 1996, which substituted "VA Form 9" for "VA Form 1-9," became effective May 7, 1996.]

§ 20.203 [Reserved]

§ 20.204 Rule 204. Withdrawal of Appeal.

(a) When and by whom filed. Only an appellant, or an appellant's authorized representative, may withdraw an appeal. An appeal may be withdrawn as to any or all issues involved in the appeal.

(b) Filing. (1) Form and content. Except for appeals withdrawn on the record at a hearing, appeal withdrawals must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn. If the appeal involves multiple issues, the withdrawal must specify that the appeal is withdrawn in its entirety, or list the issue(s) withdrawn from the appeal.

(2) Where to file. Appeal withdrawals should be filed with the agency of original jurisdiction until the appellant or representative filing the withdrawal receives notice that the appeal has been transferred to the Board. Thereafter, file the withdrawal at the following address: Director, Management and Administration (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(3) When effective. Until the appeal is transferred to the Board, an appeal withdrawal is effective when received by the agency of original jurisdiction. Thereafter, it is not effective until received by the Board. A withdrawal received by the Board after the Board issues a final decision under Rule 1100(a) (§ 20.1100(a) of this part) will not be effective.

(c) Effect of filing. Withdrawal of an appeal will be deemed a withdrawal of the Notice of Disagreement and, if filed, the Substantive Appeal, as to all issues to which the withdrawal applies. Withdrawal does not preclude filing a new Notice of Disagreement and, after a Statement of the Case is issued, a new Substantive Appeal, as to any issue withdrawn, provided such filings would be timely under these rules if the appeal withdrawn had never been filed.


(38 U.S.C. 7105(b) and (d))
§§ 20.205 -- 20.299 [Reserved]
SUBPART D -- FILING

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.
§ 20.301 Rule 301. Who can file an appeal.
§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.
§ 20.305 Rule 305. Computation of time limit for filing.
§ 20.306 Rule 306. Legal holidays.
§§ 20.307 -- 20.399 [Reserved]

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.


(38 U.S.C. 7105 (b)(1), (d)(3))

§ 20.301 Rule 301. Who can file an appeal.

(a) Persons authorized. A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.

(b) Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file. If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) Claimant under disability and able to file. Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.


(38 U.S.C. 7105(b)(2))

(a) Notice of Disagreement. Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105(b)(1))

(b) Substantive Appeal. (1) General. Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(2) Special rule in certain cases where additional evidence is submitted. Except in the case of simultaneously contested claims, if (i) a claimant submits additional evidence within 1 year of the date of mailing of the notification of the determination being appealed, and (ii) that evidence requires, in accordance with § 19.31 of this title, that the claimant be furnished a Supplemental Statement of the Case, then the time to submit a Substantive Appeal shall end not sooner than 60 days after such Supplemental Statement of the Case is mailed to the appellant, even if the 60-day period extends beyond the expiration of the 1-year appeal period.

(Authority: 38 U.S.C. 7105 (b)(1), (d)(3).)

(c) Response to Supplemental Statement of the Case. Where a Supplemental Statement of the Case is furnished, a period of 60 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal.


(38 U.S.C. 7105(d)(3))

[EFFECTIVE DATE NOTE: 68 FR 64805, 64806, Nov. 17, 2003, amended paragraph (c), effective Nov. 17, 2003.]

An extension of the 60-day period for filing a Substantive Appeal, or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required, may be granted for good cause. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board. 57 FR 4109, Feb. 3, 1992.

(38 U.S.C. 7105(d)(3))

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.
Except as provided in Rule 302(b) (§ 20.302(b) of this part), the filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination. [57 FR 4109, Feb. 3, 1992; 66 FR 50318, 50319, Oct. 3, 2001]

(38 U.S.C. 7105.)
[EFFECTIVE DATE NOTE: 66 FR 50318, 50319, Oct. 3, 2001, revised this section, effective Feb. 11, 1997.]

§ 20.305 Rule 305. Computation of time limit for filing.
(a) Acceptance of postmark date. When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.
(b) Computation of time limit. In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation. 57 FR 4109, Feb. 3, 1992.

(38 U.S.C. 7105)

§ 20.306 Rule 306. Legal holidays.
For the purpose of Rule 305 (§ 20.305 of this part), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day--January 1; Inauguration Day--January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Birthday of Martin Luther King, Jr.--Third Monday in

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January; Washington's Birthday--Third Monday in February; Memorial Day--Last Monday in May; Independence Day--July 4; Labor Day--First Monday in September; Columbus Day--Second Monday in October; Veterans Day--November 11; Thanksgiving Day--Fourth Thursday in November; and Christmas Day--December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.


(5 U.S.C. 6103)

§§ 20.307 -- 20.399 [Reserved]
SUBPART E -- ADMINISTRATIVE APPEALS

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.
§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.
§§ 20.402 -- 20.499 [Reserved]

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.
When an official of the Department of Veterans Affairs enters an administrative appeal, the claimant and his or her representative, if any, are notified and given a period of 60 days from the date of mailing of the letter of notification to join in the administrative appeal. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. If the claimant, or the representative acting on his or her behalf, elects to join in the administrative appeal, it becomes a "merged appeal" and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument by the claimant or his or her representative in response to notification of the right to join in the administrative appeal will be construed as an election to join in the administrative appeal. If the claimant does not authorize the merger, he or she must hold such evidence or argument in abeyance until resolution of the administrative appeal.

(38 U.S.C. 7106)

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.
(a) Merged appeal. If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights.
(b) Appeal not merged. If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and the Chairman will assign the proceeding to a Member or panel of Members of the Board who did not make the decision on the administrative appeal. The period of time from the date of notification to the claimant of the administrative appeal to the date of the Board's decision on the administrative appeal is not chargeable to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.
[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20450, May 7, 1996]

(38 U.S.C. 7106)
[EFFECTIVE DATE NOTE: 61 FR 20447, 20450, May 7, 1996, which revised paragraph (b), became effective May 7, 1996.]

§§ 20.402 -- 20.499 [Reserved]
SUBPART F -- SIMULTANEOUSLY CONTESTED CLAIMS

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.
§ 20.502 Rule 502. Time limit for response to appeal by another contesting party in a simultaneously contested claim.
§ 20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.
§ 20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.
§§ 20.505 -- 20.599 [Reserved]

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.
In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 501 (§ 20.501 of this part).
(38 U.S.C. 7105(b)(2), 7105A)

(a) Notice of Disagreement. In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.
(Authority: 38 U.S.C. 7105A(a))
(b) Substantive Appeal. In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.
(Authority: 38 U.S.C. 7105A(b))
(c) Supplemental Statement of the Case. Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be
presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal.

[57 FR 4109, Feb. 3, 1992; 68 FR 64805, 64806, Nov. 17, 2003]

(38 U.S.C. 7105(d)(3), 7105A(b))
[EFFECTIVE DATE NOTE: 68 FR 64805, 64806, Nov. 17, 2003, amended paragraph (c), effective Nov. 17, 2003.]

§ 20.502 -- Rule 502. Time limit for response to appeal by another contesting party in a simultaneously contested claim.
A party to a simultaneously contested claim may file a brief or argument in answer to a Substantive Appeal filed by another contesting party. Any such brief or argument must be filed with the agency of original jurisdiction within 30 days from the date the content of the Substantive Appeal is furnished as provided in § 19.102 of this chapter. Such content will be presumed to have been furnished on the date of the letter that accompanies the content.


(38 U.S.C. 7105A(b))

§ 20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.
An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.


(38 U.S.C. 7105A(b))

§ 20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.
Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.


(38 U.S.C. 7105A(b))

§§ 20.505 -- 20.599 [Reserved]
SUBPART G -- REPRESENTATION

§ 20.600 Rule 600. Right to representation.
An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.
(38 U.S.C. 5901-5905, 7105(a))

§ 20.601 Rule 601. Only one representative recognized.
A specific claim may be prosecuted at any one time by only one recognized organization, attorney, agent or other person properly designated to represent the appellant.
(38 U.S.C. 7105(b)(2))

§ 20.602 Rule 602. Representation by recognized organizations.
In order to designate a recognized organization as his or her representative, an appellant must execute a VA Form 21-22, "Appointment of Veterans Service Organization as Claimant's Representative." This form gives the organization power of attorney to represent the appellant. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked by the appellant or unless the representative has properly withdrawn.

CROSS-REFERENCE: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.
§ 20.603 Rule 603. Representation by attorneys-at-law.

(a) Designation. An attorney-at-law may be designated as an appellant's representative through a properly executed VA Form 22a, "Appointment of Attorney or Agent as Claimant's Representative." This form gives the attorney power of attorney to represent the appellant. In lieu thereof, an attorney may state in writing on his or her letterhead that he or she is authorized to represent the appellant in order to have access to information in the appellant's file pertinent to the particular claim presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the appellant or the appellant's guardian. Such consent shall be equivalent to an executed power of attorney. The designation must be of an individual attorney, rather than a firm or partnership. An appellant may limit an attorney's right to act as his or her representative in an appeal to representation with respect to a specific claim for one or more specific benefits by noting the restriction in the written designation. Unless specifically noted to the contrary, however, designations of an attorney as a representative will extend to all matters with respect to claims for benefits under laws administered by the Department of Veterans Affairs. Designations are effective when they are received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn. Legal interns, law students, and paralegals may not be independently accredited to represent appellants under this Rule.

(b) Attorneys employed by recognized organization. A recognized organization may employ an attorney-at-law to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant for the substitution of representatives must be obtained and submitted to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. When the signed consent is received by the agency of original jurisdiction or the Board, as applicable, the attorney will be recognized as the appellant's representative in lieu of the organization.

(c) Participation of associated or affiliated attorneys. With the specific written consent of the appellant, an attorney associated or affiliated with the appellant's attorney of record, including an attorney employed by the same legal services office as the attorney of record, may assist in representation of the appellant and may have access to the appellant's Department of Veterans Affairs records to the same extent as the attorney of record. Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or an attorney employed by the same legal services office. The consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney of record; the consent of the appellant for the use of the services of the associated or affiliated attorney and for that individual to have access to applicable
§ 20.604 Rule 604. Representation by agents.
(a) Designation. The designation of an agent will be by a duly executed power of attorney, VA Form 22a, "Appointment of Attorney or Agent as Claimant's Representative," or its equivalent. The designation must be of an individual, rather than a firm or partnership. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.
(b) Admission to practice. The provisions of 38 U.S.C. 5904 and of § 14.629(b) of this chapter are applicable to the admission of agents to practice before the Department of Veterans Affairs. Authority for making determinations concerning admission to practice rests with the General Counsel of the Department of Veterans Affairs, and any questions concerning admissions to practice should be addressed to: Office of the General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.
[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20450, May 7, 1996]

§ 20.605 Rule 605. Other persons as representative.
(a) Scope of rule. This section applies to representation other than by a recognized organization, an agent admitted to practice before the Department of Veterans Affairs, or an attorney-at-law.
(b) Who may act as representative. Any competent person may be recognized as a representative for a particular claim, unless that person has been barred from practice before the Department of Veterans Affairs.
(c) Designation. The designation of an individual to act as an appellant's representative may be made by executing a VA Form 22a, "Appointment of Attorney or Agent as Claimant's Representative." This form gives the individual power of attorney to represent the appellant in all matters pertaining to the presentation and prosecution of claims for any and all benefits under laws administered by the Department of Veterans Affairs. In lieu of using the form, the designation may be by a written document signed by both the appellant and the individual representative, which may be in the form of a letter, which
authorizes a named individual to act as the appellant's representative only with respect to a specific claim involving one or more specific benefits. The document must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; the name of the individual representative; a description of the specific claim for benefits to which the designation of representation applies; and a certification that no compensation will be charged or paid for the individual representative's services. The designation, in either form, must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans' Appeals. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(d) Representation of more than one appellant. An individual recognized as an appellant's representative under this Rule may represent only one appellant. If an individual has been recognized as a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in §14.630 of this chapter.

[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20450, May 7, 1996]

(38 U.S.C. 5903)

[EFFECTIVE DATE NOTE: 61 FR 20447, 20450, May 7, 1996, which substituted "VA Form 22a" for "VA Form 2-22a" in paragraph (c), became effective May 7, 1996.]

§ 20.606 Rule 606. Legal interns, law students and paralegals.

(a) Consent of appellant. If it is contemplated that a legal intern, law student, or paralegal will assist in the appeal, written consent must be obtained from the appellant. The written consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable Department of Veterans Affairs records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings before a Member or Members of the Board at Department of Veterans field facilities, the consent must be presented to the presiding Member of the hearing as noted in paragraph (d). Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or another attorney employed by the same legal services office.
(b) Supervision. Legal interns, law students and paralegals must be under the direct supervision of a recognized attorney-at-law in order to prepare and present cases before the Board of Veterans' Appeals.

(c) Hearings. Legal interns, law students and paralegals who desire to participate at a hearing before the Board in Washington, DC, must make advance arrangements with the Director of the Administrative Service and submit written authorization from the attorney naming the individual who will be participating in the hearing. In the case of hearings before a Member or Members of the Board in the field, the attorney-at-law not less than 10 days prior to the scheduled hearing date must inform the office of the Department of Veterans Affairs official who gave notice of the Travel Board hearing date and time that the services of a legal intern, law student, or paralegal will be used at the hearing. At the same time, a prehearing conference with the presiding Member of the hearing must be requested. At the conference, the written consent of the appellant for the use of the services of such an individual required by paragraph (a) must be presented and agreement reached as to the individual's role in the hearing. Legal interns, law students or paralegals may not present oral arguments at hearings either in the field or in Washington, DC, unless the recognized attorney-at-law is present. Not more than two such individuals may make presentations at a hearing. The presiding Member at a hearing on appeal may require that not more than one such individual participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(d) Withdrawal of permission for legal interns, law students, and paralegals to assist in the presentation of an appeal. When properly designated, the attorney-at-law is the recognized representative of the appellant and is responsible for ensuring that an appeal is properly presented. Legal interns, law students, and paralegals are permitted to assist in the presentation of an appeal as a courtesy to the attorney-at-law. Permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman or presiding Member at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual.


(38 U.S.C. 5904, 7105(b)(2))

§ 20.607 Rule 607. Revocation of a representative's authority to act.
Subject to the provisions of § 20.1304 of this part, an appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. The revocation is effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a
 revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.


(38 U.S.C. 5901-5904)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) Withdrawal of services prior to certification of an appeal. A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans' Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of the withdrawal is received by the agency of original jurisdiction.

(b) Withdrawal of services after certification of an appeal -- (1) Applicability. The restrictions on a representative's right to withdraw contained in this paragraph apply only to those cases in which the representative has previously agreed to act as representative in an appeal. In addition to express agreement, orally or in writing, such agreement shall be presumed if the representative makes an appearance in the case by acting on an appellant's behalf before the Board in any way after the appellant has designated the representative as such as provided in §§ 20.602 through 20.605 of this part. The preceding sentence notwithstanding, an appearance in an appeal solely to notify the Board that a designation of representation has not been accepted will not be presumed to constitute such consent.

(2) Procedures. After the agency of original jurisdiction has certified an appeal to the Board of Veterans' Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impossible, impractical, or unethical. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted, and a signed statement certifying that a copy of the motion was sent by first-class mail, postage prepaid, to the appellant, setting forth the address to which the copy was mailed. Such motions should not contain information which would violate privileged communications or which would otherwise be unethical to reveal. Such motions must be filed at the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion and must include a signed statement certifying that a copy of the response was sent by first-class
mail, postage prepaid, to the representative, setting forth the address to which the copy was mailed.

(Approved by the Office of Management and Budget under control number 2900-0085) [57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20450, May 7, 1996; 69 FR 21068, 21069, Apr. 20, 2004]

(38 U.S.C. 5901-5904, 7105(a))


§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

cclxxxvi Discussion and Analysis in the Veterans Benefits Manual

(a) Applicability of rule. The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) Who may charge fees for representation. Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized pursuant to Rule 605 (§ 20.605 of this part) are not permitted to receive fees. An attorney-at-law or agent who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as representative in accordance with Rule 603(a) or Rule 604(a) (§ 20.603(a) or § 20.604(a) of this part) in his or her individual capacity.

(c) Circumstances under which fees may be charged. (1) General. Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if both of the following conditions have been met:

(i) A final decision has been promulgated by the Board of Veterans' Appeals with respect to the issue, or issues, involved; and

(ii) The attorney-at-law or agent was retained not later than one year following the date that the decision by the Board of Veterans' Appeals with respect to the issue, or issues, involved was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(2) Clear and unmistakable error cases. For the purposes of this section, in the case of a motion under subpart O of this part (relating to requests for revision of prior Board decisions on the grounds of clear and unmistakable error), the "issue" referred to in this paragraph (c) shall have the same meaning as "issue" in Rule 1401(a) (§ 20.1401(a) of this part).

(d) Exceptions -- (1) Chapter 37 loans. With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under
chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

(2) Payment of fee by disinterested third party. (i) An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met. In no such case may the attorney or agent charge a fee which is contingent, in whole or in part, on whether the matter is resolved in a manner favorable to the claimant or appellant.

(ii) For purposes of this part, a person shall be presumed not to be disinterested if that person is the spouse, child, or parent of the claimant or appellant, or if that person resides with the claimant or appellant. This presumption may be rebutted by clear and convincing evidence that the person in question has no financial interest in the success of the claim.

(iii) The provisions of paragraph (g) of this section (relating to fee agreements) shall apply to all payments or agreements to pay involving disinterested third parties. In addition, the agreement shall include or be accompanied by the following statement, signed by the attorney or agent: "I certify that no agreement, oral or otherwise, exists under which the claimant or appellant will provide anything of value to the third-party payer in this case in return for payment of my fee or salary, including, but not limited to, reimbursement of any fees paid."

(e) Fees permitted. Fees permitted for services of an attorney-at-law or agent admitted to practice before the Department of Veterans Affairs must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) Presumption of reasonableness. Fees which total no more than 20 percent of any past-due benefits awarded, as defined in Rule 20.3(n) (§ 20.3(n) of this part), will be presumed to be reasonable.

(g) Fee agreements. All agreements for the payment of fees for services of attorneys-at-law and agents (including agreements involving fees or salary paid by an organization, governmental entity or other disinterested third party) must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran, the name of each disinterested third-party payer (see paragraph (d)(2) of this section), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of
Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(h) Payment of fees by Department of Veterans Affairs directly to an attorney-at-law from past-due benefits. (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an attorney-at-law may enter into a fee agreement providing that payment for the services of the attorney-at-law will be made directly to the attorney-at-law by the Department of Veterans Affairs out of any past-due benefits awarded as a result of a successful appeal to the Board of Veterans' Appeals or an appellate court or as a result of a reopened claim before the Department following a prior denial of such benefits by the Board of Veterans' Appeals or an appellate court. Such an agreement will be honored by the Department only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and § 3.750 et seq. of this chapter.))

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, "past-due benefits" means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the attorney-at-law represents the claimant or appellant in that phase of the claim, the attorney-at-law will be paid a supplemental payment based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the attorney-at-law, the attorney-at-law's fees will be determined on the basis of the total
amount of the past-due benefits even though a portion of those benefits may have been
apportioned to the claimant's or appellant's dependents.
(iii) If an award is made as the result of favorable action with respect to several issues,
the past-due benefits will be calculated only on the basis of that portion of the award
which results from action taken on issues concerning which the criteria in paragraph (c)
of this section have been met.
(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals
as required by paragraph (g) of this section, the attorney-at-law must notify the agency of
original jurisdiction within 30 days of the date of execution of the agreement of the
existence of an agreement providing for the direct payment of fees out of any benefits
subsequently determined to be past due and provide that agency with a copy of the fee
agreement.
(i) Motion for review of fee agreement. The Board of Veterans' Appeals may review a fee
agreement between a claimant or appellant and an attorney-at-law or agent upon its own
motion or upon the motion of any party to the agreement and may order a reduction in the
fee called for in the agreement if it finds that the fee is excessive or unreasonable in light
of the standards set forth in paragraph (e) of this section. Such motions must be in writing
and must include the name of the veteran, the name of the claimant or appellant if other
than the veteran, and the applicable Department of Veterans Affairs file number. Such
motions must set forth the reason, or reasons, why the fee called for in the agreement is
excessive or unreasonable; must be accompanied by all evidence the moving party
desires to submit; and must include a signed statement certifying that a copy of the
motion and any evidence was sent by first-class mail, postage prepaid, to each other party
to the agreement, setting forth the address to which each such copy was mailed. Such
motions (other than motions by the Board) must be filed at the following address: Office
of the Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, 810 Vermont
Avenue, NW, Washington, DC 20420. The other parties may file a response to the
motion, with any accompanying evidence, with the Board at the same address not later
than 30 days following the date of receipt of the copy of the motion and must include a
signed statement certifying that a copy of the response and any evidence was sent by
first-class mail, postage prepaid, to each other party to the agreement, setting forth the
address to which each such copy was mailed. Once there has been a ruling on the motion,
an order shall issue which will constitute the final decision of the Board with respect to
the motion. If a reduction in the fee is ordered, the attorney or agent must credit the
account of the claimant or appellant with the amount of the reduction and refund any
excess payment on account to the claimant or appellant not later than the expiration of the
time within which the ruling may be appealed to the United States Court of Appeals for
Veterans Claims.
(j) In addition to whatever other penalties may be prescribed by law or regulation, failure
to comply with the requirements of this section may result in proceedings under § 14.633
of this chapter to terminate the attorney's or agent's right to practice before the
Department of Veterans Affairs and the Board of Veterans' Appeals.
(Approved by the Office of Management and Budget under control number 2900-0085)
[57 FR 4109, Feb. 3, 1992, as amended at 57 FR 38443, Aug. 25, 1992; 59 FR 25330,
§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) Applicability of rule. The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) General. Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's dependents or survivors in the prosecution of a claim for benefits pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans' Appeals.

(c) Nature of expenses subject to reimbursement. "Expenses" include nonrecurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. "Expenses" do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) Expense charges permitted; motion for review of expenses. Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran, and the applicable Department of Veterans Affairs file number. Such motions must specifically identify which expenses charged are unreasonable; must set forth the reason, or reasons, why such expenses are excessive or unreasonable; must be accompanied by all evidence the claimant or appellant desires to submit; and must include a signed statement certifying that a copy of the motion and any evidence was sent
by first-class mail, postage prepaid, to the representative. Such motions must be filed at
the following address: Office of the Senior Deputy Vice Chairman (012), Board of
Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420. The
representative may file a response to the motion, with any accompanying evidence, with
the Board at the same address not later than 30 days following the date of receipt of the
copy of the motion and must include a signed statement certifying that a copy of the
response and any evidence was sent by first-class mail, postage prepaid, to the claimant
or appellant, setting forth the address to which the copy was mailed. Factors considered
in determining whether expenses are excessive or unreasonable include the complexity of
the case, the potential extent of benefits recoverable, whether travel expenses are in
keeping with expenses normally incurred by other representatives, etc. Once there has
been a ruling on the motion, an order shall issue which will constitute the final decision
of the Board with respect to the motion.
(e) In addition to whatever other penalties may be prescribed by law or regulation, failure
to comply with the requirements of this section may result in proceedings under § 14.633
of this chapter to terminate the attorney's or agent's right to practice before the
Department of Veterans Affairs and the Board of Veterans' Appeals.
(Approved by the Office of Management and Budget under control number 2900-0085)
[57 FR 4109, Feb. 3, 1992, as amended at 57 FR 38443, Aug. 25, 1992; 67 FR 36102,
36105, May 23, 2002]

(38 U.S.C. 5904)
[EFFECTIVE DATE NOTE: 67 FR 36102, 36105, May 23, 2002, revised paragraph (d)
and added paragraph (e), effective June 24, 2002.]

§§ 20.612 -- 20.699 [Reserved]
Subpart H -- Hearings on Appeal

§ 20.701 Rule 701. Who may present oral argument.
§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.
§ 20.703 Rule 703. When a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility may be requested.
§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
§ 20.705 Rule 705. Where hearings on appeal are conducted.
§ 20.706 Rule 706. Functions of the presiding Member.
§ 20.707 Rule 707. Designation of Member or Members to conduct the hearing.
§ 20.709 Rule 709. Procurement of additional evidence following a hearing.
§ 20.710 Rule 710. Witnesses at hearings.
§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.
§ 20.713 Rule 713. Hearings in simultaneously contested claims.
§ 20.714 Rule 714. Record of hearing.
§ 20.715 Rule 715. Recording of hearing by appellant or representative.
§ 20.716 Rule 716. Correction of hearing transcripts.
§ 20.717 Rule 717. Loss of hearing tapes or transcripts -- motion for new hearing.
§§ 20.718 -- 20.799 [Reserved]

Discussion and Analysis in the Veterans Benefits Manual

(a) Right to a hearing. A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to appear in person.

(b) Purpose of hearing. The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue. It is contemplated that the appellant and witnesses, if any, will be present. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with paragraph (d) of this section. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member assigned to conduct the hearing.

(c) Nonadversarial proceedings. Hearings conducted by the Board are ex parte in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable
time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(d) Informal hearings. This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative may present oral arguments, not exceeding 30 minutes in length, to the Board on an audio cassette without personally appearing before the Board of Veterans Appeals. These arguments will be transcribed by Board personnel for subsequent review by the Member or Members to whom the appeal has been assigned for a determination. This procedure will not be construed to satisfy an appellant's request to appear in person.

(e) Electronic hearings. When suitable facilities and equipment are available, an appellant may be scheduled for an electronic hearing. Any such hearing will be in lieu of a hearing held by personally appearing before a Member or panel of Members of the Board and shall be conducted in the same manner as, and considered the equivalent of, such a hearing. If an appellant declines to participate in an electronic hearing, the appellant's opportunity to participate in a hearing before the Board shall not be affected.

[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20450, May 7, 1996]

(38 U.S.C. 7102, 7105(a), 7107)
[EFFECTIVE DATE NOTE: 61 FR 20447, 20450, May 7, 1996, which amended paragraphs (b) and (d), and added paragraph (e), became effective May 7, 1996.]

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before the Board of Veterans' Appeals.

[57 FR 4109, Feb. 3, 1992]

(38 U.S.C. 7102, 7105, 7107)

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.

(a) General. To the extent that officials scheduling hearings for the Board of Veterans' Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(b) Notification of hearing. When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)
(c) Requests for changes in hearing dates. (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of a hearing conducted by the Board of Veterans' Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion for a new hearing date must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(d) Failure to appear for a scheduled hearing. If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her
representative gives notice that the contingency which gave rise to the failure to appear has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of hearings before the Board of Veterans' Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member assigned to conduct the hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7105A, 7107)

(e) Withdrawal of hearing requests. A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be sent to: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

(Approved by the Office of Management and Budget under control number 2900-0085)


§ 20.703 Rule 703. When a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility may be requested.

An appellant, or an appellant's representative, may request a hearing before the Board of Veterans' Appeals at a Department of Veterans Affairs field facility when submitting the substantive appeal (VA Form 9) or anytime thereafter, subject to the restrictions in Rule 1304 (§ 20.1304 of this part). Requests for such hearings before a substantive appeal has been filed will be rejected.

(Authority: 38 U.S.C. 7105(a), 7107)


[EFFECTIVE DATE NOTE: 61 FR 43008, 43009, Aug. 20, 1996, which revised this section, became effective Aug. 20, 1996.]

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

(a) General. Hearings are conducted by a Member or Members of the Board of Veterans' Appeals during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. Subject to paragraph (f) of this section, the hearings will be scheduled in the order specified in § 19.75 of this chapter. Requests for such hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) Notification of hearing. When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.
(c) Requests for changes in hearing dates. Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) Failure to appear for a scheduled hearing. If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Whether good cause for such failure to appear and the impossibility of timely requesting postponement have been established will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) Withdrawal of hearing requests. A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be submitted to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(f) Advancement of the case on the hearing docket. A hearing may be scheduled at a time earlier than would be provided for under § 19.75 of this chapter upon written motion of the appellant or the representative. The same grounds for granting relief, motion filing procedures, and designation of authority to rule on the motion specified in Rule 900(c) (§ 20.900(c) of this part) for advancing a case on the Board's docket shall apply.
§ 20.705 Rule 705. Where hearings on appeal are conducted.
A hearing on appeal before the Board of Veterans' Appeals may be held in one of the following places at the option of the appellant:
(a) In Washington, DC, or
(b) At a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings.

§ 20.706 Rule 706. Functions of the presiding Member.
The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

§ 20.707 Rule 707. Designation of Member or Members to conduct the hearing.
The Member or panel to whom a proceeding is assigned under § 19.3 of this part shall conduct any hearing before the Board in connection with that proceeding. Where a proceeding has been assigned to a panel, the Chairman, or the Chairman's designee, shall designate one of the Members as the presiding Member. The Member or Members who conduct the hearing shall participate in making the final determination of the claim, subject to the exception in § 19.11(c) of this part (relating to reconsideration of a decision).

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before the Board at Washington, DC, arrangements for a prehearing conference must be made through: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before the Board at Department of Veterans Affairs field facilities must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.[58 FR 27936, May 12, 1993; 61 FR 20447, 20452, May 7, 1996]

§ 20.709 Rule 709. Procurement of additional evidence following a hearing.
If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20452, May 7, 1996]

§ 20.710 Rule 710. Witnesses at hearings.
The testimony of witnesses, including appellants, will be heard. All testimony must be given under oath or affirmation. Oath or affirmation is not required for the sole purpose of presenting contentions and argument.[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20452, May 7, 1996; 61 FR 29027, 29028, June 7, 1996]

(a) General. An appellant, or his or her representative, may arrange for the production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence cannot be obtained in any other reasonable way, the appellant, or his
or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) Contents of motion for subpoena. The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) Where filed. Motions for a subpoena must be filed with the Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) When motion for subpoena is to be filed in cases involving a hearing on appeal. Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) Ruling on motion for subpoena. (1) To whom assigned. The ruling on the motion will be made by the Member or panel of Members to whom the case is assigned. Where the case has not been assigned, the Chairman, or the Chairman's designee, will assign the case to a Member or panel who will then rule on the motion.

(2) Procedure. If the motion is denied, the Member(s) ruling on the motion will issue an order to that effect which sets forth the reasons for the denial and will send copies to the moving party and his or her representative, if any. Granting the motion will be signified by completion of a VA Form 0714, "Subpoena," if attendance of a witness is required, and/or VA Form 0713, "Subpoena Duces Tecum," if production of tangible evidence is required. The completed form shall be signed by the Member ruling on the motion, or, where applicable, by any panel Member on behalf of the panel ruling on the motion, and served in accordance with paragraph (g) of this section.

(f) Fees. Any person who is required to attend a hearing as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. A subpoena for a witness will not be issued or served unless the party on whose behalf the subpoena is issued submits a check in an amount equal to the fee for one day's attendance and the mileage allowed by law, made payable to the witness, as an attachment to the motion for the subpoena. Except for checks on the business accounts of attorneys-at-law, agents, and recognized service organizations, such checks must be in the form of certified checks or cashier's checks.

(g) Service of subpoenas. The Board will serve the subpoena by certified mail, return receipt requested. The check for fees and mileage described in paragraph (f) of this section shall be mailed with the subpoena. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(h) Motion to quash or modify subpoena. (1) Filing procedure. Upon written motion of the party securing the subpoena, or of the person subpoenaed, the Board may quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown. Relief may include, but is not limited to, requiring the party who secured the subpoena to
advance the reasonable cost of producing books, papers, or other tangible evidence. The motion must specify the relief sought and the reasons for requesting relief. Such motions must be filed at the address specified in paragraph (c) of this section within 10 days after mailing of the subpoena or the time specified in the subpoena for compliance, whichever is less. The motion may be accompanied by such supporting evidence as the moving party may choose to submit. It must be accompanied by a declaration showing:
(i) That a copy of the motion, and any attachments thereto, were mailed to the party who secured the subpoena, or the person subpoenaed, as applicable;
(ii) The date of mailing; and
(iii) The address to which the copy was mailed.
(2) Response. Not later than 10 days after the date that the motion was mailed to the responding party, that party may file a response to the motion at the address specified in paragraph (c) of this section. The response may be accompanied by such supporting evidence as the responding party may choose to submit. It must be accompanied by a declaration showing:
(i) That a copy of the response, and any attachments thereto, were mailed to the moving party;
(ii) The date of mailing; and
(iii) The address to which the copy was mailed. If the subpoena involves testimony or the production of tangible evidence at a hearing before the Board and less than 30 days remain before the scheduled hearing date at the time the response is received by the Board, the Board may reschedule the hearing to permit disposition of the motion.
(3) Ruling on the motion. The Member or panel to whom the case is assigned will issue an order disposing of the motion. Such order shall set forth the reasons for which a motion is either granted or denied. The order will be mailed to all parties to the motion. Where applicable, an order quashing a subpoena will require refund of any sum advanced for fees and mileage.
(i) Disobedience. In case of disobedience to a subpoena issued by the Board, the Board will take such steps as may be necessary to invoke the aid of the appropriate district court of the United States in requiring the attendance of the witness and/or the production of the tangible evidence subpoenaed. A failure to obey the order of such a court may be punished by the court as a contempt thereof.

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.
No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(38 U.S.C. 111)
§ 20.713 Rule 713. Hearings in simultaneously contested claims.
(a) General. If a hearing is scheduled for any party to a simultaneously contested claim, the other contesting claimants and their representatives, if any, will be notified and afforded an opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.
(b) Requests for changes in hearing dates. Any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 702, paragraph (c) (§ 20.702(c) of this part), or Rule 704, paragraph (c) (§ 20.704(c) of this part), as applicable. In order to obtain a new hearing date under the provisions of Rule 702, paragraph (c)(1), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, paragraph (c)(2) of that rule will apply even though the request is submitted within 60 days from the date of the letter of notification of the time and place of the hearing. A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(38 U.S.C. 7105A)

§ 20.714 Rule 714. Record of hearing.
(a) Board of Veterans' Appeals. A hearing before a Member or panel of Members of the Board, whether held in Washington, DC, or at a Department of Veterans Affairs field facility, will be recorded on audio tape. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing as a duplicate record of the hearing. Tape recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:
(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why transcription is necessary. They must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.)
(2) Testimony and/or argument has been presented at the hearing pertaining to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a Member or Members of the Board at a Department of Veterans Affairs field facility:
   (i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;
   (ii) The appeal involves reconsideration of a prior Board of Veterans' Appeals decision on the same issue; or

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Appeals for Veterans Claims.

(b) Copy of hearing tape recording or written transcript. One copy of the tape recording of hearing proceedings before the Board of Veterans' Appeals, or the written transcript of such proceedings when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, shall be furnished without cost to the appellant or representative if a request is made in accordance with § 1.577 of this chapter.


(38 U.S.C. 7102, 7105(a), 7107)

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may only be authorized when prior written consent is obtained from all appellants and contesting claimants, if any, and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus. In all such situations, advance arrangements must be made. In the case of hearings held before the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before the Board at Department of Veterans Affairs field facilities, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

[58 FR 27936, May 12, 1993; 61 FR 20447, 20452, May 7, 1996]

(38 U.S.C. 7102, 7105(a), 7107)

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans' Appeals or a transcript prepared by the Board of Veterans' Appeals is the only official record of a hearing before the Board. Alternate transcript versions prepared by the appellant and representative will not be accepted. If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for the correction of the
§ 20.717 Rule 717. Loss of hearing tapes or transcripts -- motion for new hearing.
(a) Motion for new hearing. In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would result from the failure to provide a new hearing.
(b) Time limit for filing motion for a new hearing. The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans' Appeals decision or, in cases appealed to the United States Court of Appeals for Veterans Claims, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.
(c) Where motion for a new hearing is filed. In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.
(d) Ruling on motion for a new hearing. The ruling on the motion for a new hearing will be made by the Member who presided over the hearing. If the presiding Member is no longer available, the ruling on the motion may be made by the Member or Members to whom the case has been assigned for a determination. In cases in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the Chairman will assign the matter in accordance with § 19.3 of this title. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans' Appeals decision has already been promulgated, a supplemental decision will be issued.

§§ 20.718 -- 20.799 [Reserved]
§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.
§§ 20.801 -- 20.899 [Reserved]

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.
Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

(38 U.S.C. 7105(d)(1))

§§ 20.801 -- 20.899 [Reserved]
SUBPART J -- ACTION BY THE BOARD

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.
§ 20.902 Rule 902. Filing of requests for the procurement of opinions.
§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.
§ 20.904 Rule 904. Vacating a decision.
§§ 20.905 -- 20.999 [Reserved]


Discussion and Analysis in the Veterans Benefits Manual

(a) Docketing of appeals. Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) Appeals considered in docket order. Except as otherwise provided in this Rule, appeals are considered in the order in which they are entered on the docket.

(c) Advancement on the docket. (1) Grounds for advancement. A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. "Other sufficient cause" shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case or the advanced age of the appellant. For purposes of this Rule, "advanced age" is defined as 75 or more years of age. This paragraph does not require the Board to advance a case on the docket in the absence of a motion of a party to the case or the party's representative.

(2) Requirements for motions. Motions for advancement on the docket must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(3) Disposition of motions. If a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(d) Consideration of appeals remanded by the United States Court of Appeals for Veterans Claims. A case remanded by the United States Court of Appeals for Veterans Claims for additional development or other appropriate action will be treated expeditiously by the Board without regard to its place on the Board's docket.
§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) Opinion from the Veterans Health Administration. The Board may obtain a medical opinion from an appropriate health care professional in the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(b) Armed Forces Institute of Pathology opinions. The Board may refer pathologic material to the Armed Forces Institute of Pathology and request an opinion based on that material.

(c) Opinion of the General Counsel. The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(d) Independent medical expert opinions. When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(e) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of the Board before whom a case is pending.

§ 20.902 Rule 902. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 901 (§ 20.901 of this part). The request must be in writing. It will be granted upon a
§ 20.903 Rule 903. Notification of evidence secured and law to be considered by the Board and opportunity for response.

(a) If the Board obtains a legal or medical opinion. If the Board requests an opinion pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. A period of 60 days from the date the Board furnishes a copy of the opinion will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes a copy will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(b) If the Board considers law not already considered by the agency of original jurisdiction. If, pursuant to Sec. 19.9(b)(2) of this chapter, the Board intends to consider law not already considered by the agency of original jurisdiction and such consideration could result in denial of the appeal, the Board will notify the appellant and his or her representative, if any, of its intent to do so and that such consideration in the first instance by the Board could result in denial of the appeal. The notice from the Board will contain a copy or summary of the law to be considered. A period of 60 days from the date the Board furnishes the notice will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes the notice will be presumed to be the same as the date of the letter that accompanies the notice for purposes of determining whether a response was timely filed. No notice is required under this paragraph if the Board intends to grant the benefit being sought or if the appellant or the appellant's representative has advanced or otherwise argued the applicability of the law in question.


(38 U.S.C. 7104(a), 7109(c)).

[EFFECTIVE DATE NOTE: 67 FR 3099, 3105, Jan. 23, 2002, revised this section, effective Feb. 22, 2002.]

§ 20.904 Rule 904. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans' Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) Denial of due process. Examples of circumstances in which denial of due process of law will be conceded are:

______
(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans' Appeals personnel,
(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and
(3) When there was a prejudicial failure to afford the appellant a personal hearing.
(Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)
(b) Allowance of benefits based on false or fraudulent evidence. Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(38 U.S.C. 7104(a))

§§ 20.905 -- 20.999 [Reserved]

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SUBPART K -- RECONSIDERATION

§ 20.1000 Rule 1000. When reconsideration is accorded.
§ 20.1002 Rule 1002. [Reserved]
§ 20.1003 Rule 1003. Hearings on reconsideration.
§§ 20.1004 -- 20.1099 [Reserved]

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans' Appeals on motion by the appellant or his or her representative or on the Board's own motion:
(a) Upon allegation of obvious error of fact or law;
(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned; or
(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.


(38 U.S.C. 7103, 7104)


(a) Application requirements. A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans' Appeals decision, or decisions, involved more than one issue on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.
(b) Filing of motion for reconsideration. A motion for reconsideration of a prior Board of Veterans' Appeals decision may be filed at any time. Such motions must be filed at the following address: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.
(c) Disposition. The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:
(1) Motion denied. The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.
(2) Motion allowed. If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60...
days from the date of mailing of the letter of notification to present additional arguments or evidence. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with § 19.11 of this chapter.
[57 FR 4109, Feb. 3, 1992]

(38 U.S.C. 7103, 7108)

§ 20.1002 Rule 1002. [Reserved]

§ 20.1003 Rule 1003. Hearings on reconsideration.
After a motion for reconsideration has been allowed, a hearing will be granted if an appellant requests a hearing before the Board. The hearing will be held by a Member or Members assigned to the reconsideration panel. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with Rule 700(d) (§ 20.700(d) of this part). Requests for appearances by representatives alone to personally present argument to a Member or panel of Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member.
[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20453, May 7, 1996]

38 U.S.C. 7102, 7103, 7104(a), 7105(a).
[EFFECTIVE DATE NOTE: 61 FR 20447, 20453, May 7, 1996, which revised this section, became effective May 7, 1996.]

§§ 20.1004 -- 20.1099 [Reserved]
SUBPART L -- FINALITY

§ 20.1100 Rule 1100. Finality of decisions of the Board.
§ 20.1101 Rule 1101. [Reserved]
§ 20.1102 Rule 1102. Harmless error.
§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.
§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.
§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.
§§ 20.1107 -- 20.1199 [Reserved]

§ 20.1100 Rule 1100. Finality of decisions of the Board.
(a) General. All decisions of the Board will be stamped with the date of mailing on the face of the decision. Unless the Chairman of the Board orders reconsideration, and with the exception of matters listed in paragraph (b) of this section, all Board decisions are final on the date stamped on the face of the decision. With the exception of matters listed in paragraph (b) of this section, the decision rendered by the reconsideration Panel in an appeal in which the Chairman has ordered reconsideration is final.
(b) Exceptions. Final Board decisions are not subject to review except as provided in 38 U.S.C. 1975 and 1984 and 38 U.S.C. chapters 37 and 72. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.
[57 FR 4109, Feb. 3, 1992; 61 FR 20447, 20453, May 7, 1996]

38 U.S.C. 511(a), 7103, 7104(a).
[EFFECTIVE DATE NOTE: 61 FR 20447, 20453, May 7, 1996, which amended paragraph (a), became effective May 7, 1996.]

§ 20.1101 Rule 1101. [Reserved]

§ 20.1102 Rule 1102. Harmless error.
An error or defect in any decision by the Board of Veterans' Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(38 U.S.C. 7103)

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.
A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§ 20.302 of this part).
§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans' Appeals, such determination is subsumed by the final appellate decision.  

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a basis for allowing the claim. An adverse determination as to either question is appealable.  


Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2), 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.  
[57 FR 4109, Feb. 3, 1992; 67 FR 16309, 16317, Apr. 5, 2002; 70 FR 72211, December 2, 2005]

§§ 20.1107 -- 20.1199 [Reserved]
SUBPART M -- PRIVACY ACT

§§ 20.1202 -- 20.1299 [Reserved]

When a Privacy Act request is filed under § 1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(5 U.S.C. 552a; 38 U.S.C. 7107)

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000-20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000-20.1003 of this part).

(5 U.S.C. 552a(d); 38 U.S.C. 7103, 7108)

§§ 20.1202 -- 20.1299 [Reserved]
SUBPART N -- MISCELLANEOUS

§ 20.1300 Rule 1300. Removal of Board records.
§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.
§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans’ Appeals.

CROSS-REFERENCE: In cases involving access to patient information relating to a Department of Veterans Affairs program for, or the treatment of, drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.1300 Rule 1300. Removal of Board records.
No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.
[57 FR 4109, Feb. 3, 1992; 61 FR 29027, 29028, June 7, 1996]
(38 U.S.C. 5701.)
[EFFECTIVE DATE NOTE: 61 FR 29027, 29028, June 7, 1996, which revised this section, became effective June 7, 1996.]

(a) Policy. It is the policy of the Board of Veterans' Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.
(Authority: 38 U.S.C. 7105(d)(2))
(b) Public availability of Board decisions. (1) Decisions issued on or after January 1, 1992. Decisions rendered by the Board of Veterans' Appeals on or after January 1, 1992, are electronically available for public inspection and copying on the Internet at http://www.index.va.gov/search/va/bva.html. All personal identifiers are redacted from the decisions prior to publication. Specific decisions may be identified by a word and/or topic search, or by the Board docket number. Board decisions will continue to be provided in a widely-used format as future advances in technology occur.
(2) Decisions issued prior to January 1, 1992. Decisions rendered by the Board of Veterans' Appeals prior to January 1, 1992, have been indexed to facilitate access to the contents of the decisions (BVA Index I-01-1). The index, which was published

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quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. Information on obtaining a microfiche copy of the index is also available from the Board's Research Center. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written depends upon the age of the decision. Decisions archived prior to late 1989 have a number such as 82-07-0001. Decisions archived at a later date have a number such as BVA-90-12345. This number must be used when requesting a paper copy of that decision. These requests must be directed to the Research Center (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. (Authority: 5 U.S.C. 552(a)(2), 38 U.S.C. 501(a)) [57 FR 4109, Feb. 3, 1992; 71 FR 18008, April 10, 2006].

(5 U.S.C. 552(a)(2))

An appeal pending before the Board of Veterans' Appeals when the appellant dies will be dismissed.

(38 U.S.C. 7104(a))

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.
Although the Board strives for consistency in issuing its decisions, previously issued Board decisions will be considered binding only with regard to the specific case decided. Prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, but each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(38 U.S.C. 7104(a))

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.
(a) Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records. An appellant and his or her representative, if any, will be granted a period of 90 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board, or until the date the appellate decision is promulgated by the Board of Veterans' Appeals, whichever comes first, during which they may submit a request for a personal hearing,
additional evidence, or a request for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (d) of this section if a simultaneously contested claim is involved.

(b) Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence -- (1) General rule. Subject to the exception in paragraph (b)(2) of this section, following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Depending upon the ruling on the motion, action will be taken as follows:

(i) Good cause not shown. If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.
(ii) Good cause shown. If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (d) of this section if a simultaneously contested claim is involved.

(2) If the Board obtains evidence or considers law not considered by the agency of original jurisdiction. The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to the notice described in paragraph (a) or (b) of Rule 903 (paragraph (a) or (b) of § 20.903 of this part).

(c) Consideration of additional evidence by the Board or by the agency of original jurisdiction. Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, or is submitted by the appellant or representative in response to a Sec. 20.903 of this part, notification, as well as any such evidence referred to the Board by the agency of original jurisdiction under Sec. 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review, unless this procedural right is waived by the appellant or representative, or unless the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal without such referral. Such a waiver must be in writing or, if a hearing on appeal is conducted, the waiver must be formally entered on the record orally at the time of the hearing. Evidence is not pertinent if it does not relate to or have a bearing on the appellate issue or issues.

(d) Simultaneously contested claims. In simultaneously contested claims, if pertinent evidence which directly affects payment, or potential payment, of the benefit sought is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. For matters over which the Board does not have original jurisdiction, a waiver of initial agency of original jurisdiction consideration of pertinent additional evidence received by the Board must be obtained from each claimant in accordance with paragraph (c) of this section. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.


(38 U.S.C. 7104, 7105, 7105(A)).

SUBPART O -- REVISION OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR

§ 20.1400 Rule 1400. Motions to revise Board decisions.
§ 20.1402 Rule 1402. Inapplicability of other rules.
§ 20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.
§ 20.1404 Rule 1404. Filing and pleading requirements; withdrawal.
§ 20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.
§ 20.1407 Rule 1407. Motions by the Board.
§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.
§ 20.1409 Rule 1409. Finality and appeal.
§ 20.1411 Rule 1411. Relationship to other statutes.

§ 20.1400 Rule 1400. Motions to revise Board decisions.
(a) Review to determine whether clear and unmistakable error exists in a final Board decision may be initiated by the Board, on its own motion, or by a party to that decision (as the term "party" is defined in Rule 1401(b) (§ 20.1401(b) of this part) in accordance with Rule 1404 (§ 20.1404 of this part).
(b) All final Board decisions are subject to revision under this subpart except:
(1) Decisions on issues which have been appealed to and decided by a court of competent jurisdiction; and
(2) Decisions on issues which have subsequently been decided by a court of competent jurisdiction.
[64 FR 2134, 2139, Jan. 13, 1999; 64 FR 73413, 73414, Dec. 30, 1999]

(Authority: 38 U.S.C. 501(a), 7111)

(a) Issue. Unless otherwise specified, the term "issue" in this subpart means a matter upon which the Board made a final decision (other than a decision under this subpart). As used in the preceding sentence, a "final decision" is one which was appealable under Chapter 72 of title 38, United States Code, or which would have been so appealable if such provision had been in effect at the time of the decision.
(b) Party. As used in this subpart, the term "party" means any party to the proceeding before the Board that resulted in the final Board decision which is the subject of a motion under this subpart, but does not include officials authorized to file administrative appeals pursuant to § 19.51 of this title.
§ 20.1402 Rule 1402. Inapplicability of other rules.

Motions filed under this subpart are not appeals and, except as otherwise provided, are not subject to the provisions of part 19 of this title or this part 20 which relate to the processing and disposition of appeals.

§ 20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.

(a) General. Clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. Generally, either the correct facts, as they were known at the time, were not before the Board, or the statutory and regulatory provisions extant at the time were incorrectly applied.

(b) Record to be reviewed. -- (1) General. Review for clear and unmistakable error in a prior Board decision must be based on the record and the law that existed when that decision was made.

(2) Special rule for Board decisions issued on or after July 21, 1992. For a Board decision issued on or after July 21, 1992, the record that existed when that decision was made includes relevant documents possessed by the Department of Veterans Affairs not later than 90 days before such record was transferred to the Board for review in reaching that decision, provided that the documents could reasonably be expected to be part of the record.

(c) Errors that constitute clear and unmistakable error. To warrant revision of a Board decision on the grounds of clear and unmistakable error, there must have been an error in the Board's adjudication of the appeal which, had it not been made, would have manifestly changed the outcome when it was made. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

(d) Examples of situations that are not clear and unmistakable error. -- (1) Changed diagnosis. A new medical diagnosis that "corrects" an earlier diagnosis considered in a Board decision.

(2) Duty to assist. The Secretary's failure to fulfill the duty to assist.

(3) Evaluation of evidence. A disagreement as to how the facts were weighed or evaluated.
(e) Change in interpretation. Clear and unmistakable error does not include the otherwise correct application of a statute or regulation where, subsequent to the Board decision challenged, there has been a change in the interpretation of the statute or regulation.
[64 FR 2134, 2139, Jan. 13, 1999]

(Authority: 38 U.S.C. 501(a), 7111)
[EFFECTIVE DATE NOTE: 64 FR 2134, 2139, Jan. 13, 1999, added Subpart O, effective Feb. 12, 1999.]

§ 20.1404 Rule 1404. Filing and pleading requirements; withdrawal.

(a) General. A motion for revision of a decision based on clear and unmistakable error must be in writing, and must be signed by the moving party or that party's representative. The motion must include the name of the veteran; the name of the moving party if other than the veteran; the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision to which the motion relates. If the applicable decision involved more than one issue on appeal, the motion must identify the specific issue, or issues, to which the motion pertains. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refiling under this subpart.

(b) Specific allegations required. The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refiling under this subpart.

(c) Filing. A motion for revision of a decision based on clear and unmistakable error may be filed at any time. Such motions should be filed at the following address: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) Requests not filed at the Board. A request for revision transmitted to the Board by the Secretary pursuant to 38 U.S.C. 7111(f) (relating to requests for revision filed with the Secretary other than at the Board) shall be treated as if a motion had been filed pursuant to paragraph (c) of this section.

(e) Motions for reconsideration. A motion for reconsideration, as described in subpart K of this part, whenever filed, will not be considered a motion under this subpart.

(f) Withdrawal. A motion under this subpart may be withdrawn at any time before the Board promulgates a decision on the motion. Such withdrawal shall be in writing, shall be filed at the address listed in paragraph (c) of this section, and shall be signed by the moving party or by such party's representative. If such a writing is timely received, the motion shall be dismissed without prejudice to refiling under this subpart.
[64 FR 2134, 2139, Jan. 13, 1999; 66 FR 35902, 35903, July 10, 2001, as confirmed at 67 FR 46869, 46870, July 17, 2002]

(38 U.S.C. 501(a), 7111)

(a) Docketing and assignment; notification of representative -- (1) General. Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this title (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(2) Advancement on the docket. A motion may be advanced on the docket subject to the same substantive and procedural requirements as those applicable to an appeal under Rule 900(c) (§ 20.900(c) of this part).

(3) Notification of representative. When the Board receives a motion under this subpart from an individual whose claims file indicates that he or she is represented, the Board shall provide a copy of the motion to the representative before assigning the motion to a Member or panel. Within 30 days after the date on which the Board provides a copy of the motion to the representative, the representative may file a relevant response, including a request to review the claims file prior to filing a further response. Upon request made within the time allowed under this paragraph (a)(2), the Board shall arrange for the representative to have the opportunity to review the claims file, and shall permit the representative a reasonable time after making the file available to file a further response.

(b) Evidence. No new evidence will be considered in connection with the disposition of the motion. Material included in the record on the basis of Rule 1403(b)(2) (§ 20.1403(b)(2) of this part) is not considered new evidence.

(c) Hearing. -- (1) Availability. The Board may, for good cause shown, grant a request for a hearing for the purpose of argument. No testimony or other evidence will be admitted in connection with such a hearing. The determination as to whether good cause has been shown shall be made by the member or panel to whom the motion is assigned.

(2) Submission of requests. Requests for such a hearing shall be submitted to the following address: Director, Management and Administration (01E), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) Decision to be by the Board. The decision on a motion under this subpart shall be made by the Board. There shall be no referral of the matter to any adjudicative or hearing official acting on behalf of the Secretary for the purpose of deciding the motion.

(e) Referral to ensure completeness of the record. Subject to the provisions of paragraph (b) of this section, the Board may use the various agencies of original jurisdiction to ensure completeness of the record in connection with a motion under this subpart.

(f) General Counsel opinions. The Board may secure opinions of the General Counsel in connection with a motion under this subpart. In such cases, the Board will notify the party and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the party's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the party if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for
response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(g) Decision. The decision of the Board on a motion will be in writing. The decision will include separately stated findings of fact and conclusions of law on all material questions of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the motion.


(38 U.S.C. 501(a), 7104(d), 7111)
[EFFECTIVE DATE NOTE: 68 FR 53681, 53682, Sept. 12, 2003, redesignated paragraph (a)(2) as paragraph (a)(3), and added a new paragraph (a)(2), effective Sept. 12, 2003.]

§ 20.1406 Rule 1406. Effect of revision; discontinuance or reduction of benefits.

(a) General. A decision of the Board that revises a prior Board decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision.

(b) Discontinuance or reduction of benefits. Revision of a prior Board decision under this subpart that results in the discontinuance or reduction of benefits is subject to laws and regulations governing the reduction or discontinuance of benefits by reason of erroneous award based solely on administrative error or errors in judgment.

[64 FR 2134, 2140, Jan. 13, 1999]

(Authority: 38 U.S.C. 7111(b))
[EFFECTIVE DATE NOTE: 64 FR 2134, 2140, Jan. 13, 1999, added Subpart O, effective Feb. 12, 1999.]

§ 20.1407 Rule 1407. Motions by the Board.

If the Board undertakes, on its own motion, a review pursuant to this subpart, the party to that decision and that party's representative (if any) will be notified of such motion and provided an adequate summary thereof and, if applicable, outlining any proposed discontinuance or reduction in benefits that would result from revision of the Board's prior decision. They will be allowed a period of 60 days to file a brief or argument in answer. The failure of a party to so respond does not affect the finality of the Board's decision on the motion.

[64 FR 2134, 2140, Jan. 13, 1999]

(Authority: 38 U.S.C. 501(a), 7111)
[EFFECTIVE DATE NOTE: 64 FR 2134, 2140, Jan. 13, 1999, added Subpart O, effective Feb. 12, 1999.]

§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.

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In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(o) (§ 20.3(o) of this part), a copy of such motion shall, to the extent practicable, be sent to all other contesting parties. Other parties have a period of 30 days from the date of mailing of the copy of the motion to file a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy. Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

[64 FR 2134, 2140, Jan. 13, 1999]

(Authority: 38 U.S.C. 501(a))

[EFFECTIVE DATE NOTE: 64 FR 2134, 2140, Jan. 13, 1999, added Subpart O, effective Feb. 12, 1999.]

§ 20.1409 Rule 1409. Finality and appeal.
(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart will be stamped with the date of mailing on the face of the decision, and is final on such date. The party and his or her representative, if any, will be provided with copies of the decision.
(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part), Rule 1404(b) (§ 20.1404(b)), or Rule 1404(f) (§ 20.1404(f)), or a referral under Rule 1405(e) is not a final decision of the Board.
(c) Once there is a final decision on a motion under this subpart relating to a prior Board decision on an issue, that prior Board decision on that issue is no longer subject to revision on the grounds of clear and unmistakable error. Subsequent motions relating to that prior Board decision on that issue shall be dismissed with prejudice.
(d) Chapter 72 of title 38, United States Code (relating to judicial review), applies with respect to final decisions on motions filed by a party or initiated by the Board pursuant to this subpart.

[64 FR 2134, 2140, Jan. 13, 1999; 66 FR 35902, 35903, July 10, 2001, as confirmed at 67 FR 46869, 46870, July 17, 2002]

(38 U.S.C. 501(a); Pub. L. 105-111)

[EFFECTIVE DATE NOTE: 66 FR 35902, 35903, July 10, 2001, revised paragraph (b), effective July 10, 2001.]

The Board will stay its consideration of a motion under this subpart upon receiving notice that the Board decision that is the subject of the motion has been appealed to a court of competent jurisdiction until the appeal has been concluded or the court has issued an order permitting, or directing, the Board to proceed with the motion.

[64 FR 2134, 2140, Jan. 13, 1999]

(Authority: 38 U.S.C. 501(a))

[EFFECTIVE DATE NOTE: 64 FR 2134, 2140, Jan. 13, 1999, added Subpart O, effective Feb. 12, 1999.]
§ 20.1411 Rule 1411. Relationship to other statutes.

(a) The "benefit of the doubt" rule of 38 U.S.C. 5107(b) does not apply to the Board's decision, on a motion under this subpart, as to whether there was clear and unmistakable error in a prior Board decision.

(b) A motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (relating to reopening claims on the grounds of new and material evidence).

(c) A motion under this subpart is not an application for benefits subject to any duty associated with 38 U.S.C. 5103(a) (relating to applications for benefits).

(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5107(a) (requiring "well-grounded" claims and imposing a duty to assist).

[64 FR 2134, 2141, Jan. 13, 1999]

(Authority: 38 U.S.C. 501(a))

[EFFECTIVE DATE NOTE: 64 FR 2134, 2141, Jan. 13, 1999, added Subpart O, effective Feb. 12, 1999.]
## APPENDIX A TO PART 20 -- CROSS-REFERENCES

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Cross-reference</th>
<th>Title of cross-referenced material or comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.1</td>
<td>38 CFR 3.103(a)</td>
<td>Statement of policy.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 19.31</td>
<td>Supplemental Statement of the Case.</td>
</tr>
<tr>
<td>20.301</td>
<td>38 CFR 20.500</td>
<td>Rule 500. Who can file an appeal in simultaneously contested claims.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 20.605</td>
<td>Rule 605. Other persons as representative.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 20.503</td>
<td>Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 20.503</td>
<td>Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.</td>
</tr>
<tr>
<td>20.400</td>
<td>38 CFR 19.50-19.53</td>
<td>See also re administrative appeals.</td>
</tr>
<tr>
<td>20.401</td>
<td>38 CFR 19.50-19.53</td>
<td>See also re administrative appeals.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 20.302-20.306</td>
<td>See re time limits for perfecting an appeal in simultaneously contested claims.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 20.713</td>
<td>Rule 713. Hearings in simultaneously contested claims.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 20.713</td>
<td>Rule 713. Hearings in simultaneously contested claims.</td>
</tr>
<tr>
<td>20.600</td>
<td>38 CFR 14.626 et seq</td>
<td>See also re representation.</td>
</tr>
<tr>
<td></td>
<td>38 CFR 20.605</td>
<td>Rule 605. Other persons as representative.</td>
</tr>
</tbody>
</table>
38 CFR 20.100 Rule 100. Name, business hours, and mailing address of the Board.


38 CFR 20.608 Rule 608. Withdrawal of services by a representative.

38 CFR 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

38 CFR 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.


38 CFR 20.100 Rule 100. Name, business hours, and mailing address of the Board.

38 CFR 20.606 Rule 606. Legal interns, law students and paralegals.


38 CFR 20.608 Rule 608. Withdrawal of services by a representative.

38 CFR 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

38 CFR 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.


38 CFR 20.100 Rule 100. Name, business hours, and mailing address of the Board.


38 CFR 20.608 Rule 608. Withdrawal of services by a representative.

38 CFR 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

38 CFR 20.610

personnel acting on behalf of the Board of Veterans' Appeals at field facilities.

20.706 38 CFR 20.700(c) See also re the presiding Member's role in the conduct of hearings.


38 CFR 20.709 Rule 709. Procurement of additional evidence following a hearing.

20.707 38 CFR 19.11 Reconsideration Section.

20.708 38 CFR 20.606(d) See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.

20.709 38 CFR 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

38 CFR 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence.
following certification of an appeal to the Board of Veterans' Appeals.


20.711 38 CFR 2.1 See for further information on subpoenas, including action to be taken in the event of noncompliance.

20.713 38 CFR 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.

20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs facilities.

20.706 Rule 706. Functions of the presiding Member.

20.800 Rule 800. Filing additional evidence does not extend time limit for appeal.

20.709 Rule 709. Procurement of additional evidence following a hearing.

20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

20.1407 See re opinions of the General Counsel of the Department of Veterans Affairs.


20.700(b) See re submission of written brief and of oral argument on audio cassette.


20.1302 Rule 1302. Continuation of representation following death of a claimant or appellant.

20.1304 See also re hearings.

New and
material
evidence.

38 CFR 3.160(e)  Reopened claim.


PART 21 -- VOCATIONAL REHABILITATION AND EDUCATION

Subpart A -- Vocational Rehabilitation Under 38 U.S.C. Chapter 31
Subpart B -- Claims and Applications for Educational Assistance
SUBPART C -- SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CHAPTER 35
SUBPART D -- ADMINISTRATION OF EDUCATIONAL ASSISTANCE PROGRAMS
SUBPART F -- EDUCATION LOANS
SUBPART F-3 [Subpart F-3 was removed and reserved. See 66 FR 38938, July 26, 2001.]
SUBPART G -- POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CHAPTER 32
SUBPART H -- EDUCATIONAL ASSISTANCE TEST PROGRAM
SUBPART I -- TEMPORARY PROGRAM OF VOCATIONAL TRAINING FOR CERTAIN NEW PENSION RECIPIENTS
SUBPART J -- TEMPORARY PROGRAM OF VOCATIONAL TRAINING AND REHABILITATION
SUBPART K -- ALL VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM (MONTGOMERY GI BILL -- ACTIVE DUTY)
SUBPART L -- EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE
Subpart M -- Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans -- Spina Bifida and Covered Birth Defects
Subpart A -- Vocational Rehabilitation Under 38 U.S.C. Chapter 31

VOCATIONAL REHABILITATION OVERVIEW
NONDUPICATION
DEFINITIONS
BASIC ENTITLEMENT
PERIODS OF ELIGIBILITY
INITIAL AND EXTENDED EVALUATION
VOCATIONAL REHABILITATION PANEL
DURATION OF REHABILITATION PROGRAMS
INDIVIDUALIZED WRITTEN REHABILITATION PLAN
COUNSELING
EDUCATIONAL AND VOCATIONAL TRAINING SERVICES
SPECIAL REHABILITATION SERVICES
INDEPENDENT LIVING SERVICES
CASE STATUS
SUPPLIES
MEDICAL AND RELATED SERVICES
EMPLOYMENT SERVICES
MONETARY ASSISTANCE SERVICES
ENTERING A REHABILITATION PROGRAM
COURSE APPROVAL AND FACILITY SELECTION
RATE OF PURSUIT
AUTHORIZATION OF SUBSISTENCE ALLOWANCE AND TRAINING AND REHABILITATION SERVICES
LEAVES OF ABSENCE
CONDUCT AND COOPERATION
INTERREGIONAL AND INTRAREGIONAL TRAVEL OF VETERANS
PERSONNEL TRAINING AND DEVELOPMENT
REHABILITATION RESEARCH AND SPECIAL PROJECTS
VETERANS' ADVISORY COMMITTEE ON REHABILITATION
ADDITIONAL ADMINISTRATIVE CONSIDERATION
INFORMING THE VETERAN
ACCOUNTABILITY
38 U.S.C. 501(a), 3100-3121.
§ 21.1 Training and rehabilitation for veterans with service-connected disabilities.

(a) Purposes. The purposes of this program are to provide to eligible veterans with compensable service-connected disabilities all services and assistance necessary to enable them to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment.

(Authority: 38 U.S.C. 3100)

(b) Basic requirements. Before a service-disabled veteran may receive training and rehabilitation services under Chapter 31, Title 38 U.S.C., three basic requirements must be met:

(1) The Department of Veterans Affairs must first find that the veteran has basic entitlement to services as prescribed by § 21.40.

(Authority: 38 U.S.C. 3102)

(2) The services necessary for training and rehabilitation must be identified by the Department of Veterans Affairs and the veteran.

(Authority: 38 U.S.C. 3106)

(3) An individual written plan must be developed by the Department of Veterans Affairs and the veteran describing the goals of the program and the means through which these goals will be achieved.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]
§ 21.21 Election of benefits under education programs administered by the Department of Veterans Affairs.

(a) Election of benefits required. A veteran must make an election of benefits among the programs of education administered by VA for which he or she may be eligible. A veteran who has basic entitlement to rehabilitation under chapter 31 and is also eligible for assistance under any of the other education programs administered by VA must make an election of benefits between chapter 31 and any other VA program of education for which he or she may be eligible. The veteran may reelect at any time if he or she is otherwise eligible. (See §§ 21.264 and 21.334.)

(b) Use of prior training in formulating a rehabilitation program. If a veteran has pursued an educational or training program under an education program listed in § 21.4020 of this part, the earlier program of education or special restorative training shall be utilized to the extent practicable.

§ 21.22 Nonduplication -- Federal programs.

(a) Allowances. A service-disabled veteran who is eligible for benefits under Chapter 31, may not receive a subsistence allowance or elect payment of an allowance at the educational assistance rate under Chapter 30 pursuant to § 21.264 if the veteran:

(1) Is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service), or

(2) Is attending a course of education or training paid for under Chapter 41, Title 5 U.S.C. and whose full salary is being paid to such veteran while so training.

(b) Services which may be authorized. A service-disabled veteran who is in one of the two categories defined in paragraph (a) of this section is entitled to receive all benefits, other than an allowance, to which he or she is otherwise entitled under Chapter 31, including:

(1) Payment of any tuition and fees not paid for by the Armed Forces.

(2) The cost of special services, such as reader services, tutorial assistance, and special equipment during the period of such training.


(38 U.S.C. 3681)
CLAIMS

§ 21.30 Claims.
§ 21.31 Informal claim.
§ 21.32 Time limit.

§ 21.30 Claims.
A specific claim in the form prescribed by the Department of Veterans Affairs must be filed for:
(a) A program of rehabilitation services, or
(b) Employment assistance.

(38 U.S.C. 501(a), 3102, 3117, 5101(a))

§ 21.31 Informal claim.
Any communication or action indicating an intent to apply for rehabilitation or employment assistance, from a veteran, a duly authorized representative, or a Member of Congress may be considered an informal claim. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the veteran for execution. In the case of a claim for rehabilitation, or employment assistance, the formal claim will be considered filed as of the date of receipt of the informal claim if received within 1 year from the date it was sent to the veteran, or before cessation of the course, whichever is earlier.

(38 U.S.C. 501(a), 5101(a), 5103(a))

§ 21.32 Time limit.
(a) Time limit for filing evidence. The provisions of this paragraph are applicable to an original application, formal or informal, for rehabilitation or employment assistance and to a claim for increased benefits by reason of the existence of a dependent.
(1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application;
(2) If the evidence is not received within 1 year from the date of such notification, benefits may not be paid by reason of that application.
(b) Failure to furnish claim or notice of time limit. The failure of VA to furnish a claimant:
(1) Any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim is not a basis for adjusting the periods allowed for these actions;
(2) Appropriate notice of time limits within which evidence must be submitted to perfect a claim shall result in an adjustment of the period during which the time limit runs. The period during which the time limit runs shall be determined in accordance with paragraph (c) of this section. As to appeals see § 19.129 of this chapter.
(Authority: (39 U.S.C. 5113))
(c) Adjustment of time limit. (1) In computing the time limit for any action required of a claimant or beneficiary to perfect the types of claims described in paragraph (a) of this section, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.
(2) The period during which the veteran must provide information necessary to perfect his or her claim does not begin to run until the veteran has been notified of this requirement for submission of information. The date of the letter of notification informing the veteran of the action required and the time limit for accomplishing the action shall be "The first day of the specified period" referred to in paragraph (c)(1) of this section.
(Authority: 38 U.S.C. 5101, 5113)

CROSS-REFERENCE: Due Process. See § 3.103.
§ 21.35 Definitions.

(a) Employment handicap. This term means an impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(b) Independence in daily living. This term means the ability of a veteran, without the service of others, or with a reduced level of the services of others, to live and function within such veteran's family and community.

(c) Program of education. This term means:

(1) A combination of subjects or unit courses pursued at a school which is generally acceptable to meet requirements for a predetermined educational, professional or vocational objective; or

(2) Such subjects or courses which are generally acceptable to meet requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; or

(3) Any unit course or subject, or combination of courses or subjects, pursued by an eligible veteran at any educational institution required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of section (7)(i)(1) of the Small Business Act.

(d) Program of independent living services and assistance. This term includes:

(1) The services provided in this program that are needed to enable a veteran to achieve maximum independence in daily living, including counseling, diagnostic, medical, social, psychological, and educational services determined by the Department of Veterans Affairs to be necessary, and

(2) The monthly allowance authorized by 38 U.S.C. Chapter 31 for such a veteran.

(e) Rehabilitated to the point of employability. This term means that the veteran is employable in an occupation for which a vocational rehabilitation program has been provided under this program.

(f) Rehabilitation program. This term includes, when appropriate:

(1) A vocational rehabilitation program (see paragraph (i) of this section);

(2) A program of independent living services and assistance (see paragraph (d) of this section) for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible; or

(3) A program of employment services for employable veterans who are prior participants in Department of Veterans Affairs or state-federal vocational rehabilitation programs.
(g) Serious employment handicap. This term means a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(7)

(h) Vocational goal. (1) The term vocational goal means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests;
(2) The term achievement of a vocational goal is reasonably feasible means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances does not prevent the veteran from successfully pursuing a vocational rehabilitation program and becoming gainfully employed in an occupation consistent with the veteran's abilities, aptitudes, and interests;
(3) The term achievement of a vocational goal is not currently reasonably feasible means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances at the time of the determination:
(i) Prevent the veteran from successfully achieving a vocational goal at that time; or
(ii) Are expected to worsen within the period needed to achieve a vocational goal and which would, therefore, make achievement not reasonably feasible.

(Authority: 38 U.S.C. 3101(8))

(i) Vocational rehabilitation program. This term includes:
(1) The services that are needed for the accomplishment of the purposes of 38 U.S.C. Chapter 31 including such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Department of Veterans Affairs to be needed;
(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible, such services include:
(A) Determining whether a vocational goal is reasonably feasible;
(B) Improving the veteran's potential to participate in a program of services designed to achieve a vocational goal;
(C) Enabling the veteran to achieve maximum independence in daily living;
(ii) In the case of a veteran for whom achievement of a vocational goal is feasible, such services include assisting the veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment; and
(2) The term also includes the monetary assistance authorized by 38 U.S.C. Chapter 31 for a veteran receiving any of the services described in this paragraph.

(Authority: 38 U.S.C. 3101(9); Pub. L. 99-576)

(j) Program of employment services. This term includes the counseling, medical, social, and other placement and post-placement services provided to a veteran under 38 U.S.C. Chapter 31 to assist the veteran in obtaining or maintaining suitable employment.

(Authority: 38 U.S.C. 3117)

(k) Other terminology. The following are primarily intended as explanations rather than definitions of terms to which frequent reference will be made in these regulations.
(1) Counseling psychologist. Unless otherwise stated, the term counseling psychologist refers to a counseling psychologist in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))
(2) Vocational rehabilitation specialist. Unless otherwise stated, the term vocational rehabilitation specialist refers to a vocational rehabilitation specialist in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration of the Department of Veterans Affairs, or to a Department of Veterans Affairs counseling psychologist performing the duties of a vocational rehabilitation specialist.
(Authority: 38 U.S.C. 3118(c))

(3) School, educational institution, institution. These terms means any public or private school, secondary school, vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults.
(Authority: 38 U.S.C. 3452(C))

(4) Training establishment. This term means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.
(Authority: 38 U.S.C. 3452(e))

(5) Rehabilitation facility. This term means a distinct organizational entity, either separate or within a larger institution or agency, which provides goal-oriented comprehensive and coordinated services to individuals designed to evaluate and minimize the handicapping effects of physical, mental, social and vocational disadvantages, and to effect a realization of the individual's potential.
(Authority: 38 U.S.C. 3115(a))

(6) Workshop. This term means a charitable organization or institution, conducted not for profit, but for the purpose of carrying out an organized program of evaluation and rehabilitation for handicapped workers and/or for providing such individuals with remunerative employment and other occupational rehabilitative activity of an educational or therapeutic nature.
(Authority: 38 U.S.C. 3115(a))

(7) Vocational rehabilitation counselor. Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs.
(Authority: 38 U.S.C. 3118(c))

§ 21.40 Basic entitlement.

§ 21.40 Basic entitlement.

A veteran or serviceperson shall be entitled to a program of rehabilitation services under 38 U.S.C. chapter 31 if all of the following conditions are met:
(a) Service-connected disability. (1) The veteran has a service-connected disability of 20 percent or more which is, or but for the receipt of retired pay would be, compensable under 38 U.S.C. chapter 11, and which was incurred or aggravated in service on or after September 16, 1940; or
(2) A serviceperson is hospitalized for a service-connected disability in a hospital over which the Secretary concerned has charge pending discharge or release from active military, naval or air service and is suffering from a disability which will likely be compensable at a rate of 20 percent or more under 38 U.S.C. Chapter 11; or
(3) A veteran or serviceperson, as described in paragraphs (a)(1) and (2) of this section, has a service-connected disability which is compensable or is likely to be compensable at less than 20 percent, if the individual filed an original application for Chapter 31 before November 1, 1990.
(b) Employment handicap. The veteran or serviceperson is determined to be in need of rehabilitation to overcome an employment handicap.

[56 FR 15836, April 18, 1991]

PERIODS OF ELIGIBILITY

§ 21.41 Basic period of eligibility.
§ 21.42 Basic period of eligibility deferred.
§ 21.44 Extension beyond basic period of eligibility because of serious employment handicap.
§ 21.45 Extension beyond basic period of eligibility for a program of independent living services.
§ 21.47 Eligibility for employment assistance.
§ 21.48 Severance of service connection -- reduction to noncompensable degree.

§ 21.41 Basic period of eligibility.

A veteran having basic entitlement may be provided a program of rehabilitative services during the twelve-year period following discharge. The beginning date of the twelve-year period is the day of the veteran's discharge or release from his or her last period of active military, naval, or air service and the ending date is twelve years from the discharge or release date, unless the beginning date is deferred or the ending date is deferred or extended as provided in §§ 21.42, 21.44, and 21.45.


(Authority: 38 U.S.C. 3103)

§ 21.42 Basic period of eligibility deferred.

The basic twelve-year period of eligibility does not begin to run if the veteran was prevented from beginning or continuing a vocational rehabilitation program for one of the following reasons:

(a) Qualifying compensable service-connected disability established. The basic twelve-year period shall not begin to run until the veteran establishes the existence of a compensable service-connected disability described in § 21.40(a). When the veteran establishes the existence of a compensable service-connected disability described in § 21.40(a), the basic twelve-year period begins on the day the Department of Veterans Affairs notifies the veteran of this. The ending date is twelve years from the beginning date.

(b) Character of discharge. (1) The basic twelve-year period of eligibility shall not begin to run during any period when the veteran had not met the requirement of a discharge or release from the active military, naval or air services under conditions other than dishonorable:

(i) The discharge or release was changed by appropriate authority, or

(ii) The Department of Veterans Affairs determines that the discharge or release was under conditions other than dishonorable.

(2) The basic twelve-year period shall not begin to run during any period in which the veteran's discharge or dismissal was considered a bar to benefits by the Department of Veterans Affairs, before this bar is removed by the Department of Veterans Affairs.

(3) When there is a change in the character of discharge or dismissal under paragraph (b) (1) or (2) of this section the beginning date of the basic twelve-year period of eligibility is the effective date of the change. Determination of character of discharge and change in the character of discharge shall be made under the provisions of § 3.12. The ending date is twelve years from the beginning date.

(Authority: 38 U.S.C. 3103(b)(2))

(c) Medical condition prevents initiation or continuation. (1) The basic 12-year period of eligibility shall not begin to run or continue to run during any period of 30 days or more in which the veteran's participation in vocational rehabilitation is infeasible because of the veteran's medical condition, which condition may include the disabling effects of chronic alcoholism, subject to paragraph (c)(2) of this section. The 12-year period shall begin or resume when it is feasible for the veteran to participate in a vocational rehabilitation program, as that term is defined in § 21.35.

(2) The term disabling effects of chronic alcoholism means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's rehabilitation program.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of disabling effects of chronic alcoholism.

(4) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(5) The disabling effects of chronic alcoholism, which prevent initiation or continuation of participation in a vocational rehabilitation program after November 17, 1988, shall not be considered to be the result of willful misconduct.

(Authority: 38 U.S.C. 3103(b)(1), Pub. L. 100-689)


§ 21.44 Extension beyond basic period of eligibility because of serious employment handicap.

The basic period of eligibility of a veteran with a serious employment handicap may be extended when the veteran's employment and particular handicap necessitate an extension as necessary to pursue a vocational rehabilitation program under the following conditions:

(a) Not rehabilitated to the point of employability. The basic period of eligibility may be extended when the veteran has not previously been rehabilitated to the point of employability.

(Authority: 38 U.S.C. 3103(c))
(b) Rehabilitated to the point of employability. The veteran was previously declared rehabilitated to the point of employability, under the Department of Veterans Affairs vocational rehabilitation program, but either:
(1) The veteran's service-connected disability or disabilities have worsened to the extent that he or she is unable to perform the duties of the occupation in which he or she is trained, or in a related occupation; or
(2) The occupation in which the veteran was rehabilitated to the point of employability is not presently suitable in view of the veteran's current employment handicap and capabilities. (The finding of unsuitability must be based upon objective evidence developed in the course of reconsideration which shows that the nature or extent of the veteran's employment handicap and his or her capabilities are significantly different than were previously found.) or;
(3) Occupational requirements have changed and additional services are needed to help the veteran continue in the occupation in which he or she was trained or in a related field. 49 FR 40814, Oct. 18, 1984.

(38 U.S.C. 3103(c))

§ 21.45 Extension beyond basic period of eligibility for a program of independent living services.
The period of eligibility for a veteran to pursue a program of independent living services may be extended beyond the basic twelve-year period under the following conditions:
(a) The veteran's medical condition (service and nonservice-connected disabilities) is so severe that achievement of a vocational goal is not currently reasonably feasible, or (b) the extension is necessary to ensure that he or she will achieve maximum independence in daily living.

(38 U.S.C. 3103(d); Pub. L. (99-576)

§ 21.47 Eligibility for employment assistance.
(a) Providing employment services to veterans eligible for a rehabilitation program under chapter 31. Each veteran, other than one found in need of a program of independent living services and assistance, who is otherwise currently eligible for and entitled to participate in a program of rehabilitation under chapter 31 may receive employment services. Included are those veterans who:
(1) Have completed a program of rehabilitation services under chapter 31 and been declared rehabilitated to the point of employability;
(2) Have not completed a period of rehabilitation to the point of employability under chapter 31, but:
   (i) Have elected to secure employment without completing the period of rehabilitation to the point of employability; and
   (ii) Are employable; or
(3) Have never received services for rehabilitation to the point of employability under chapter 31 if they:
   (i) Are employable or employed in a suitable occupation;
   (ii) Have an employment handicap or a serious employment handicap; and
(iii) Need employment services to secure and/or maintain suitable employment. (Authority: 38 U.S.C. 3102)

(b) Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended. A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

1. The veteran is employable in a suitable occupation;
2. The veteran has filed a claim for vocational rehabilitation or employment assistance;
3. The veteran meets the criteria for eligibility described in §21.40(a); and
4. The veteran has an employment handicap or serious employment handicap; and
5. The veteran:
   (i) Completed a vocational rehabilitation program under 38 U.S.C. ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or
   (ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program which included at least 90 days of postsecondary education or vocational training. (Authority: 38 U.S.C. 3117)

(c) Veteran never received vocational rehabilitation services from the Department of Veterans Affairs or under the Rehabilitation Act of 1973. If a veteran is currently ineligible under chapter 31 because he or she does not have an employment handicap, and has never before participated in a vocational rehabilitation program under chapter 31 or under the Rehabilitation Act of 1973, no employment assistance may now be provided to the veteran under chapter 31. (Authority: 38 U.S.C. 3117)

(d) Duration of period of employment assistance. The periods during which employment assistance may be provided are not subject to limitations on periods of eligibility for vocational rehabilitation provided in §§21.41 through 21.45 of this part, but entitlement to such assistance is, as provided in §21.73 of this part, limited to 18 total months of assistance.

[54 FR 21215, May 17, 1989, as amended at 56 FR 15836, Apr. 18, 1991]

(38 U.S.C. 3105)

§21.48 Severance of service connection -- reduction to noncompensable degree.

When a rating action is taken which proposes severance of service-connection or reduction to a noncompensable degree, the provisions of the following paragraphs will govern the veteran's entitlement to rehabilitation and employment assistance under 38 U.S.C. Chapter 31.

(a) Applicant. If the veteran is an applicant for rehabilitation or employment assistance when the proposed rating action is taken, all processes respecting determination of entitlement or induction into training shall be immediately suspended. In no event shall any veteran be inducted into a rehabilitation program or provided employment assistance during the interim periods provided in §3.105 (d) and (e) of this title. If the proposed rating action becomes final, the application will be denied. See also §21.50 as to initial evaluation.
(Authority: 38 U.S.C. 3104)

(b) Reduction while in a rehabilitation program. If the proposed rating action is taken while the veteran is in a rehabilitation program and results in a reduction to a noncompensable rating of his or her disability, the veteran may be retained in the program until the completion of the program, except if "discontinued" under § 21.198 he or she may not reenter.

(Authority: 38 U.S.C. 3103)

(c) Severance while in a rehabilitation program. If the proposed rating action is taken while the veteran is in a rehabilitation program and results in severance of the service-connection of his or her disability, rehabilitation will be terminated effective as of the last day of the month in which severance of service-connection becomes final.


(38 U.S.C. 3103)
§ 21.50 Initial evaluation.

§ 21.51 Employment handicap.

§ 21.52 Serious employment handicap.

§ 21.53 Reasonable feasibility of achieving a vocational goal.

§ 21.57 Extended evaluation.

§ 21.58 Redetermination of employment handicap and serious employment handicap.

§ 21.59 Review and appeal of decisions on eligibility and entitlement.

§ 21.50 Initial evaluation.

(a) Eligibility for initial evaluation. VA shall provide an initial evaluation to each individual who applies for benefits under chapter 31 if the individual's compensable service-connected disability meets one of the conditions contained in § 21.40(a).

(b) Purpose. An initial evaluation will be provided to each individual who meets the conditions of paragraph (a) of this section to:

1. Determine the existence of an employment handicap;
2. Determine the basic twelve-year period of eligibility;
3. Determine whether an employment handicap shall be considered a serious employment handicap;
4. Determine whether the basic twelve-year period of eligibility is extended for a veteran with a serious employment handicap;
5. Determine as expeditiously as possible, without extended evaluation, whether achievement of a vocational goal is currently reasonably feasible.
6. Evaluate the ability of the veteran to live and function independently within the veteran's family and community;
7. Determine if the veteran is eligible for employment services under § 21.47;
8. Develop information necessary to plan an individual program for a veteran found eligible and entitled to services under Chapter 31; and
9. Assist a veteran who is found ineligible for assistance under Chapter 31 to identify other resources and programs for which he or she may be eligible.

(c) Scope of initial evaluation. The initial evaluation shall include consideration of:

1. The handicapping effects of the veteran's service-connected disability on employability and independence in daily living;
2. The veteran's residual physical and mental capabilities which contribute to employability and independence in daily living;
3. The veteran's ability to function independently in family and community;
4. Prior assessments of employability by a counseling psychologist;
5. Assessments authorized to provide additional information necessary for initial evaluation; and
6. The veteran's personal history including:
   (i) Education and training;
   (ii) Employment;
   (iii) Non-service-connected disability(ies), and
(iv) Family and community adjustment.
(Authority: 38 U.S.C. 3106(a))
(d) Responsibility for initial evaluation. (1) All determinations regarding service requirements for basic entitlement and, the beginning and ending dates of a veteran's basic twelve-year period of eligibility shall be made by appropriate staff of the Veterans Service Center.
(2) All other determinations, including extension of the basic twelve-year period because of serious employment handicap, and entitlement to assistance under Chapter 31 shall be made by appropriate staff of the Vocational Rehabilitation and Employment Division.
(Authority: 38 U.S.C. 3102, 2103, 3115(a))
(e) Cooperation of the veteran. The cooperation of the veteran is essential to an initial evaluation. The purpose of the initial evaluation and the steps in the process shall be explained to the veteran and his or her cooperation requested. If the veteran does not cooperate in the initiation or completion of the initial evaluation the counseling psychologist shall make a reasonable effort through counseling to secure the veteran's cooperation. If the veteran's cooperation cannot be secured, the counseling psychologist shall suspend the initial evaluation until such time as the veteran cooperates. The veteran will be informed of any suspension of the initial evaluation, the reasons for this action, and the steps necessary to resume the evaluation.
(38 U.S.C. 3111)

§ 21.51 Employment handicap.
(a) Importance of decision. The proper determination of employment handicap is a critical decision for rehabilitation planning and program accountability. To the extent possible, necessary information shall be developed in the course of initial evaluation and the significance of the information under paragraphs (d) and (e) of this section for determining employment handicap shown in each case.
(Authority: 38 U.S.C. 3101(1), 3102)
(b) Definition. The term employment handicap means an impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests.
(Authority: 38 U.S.C. 3101(1))
(c) Components of employment handicap. Components of employment handicap include:
(1) Impairment. This term means the restrictions on employability caused by:
(i) The veteran's service and nonservice-connected disabilities;
(ii) Deficiencies in education and training;
(iii) Negative attitudes toward the disabled; and
(iv) Other pertinent factors.
(2) Service-connected disability. The veteran's service-connected disability need not be the sole or primary cause of the employment handicap but it must materially contribute to the impairment described in paragraph (c)(1) of this section. Therefore its effects must be identifiable, measurable, or observable.
(3) Nonservice-connected disability. This term includes all physical and mental disabilities which have not been found to be service-connected by the Department of
Veterans Affairs, including alcoholism and drug abuse. The effects of alcoholism and drug abuse are to be considered in the same manner as other nonservice-connected disabilities in evaluating restrictions on employability. When the manifestations of alcoholism, drug abuse or other nonservice-connected disabilities raise questions as to the reasonable feasibility of a vocational goal for a veteran otherwise entitled to assistance under Chapter 31 such questions will be resolved under provisions of § 21.53.

(4) Consistency with abilities, aptitudes, and interests. The following points should be considered to determine if the veteran's training and employment are consistent with his or her abilities, aptitudes and interests:

(i) A finding that a veteran is employed in an occupation which is consistent with his or her abilities, aptitudes and interests may not be made if the occupation does not require reasonably developed skills, except under conditions described in paragraphs (e) (2) and (3), of this section;

(ii) The veteran's residual capacities, as well as limitations arising from the veteran's service and nonservice-connected disabilities are relevant;

(iii) Evidence of the consistency of interests with training and employment may be based on:

(A) The veteran's statements to a Department of Veterans Affairs counseling psychologist during initial evaluation or subsequent reevaluation;

(B) The veteran's history of participation in specific activities; or

(C) Information developed by the Department of Veterans Affairs through use of interest inventories.

(Authority: 38 U.S.C. 3102)

(d) Determining extent of impairment. The extent of the veterans impairment shall be assessed through consideration of factors described in paragraph (c)(1) of this section:

(e) Material contribution of service-connected disability to the impairment. A finding that the veteran's service-connected disability materially contributes to his or her impairment to employment will be made by assessing the following factors:

(1) Preparation for employment. The service-connected condition adversely affects the veteran's current ability to prepare for employment in one or more fields which would otherwise be consistent with the veteran's abilities, aptitudes, and interests. An adverse effect is demonstrated when the physical or psychological results of the service-connected condition:

(i) Impair the veteran's ability to train;

(ii) Prevent or impede access to training facilities; or

(iii) Diminish the veteran's motivation and ability to mobilize his or her energies for education or training.

(2) Obtaining employment. The service-connected condition places the veteran at a competitive disadvantage with similarly circumstanced nondisabled persons in obtaining employment. A veteran without reasonably developed specific job skills shall be considered to be at a competitive disadvantage unless evidence of record shows a history of current, stable, continuing employment.

(3) Retaining employment. The physical or psychological effects of a service-connected condition adversely affect the veteran's ability to maintain employment which requires reasonably developed skills. This criterion is not met if a veteran though lacking reasonably developed skills, has a history of continuing, stable employment.
(Authority: 38 U.S.C. 3101(1))
(f) Determination of employment handicap. The counseling psychologist may find the veteran has an employment handicap.
(1) An employment handicap which entitles the veteran to assistance under this program exists when all of the following conditions are met:
(i) The veteran has an impairment of employability; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons not within their control;
(ii) The veteran's service-connected disability materially contributes to the impairment of employability;
(iii) The veteran has not overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests.
(2) An employment handicap does not exist when any of the following conditions is present:
(i) The veteran's employability is not impaired; this includes veterans who are qualified for suitable employment, but do not obtain or retain such employment for reasons within their control;
(ii) The veteran's employability is impaired, but his or her service-connected disability does not materially contribute to the impairment of employability.
(iii) The veteran has overcome the effects of the impairment of employability through employment in an occupation consistent with his or her pattern of abilities, aptitudes and interests, and is successfully maintaining such employment.
(Authority: 38 U.S.C. 3102)
(g) Eligibility for employment assistance. If a veteran is not found to have an employment handicap a separate determination of his or her eligibility for employment assistance will be made under provisions of § 21.47.
(Authority: 38 U.S.C. 3117)
(h) Responsibility for determinations. The determination of an employment handicap and eligibility for employment assistance may only be made by a counseling psychologist in the Vocational Rehabilitation and Employment Division.

(38 U.S.C. 3106(a))

§ 21.52 Serious employment handicap.
(a) Requirement of determination of serious employment handicap. A separate determination whether a serious employment handicap exists shall be made in each case in which an employment handicap is found.
(Authority: 38 U.S.C. 3106(a))
(b) Definition. The term serious employment handicap means a significant impairment of a veteran's ability to prepare for, obtain or retain employment consistent with such veteran's abilities, aptitudes, and interests.
(Authority: 38 U.S.C. 3101(7))
(c) Serious employment handicap exists. A veteran who has been found to have an employment handicap shall also be held to have serious employment handicap if he or she has:
(1) A neuropsychiatric service-connected disability rated at thirty percent or more disabling; or
(2) Any other service-connected disability rated at fifty percent or more disabling.
(d) Serious employment handicap may exist. A veteran with a nonneuropsychiatric service-connected disability may be found to have a serious employment handicap even though the disability is rated at thirty or forty percent disabling, when either of the following conditions exists:
(1) The veteran has a prior history of poor adjustment in training and employment, and special efforts will be needed if the veteran is to be rehabilitated; or
(2) The veteran's situation presents special problems due to nonservice-connected disability, family pressures, etc., and a number of special and supportive services are needed to effect rehabilitation.
(e) Serious employment handicap normally not found. A finding of serious employment handicap will normally not be made when a veteran's service-connected disability is rated at less than thirty percent disabling. A finding of serious employment handicap may nevertheless be made when:
(1) The veteran's service-connected disability has caused substantial periods of unemployment or unstable work history;
(2) The veteran has demonstrated a pattern of maladaptive behavior which is shown by a history of withdrawal from society or continuing dependency on government income support programs; and
(f) Responsibility for determining serious employment handicap. A counseling psychologist in the Vocational Rehabilitation and Employment Division shall make determinations of serious employment handicap.
[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 37332, Sept. 8, 1989]

(38 U.S.C. 3106(a))

§ 21.53 Reasonable feasibility of achieving a vocational goal.

(a) Requirement. The Department of Veterans Affairs shall determine the reasonable feasibility of achieving a vocational goal in each case in which a veteran has either:
(1) An employment handicap, or
(2) A serious employment handicap.
(Authority: 38 U.S.C. 3106(a))
(b) Definition. The term vocational goal means a gainful employment status consistent with the veteran's abilities, aptitudes, and interests.
(Authority: 38 U.S.C. 3101(8))
(c) Expeditious determination. The determination of reasonable feasibility shall be made as expeditiously as possible when necessary information has been developed in the course of initial evaluation. If an extended evaluation is necessary as provided in § 21.57 a decision of feasibility shall be made by the end of the extended evaluation. Any reasonable doubt shall be resolved in favor of a finding of feasibility.
(Authority: 38 U.S.C. 3105(d))
(d) Vocational goal is reasonably feasible. Achievement of a vocational goal is reasonably feasible for a veteran with either an employment or serious employment handicap when the following conditions are met:
(1) Vocational goal(s) has (have) been identified;
(2) The veteran's physical and mental conditions permit training for the goal(s) to begin within a reasonable period; and
(3) The veteran:
   (i) Possesses the necessary educational skills and background to pursue the vocational goal; or
   (ii) Will be provided services by the Department of Veterans Affairs to develop such necessary educational skills as part of the program.

(Authority: 38 U.S.C. 3104(a)(1), 3106(a))

(e) Criteria for reasonable feasibility not met. (1) When VA finds that the provisions of paragraph (d) of this section are not met, but VA has not determined that achievement of a vocational goal is not currently reasonably feasible, VA shall provide the rehabilitation services contained in § 21.35(i)(1)(i) of this part as appropriate;
(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt.

(Authority: 38 U.S.C. 3104(a)(1), 3106(b))

(f) Independent living services. The counseling psychologist shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocational Rehabilitation and Employment (VR&E) Officer is required in any case in which the counseling psychologist does not approve a program of independent living services.

(Authority: 38 U.S.C. 3100)

(g) Responsible staff. A counseling psychologist in the Vocational Rehabilitation and Employment Division shall determine whether achievement of a vocational goal is:
(1) Reasonably feasible; or
(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services.


§ 21.57 Extended evaluation.
(a) Purpose. The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation.


(b) Scope of services. During the extended evaluation, a veteran may be provided:
(1) Diagnostic and evaluative services;
(2) Services to improve his or her ability to attain a vocational goal;
(3) Services to improve his or her ability to live and function independently in the community;
(4) An allowance as provided in § 21.260.
(Authority: 38 U.S.C. 3104)
(c) Determination. (1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor;
(2) When it is reasonably feasible for the veteran to achieve a vocational goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in § 21.84 of this part.
(Authority: 38 U.S.C. 3106(d))
(d) Responsibility for determining the need for a period of extended evaluation. A counseling psychologist in the Vocational Rehabilitation and Employment Division shall determine whether a period of extended evaluation is needed.
(Authority: 38 U.S.C. 3106(c))

§ 21.58 Redetermination of employment handicap and serious employment handicap.
(a) Prior to induction into a program. A determination as to employment handicap, serious employment handicap, or eligibility for a program of employment services will not be changed except for:
(1) Unmistakable error in fact or law; or
(2) New and material evidence which justifies a change.
(b) After induction into a program. (1) The Department of Veterans Affairs will not redetermine a finding of employment handicap, serious employment handicap, or eligibility for a program of employment services subsequent to the veteran's induction into a program because of a reduction in his or her disability rating, including a reduction to 0 percent:
(2) The Department of Veterans Affairs may consider whether a finding of employment handicap should be changed to serious employment handicap when there is an increase in the degree of service-connected disability, or other significant change in the veteran's situation;
(3) A redetermination of employment handicap, serious employment handicap, or eligibility for a program of employment services will be made when there is a clear and unmistakable error of fact or law.
(Authority: 38 U.S.C. 3102, 3106)
(c) Following rehabilitation or discontinuance. A veteran's eligibility and entitlement to assistance must be redetermined in any case in which:
(1) The veteran is determined to be rehabilitated to the point of employability under the provisions of § 21.190;
(2) The veteran is determined to meet the requirements for rehabilitation under the provisions of § 21.196; or
(3) The veteran's program is discontinued under the provisions of § 21.198, except as described in § 21.198(c)(3).

(38 U.S.C. 3102, 3111)

§ 21.59 Review and appeal of decisions on eligibility and entitlement.
A veteran may appeal decisions of the Vocational Rehabilitation and Employment staff on eligibility and entitlement to rehabilitation services to the Board of Veterans Appeals as provided in § 19.2 of Title 38, CFR. However, the veteran or an accredited representative, on his or her behalf, may request administrative review by Central Office prior to filing an appeal to BVA. A case already on appeal to BVA may not be referred to Central Office for administrative review or advisory opinion.

(38 U.S.C. 3107(c))

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§ 21.60 Vocational Rehabilitation Panel.

(a) Establishment of the Panel. A Vocational Rehabilitation Panel will be established at each field facility by the facility head. The purpose of the Panel is to provide technical assistance in the planning of rehabilitation programs for seriously disabled veterans and dependents. This purpose will be most effectively carried out through use of the services of a wide range of professionals to bring the resources of the Department of Veterans Affairs and the community to bear on problems presented in the individual case.

(b) Composition of the Panel. The Panel will include, but not be limited to the following:

(1) A counseling psychologist in the VR&E (Vocational Rehabilitation and Employment) Division as the chairperson;
(2) A vocational rehabilitation specialist in VR&E;
(3) A medical consultant from a Department of Veterans Affairs Medical Center;
(4) A member of the Social Services staff from a Department of Veterans Affairs Medical Center; and
(5) Other specialists from the Department of Veterans Affairs.

(c) Appointment to the Panel.

(1) The VR&E (Vocational Rehabilitation and Employment) Officer may not serve as either chairperson or member of the Panel.
(2) The VR&E Officer will arrange for the participation of nonmedical professional staff in the Panel's meetings.

(d) Scope of Panel review. The Panel will review each case which has been referred to it in relation to:

(1) Specific reason for the referral; and
(2) Other problem areas which the Panel identifies in the course of its consideration of the case.

(e) Referral. A case may be referred to the Panel by:

(1) A counseling psychologist in VR&E;
(2) A vocational rehabilitation specialist in VR&E; or
(3) The VR&E officer.

(f) Report. The Panel must prepare a report on its findings and recommendations in each case. The Panel's recommendations may include specific actions which are warranted on the basis of current information, or may identify additional information needed to provide a sounder basis for planning the veteran's program of rehabilitation.

[49 FR 40814, Oct. 18, 1984]

§ 21.62 Duties of the Vocational Rehabilitation Panel.
(a) Consultation requested. The panel shall provide technical and consultative services when requested by professional staff of the Vocational Rehabilitation and Employment (VR&E) Division to:
(1) Assist staff members in planning and carrying out a rehabilitation plan for seriously disabled veterans and their dependents; and
(2) Consider other cases of individuals eligible for, or being provided assistance under chapter 31 and other programs of education and training administered by the Department of Veterans Affairs.
(Authority: 38 U.S.C. 3104(a))
(b) Independent living services. The Panel has a key responsibility to assure that seriously disabled service-connected veterans who need independent living services to increase their independence in daily living are provided necessary services. In carrying out this responsibility the Panel shall review all cases which come before it to assure that the proposed program of vocational rehabilitation or independent living services includes those services necessary to enable the veteran to achieve the goals of the program.
(Authority: 38 U.S.C. 3100)
(c) Dependents. The specific duties of the Panel with respect to dependents are more fully described §§ 21.3300, 21.3301, 21.3304, 21.4105, and 21.4276 of this part.
[54 FR 37332, Sept. 8, 1989]

(38 U.S.C. 3536, 3540, 3541, 3542, 3543)
DURATION OF REHABILITATION PROGRAMS

§ 21.70 Vocational rehabilitation.
§ 21.72 Rehabilitation to the point of employability.
§ 21.73 Duration of employment assistance programs.
§ 21.74 Extended evaluation.
§ 21.76 Independent living.
§ 21.78 Approving more than 48 months of rehabilitation.
§ 21.79 Determining entitlement usage under chapter 31.

§ 21.70 Vocational rehabilitation.

(a) General. The goal of a vocational rehabilitation program is to:
(1) Evaluate and improve the veteran's ability to achieve a vocational goal;
(2) Provide services needed to qualify for suitable employment;
(3) Enable the veteran to achieve maximum independence in daily living;
(4) Enable the veteran to become employed in a suitable occupation and to maintain suitable employment.

(b) Vocational rehabilitation program. This term includes:
(1) The services that are needed for the accomplishment of the purposes of Chapter 31, including such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Department of Veterans Affairs to be needed;
(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible such needed services include:
(A) Determining whether a vocational goal is reasonably feasible;
(B) Improving the veteran's potential to participate in a program of services designed to achieve a vocational goal;
(C) Enabling the veteran to achieve maximum independence in daily living;
(ii) In the case of a veteran for whom achievement of a vocational goal is feasible, such needed services include assisting the veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment;
(2) The term also includes the monetary assistance authorized by Chapter 31 for a veteran receiving any of the services described in this paragraph.

(Authority: 38 U.S.C. 3101(9); Pub. L. 99-576)

(c) Duration of vocational rehabilitation. Decisions on the duration of periods for attaining the goals named in paragraph (a) of this section are made in the course of development and approval of the Individualized Written Rehabilitation Plan. However, the duration of a vocational rehabilitation program may not exceed 48 months (or its equivalent when pursued on a part-time basis), except as provided in § 21.78.


(38 U.S.C. 3695, 3105)

§ 21.72 Rehabilitation to the point of employability.
(a) General. Rehabilitation to the point of employability may include the services needed to:
(1) Evaluate and improve the veteran's ability to undertake training;
(2) Train the veteran to the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma, or certificate is generally necessary for entry into the occupation, e.g., an MSW for social work, the veteran shall be trained to that level.
(Authority: 38 U.S.C. 3101(5), 3104)

(b) When duration of training may exceed general requirements -- (1) Employment handicap. If the amount of training necessary to qualify for employment in a particular occupation in a geographical area where a veteran lives or will seek employment exceeds the amount generally needed for employment in that occupation, the Department of Veterans Affairs will provide, or arrange for the necessary additional training.
(2) Serious employment handicap. The Department of Veterans Affairs will assist a veteran with a serious employment handicap to train to a higher level than is usually required to qualify in a particular occupation, when one of the following conditions exist:
(i) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for jobs or business, and the additional training will help to offset the competitive disadvantage;
(ii) The number of feasible occupations are restricted, and additional training will enhance the veteran's employability in one of those occupations;
(iii) The number of employment opportunities within feasible occupations are restricted.
(Authority: 38 U.S.C. 3105(c))

(c) Responsibility for estimating duration of training. (1) The counseling psychologist shall estimate the duration of training and the estimate shall be incorporated in the IWRP (Individualized Written Rehabilitation Plan). When the period of training is estimated to exceed 48 months, the concurrence of the Vocational Rehabilitation and Employment Officer is required, prior to approving the IWRP, under conditions listed in § 21.78.
(2) The estimated duration of the period of training required to complete an original or amended IWRP may be extended when necessary. Authorization of an extension is the responsibility of the counseling psychologist, except as provided in paragraph (d) of this section. Any extension which will result in use of more than 48 months of entitlement must meet conditions described in § 21.78.
(Authority: 38 U.S.C. 3695(b))

(d) Extension of training by the vocational rehabilitation specialist. (1) The VRS (Vocational Rehabilitation Specialist) may authorize an extension of up to six months of the period of vocational rehabilitation training authorized by the IWRP when:
(i) The veteran is in rehabilitation to the point of employability status under § 21.190;
(ii) The veteran has completed more than half of the prescribed training;
(iii) The veteran is making satisfactory progress;
(iv) The extension is necessary to complete training;
(v) Training can be completed within six months; and
(vi) The extension will not result in use of more than 48 months of entitlement under Chapter 31 alone or in combination with other programs identified in § 21.4020.
(2) If the conditions listed in paragraph (d)(1) of this section are not met, and an extension is needed to complete the program, the case will be referred to the counseling psychologist for a determination.
(Authority: 38 U.S.C. 3105(c))

§ 21.73 Duration of employment assistance programs.
(a) Duration. Employment assistance may be provided to the veteran for the period necessary to enable the veteran to secure employment in a suitable occupation, and to adjust in the employment. This period shall not exceed 18 months. A veteran may be provided such assistance if he or she is eligible for employment assistance under the provisions of § 21.47 of this part.
(Authority: 38 U.S.C. 3105(b))
(b) Employment assistance not charged against Chapter 31 entitlement. The period of employment assistance provided in paragraph (a) of this section is not charged against the months of entitlement under Chapter 31 (see § 21.70).
(38 U.S.C. 3105(b))

§ 21.74 Extended evaluation.
(a) General. An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is currently reasonably feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in § 21.57(b) of this part.
(Authority: 38 U.S.C. 3105(a), 3106(a))
(b) Duration. An extended evaluation may not be for less than two weeks (full or part-time equivalent) nor for more than twelve months, unless a longer period is necessary to determine whether achievement of a vocational goal is reasonably feasible.
(Authority: 38 U.S.C. 3105(a))
(c) Approval of the period of an extended evaluation. (1) The counseling psychologist may approve an initial period of up to 12 months for an extended evaluation.
(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain the concurrence of the Vocational Rehabilitation and Employment (VR&E) Officer before approving the extension of a period of extended evaluation.
(3) An extension beyond a total period of 18 months for additional periods of up to 6 months each may only be approved by the counseling psychologist if there is a substantial certainty that a determination of current feasibility may be made within this extended period. The concurrence of the VR&E Officer is also required for this extension.
(Authority: 38 U.S.C. 3105(a), 3106(b); Pub. L. 99-576)
§ 21.76 Independent living.
(a) General. A program of independent living services may be authorized to enable the veteran to:
(1) Reach the goals of the program, and
(2) Maintain the newly achieved level of independence in daily living.
(Authority: 38 U.S.C. 3101(4), 3104(b))
(b) Period of independent living services. The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational Counseling and Rehabilitation Officer in this finding is required.

§ 21.78 Approving more than 48 months of rehabilitation.
(a) General. Neither the basic period of entitlement which may be authorized for a program of rehabilitation under Chapter 31 alone, nor a combination of entitlement of Chapter 31 and other programs listed in § 21.4020 shall exceed 48 months except as indicated in paragraphs (b) and (c) of this section.
(Authority: 38 U.S.C. 3695)
(b) Employment handicap. A rehabilitation program for a veteran with an employment handicap may only be extended beyond 48 months when:
(1) The veteran previously completed training for a suitable occupation but the veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which training had been provided, and a period of training in the same or a different field is required. An extension beyond 48 months under Chapter 31 alone shall be authorized for this purpose.
(Authority: 38 U.S.C. 3105(c)(1)(A))
(2) The occupation in which the veteran previously completed training is found to be unsuitable because of the veteran's abilities and employment handicap. An extension beyond 48 months under Chapter 31 alone shall be approved for this purpose.
(Authority: 38 U.S.C. 3105(c)(1)(B))
(3) The veteran previously used education benefit entitlement under other programs administered by VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all VA education programs, under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.
(Authority: 38 U.S.C. 3695)
(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 educational assistance rate. The 48 month limitation may be exceeded only:
(i) To the extent that the entitlement in excess of 48 months does not exceed the entitlement previously used by the veteran in a course at the secondary school level under § 21.4235 before December 31, 1989, or
(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31.

(Authority: 38 U.S.C. 3013, 3695; Pub. L. 98-525)

(5) The assistance to be provided in excess of 48 months consists only of a period of employment assistance (see § 21.73).

(Authority: 38 U.S.C. 3105(b))

(c) Serious employment handicap. The duration of a rehabilitation program for a veteran with a serious employment handicap may be extended beyond 48 months under Chapter 31 for the number of months necessary to complete a rehabilitation program under the following conditions:

(1) To enable the veteran to complete a period of rehabilitation to the point of employability;

(2) To provide an extended evaluation in cases in which the total period needed for an extended evaluation and for rehabilitation to the point of employability would exceed 48 months;

(3) To provide a program of independent living services, including cases in which achievement of a vocational goal becomes feasible during or following a program of independent living services;

(4) Following rehabilitation to the point of employability:
   (i) The veteran has been unable to secure employment in the occupation for which training has been provided despite intensive efforts on the part of the Department of Veterans Affairs and the veteran, and a period of retraining or additional training is needed;
   (ii) The skills which the veteran developed in training for an occupation in which he or she was employed are no longer adequate to maintain employment in that field and a period of retraining is needed;
   (iii) The veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which the veteran has been trained, and a period of training in the same or different field is required;
   (iv) The occupation in which the veteran previously completed training is found to be unsuitable due to the veteran's abilities and employment handicap.

(5) The assistance to be provided in excess of 48 months consists, only of a period of employment assistance. (see § 21.73).

(Authority: 38 U.S.C. 3105(c)(2))

(d) Approval of extension beyond 48 months. All extensions of a rehabilitation program beyond 48 months of total entitlement under all Department of Veterans Affairs programs requires the approval of the counseling psychologist and concurrence of the Vocational Rehabilitation and Employment Officer. Concurrence of the VR&E officer is not required for an extension due to provision of employment assistance (see § 21.21).
§ 21.79 Determining entitlement usage under chapter 31.

(a) General. The determination of entitlement usage for chapter 31 participants is made under the provisions of this section except as provided in paragraph (f) of this section. Charges for entitlement usage shall be based upon the principle that a veteran who pursues a rehabilitation program for 1 day should be charged 1 day of entitlement. The determination of entitlement is based upon the rate at which the veteran pursues his or her rehabilitation program. The rate of pursuit is determined under the provisions of § 21.310 of this part.

(b) No charge against chapter 31 entitlement. No charge will be made against chapter 31 entitlement under any of the following circumstances:

(1) The veteran is receiving employment services under an Individualized Employment Assistance Plan (IEAP);

(2) The veteran is receiving an employment adjustment allowance; or

(3) The veteran is on leave from his or her program, but leave is not authorized by the Department of Veterans Affairs.

(c) Periods during which entitlement may be charged. Charges for usage of chapter 31 entitlement may only be made for program participants in one of the following case statuses:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living.

(d) Method of charging entitlement under chapter 31. The Department of Veterans Affairs will make a charge against entitlement:

(1) On the basis of total elapsed time (1 day of entitlement for each day of pursuit) if the veteran is being provided a rehabilitation program on a full-time basis;

(2) On the basis of a proportionate rate of elapsed time if the veteran is being provided a rehabilitation program on a three-quarter, one-half or less than one-half time basis.

Entitlement is charged at a:

(i) Three-quarter time rate if pursuit is three-quarters or more, but less than full-time;

(ii) One-half time rate if pursuit is half-time or more, but less than three-quarter time;

(iii) One-quarter time rate if pursuit is less than half-time. Measurement of pursuit on a one-quarter time basis is limited to veterans in independent living or extended evaluation programs.

(e) Computing entitlement. (1) The computation of entitlement is based upon the rate of program pursuit, as determined under § 21.310 of this part, over the elapsed time during which training and rehabilitation services were furnished;

(2) The Department of Veterans Affairs will compute elapsed time from the commencing date of the rehabilitation program as determined under § 21.322 of this part to the date of
termination as determined under § 21.324 of this part. This includes the period during which veterans not receiving subsistence allowance because of a statutory bar; e.g., certain incarcerated veterans or servicepersons in a military hospital, nevertheless, received other chapter 31 services and assistance. Elapsed time includes the total period from the commencing date until the termination date, except for any period of unauthorized leave;

(3) If the veteran's rate of pursuit changes after the commencing date of the rehabilitation program, the Department of Veterans Affairs will:
(i) Separate the period of rehabilitation program services into the actual periods of time during which the veteran's rate of pursuit was different; and
(ii) Compute entitlement based on the rate of pursuit for each separate elapsed time period.

(Authority: 38 U.S.C. 3108(f))

(f) Special situations. (1) When a chapter 31 participant elects benefits of the kind provided under chapter 30 or chapter 34 as a part of his or her rehabilitation program under chapter 31, the veteran's entitlement usage will be determined by using the entitlement provisions of those programs. Entitlement charges shall be in accordance with § 21.7076 for chapter 30 and § 21.1045 under chapter 34. The entitlement usage computed under these provisions is deducted from the veteran's chapter 31 entitlement. No entitlement charges are made against either chapter 30 or chapter 34.

(Authority: 38 U.S.C. 3108(f))

(2) When a veteran is pursuing on-job training or work experience in a Federal agency on a nonpay or nominal pay basis, the amount of entitlement used is determined in the following manner:
(i) Entitlement used in on-job training in a Federal agency on a nonpay or nominal pay basis is determined in the same manner as other training.
(ii) Entitlement used in pursuing work experience will be computed in the same manner as for veterans in on-job training except that work experience may be pursued on a less than full-time basis. If the veteran is receiving work experience on a less than full-time basis, entitlement charges are based upon a proportionate amount of the workweek. For example, if the workweek is 40 hours, three-quarter time is at least 30 hours, but less than 40 hours, and half-time is at least 20 hours but less than 30 hours.

(Authority: 38 U.S.C. 3108(c))

(3) Entitlement is charged on a full-time basis for a veteran found to have a reduced work tolerance.

(Authority: 38 U.S.C. 3108(d), 3680(g))

(g) Overpayment. The Department of Veterans Affairs will make a charge against entitlement for an overpayment of subsistence allowance under the conditions described in § 21.1045(h) of this part.

[54 FR 47770, Nov. 17, 1989]

(38 U.S.C. 3680(g))
§ 21.80 Requirement for a rehabilitation plan.
§ 21.82 Completing the plan under Chapter 31.
§ 21.84 Individualized written rehabilitation plan.
§ 21.86 Individualized extended evaluation plan.
§ 21.90 Individualized independent living plan.
§ 21.92 Preparation of the plan.
§ 21.94 Changing the plan.
§ 21.96 Review of the plan.
§ 21.98 Appeal of disagreement regarding development of, or change in, the plan.

§ 21.80 Requirement for a rehabilitation plan.
(a) General. An IWRP (Individualized Written Rehabilitation Plan) will be developed for each veteran eligible for rehabilitation services under Chapter 31. The plan is intended to assist in:
(1) Providing a structure which allows VR&E staff to translate the findings made in the course of the initial evaluation into specific rehabilitation goals and objectives;
(2) Monitoring the veteran's progress in achieving the rehabilitation goals established in the plan;
(3) Assuring the timeliness of assistance by Department of Veterans Affairs staff in providing services specified in the plan; and
(4) Evaluating the effectiveness of the planning and delivery of rehabilitation services by VR&E staff.
(b) When a plan is prepared. A plan will be prepared in each case in which a veteran will pursue:
(1) A vocational rehabilitation program, as that term is defined in § 21.35(i);
(2) An extended evaluation program;
(3) An independent living services program; or
(4) An employment program.
(Authority: 38 U.S.C. 3107(a))
(d) Plan not required. A plan will not be prepared for a veteran who is not eligible for any assistance under Chapter 31. Department of Veterans Affairs staff, with the veteran's assistance and cooperation, will utilize information developed in the course of an initial evaluation to assist the veteran to develop alternatives for education and training, independence in daily living, or employment assistance. This assistance should help the veteran in achieving attainable vocational, independent living and employment goals utilizing benefits and services for which the veteran may be eligible under other Department of Veterans Affairs or non-Department of Veterans Affairs programs.
(Authority: 38 U.S.C. 523, 7722(c))
§ 21.82 Completing the plan under Chapter 31.

(a) Serious employment handicap. Each plan for a veteran with a serious employment handicap shall provide for completion of the program provided by the plan under Chapter 31. The provisions of § 21.70 and § 21.78(c) are designed to enable a veteran with a serious employment handicap to pursue and complete a rehabilitation plan under Department of Veterans Affairs auspices. These provisions shall be used as necessary to accomplish the goals of the plan.

(Authority: 38 U.S.C. 3105(c), 3107)

(b) Employment handicap. A plan for a veteran with an employment handicap that is not a serious employment handicap shall require that the program be completed within 48 months, if the veteran is not eligible for an extension as provided in § 21.78. When the program provided by the plan cannot be completed under Chapter 31 because of limitations imposed by the veteran's termination date or months of remaining entitlement, realistic, comprehensive and detailed arrangements must be made which will enable the veteran to successfully complete training under other auspices. If an arrangement cannot be made which meets these requirements, the long-range vocational goal of the veteran must be reevaluated, and another vocational goal selected which can be completed using the veteran's remaining Chapter 31 resources.

(Authority: 38 U.S.C. 3107(a))

(c) Employment assistance when training is not completed under Chapter 31. A plan for employment assistance may be implemented even though the veteran's training has not been or will not be completed under Chapter 31.


(38 U.S.C. 3117(a))

§ 21.84 Individualized written rehabilitation plan.

(a) Purpose. The purposes of the IWRP (Individualized Written Rehabilitation Plan) are to:

(1) Identify goals and objectives to be achieved by the veteran during the period of rehabilitation services that will lead to the point of employability;

(2) Plan for placement of the veteran in the occupational field for which training and other services will be provided; and

(3) Specify the key services needed by the veteran to achieve the goals and objectives of the plan.

(Authority: 38 U.S.C. 3107)

(b) Elements of the plan. A plan will include the following:

(1) A statement of long-range rehabilitation goals. Each statement of long-range goals shall include at a minimum:

(i) One vocational goal for a veteran with an employment handicap; or

(ii) One vocational goal and, if applicable, one independent living goal for a veteran with a serious employment handicap.

(2) Intermediate rehabilitation objectives; Intermediate objectives are statements of achievement expected of the veteran to attain the long-range goal. The development of
appropriate intermediate objectives is the cornerstone of an effective plan. Intermediate objectives should have the following characteristics:

(i) The activity specified relates to the achievement of the goal;
(ii) The activity specified is definable in terms of observable behavior (e.g., pursuing an A.A. degree);
(iii) The activity has a projected completion date;
(iv) The outcome desired upon completion is measurable (e.g., receiving an A.A. degree).

3 The specific services to be provided by the Department of Veterans Affairs as stated. Counseling shall be included in all plans for a veteran with a serious employment handicap.

4 The projected starting and completion dates of the planned services and the duration of each service;

5 Objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved as set forth; and

6 The name, location, and phone number of the VBA case manager.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

(38 U.S.C. 3107(a))

§ 21.86 Individualized extended evaluation plan.

(a) Purpose. The purpose of an IEEP is to identify the services needed for the VA to determine the veteran's current ability to achieve a vocational goal when this cannot reasonably be determined during the initial evaluation.

(Authority: 38 U.S.C. 3106(a), 3107(a))

(b) Elements of the plan. An IEEP shall include the same elements as an IWRP except that:

(1) The long range goal shall be to determine achievement of a vocational goal is currently reasonably feasible;

(2) The intermediate objectives relate to problems of questions which must be resolved for the VA to determine the current reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 3106(a), 3107(a))


(a) Purpose. The purpose of the IEAP (Individualized Employment Assistance Plan) is to assure that a comprehensive, thoughtful approach is taken, enabling eligible veterans to secure suitable employment.

(Authority: 38 U.S.C. 3107)

(b) Requirement for a plan. An IEAP will be prepared:

(1) As part of an IWRP; or

(2) When the veteran is eligible for employment assistance under provisions of § 21.47.

(Authority: 38 U.S.C. 3107(a))

(c) Elements of the plan. The IEAP shall follow the same structure as the IWRP. Each IEAP will include full utilization of community resources to enable the veteran to:

(1) Secure employment; and

(2) Maintain employment.
(d) Preparation of the IEAP. Preparation of the IEAP will be completed:
(1) No later than 60 days before the projected end of the period of rehabilitation services
leading to the point of employability; or
(2) Following initial evaluation when employment services constitute the whole of the
veteran's program under provisions of § 21.47.

(38 U.S.C. 3107(a))

§ 21.90 Individualized independent living plan.
(a) Purpose. The purpose of the IILP is to identify the steps through which a veteran,
whose disabilities are so severe that a vocational goal is not currently reasonably feasible,
can become more independent in daily living within the family and community.
(Authority: 38 U.S.C. 3109, 3120)
(b) Elements of the plan. The IILP shall follow the same structure as the IWRP. The plan
will include:
(1) Services which may be provided under Chapter 31 to achieve independence in daily
living;
(Authority: 38 U.S.C. 3104)
(2) Utilization of programs with a demonstrated capacity to provide independent living
services for severely handicapped persons;
(Authority: 38 U.S.C. 3104(b), 3120(a))
(3) Services provided under other Department of Veterans Affairs and non-Department of
Veterans Affairs programs needed to achieve the goals of the plan;
(Authority: 38 U.S.C. 3107)
(4) Arrangements for maintaining the improved level of independence following
completion of the plan.
(Authority: 38 U.S.C. 3107(a))
17708, Apr. 11, 1997]

§ 21.92 Preparation of the plan.
(a) General. The plan will be jointly developed by Department of Veterans Affairs staff
and the veteran.
(b) Approval of the plan. The terms and conditions of the plan must be approved and
agreed to by the counseling psychologist, the vocational rehabilitation specialist, and the
veteran.
(c) Implementation of the plan. The vocational rehabilitation specialist or counseling
psychologist designated as case manager has the primary role in carrying out Department
of Veterans Affairs responsibility for implementation of the plan.
(d) Responsible staff. The counseling psychologist has the primary responsibility for the
preparation of plans.

(38 U.S.C. 3107(a))
§ 21.94 Changing the plan.
(a) General. The veteran, the counseling psychologist or the vocational rehabilitation specialist may request a change in the plan at any time.
(Authority: 38 U.S.C. 3107(b))
(b) Long-range goals. A change in the statement of a long-range goal may only be made following a reevaluation of the veteran's rehabilitation program by the counseling psychologist. A change may be made when:
(1) Achievement of the current goal(s) is no longer reasonably feasible; or
(2) The veteran's circumstances have changed or new information has been developed which makes rehabilitation more likely if a different long-range goal is established; and
(3) The veteran fully participates and concurs in the change.
(Authority: 38 U.S.C. 3107(b))
(c) Intermediate objectives or services. A change in intermediate objectives or services provided under the plan may be made by the case manager when such change is necessary to carry out the statement of long-range goals. The veteran must concur in the change.
(Authority: 38 U.S.C. 3107(b))
(d) Minor changes. Minor changes in the plan (e.g., changing the date of a scheduled evaluation) by the case manager may be made without the participation and concurrence of the veteran.
(Authority: 38 U.S.C. 3107(b))
(e) Changes in duration of the plan. Any change in the total duration of a veteran's rehabilitation plan is subject to provisions on duration of a rehabilitation program described in §§ 21.70-21.78.
(Authority: 38 U.S.C. 3107(b))

§ 21.96 Review of the plan.
(a) General. The veteran's progress in reaching the goals of the plan will be reviewed and evaluated as scheduled in the plan by the case manager and the veteran.
(b) Comprehensive review required. The case manager and the veteran will review all of the terms of the plan and the veteran's progress at least every twelve months. On the basis of such review the veteran and the case manager will agree whether the plan should be:
(1) Retained in its current form;
(2) Amended; or
(3) Redeveloped.

(38 U.S.C. 3107(b))

§ 21.98 Appeal of disagreement regarding development of, or change in, the plan.
(a) General. The veteran may request a review of a proposed, original, or amended plan when Department of Veterans Affairs staff and the veteran do not reach agreement on the terms and conditions of the plan. A veteran who requests a review of the plan must submit a written statement to the case manager which:
(1) Requests a review of the proposed, original, or amended plan; and
(2) Details his or her objections to the terms and conditions of the proposed, original, or amended plan.
(b) Review by Vocational Rehabilitation and Employment Officer. Upon receipt of the veteran's request for review of the plan, the counseling psychologist or the case manager will forward the request together with relevant comment to the VR&E Officer who will:
(1) Review relevant information; and
(2) Inform the veteran of his or her decision within 90 days.
(c) Review by Director, Vocational Rehabilitation and Employment Service. The veteran's request shall be reviewed by the Director, VR&E in any case in which the VR&E Officer is the case manager. The veteran will be informed of the decision within 90 days.
(d) Appeal to the Board of Veterans Appeals. The veteran may appeal an adverse decision of the VR&E Officer, or the Director, VR&E to the Board of Veterans Appeals. (Authority: 38 U.S.C. 3107(c))
§ 21.100 Counseling.

(a) General. A veteran requesting or being furnished assistance under Chapter 31 shall be provided professional counseling services by Vocational Rehabilitation and Employment (VR&E) Service and other staff as necessary to:
(1) Carry out an initial evaluation in each case in which assistance is requested;
(2) Develop a rehabilitation plan or plan for employment services in each case in which the veteran is found during the initial evaluation to be eligible and entitled to services;
(3) Assist veterans found ineligible for services under Chapter 31 to the extent provided in § 21.82; and
(4) Try to overcome problems which arise during the course of the veteran's rehabilitation program or program of employment services.

(b) Types of counseling services. VA will furnish comprehensive counseling services, including but not limited to
(1) Psychological;
(2) Vocational;
(3) Personal adjustment;
(4) Employment;
(5) Educational.

(c) Qualifications. Counseling services may only be furnished by VA or other personnel who meet requirements established under provisions of § 21.380 and other policies of the VA pertaining to the qualifications of staff providing assistance under Chapter 31.

(d) Limitations. (1) If a veteran resides within a State, counseling services necessary to carry out the initial evaluation and the development of a rehabilitation plan or a program of employment services will be furnished by counseling psychologists in the Vocational Rehabilitation and Employment (VR&E) Division;
(2) If a veteran does not reside in a State the counseling services necessary to carry out an initial evaluation may be accomplished in the same manner as for a veteran residing in a State or through other arrangements when deemed appropriate by the VR&E Division. These alternative arrangements include, but are not limited to:
(i) Use of counseling centers or individual qualified professionals under contract to VA; and
(ii) Professional staff of other Federal agencies located in the area in which the veteran resides.
(3) Alternative arrangements to provide counseling are subject to the following requirements:
(i) All arrangements must be consistent with the provisions of paragraph (c) of this section regarding utilization of professionally qualified persons to provide counseling services during the initial evaluation;
(ii) All determinations of eligibility, entitlement and the development of a rehabilitation plan will continue to be made by counseling psychologists in the VR&E Division.

(4) If a counseling psychologist in the VR&E Division determines that the evidence of record is insufficient to carry out an initial evaluation in a case in which alternative arrangements were used, VA staff may authorize the veteran to travel to a VA facility to complete the evaluation.

(Authority: 38 U.S.C. 3118(c))

(e) Definition. For the purposes of this section, the term State means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

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

EDUCATIONAL AND VOCATIONAL TRAINING SERVICES

§ 21.120 Educational and vocational training services.
§ 21.122 School course.
§ 21.124 Combination course.
§ 21.126 Farm cooperative course.
§ 21.128 Independent study course.
§ 21.129 Home study course.
§ 21.130 Education and vocational courses outside the United States.
§ 21.132 Repetition of the course.
§ 21.134 Limitation on flight training.

§ 21.120 Educational and vocational training services.
(a) Purposes. The purposes of providing educational and vocational training services are to enable a veteran eligible for, and entitled to, services and assistance under Chapter 31 to:
(1) Meet the requirements for employment in the occupational objective established in the IWRP (Individualized Written Rehabilitation Plan);
(2) Provide incidental training which is necessary to achieve the employment objective in the IEAP (Individualized Employment Assistance Plan);
(3) Provide incidental training needed to achieve the goals of an IILP (Individualized Independent Living Plan); or
(4) Provide training services necessary to implement an IEEP (Individualized Extended Evaluation Plan).
(b) Selection of courses. VA will generally select courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or employment. If such courses are not available in the area in which the veteran resides, or if they are available but not accessible to the veteran, other arrangements may be made. Such arrangements may include, but are not limited to:
(1) Relocation of the veteran to another area in which necessary services are available, or
(2) Use of an individual instructor to provide necessary training.
(Authority: 38 U.S.C. 3107)
(c) Charges for education and training services. The cost of education and training services will be one of the factors considered in selecting a facility when:
(1) There is more than one facility in the area in which the veteran resides which:
   (i) Meets requirements for approval under §§ 21.292 through 21.298;
   (ii) Can provide the education and training services, and other supportive services specified in the veteran's plan; and
   (iii) Is within reasonable commuting distance; or
(2) The veteran wishes to train at a suitable facility in another area, even though training can be provided at a suitable facility in the area in which the veteran resides.
(Authority: 38 U.S.C. 3104(a)(7), 3115(a))
§ 21.122 School course.
(a) Explanation of terms -- schools, educational institution, and institution. These terms mean any public or private school, secondary school, vocational school, correspondence school, business school, junior college, teacher's college, college, normal school, professional school, university, scientific or technical institution, or other institution furnishing education for adults.
(Authority: 38 U.S.C. 501(a), 3104)
(b) Course. A course generally consists of a number of areas of subject matter which are organized into learning units for the purpose of attaining a specific educational or vocational objective. Organized instruction in the units comprising the course is offered within a given period of time and credit toward graduation or certification is generally given.
(Authority: 38 U.S.C 3104(a)(7))
(c) School course. A school course is a course as defined in paragraph (b) of this section offered by a facility identified in paragraph (a) of this section.
(Authority: 38 U.S.C. 3115)

(a) Training establishment. This term means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any state apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal government authorized to supervise such training.
(b) On-job course. An on-job course is pursued toward a specified vocational objective, provided by a training establishment. The trainee learns, in the course of work performed under supervision, primarily by receiving formal instruction, observing practical demonstration of work tasks, and assisting in those tasks. Productive work should gradually increase with greater independence from formal instruction as the course progresses.
(Authority: 38 U.S.C. 501(a), 3104)

§ 21.124 Combination course.
(a) General. A combination course is a course which combines training on the job with training in school. For the purpose of VA vocational rehabilitation, a course will be considered to be a combination course, if the student spends full-time on the job and one or more times a week also attends school on a part-tme basis. A veteran may pursue the components of a combination course in the following manner:
(1) Concurrent school and on-job training;
(2) Primarily on-job with some related instruction in school;
(3) In a school as a preparatory course to entering on-job training; or
(4) First training on-job followed by the school portion.
(b) Cooperative course. A cooperative course is a special type of combination course which usually:
(1) Has an objective which the student attains primarily through school instruction with the on-job portion being supplemental to the school course;
(2) Is at the college or junior college level although some cooperative courses are offered at post-secondary schools which do not offer a college degree or at secondary schools;
(3) Requires the student to devote at least one-half of the total training period to the school portion of the course; and
(4) Includes relatively long periods each of training on the job and in school such as a full term in school followed by a full term on the job.
[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

(38 U.S.C. 3104(a)(7))

§ 21.126 Farm cooperative course.
(a) Definition. An approvable farm cooperative course is a full-time course designated to restore employability by training a veteran to:
(1) Operate a farm which he or she owns or leases; or
(2) Manage a farm as the employee of another.
(b) Reaching the goal of a farm cooperative course. The farm cooperative course must enable a veteran to become proficient in the type of farming for which he or she is being provided rehabilitation services. The areas in which proficiency is to be established include:
(1) Planning;
(2) Producing;
(3) Marketing;
(4) Maintaining farm equipment;
(5) Conserving farm resources;
(6) Financing the farm;
(7) Managing the farm; and
(8) Keeping farm and home accounts.
(c) Instruction, including organized group instruction. Instruction in a farm cooperative course may be by a mixture of organized group (classroom) instruction and individual instruction or by individual instruction alone. A course which includes organized group instruction must meet the following criteria to be considered as full-time:
(1) The number of clock hours of instruction which should be provided yearly shall meet the requirements of § 21.310(a)(4) and § 21.4264 pertaining to full-time pursuit of a farm cooperative course:
(2) The individual instructor portion of a farm cooperative course shall include at least 100 hours of individual instruction per year.
(d) Instruction given solely by an individual instructor. (1) Instruction in a farm cooperative course may be given solely by an individual instructor if organized group instruction is:
(i) Not available within reasonable commuting distance of the veteran's farm; or
(ii) The major portion of the organized group instruction that is available does not have a direct relation to the veteran's farming operation and pertinent VA records are fully and clearly documented accordingly.
(2) To be considered full-time pursuit the individual instruction provided in these course must:
(i) Consist of at least 200 hours of instruction per year;
(ii) Be given by a fully qualified individual instructor by contract between VA and the instructor or an educational agency which employs the instructor.
(e) Plan requirements for farm operator or farm manager. (1) The plan for training developed by the case manager and the veteran in collaboration with the instructor must include:
(i) A complete written survey including but not limited to the areas identified in § 21.298 (a) and (b);
(ii) An overall, long-term plan based upon the survey of the operation of the farm;
(iii) An annual plan identifying the part of the overall plan to be implemented which will be prepared before the beginning of each crop year; and
(iv) A detailed individual training program showing the kind and amount of instruction, classroom and individual, or individual; and
(2) The farm must meet the requirements for selecting a farm found in § 21.298.
[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

§ 21.128 Independent study course.
A veteran may pursue a course by independent study under the following conditions:
(a) College level. The course is offered by a college or university.
(b) College degree. The course leads to or is fully creditable towards a standard college degree.
(c) Course content. The course consists of a prescribed program of study with provision for interaction between the student and regularly employed faculty of the university or college by mail, telephone, personally, or class attendance.
(d) School responsibility. The university or college:
(1) Evaluates the course in semester or quarter hours or the equivalent; and
(2) Prescribes a period for completion.
[49 FR 40814, Oct. 18, 1984]

§ 21.129 Home study course.
(a) Definition. A home study course is a course conducted by mail, consisting of a series of written lesson assignments furnished by a school to the student for study and preparation of written answers, solutions to problems, and work projects which are corrected and graded by the school and returned to the trainee.
(b) Limitations on inclusion of home study courses, in rehabilitation plans. A veteran and his or her case manager may include a home study course in a rehabilitation plan only when it supplements the major part of the program. The purpose of the home study course is to provide the veteran with theory or technical information directly related to the practice of the occupation for which the veteran is training.
[49 FR 40814, Oct. 18, 1984]
§ 21.130 Education and vocational courses outside the United States.
(a) General. VA may provide educational and vocational courses outside a State if the case manager determines that such training is in the best interest of the veteran and the Federal Government.
(b) Specific conditions. (1) The training must be necessary to enable the veteran to qualify for, obtain, and retain suitable employment in the occupational objective; and (2) Either: (i) The training is not available in the United States; or (ii) The training is available in the United States, but personal hardship would result from requiring that the veteran pursue training in this country; and
(3) All necessary supportive and follow-up services, including medical care and treatment and employment services, reasonably can be provided by or through VA, considering such factors as the availability, accessibility and cost of such services.
[49 FR 40814, Oct. 18, 1984, as amended at 55 FR 27822, July 6, 1990]

§ 21.132 Repetition of the course.
(a) Repeating all or part of the course. A veteran, having completed a course under Chapter 31 according to the standards and practices of the institution, ordinarily will not pursue it again at the expense of VA. However, VA may approve repetition of all, or any part of the course when VA determines that the repetition is necessary to accomplish the veteran's vocational rehabilitation. A veteran repeating a course under Chapter 31 is subject to the same requirements for satisfactory pursuit and completion of the course as are other veterans taking the course unless a longer period is needed because of the veteran's reduced work tolerance.
(Authority: 38 U.S.C. 3104(a)(7))
(b) Review course. A veteran who has completed a course of training under Chapter 31 may pursue a review course, such as a bar review course, if it is specifically organized and conducted as a review course.
(Authority: 38 U.S.C. 3104(a)(7))
(c) Auditing a subject. Auditing, as defined in § 21.4200(i), may not be authorized as a part of any rehabilitation plan. However, if an individual repeats a course under the conditions described in paragraph (a) of this section, the course shall not be considered an audited course, if pursued in the same manner as a subject offered for credit. The individual must meet the same requirements as other students, and not be a mere listener.
[49 FR 40814, Oct. 18, 1984]

§ 21.134 Limitation on flight training.
Flight Training approved under chapter 31 may only be authorized in degree curriculums in the field of aviation that include required flight training. This type of training is otherwise subject to the same limitations as are applicable to flight training under Chapter 30.
(Authority: 38 U.S.C. 3680A(b))
§ 21.140 Evaluation and improvement of rehabilitation potential.
§ 21.142 Adult basic education.
§ 21.144 Vocational course in a sheltered workshop or rehabilitation facility.
§ 21.146 Independent instructor course.
§ 21.148 Tutorial assistance.
§ 21.150 Reader service.
§ 21.152 Interpreter service for the hearing impaired.
§ 21.154 Special transportation assistance.
§ 21.155 Services to a veteran's family.
§ 21.156 Other incidental goods and services.

§ 21.140 Evaluation and improvement of rehabilitation potential.

(a) General. The purposes of these services are to:
(1) Evaluate if the veteran:
   (i) Has an employment handicap;
   (ii) Has a serious employment handicap; and
   (iii) Is reasonably feasible for a vocational goal or an independent living goal.
(2) Provide a basis for planning:
   (i) A program of services and assistance to improve the veteran's potential for vocational rehabilitation or independent living;
   (ii) A suitable vocational rehabilitation program; or
   (iii) A suitable independent living program.
(3) Reevaluate the vocational rehabilitation or independent living potential of a veteran participating in a rehabilitation program under Chapter 31, as necessary.
(4) Enable a veteran to achieve:
   (i) A vocational goal; or
   (ii) An independent living goal.

(b) Periods during which evaluation and improvement services may be provided.
Evaluation and improvement services may be provided concurrently, whenever necessary, with a period of rehabilitation services, including:
(1) Initial evaluation or reevaluation;
(2) Extended evaluation:
(3) Rehabilitation to the point of employability:
(4) A program of independent living services: or
(5) Employment services, incidental to obtaining or maintaining employment.

(c) Duration of full-time assistance. If evaluation and improvement services are furnished on a full-time basis as a preliminary part of the period of rehabilitation to the point of employability, or as the vocational rehabilitation program, the duration of such assistance may not exceed 12 months, except as provided in § 21.74(c).

(d) Scope of services. Evaluation and improvement services include:
(1) Diagnostic services;
(2) Personal and work adjustment training;
(3) Medical care and treatment;
(4) Independent living services;
(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;
(6) Orientation, adjustment, mobility and related services; and
(7) Other appropriate services.
(Authority: 38 U.S.C. 3104(a)(1), (6), (9), (10), (15))

§ 21.142 Adult basic education.
(a) Definition. The term adult basic education means an instructional program for the undereducated adult planned around those basic and specific skills most needed to help him or her to function adequately in society.
(b) Purposes. The purposes of providing adult basic education are to:
(1) Upgrade a veteran's basic educational skills;
(2) Provide refresher training; or
(3) Remedy deficiencies which prevent the veteran from undertaking a course of education or vocational training.
(c) Periods during which basic adult education may be provided. Basic adult education may be authorized, as necessary, during:
(1) Rehabilitation to the point of employability;
(2) Extended evaluation; and
(3) Independent living services.

§ 21.144 Vocational course in a sheltered workshop or rehabilitation facility.
(a) General. A vocational course in a sheltered workshop or rehabilitation facility may be an institutional, on-job, or combination course which has been modified to facilitate successful pursuit by a person with a disability that would otherwise prevent or impair the person's participation in the course.
(b) Authorization. A vocational course in a sheltered workshop or rehabilitation facility may be authorized when the training offered is a sound method of restoring a veteran's employability.

§ 21.146 Independent instructor course.
(a) Definition. An independent instructor course is a full-time course of vocational training which the veteran pursues with an individual instructor, who, independently of a training institution or on-job training establishment, furnishes and conducts a vocational course at a suitable place of training.
(b) Limitations on including an independent instructor course in a rehabilitation plan. A veteran and his or her case manager may include an independent instructor course in a
rehabilitation plan, other than one involving a farm cooperative program, only when either or both of the following conditions exist:
(1) Training is not available through an established school, on-job training establishment, rehabilitation facility or sheltered workshop within a reasonable commuting distance from the veteran's home; or
(2) The veteran's condition or other circumstances do not permit the veteran to attend an otherwise suitable facility within commuting distance. See § 21.126.

(c) Training in the home. Training in the home is a specialized type of independent instructor course which the veteran pursues in his or her home if:
(1) He or she is unable to pursue training at an otherwise suitable facility because of the effects of his or her disability;
(2) Based on proper medical opinion, the veteran is able to pursue the prescribed training; and
(3) The veteran's home provides a favorable educational environment with adequate work and study space.

d) Planning an individual instructor course. The case manager, the veteran, and the instructor should jointly plan the training program for a veteran for whom an independent instructor course is prescribed.

e) Assuring employment. Since the customary channels leading to employment may not be readily available to a veteran requiring an individual instructor course, the IEAP (Individual Employment Assistance Plan) shall indicate thorough consideration of plans and prospects for seeking and obtaining employment, including self-employment, upon completion of training.

(f) Rate of pursuit. A veteran in an independent instructor program shall pursue training at a rate comparable to the rate at which similar training is pursued on an institutional basis, unless the veteran's work tolerance is reduced by the effects of his or her disability.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104(a)(7))

§ 21.148 Tutorial assistance.

(a) General. A veteran may be provided individualized tutorial assistance, if VA determines that special assistance beyond that ordinarily given by the facility to students pursuing the same or a similar subject is needed to correct a deficiency in a subject.

(b) Authorization of tutorial assistance. Tutorial assistance may be provided during any period of rehabilitation services authorized by VA.

(Authority: 38 U.S.C. 3104(a)(7))

(c) Use of relatives precluded. Tutorial assistance at VA expense may not be provided by a relative of the veteran. The term relative has the same meaning as under § 21.374 pertaining to the use of a relative as an attendant.

(Authority: 38 U.S.C. 3492)

(d) Payment at the Chapter 30 rate. If a veteran has elected payment at the educational assistance rate payable under Chapter 30, he or she may not be provided individualized tutorial assistance under provision of Chapter 31. (See § 21.334.)

(Authority: 38 U.S.C. 3108(f))
§ 21.150 Reader service.

(a) Limitations on vision. A veteran considered to have a visual impairment necessitating reader service includes a veteran:
(1) Whose best corrected vision is 20/200 in both eyes;
(2) Whose central vision is greater than 20/200 but whose field of vision is limited to such an extent that the widest diameter of a visual field subtends to an angle no greater than 20 degrees; or
(3) With impaired vision, whose condition or prognosis indicates that the residual sight will be adversely affected by the use of his or her eyes for reading.

(b) Periods during which reader service may be provided. Reader service necessary to the development of a rehabilitation plan, or the successful pursuit of a rehabilitation program may be provided during:
(1) Initial evaluation or reevaluation;
(2) Extended evaluation;
(3) Rehabilitation to the point of employability;
(4) Independent living services; or
(5) Employment services, including an initial employment period of up to three months.

(c) Reader responsibility. The reader should be able to do more than read to the veteran. The reader should have an understanding of the subject matter based upon prior training or experience which allows him or her to:
(1) Read printed material with understanding; and
(2) Test the veteran's understanding of what has been read.

(d) Extent of service. The number of hours of service will be determined in each case by the amount of reading necessitated by the course and the efficacy of other equipment with which the veteran has been furnished to enable him or her to read printed material unassisted.

(e) Recording. VA will not normally pay for recording textbooks or other materials as a part of reader services, since excellent recording services are provided by volunteer organizations at no cost.

(f) Selecting a relative as a reader. Utilization of a relative of the veteran as a reader is subject to the limitations on use of a relative as an attendant under § 21.374.


§ 21.152 Interpreter service for the hearing impaired.

(a) General. The main purpose of interpreter service for the hearing impaired is to facilitate instructor-student communication. VA will provide interpreter service as necessary for the development and pursuit of a rehabilitation program. This service will be provided if:
(1) A VA physician determines that:
   (i) The veteran is deaf or his or her hearing is severely impaired; and
(ii) All appropriate services and aids have been furnished to improve the veteran's residual hearing; or

(2) A VA physician determines that the veteran:
   (i) Can benefit from language and speech training; and
   (ii) Agrees to undertake language and speech training.

(b) Periods during which interpreter service may be provided. Interpreter service may be furnished during:
   (1) Initial evaluation or reevaluation;
   (2) Extended evaluation;
   (3) Rehabilitation to the point of employability;
   (4) Independent living services; or
   (5) Employment services, including the first three months of employment.

(c) Selecting the interpreter. Only certified interpreters or persons meeting generally accepted standards for interpreters shall provide interpreter service. When an individual is not certified by a State or professional association, VA shall seek the assistance of a State certifying agency or a professional association in ascertaining whether the individual is qualified to serve as an interpreter.

   (Authority: 36 U.S.C. 3104(a)(14))

(d) Relatives. Interpreter service at VA expense may not be provided by a relative of the veteran. The term relative has the same meaning as under § 21.374 pertaining to the use of relatives as attendants.

   [49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104(a)(14))

§ 21.154 Special transportation assistance.

(a) General. A veteran, who because of the effects of disability has transportation expenses in addition to those incurred by persons not so disabled, shall be provided a transportation allowance to defray such additional expenses. The assistance provided in this section is in addition to provisions for interregional and intraregional travel which may be authorized under provisions of §§ 21.370 through 21.376.

   (Authority: 38 U.S.C. 3104(a)(13))

(b) Periods during which special transportation allowance may be provided. A special transportation allowance may be provided during:
   (1) Extended evaluation;
   (2) Rehabilitation to the point of employability;
   (3) Independent living services; or
   (4) Employment services, including the first three months of employment.

   (Authority: 38 U.S.C. 3104(a)(14))

(c) Scope of transportation assistance. (1) Transportation assistance includes mileage, parking fees, reasonable fee for a driver, transportation furnished by a rehabilitation facility or sheltered workshop, and other reasonable expenses which may be incurred in local travel;

   (2) The veteran's monthly transportation allowance may not exceed the lesser of actual expenses incurred or one-half of the subsistence allowance of a single veteran in full-time institutional training, unless extraordinary arrangements, such as transportation by ambulance, are necessary to enable a veteran to pursue a rehabilitation program.
(d) Determining the need for a transportation allowance. The case manager will determine the need for a transportation allowance. The assistance of a medical consultant shall be utilized, as necessary, to determine the need for special transportation assistance and to develop transportation arrangements which do not unduly tax the veteran's ability to travel and pursue a rehabilitation program.

(e) Use of a relative precluded. A relative of the veteran may not be paid any part of a special transportation allowance. The term relative has the same meaning as under § 21.374 pertaining to the use of a relative as an attendant.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104(a)(13))

§ 21.155 Services to a veteran's family.

(a) General. VA shall provide services to a veteran's family which are necessary to the implementation of the veteran's rehabilitation plan. The term family includes the veteran's immediate family, legal guardian, or any individual in whose home the veteran certifies an intention to live.

(b) Scope of services to a veteran's family. The services which may be furnished to the family are generally limited to consultation, homecare training, counseling, and mental health services of brief duration which are designed to enable the family to cope with the veteran's needs. Extended medical, psychiatric or other services may not be furnished to family members under these provisions.

(c) Providing services to a veteran's family. VR&E Staff will:

(1) Identify services which family members may need to facilitate the rehabilitation of the veteran; and

(2) Arrange for provision of the services which have been identified.

(d) Resources for provision of services to family members. (1) The established program and services which are furnished by Veterans Health Administration (VHA) to family members of veterans eligible for Chapter 31 should be used to the extent practicable; but

(2) If services are not readily available through regular VHA programs, necessary services will normally be secured through arrangements with other public and nonprofit agencies.

(Authority: 38 U.S.C. 3104(a)(11))


§ 21.156 Other incidental goods and services.

(a) General. Other incidental goods and services may be authorized if the case manager determines them to be necessary to implement the veteran's rehabilitation plan. For example, a calculator may be authorized for a veteran pursuing an engineering degree, even though the veteran may not be required to have a calculator for any specific subject in his or her course, where there is substantial evidence that lack of a calculator places the veteran at a distinct disadvantage in successfully pursuing the course.

(b) Limitation on cost. The costs of incidental goods and services normally should not exceed five percent of training costs for any twelve-month period.

[49 FR 40814, Oct. 18, 1984]
(38 U.S.C. 3104(a)(10))
INDEPENDENT LIVING SERVICES

§ 21.160 Independent living services.
§ 21.162 Participation in a program of independent living services.

§ 21.160 Independent living services.
(a) Purpose. The purpose of independent living services is to assist eligible veterans whose ability to function independently in family, community, or employment is so limited by the severity of disability (service and nonservice-connected) that vocational or rehabilitation services need to be appreciably more extensive than for less disabled veterans.
(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)
(b) Definitions. The term independence in daily living means the ability of a veteran, without the services of others or with a reduced level of the services of others, to live and function within the veteran's family and community.
(Authority: 38 U.S.C. 3101(2))
(c) Situations under which independent living services may be furnished. Independent living services may be furnished:
(1) As part of a program to achieve rehabilitation to the point of employability;
(2) As part of an extended evaluation to determine the current reasonable feasibility of achieving a vocational goal;
(3) Incidental to a program of employment services; or
(4) As a program of rehabilitation services for eligible veterans for whom achievement of a vocational goal is not currently reasonably feasible. This program of rehabilitation services may be furnished to help the veteran:
(i) Function more independently in the family and community without the assistance of others or a reduced level of the assistance of others;
(ii) Become reasonably feasible for a vocational rehabilitation program; or
(iii) Become reasonably feasible for extended evaluation.
(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)
(d) Services which may be authorized. The services which may be authorized as part of an IILP (Individualized Independent Living Plan) include:
(1) Any appropriate service which may be authorized for a vocational rehabilitation program as that term is defined in § 21.35(i), except for a course of education or training as described in § 21.120; and
(2) Independent living services offered by approved independent living centers and programs which are determined to be necessary to carry out the veteran's plan including:
(i) Evaluation of independent living potential;
(ii) Training in independent living skills;
(iii) Attendant care;
(iv) Health maintenance programs; and
(v) Identifying appropriate housing accommodations.
(Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)
(e) Coordination with other VA elements and other Federal, State, and local programs. Implementation of programs of independent living services and assistance will generally require extensive coordination with other VA and non-VA programs. If appropriate
§ 21.162 Participation in a program of independent living services.
(a) Approval of a program of independent living services. A program of independent living services and assistance is approved when:
(1) The VA determines that achievement of a vocational goal is not currently reasonably feasible;
(2) The VA determines that the veteran's independence in daily living can be improved, and the gains made can reasonably be expected to continue following completion of the program;
(3) All steps required by §§ 21.90 and 21.92 of this part for the development and preparation of an Individualized Independent Living Plan (IILP) have been completed; and
(4) The VR&E Officer concurs in the IILP.
(b) Considerations for the VR&E Officer. The VR&E Officer will consider the following factors in administering programs providing independent living services:
(1) If VA resources available limit the number of veterans who may be provided a program of independent living services and assistance, the first priority shall be given to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of service-connected disability; and
(2) To the maximum extent feasible, a substantial portion of veterans provided with programs of independent living services and assistance shall be receiving long-term care in VA medical centers and nursing homes.

[Authority: 38 U.S.C. 3120(c)]
CASE STATUS

§ 21.180 Case status system.
§ 21.182 'Applicant' status.
§ 21.184 'Evaluation and planning' status.
§ 21.186 'Ineligible' status.
§ 21.188 'Extended evaluation' status.
§ 21.190 'Rehabilitation to the point of employability' status.
§ 21.192 'Independent living program' status.
§ 21.194 'Employment services' status.
§ 21.196 'Rehabilitated' status.
§ 21.197 'Interrupted' status.
§ 21.198 'Discontinued' status.

§ 21.180 Case status system.
(a) General. Each veteran's case will be assigned to a specific case status from the point of initial contact until all appropriate steps in the rehabilitation process have been completed. The case status system will:
(1) Assist VR&E staff to fulfill its case management responsibility to provide authorized assistance to enable the veteran to successfully pursue his or her program; and
(2) Assure program management and accountability.
(Authority: 38 U.S.C. 3107)
(b) Responsibility for change of case status. The case manager is responsible for assigning a case to the appropriate case status at each point in the rehabilitation process.
(c) Case manager. The VR&E (Vocational Rehabilitation and Employment) Officer or his or her designee will assign a case manager when the veteran's case is placed in evaluation and planning status. The VR&E Officer or his or her designee may assign case management responsibility for development and implementation of a rehabilitation plan authorized under Chapter 31 to a counseling psychologist or vocational rehabilitation specialist in the VR&E Division. The case manager assigned will, unless replaced by the VR&E Officer, continue to be responsible for case management throughout the course of the veteran's rehabilitation program. When securing medical care, treatment, and other related services, the VR&E case manager will coordinate with Veterans Health Administration (VHA) staff members who have case management responsibility for the veteran.
(Authority: 38 U.S.C. 3106(e))
(d) Informing the veteran. The veteran will be informed in writing of changes in case status by VA which affect his or her receipt of benefits and services under Chapter 31. The letter to the veteran will include the reason for the change of case status, and other information required under provisions of § 21.420.
(Authority: 38 U.S.C. 3107)
(e) Normal progression for eligible veterans. The cases of veterans who are eligible for and entitled to services under Chapter 31 for whom individualized plans have been prepared will generally undergo the following changes of status:
(1) Individualized written rehabilitation plan. A veteran with an IWRP (Individualized Written Rehabilitation Plan) will generally move sequentially from applicant status
through evaluation and planning status, rehabilitation to the point of employability status, employment services status, and rehabilitated status.

(2) Individualized extended evaluation plan. A veteran with an IEEP (Individualized Extended Evaluation Plan) will generally move from applicant status through evaluation and planning status to extended evaluation status. Once in extended evaluation status there will generally be a finding which leads to development of an IWRP (paragraph (e)(1) of this section), or IILP (Individualized Independent Living Plan) (paragraph (e)(3) of this section).

(3) Individualized independent living plan. A veteran with an IILP (Individualized Independent Living Plan) will generally move from applicant status through evaluation and planning, extended evaluation, independent living, and rehabilitated status.

(4) Individualized employment assistance plan. (i) A veteran with an IEAP (Individualized Employment Assistance Plan) which is a part of an IWRP will move through the case statuses described in paragraph (e)(1) of this section, or in some cases through the steps in paragraph (e)(2) of this section.

(ii) A veteran for whom only employment services are provided will generally move from applicant through evaluation and planning, employment services to rehabilitated status.

(Authority: 38 U.S.C. 3107)

(f) Normal progression for ineligible veterans. A veteran found ineligible for services under Chapter 31 will generally move from applicant to evaluation and planning status, to ineligible status.

(Authority: 38 U.S.C. 3107)

(g) Changes of status. The case manager may change the case status when:

(1) Conditions for change specified in the status are met;

(2) The change is not specifically precluded by the status to which change is being considered; and

(3) The change is consistent with provisions of other applicable regulations.

(Authority: 38 U.S.C. 3106)


§ 21.182 'Applicant' status.

(a) Purpose. The purposes of applicant status are to:

(1) Process a veteran's claim for assistance under Chapter 31 in a timely manner; and

(2) Identify service-disabled veterans whom VA should contact individually to increase their awareness and understanding of how they may benefit from services furnished under Chapter 31.

(Authority: 38 U.S.C. 3102)

(b) Assignment to applicant status. VA will assign a veteran's records to applicant status when either:

(1) VA receives a formal or informal application from a veteran for services under Chapter 31; or

(2) The VR&E (Vocational Rehabilitation and Employment) Division:

(i) Advises a veteran in writing of the veteran's potential eligibility for Chapter 31 services, or
(ii) Is informed that the veteran has been advised in writing of his or her potential eligibility for Chapter 31 services by other VA elements.

(Authority: 38 U.S.C. 3102(2))

(c) Termination of applicant status. Applicant status will be terminated when:

(1) An appointment for an initial evaluation has been kept by the veteran; or
(2) The veteran's service-connected disability is reduced to a noncompensable degree; or
(3) The veteran's service-connected disability is severed; or
(4) The veteran's application is invalid because of fraud or error; or
(5) The veteran withdraws his or her claim, or otherwise indicates that no further assistance is desired.

(Authority: 38 U.S.C. 3106)

(d) Transfer of terminated cases to discontinued status. Each instance in which a veteran's case is terminated for reasons described in paragraph (c)(4) or (5) of this section shall be placed in discontinued status.


(38 U.S.C. 3102)


§ 21.184 'Evaluation and planning' status.

(a) Purpose. The purpose of evaluation and planning status is to identify veterans for whom evaluation and planning services are needed to:

(1) Accomplish an initial evaluation as provided in § 21.50;
(2) Develop an IWRP (Individualized Written Rehabilitation Plan), IEEP (Individualized Extended Evaluation Plan), IILP (Individualized Independent Living Plan) or IEAP (Individualized Employment Assistance Plan); or
(3) Reevaluate:
   (i) Findings made in prior initial evaluations, or
   (ii) Current or previous individualized rehabilitation plans.

(b) Assignment to evaluation and planning status. A veteran's records will be assigned to evaluation and planning status for any of the purposes specified in paragraph (a) of this section.

(c) Termination of evaluation and planning status. The assignment of the veteran's records to evaluation and planning status may be terminated under the following conditions:

(1) Evaluation and planning completed. The services necessary to complete evaluation and planning have been provided. These services are:
   (i) Completion of an initial evaluation;
   (ii) Development of an IWRP (Individualized Written Rehabilitation Plan) or other individual rehabilitation plan in those cases in which eligibility and entitlement to services provided under Chapter 31 are established; or
   (iii) Completion of reevaluation of prior findings made in initial evaluation or modification of a rehabilitation plan.

(2) Evaluation and planning not completed. The VR&E Division shall make every reasonable effort to enable the veteran to complete the evaluation and planning phase of the rehabilitation process. A determination that every reasonable effort by VA has been
made, and that little likelihood exists that continued efforts will lead to completion of planning and evaluation, may be made under the following conditions:
(i) The veteran writes VA and requests that his or her case be inactivated;
(ii) The veteran fails to keep scheduled appointments following his or her initial appointment; or
(iii) The veteran otherwise fails to cooperate with VA in the evaluation and planning process. If the veteran fails to cooperate, the provisions of § 21.362 are applicable. [49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3106, 3107)
[CROSS REFERENCE: See §§ 21.50 through 21.58 Initial and extended evaluation, and §§ 21.80 through 21.98 Individualized written rehabilitation plan.]

§ 21.186 'Ineligible' status.
(a) Purpose. The purpose of ineligible status is to identify the cases in which a veteran requests services under Chapter 31, but the request is denied by VA, usually, on the basis of information developed when the veteran was in evaluation and planning status. (Authority: 38 U.S.C. 3106)
(b) Assignment to ineligible status. A veteran's case will be assigned to ineligible status following a finding by VA that the veteran is not eligible for or entitled to services under Chapter 31. The finding must preclude all possible Chapter 31 services. (Authority: 38 U.S.C. 3106, 3107)
(c) Termination of ineligible status. The assignment of the veteran's case to ineligible status should be terminated if the veteran thereafter becomes eligible to receive any Chapter 31 service. Placement of the case in ineligible status is a bar to reconsideration of eligibility unless a material change in circumstances occurs. [49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3106, 3107)

§ 21.188 'Extended evaluation' status.
(a) Purpose. The purposes of extended evaluation status are to:
(1) Identify a veteran for whom a period of extended evaluation is needed; and
(2) Assure that necessary services are provided by VA during the extended evaluation. (Authority: 38 U.S.C. 3106)
(c) Continuation in extended evaluation status. A veteran's case will be in extended evaluation status during periods in which:
(1) The veteran is pending induction into the facility at which rehabilitation services will be provided;
(2) The veteran is receiving rehabilitation services prescribed in the IEEP (§ 21.86); or
(3) The veteran is on authorized leave of absence during an extended evaluation. (Authority: 38 U.S.C. 3108)
(d) Termination of extended evaluation status. A veteran in extended evaluation status will remain in that status until one of the following events occur:
(1) Following notification of necessary arrangements to begin an extended evaluation, the date the extended evaluation begins, and instructions as to the next steps to be taken, the veteran:
(i) Fails to report and does not respond to followup contact by the case manager;
(ii) Declines or refuses to enter the program; or
(iii) Defers induction for a period exceeding 30 days beyond the scheduled date of induction, except where the deferment is due to illness or other sufficient reason;
(2) VA determines the reasonable feasibility of a vocational goal for the veteran before completion of all of the planned evaluation because the decision does not require the further evaluation;
(3) The veteran completes the extended evaluation;
(4) Either the veteran or VA interrupts the extended evaluation;
(5) Either the veteran or VA discontinues the extended evaluation; or
(6) Service-connection for the veteran's service-connected disability is severed by VA or his or her continued eligibility otherwise ceases.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3108)
[CROSS-REFERENCES: See §§ 21.57 Extended evaluation, 21.322 Commencing dates, 21.324 Reduction or termination.]

§ 21.190 'Rehabilitation to the point of employability' status.
(a) Purpose. The rehabilitation to the point of employability status serves to:
(1) Identify veterans who receive training and rehabilitation services to enable them to attain a vocational goal; and
(2) Assure that services specified in the veteran's IWRP are provided in a timely manner by VA.
(Authority: 38 U.S.C. 3101)
(b) Assignment. A veteran's case may be assigned or reassigned to rehabilitation to the point of employability status under the provisions of §§ 21.84, 21.94, 21.96, or 21.98.
(Authority: 38 U.S.C. 3107)
(c) Continuation in rehabilitation to the point of employability status. A veteran will be assigned to rehabilitation to the point of employability status during periods in which:
(1) The veteran has progressed through applicant status and evaluation and planning status (including extended evaluation status when appropriate), and is pending induction into the facility at which training and rehabilitation services will be provided;
(2) The veteran is receiving training and rehabilitation services prescribed in the IWRP; or
(3) The veteran is on authorized leave of absence.
(Authority: 38 U.S.C. 3104, 3108)
(d) Termination of rehabilitation to the point of employability status when goals of the IWRP for this period are achieved. VA will consider a veteran to have completed the period of rehabilitation to the point of employability, and will terminate this status under the following conditions:
(1) The veteran achieves the goals of, and has been provided services specified in, the IWRP;
(2) The veteran who leaves the program has completed a sufficient portion of the services prescribed in the IWRP to establish clearly that he or she is generally employable as a trained worker in the occupational objective established in the IWRP;
(3) The veteran, who has not completed all prescribed services in the IWRP, accepts employment in the occupational objective established in the IWRP with wages and other benefits commensurate with wages and benefits received by trained workers; or
(4) The veteran:
   (i) Satisfactorily completes a prescribed program, the practice of which requires pursuing an examination for licensure, but
   (ii) Is unable to take the licensure examination prior to the basic twelve-year termination date and there is no basis for extension of that date.

(Authority: 38 U.S.C. 3107)

(e) Other conditions for termination of rehabilitation to the point of employability status. In addition to termination under conditions described in paragraph (d) of this section, the classification of the veteran's records in this status may be terminated under any of the following conditions:
(1) A veteran who has been notified of necessary arrangements to begin the program, the date the program begins and instructions as to the next steps to be taken:
   (i) Fails to report and does not respond to initial or subsequent followup by the case manager;
   (ii) Declines or refuses to enter the program; or
   (iii) Defers induction for a period exceeding 30 days beyond the scheduled beginning date of the program, except where the deferment is due to illness or other sufficient reason.
(2) Either the veteran or VA interrupts the period of rehabilitation to the point of employability;
(3) Either VA or the veteran discontinues the period of rehabilitation to the point of employability;
(4) The veteran reaches his or her termination date, and there is no basis for extension under § 21.44;
(5) The veteran's entitlement to training and rehabilitation services under Chapter 31 is exhausted, and there is no basis for extension under § 21.78; or
(6) Service-connection for the veteran's service-connected disability is served by VA or he or she otherwise ceases to be eligible.

(Authority: 38 U.S.C. 3107)

(f) Payment of employment adjustment allowance. An employment adjustment allowance will be paid when the veteran's classification in rehabilitation to the point of employability status is terminated under provisions of paragraph (d) of this section. An employment adjustment allowance will not be paid if termination is for one of the reasons specified in paragraph (e) of this section.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3107)
§ 21.192 'Independent living program' status.
(a) Purpose. The independent living program status serves to:
(1) Identify veterans who are being furnished a program of independent living services by VA; and
(2) Assure that such veterans receive necessary services from VA in a timely manner.
(b) Assignment to independent living program status. A veteran may be assigned or reassigned to independent living program status under the provisions of §§ 21.88, 21.94, 21.96, or 21.98.
(Authority: 38 U.S.C. 3107)
(c) Continuation in independent living program status. A veteran will be in independent living program status during periods in which:
(1) The provisions of § 21.282 for induction into a program are met, but the veteran is pending induction into the facility at which rehabilitation services will be provided;
(2) The veteran receives rehabilitation services prescribed in an IILP; or
(3) The veteran is on authorized leave of absence status.
(Authority: 38 U.S.C. 3109, 3120)
(d) Termination of independent living program status. When a veteran's case has been assigned to independent living program status, the case will be terminated from that status, if one of the following occurs:
(1) A veteran, who has been notified of necessary arrangements to begin a program, the date the program begins and instructions as to the next steps to be taken:
   (i) Fails to report and does not respond to followup contact by the case manager;
   (ii) Declines or refuses to enter the program; or
   (iii) Defers entry for more than 30 days beyond the scheduled beginning date, unless the deferment is due to illness or other sufficient reason.
(2) The veteran completes the IILP;
(3) Either the veteran or VA interrupts the program;
(4) Either the veteran or VA discontinues the program; or
(5) Service-connection for the veteran's service-connected disability is severed by VA or he or she otherwise ceases to be eligible.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3109, 3110)
[CROSS-REFERENCES: See §§ 21.160 Independent living services, 21.282 Effective date of induction into a rehabilitation program, 21.322 Commencing date, and 21.324 Reduction or termination date.]

§ 21.194 'Employment services' status.
(a) Purpose. The status employment services serves to:
(1) Identify veterans who are being furnished employment services; and
(2) Assure that these veterans receive necessary services in a timely manner.
(b) Assignment to employment services status. A veteran's case may be assigned or reassigned to employment services status under the provisions of §§ 21.84, 21.88, 21.94 and 21.98.

(c) Continuation in employment services status. A case will remain in employment services status for the period specified in the IEAP, subject to the limitations specified in paragraph (d) of this section.

(d) Termination of employment services status. The veteran will continue in employment services status until the earliest of the following events occurs:

1. He or she is determined to be rehabilitated under the provisions of § 21.283; or

2. He or she is:
   i. Employed for at least 60 days in employment that does not meet the criteria for rehabilitation contained in § 21.283, if the veteran intends to maintain this employment and declines further assistance; and
   ii. Adjusted to the duties and responsibilities of the job.

3. Either the veteran or VA interrupts the employment services program;

4. Either the veteran or VA discontinues the employment services program;

5. He or she reaches the end of the period for which employment services have been authorized and there is no basis for extension; or

6. Service-connection for the veteran's service-connected disability is severed or he or she otherwise ceases to be eligible.


(38 U.S.C. 3117)


§ 21.196 'Rehabilitated' status.

(a) Purpose. The purpose of rehabilitated status is to identify those cases in which the goals of a rehabilitation program or a program of employment services have been substantially achieved.

(b) Assignment to "rehabilitated" status. A veteran's case shall be assigned to "rehabilitated" status when his or her case meets the criteria for rehabilitation contained in § 21.283.

(Authority: 38 U.S.C. 3102, 3107 and 3117)

(c) Termination of rehabilitated status. A veteran's case will not be removed from rehabilitated status under § 21.284 once that status has been assigned, unless the determination of rehabilitation is set aside for a reason specified in § 21.284.

(38 U.S.C. 3100)


(38 U.S.C. 3100)

[CROSS-REFERENCE: See § 21.284 Reentrance into a rehabilitation program.]

§ 21.197 'Interrupted' status.

(a) Purpose. The purpose of interrupted status is to recognize that a variety of situations may arise in the course of a rehabilitation program in which a temporary suspension of the program is warranted. In each case, VA first must determine that the veteran will be
able to return to a rehabilitation program or a program of employment services following the resolution of the situation causing the interruption. This determination will be documented in the veteran's record.

(Authority: 38 U.S.C. 3117)

(b) Assignment to "interrupted" status. A veteran's case will be assigned to interrupted status when:

(1) VA determines that a suspension of services being provided is necessary; and

(2) Either:

(i) A definite date for resumption of the program is established; or

(ii) The evidence indicates the veteran will be able to resume the program at some future date, which can be approximately established.

(Authority: 38 U.S.C. 3110)

(c) Reasons for assignment to "interrupted" status. A veteran's case may be interrupted and assigned to interrupted status for reasons including but not limited to the following:

(1) Veteran does not initiate or continue rehabilitation process. If a veteran does not begin or continue the rehabilitation process, the veteran's case will be interrupted and assigned to interrupted status, including:

(i) A case in evaluation and planning status;

(ii) A case in extended evaluation status;

(iii) A case in rehabilitation to the point of employability status;

(iv) A case in independent living program status; or

(v) A case in employment services status.

(2) Unsatisfactory conduct and cooperation. If a veteran's conduct or cooperation becomes unsatisfactory, services and assistance may be interrupted as determined under provisions of §§ 21.362 and 21.364.

(3) Services not available. The veteran cannot continue the program because the necessary training and rehabilitation services are unavailable.

(4) Prior to assignment to "discontinued" status. A veteran's case shall be assigned to interrupted status prior to discontinuance and assignment to discontinued status in all cases except as provided in § 21.182(d) and upon the veteran's death. The purpose of assignment to interrupted status is to assure that all appropriate actions have been taken to help the veteran continue in his or her program before discontinuing benefits and services.

(5) Absences. The veteran is not entitled to be placed on authorized absence under §§ 21.340 through 21.350 while in interrupted status.

(Authority: 38 U.S.C. 3111)

(d) Reentrance from "interrupted" status. (1) A veteran in interrupted status may be assigned to his or her prior status or other appropriate status, if he or she reports for entrance or reentrance into the prescribed program at the time and place scheduled for the resumption of the rehabilitation program.

(2) If a veteran in interrupted status fails to report for entrance or reentrance into the program at the appointed time and place, the veteran's case will remain in interrupted status. The case manager will then determine whether there is a satisfactory reason for the veteran's failure to enter a new or reenter the prior program. If the evidence of record does not establish a satisfactory reason, the veteran's case will be discontinued and assigned to discontinued status.
(e) Case management responsibility during a period of interruption. The case manager shall maintain contact with the veteran during interruption and shall arrange for appropriate medical or other services the veteran needs to be able to enter or reenter a rehabilitation program or a program of employment services.


(38 U.S.C. 3107)
[CROSS-REFERENCE: See § 21.324 Reduction or termination date.]

§ 21.198 'Discontinued' status.

(a) Purpose. The purpose of discontinued status is to identify situations in which termination of all services and benefits received under Chapter 31 is necessary.

(b) Placement in "discontinued". VA will discontinue the veteran's case and assign the case to discontinued status following assignment to interrupted status as provided in §21.197 for reasons including but not limited to the following:

(1) Veteran declines to initiate or continue rehabilitation process. If a veteran does not initiate or continue the rehabilitation process and does not furnish an acceptable reason for his or her failure to do so following assignment to interrupted status, the veteran's case will be discontinued and assigned to discontinued status. This includes:

(i) A case in applicant status;
(ii) A case in evaluation and planning status;
(iii) A case in extended evaluation status;
(iv) A case in rehabilitation to the point of employability status;
(v) A case in independent living program status;
(vi) A case in employment services status; or
(vii) A case in interrupted status;

(2) Unsatisfactory conduct and cooperation. When a veteran's conduct or cooperation becomes unsatisfactory, services and assistance may be discontinued and assigned to discontinued status as determined under provisions of §§21.362 and 21.364.

(3) Eligibility and entitlement. Unless the veteran desires employment assistance, the veteran's case will be discontinued and assigned to discontinued status when:

(i) The veteran reaches the basic twelve-year termination date, and there is no basis for extension; or
(ii) The veteran has used 48 months of entitlement under one or more VA programs, and there is no basis for extension of entitlement.

(4) Medical and related problems. A veteran's case will be discontinued and assigned to discontinued status when:

(i) The veteran will be unable to participate in a rehabilitation program because of a serious physical or emotional problem for an extended period; and
(ii) VA medical staff are unable to estimate an approximate date by which the veteran will be able to begin or return to the program.

(5) Withdrawal. Veteran voluntarily withdraws from the program.

(6) Failure to progress. The veteran's case will be discontinued and assigned to discontinued status if his or her failure to progress in a program is due to:

(i) Continuing lack of application by the veteran unrelated to any personal or other problems; or
(ii) Inability of the veteran to benefit from rehabilitation services despite the best efforts of VA and the veteran.

(Authority: 38 U.S.C. 3108, 3111)

(7) Special review of proposed discontinuance action. The Vocational Rehabilitation and Employment (VR&E) Officer shall review each case in which discontinuance is being considered for a veteran with a service-connected disability rated 50 percent or more disabling. The VR&E Officer may utilize existing resources to assist in the review, including referral to the Vocational Rehabilitation Panel (VRP).

(Authority: 38 U.S.C. 3104(a)(1))

(c) Termination of "discontinued" status. Except as noted in paragraph (c)(3) of this section assignment of the veteran's case to the same status from which the veteran was discontinued or to a different one requires that VA first find:

(1) The reason for the discontinuance has been removed; and
(2) VA has redetermined his or her eligibility and entitlement under Chapter 31.

(3) In addition to the criteria described in paragraphs (c) (1) and (2) of this section a veteran placed into discontinued status as a result of a finding of unsatisfactory conduct or cooperation under §§ 21.362 and 21.364 must also meet the requirements for reentrance into a rehabilitation program found in § 21.364.

(Authority: 38 U.S.C. 3111)

(d) Follow-up of a cases placed in "discontinued" status. VA shall establish appropriate procedures to follow up on cases which have been placed in discontinued status, except in those cases reassigned from applicant status. The purpose of such followup is to determine if:

(1) The reasons for discontinuance may have been removed, and reconsideration of eligibility and entitlement is possible; or
(2) The veteran is employed, and criteria for assignment to rehabilitated status are met.


(38 U.S.C. 3107)

[CROSS REFERENCE: See § 21.324 Reduction or termination dates of subsistence allowance.]
SUPPLIES

§ 21.210 Supplies.
§ 21.212 General policy in furnishing supplies during periods of rehabilitation.
§ 21.214 Furnishing supplies for special programs.
§ 21.216 Special equipment.
§ 21.218 Methods of furnishing supplies.
§ 21.219 Supplies consisting of clothing, magazines and periodicals, and items which may be personally used by the veteran.
§ 21.220 Replacement of supplies.
§ 21.222 Release of, and repayment for, training and rehabilitation supplies.

§ 21.210 Supplies.
(a) Purpose of furnishing supplies. Supplies are furnished to enable a veteran to pursue rehabilitation and achieve the goals of his or her program.
(b) Definition. The term supplies includes books, tools, and other supplies and equipment which VA determines are necessary for the veteran's rehabilitation program.
(c) Periods during which supplies may be furnished. Supplies may be furnished during:
(1) Extended evaluation;
(2) Rehabilitation to the point of employability;
(3) Employment services; and
(4) An independent living services program.
(Authority: 38 U.S.C. 3104(a))
(d) Supplies precluded. Notwithstanding the provisions of paragraph (c) of this section, supplies may not be furnished to a veteran who has elected, or is in receipt of, payment at the educational assistance rate paid under Chapter 34.
[49 FR 40814, Oct. 18, 1984]
(38 U.S.C. 3108(a))

§ 21.212 General policy in furnishing supplies during periods of rehabilitation.
(a) Furnishing necessary supplies during a period of rehabilitation services. A veteran will be furnished supplies that are necessary for a program of rehabilitation services. For example, a veteran training in a school will be furnished the supplies needed to pursue the school course. If additional supplies are subsequently needed to secure employment, they will be furnished during the period of employment services as provided in § 21.214(d).
(b) Determining supplies needed during a period of rehabilitation. Subject to the provisions of §§ 21.210 through 21.222, VA will authorize only those supplies which are required:
(1) To be used by similarly circumstanced non-disabled persons in the same training or employment situation;
(2) To mitigate or compensate for the effects of the veteran's disability while he or she is being evaluated, trained or assisted in gaining employment; or
(3) To allow the veteran to function more independently and thereby lessen his or her dependence on others for assistance.

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(c) When supplies may be authorized. Supplies should generally be authorized subsequent to the date of enrollment in training or beginning date of other rehabilitation services unless there are compelling reasons to authorize them earlier. Supplies may not be authorized earlier than the date the veteran's rehabilitation plan is approved by VA and the veteran is accepted by the facility or individual providing services.

(d) Supplies needed, but not specifically required. VA may determine that an item, such as a calculator, while not required by the school for the pursuit of a particular school subject, is nevertheless necessary for the veteran to successfully pursue his or her program under the provisions of § 21.156 pertaining to incidental goods and services.

The item may be authorized if:

(1) It is generally owned and used by students pursuing the course; and
(2) Students who do not have the item would be placed at a distinct disadvantage in pursuing the course.

(e) Supplies for special projects and theses. The amount of supplies that VA may authorize for special projects, including theses, may not exceed the amount generally needed by similarly circumstanced nonveterans in meeting course or thesis requirements.

(Authority: 38 U.S.C. 3104(a))

(f) Responsibility for authorization of supplies. The case manager is responsible for the authorization of supplies, subject to requirements for prior approval contained in § 21.258 and other instructions governing payment of program charges.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3106(e))

§ 21.214 Furnishing supplies for special programs.

(a) General. A veteran pursuing one of the following types of vocational rehabilitation programs is eligible for any types of supplies listed in § 21.212. The following paragraphs clarify the applicability of the general provisions of § 21.212 to these special situations.

(b) Supplies furnished to veterans pursuing training in the home. VA may furnish to veterans training in the home:

(1) Books, tools, and supplies which schools or training establishments that train individuals outside the home for the objective the veteran is pursuing at home ordinarily require all students and trainees to personally possess;

(2) Supplies and equipment which are essential to the prescribed course of training because the veteran is pursuing the course at home. Equipment in this category consists of items which ordinarily are not required by a school or training establishment;

(3) Special equipment, such as a vise or drafting table;

(4) Supplies needed to enable the veteran to function more independently in his or her home and community.

(Authority: 38 U.S.C. 3104(a))

(c) Supplies furnished to a veteran in farm cooperative training. The books and related training supplies which VA may furnish a veteran in farm cooperative training depend upon the type of instruction he or she is receiving:

(1) When organized, group instruction is part of a veteran's course, VA will furnish those books and supplies which the school requires all students in the school portion of the course to own personally or on a rental basis;
(2) When all instruction is given on the veteran's farm by an individual instructor, VA will furnish to a student only those textbooks and other supplies which would ordinarily be required by a school. (Authority: 38 U.S.C. 3104(a)(7))

(d) Obtaining and maintaining employment. A veteran being furnished employment services may receive supplies which:

(1) The employer requires similarly circumstanced nonveterans to own upon beginning employment to the extent that the items were not furnished during the period in which the veteran was training for the objective, or the items that were furnished for training purposes are not adequate for employment;
(2) VA determines that special equipment is necessary for the veteran to perform his or her duties, subject to the obligation of the employer to make reasonable accommodation to the disabling effects of the veteran's condition. (Authority: 38 U.S.C. 3104(a), 4212)

(e) Self-employment. The supplies and services which may be furnished, subject to the requirements prescribed under § 21.258, to a veteran for whom self-employment has been approved as the occupational objective, are generally limited to those necessary to begin operations:

(1) Minimum stocks of materials, e.g., inventory of saleable merchandise or goods, expendable items required for day-to-day operations, and items which are consumed on the premises;
(2) Essential equipment, including machinery, occupational fixtures, accessories, and appliances; and
(3) Other incidental services such as business license fees. (Authority: 38 U.S.C. 3104(a)(2))

(f) Supplies and related assistance which may not be furnished for self-employment. VA may not authorize assistance for:

(1) Purchase of, or part payment for, land and buildings;
(2) Making full or part payment of leases or rentals;
(3) Purchase or rentals of trucks, cars, or other means of transportation;
(4) Stocking a farm for animal husbandry operations.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

§ 21.216 Special equipment.

(a) General. Special equipment should be authorized as necessary to enable a veteran to mitigate or overcome the effects of disability in pursuing a rehabilitation program. The major types of special equipment which may be authorized include:

(1) Equipment for educational or vocational purposes. This category includes items which are ordinarily used by nondisabled persons pursuing evaluation or training, modified to allow for use by disabled persons. e.g., calculators with speech capability for blinded persons.
(2) Sensory aids and prostheses. This category includes items which are specifically designed to mitigate or overcome the effects of disability. They range from eyeglasses and hearing aids to closed-circuit TV systems which amplify reading material for veterans with severe visual impairments.
(3) Modifications to improve access. This category includes adaptations of environment not generally associated with education and training, such as adaptive equipment for automobiles or supplies necessary to modify a veteran's home to make either training or self-employment possible.

(Authority: 38 U.S.C. 3104(a))

(b) Coordination with other VA elements in securing special equipment. In any case in which the veteran needs special equipment and is eligible for such equipment under other VA programs, such as medical care and treatment at VA medical centers, the items will be secured under that program. The veteran must be found ineligible for needed special equipment under other programs and benefits administered by VA before the item may be authorized under Chapter 31.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3115)

§ 21.218 Methods of furnishing supplies.

(a) Supplies furnished by the school or facility. VA will make arrangements for the school or other facility furnishing a veteran training, rehabilitation assistance, or employment under Chapter 31 to provide supplies to the extent practicable. This method is the one most likely to assure that supplies are available and can be secured expeditiously. A facility may be considered to be furnishing supplies when the facility itself is the supplier, or the facility has designated a supplier. Prior authorization of supplies by the case manager is required, except for standard sets of books, tools, or supplies which the facility requires all trainees or employees to have.

(b) Issuance of supplies not furnished by the facility. VA will issue authorized supplies directly to the veteran, if the supplies are not furnished by the facility providing training, rehabilitation services, or employment.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104(a))


§ 21.219 Supplies consisting of clothing, magazines and periodicals, and items which may be personally used by the veteran.

(a) Furnishing protective articles and clothing. Protective articles or apparel worn in place of ordinary clothing will be furnished at VA expense, when the school or training establishment requires similarly circumstanced nonveterans to use the articles of apparel. No other clothing will be supplied.

(b) Furnishing magazines and periodicals. Appropriate past issues of magazines, periodicals, or reprints may be furnished in the same manner as text material, when relevant to the course or training.

(c) Furnishing items which may be personally used. Musical instruments, cameras, or other items which could be used personally by the veteran may only be furnished if required by the facility to meet requirements for degree or course completion.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104(a)(7))
§ 21.220 Replacement of supplies.
(a) Lost, stolen, misplaced or damaged supplies. VA will replace articles which are necessary to further pursuit of the veteran's program and which are lost, stolen, misplaced, or damaged beyond repair through no fault of the veteran;
(1) VA will make an advancement from the Vocational Rehabilitation Revolving Fund to a veteran to replace articles for which VA will not pay, if the veteran is without funds to pay for them;
(2) If a veteran refuses to replace an article indispensable to the program after VA determines that its loss or damage was his or her fault, the veteran's refusal may be considered as noncooperation under § 21.364;
(3) If the veteran's program is discontinued under provisions of § 21.364(b), he or she will be reentered into the program only when he or she replaces the necessary articles.
(Authority: 38 U.S.C. 3104(a))
(b) Personally purchased supplies. VA will not generally reimburse a veteran who personally buys supplies. VA may pay for the required supplies which a training facility or other vendor sells to a veteran, if the facility chooses to return to the veteran the amounts he or she paid, so that the charges stand as an unpaid obligation of VA to the facility. If the facility does not agree to such an arrangement, VA may still pay the veteran, if the facts and equities of the case are demonstrated.
(Authority: 38 U.S.C. 3115)
(c) Supplies used in more than one part of the program. Except as provided in paragraph (a) of this section, VA will generally furnish any nonconsumable supplies only one time, even though the same supplies may be required for use by the veteran in another subject or in another quarter, semester, or school year.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104(a))

§ 21.222 Release of, and repayment for, training and rehabilitation supplies.
The value of supplies authorized by VA will be repaid under the provisions of this section, when the veteran fails to complete the program as planned.
(a) Consumable supplies. VA will require reimbursement from a veteran for consumable supplies authorized, unless:
(1) The veteran fails to complete the rehabilitation program through no fault of his or her own;
(2) The employment objective of the rehabilitation plan is changed as a result of reevaluation by VA staff;
(3) The total value of the supplies for which repayment is required is less than $ 100; or
(4) The veteran dies.
(Authority: 38 U.S.C. 3104)
(b) Nonconsumable supplies (general). (1) In addition to the exceptions noted in paragraph (c) of this section, VA will not require reimbursement from a veteran for nonconsumable supplies authorized, if:
(i) The veteran and VA change the long-range goal of the rehabilitation plan and those supplies are not required for the veteran's pursuit of training for the new goal;
(ii) The veteran's failure to complete the program was not his or her fault;
(iii) The veteran was pursuing the program at a facility which recovers nonconsumable supplies from veterans through contractual arrangements with VA, and the veteran returned to the facility all the nonconsumable supplies furnished at VA expense;
(iv) The veteran reenters the Armed Forces or is in the process of reentering the Armed Forces;
(v) The veteran satisfactorily completed one-half or more of a noncollege degree course (or at least two terms in the case of a college course) for which VA furnished the supplies;
(vi) The veteran certifies that he or she is using in current employment the supplies furnished during training;
(vii) The total value of the supplies for which repayment is required is less than $100;
(viii) The veteran dies;
(ix) The veteran is furnished supplies during a period of employment services but loses the job through no fault of his or her own;
(x) A veteran discontinued from an independent living services program is using supplies and equipment to reduce his or her dependence on others; or
(xi) The veteran is declared rehabilitated.

(2) The amount which a veteran must repay will be the lesser of the current value of the supplies, or the original cost of the supplies. VA will accept supplies in lieu of repayment of the value of the supplies if VA has authorized a change of objective.

(Authority: 38 U.S.C. 3104(a))

c) Training in the home and self-employment. In addition to the reasons for not requiring repayment or return of nonconsumable supplies listed in paragraph (b) of this section, VA will not require a veteran to pay for or return nonconsumable supplies if: (1) In the case of a veteran training in the home:
(i) VA furnished such supplies to equip his or her home as a place of training; and
(ii) The veteran has completed enough of his or her training program to be considered employable, and has been declared rehabilitated to the point of employability;
(2) A veteran in a self-employment program not in the home is declared rehabilitated; or
(3) The veteran dies and the Director, VR&E Service determines that the facts and equities of the family situation warrant waiver of all or a part of the requirements for repayment.

(Authority: 38 U.S.C. 3104(a)(12))


Supplies are to be furnished under the most careful checks by the case manager as to what is needed by the veteran to pursue his or her program. Determinations of the supplies needed to enable the veteran to successfully pursue his or her rehabilitation program are made under the provisions of §§ 21.210 through 21.222.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104, 3111)
MEDICAL AND RELATED SERVICES

§ 21.240 Medical treatment, care and services.
§ 21.242 Resources for provision of treatment, care and services.

§ 21.240 Medical treatment, care and services.
(a) General. A Chapter 31 participant shall be furnished medical treatment, care and services which VA determines are necessary to develop, carry out and complete the veteran's rehabilitation plan. The provision of such services is a part of the veteran's entitlement to benefits and services under Chapter 31, and is limited to the period or periods in which the veteran is a Chapter 31 participant.

(b) Scope of services. The services which may be furnished under Chapter 31 include the treatment, care and services described in part 17 of this title. In addition the following services may be authorized under Chapter 31 even if not included or described in part 17:

(1) Prosthetic appliances, eyeglasses, and other corrective or assistive devices;
(2) Services to a veteran's family as necessary for the effective rehabilitation of the veteran;
(3) Special services (including services related to blindness and deafness) including:
   (i) Language training; speech and voice correction, training in ambulation, and one-hand typewriting;
   (ii) Orientation, adjustment, mobility and related services;
   (iii) Telecommunications, sensory and other technical aids and devices.

(c) Eligibility. A veteran is eligible for the services described in paragraph (b) of this section during periods in which he or she is considered a Chapter 31 participant. These periods include:

(1) Initial evaluation;
(2) Extended evaluation;
(3) Rehabilitation to the point of employability;
(4) Independent living services program;
(5) Employment services; and

(6) Other periods to the extent that services are needed to begin or continue in any of the statutes described in paragraphs (c)(1) through (5) of this section. Such periods include but are not limited to services needed to facilitate reentry into rehabilitation following:
   (i) Interruption; or
   (ii) Discontinuance because of illness or injury.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104)
CROSS-REFERENCE: See § 17.48(g). Participating in a rehabilitation program under Chapter 31.

§ 21.242 Resources for provision of treatment, care and services.
(a) General. VA medical centers are the primary resources for the provision of medical treatment, care and services for Chapter 31 participants which may be authorized under
the provisions of § 21.240. The availability of necessary services in VA facilities shall be ascertained in each case.

(Authority: 38 U.S.C. 3115)

(b) Hospital care and medical service. Hospital care and medical services provided under Chapter 31 shall only be furnished in facilities over which VA has direct jurisdiction, except as authorized on a contract or fee basis under the provisions of part 17 of this title.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3115(b))

CROSS-REFERENCES: See § 17.30(l). Hospital care. § 17.30(m) Medical services.
EMPLOYMENT SERVICES

§ 21.250 Overview of employment services.

§ 21.252 Job development and placement services.

§ 21.254 Supportive services.

§ 21.256 Incentives for employers.


§ 21.258 Special assistance for veterans in self-employment.

§ 21.250 Overview of employment services.
(a) General. Employment services shall be provided if:
(1) Eligibility for employment services exists;
(2) The employment services which are needed have been identified; and
(3) The services which have been identified are incorporated in the veteran's IWRP (Individualized Written Rehabilitation Plan) or IEAP (Individualized Employment Assistance Plan).

(b) Definitions.

(1) The term program (period) of employment services includes the counseling, medical, social, and other placement and postplacement services provided to a veteran under 38 U.S.C. Chapter 31 to assist the veteran in obtaining or maintaining suitable employment. The term program of employment services is used only if the veteran's eligibility under Chapter 31 is limited to employment services.

(2) The term job development means a comprehensive professional service to assist the individual veteran to actually obtain a suitable job, and not simply the solicitation of jobs on behalf of the veteran. Continuing and mutually beneficial relationships with employers should be established by VA staff through referral of suitable employees and supportive services (e.g., adjustment counseling and job modification). Job development activities by VA staff are intended to provide disabled workers with a chance for suitable employment with cooperating employers.

(3) The term employable means the veteran is able to secure and maintain employment in the competitive labor market or in a sheltered workshop or other special situation at the minimum wage.

(c) Determining eligibility for, and the extent of, employment services.

(1) A veteran's eligibility for employment services shall be determined under the provisions of § 21.47;

(2) The duration of the period of employment services is determined under provisions of § 21.73;

(3) An IEAP (Individualized Employment Assistance Plan) shall be prepared under provisions of § 21.88;

(4) A veteran shall be placed in and removed from "Employment Assistance Status" under provisions of § 21.194.


(38 U.S.C. 3101, 3117)
§ 21.252 Job development and placement services.
(a) General. Job development and placement services may include:
(1) Direct placement assistance by VA;
(2) Utilization of the job development and placement services of:
   (i) DVOP (Disabled Veterans Outreach Program) specialists;
   (ii) Programs authorized under the Rehabilitation Act of 1973, as amended;
   (iii) The State Employment Services and the Veterans' Employment and Training Service of the United States Department of Labor;
   (iv) The Office of Personnel Management; and
   (v) The services of any other public, or nonprofit organization having placement services available; and
   (vi) Any for-profit agency in a case in which it has been determined that comparable services are not available through public and nonprofit agencies and comparable services cannot be provided cost-effectively by the public and nonprofit agencies listed in this paragraph.
   (Authority: 38 U.S.C. 3117(a)(2))
(b) Promotion of employment and training opportunities. As funding permits, VA employees engaged in the administration of Chapter 31 will promote the establishment of employment, training, and related opportunities to accomplish the purposes described in § 21.1.
   (Authority: 38 U.S.C. 3101)
(c) Advocacy responsibility. VA shall take reasonable steps to ensure that a veteran being provided employment services receives the benefit of any applicable provision of law or regulation providing for special consideration or emphasis or preference of the veteran in employment or training, especially programs and activities identified in the preceding paragraphs of this section.
   (Authority: 38 U.S.C. 523)
(d) Interagency coordination. VA employees providing assistance to Chapter 31 participants shall coordinate their job development, placement, promotional, and advocacy activities with similar or related activities of:
   (1) The Department of Labor and State employment security agencies as provided by written agreement or other arrangement;
   (2) The State approving agencies;
   (3) Other public, for-profit and nonprofit agencies providing employment and related services.
   (Authority: 38 U.S.C. 3116, 3117, Pub. L. 100-689)

§ 21.254 Supportive services.
(a) General. Supportive services which may be provided during a period or program of employment services include a broad range of medical treatment, care and services, supplies, license and other fees, special services, including services to the blind and deaf, transportation assistance, services to the veteran's family, and other appropriate services, subject to the limitations provided in VA regulations governing the provisions of these services under Chapter 31.
(b) Exclusions. The following benefits may not be provided to the veteran by VA during a period or program of employment services:
(1) Subsistence allowance, or payment of an allowance at the educational assistance rate paid under Chapter 30 for similar training;
(2) Education and training services, other than brief courses, such as review courses necessary for licensure;
(3) Revolving Fund Loan; and
(4) Work-study allowance.
(Authority: 38 U.S.C. 3104(a), 3108(f))
(c) Disabled veterans trained for self-employment under a State rehabilitation agency. A service-disabled veteran who has trained for self-employment under the auspices of a State rehabilitation agency may be provided supplemental equipment and initial stocks and supplies similar to the materials supplied to the most severely disabled veterans in self-employment programs under Chapter 31, if the following conditions are met:
(1) The veteran is eligible for employment assistance under provisions of § 21.47;
(2) An official of the State rehabilitation program with responsibility for administration of self-employment programs certifies that:
   (i) The veteran has successfully completed training for a self-employment program;
   (ii) The assistance needed is not available through the State rehabilitation program, or other non-VA sources;
   (iii) The assistance requested is a part of the veteran's IWRP (Individualized Written Rehabilitation Plan) developed by the State rehabilitation program;
(3) The requirements of § 21.258 pertaining to self-employment for the most severely disabled veterans are met; and
(4) The Director, VR&E Service, approves the request, if the cost of supplies is more than $2,500. The approval of the Director is required prior to authorization of supplies.
(Authority: 38 U.S.C. 3117(b))

§ 21.256 Incentives for employers.
(a) General. VA may make payments to employers to enable a veteran who has been rehabilitated to employability to begin and maintain employment or to provide on-job training. The purpose of such payment is to facilitate the placement of veterans who are generally qualified for employment but may lack some specific training or work experience which the employer requires or who are difficult to place due to their disability. The specific conditions which must be met before this option may be considered are contained in paragraphs (b) through (d) of this section.
(b) Requirements for payments to employers. Payments may be made to employers to provide on-job training or to begin and maintain employment if all of the following conditions are met:
(1) The veteran is in need of an on-job training situation or is generally qualified for employment but such on-job situation or employment opportunity is not otherwise available despite repeated and intensive efforts on the part of VA and the veteran to secure such opportunities. These conditions are also considered to be met when:
(i) There are few employers within commuting distance of the veteran's home who can provide a training or employment opportunity consistent with the veteran's plan; and
(ii) The veteran reasonably could not be required to seek on-job or employment opportunities in other areas due to the effects of his or her disability, family situation, or other pertinent factors; and
(iii) The available local employers will only provide a training or employment opportunity if VA agrees to reimburse for direct expenses to the degree permitted under this section.

(2) The training establishment or employer is in compliance with provisions of § 21.292 (a) and (b), pertaining to the approval of courses and facilities.

(3) VA entered into an agreement with the employer in writing prior to the beginning of the period of on-job training or employment, whereby the employer will be reimbursed for direct expenses approved under provisions of paragraph (c) of this section.

(4) The on-job training program or employment of the veteran does not displace a current employee or prevent the recall of a laid-off employee.

(c) Limitation on payment. Payments to the employer may be made only for the employer's direct expenses as a result of hiring the veteran and generally may not exceed one-half of the wage paid to other employees in the same or similar job. Direct expenses include:

(1) Instruction;
(2) Instructional aids;
(3) Training materials and supplies provided to the veteran;
(4) Minor modification of equipment to the special limitations of the veteran;
(5) Significant loss of productivity of the employer caused by using the veteran as opposed to a nondisabled employee.

(d) Duration. The period for which the employer is paid may not exceed the period necessary to accomplish on-job training or to begin and maintain employment at the journeyman level for at least 2 months. The period for which payment may be authorized may not exceed 9 months, unless the VR&E Officer approves a longer period.

(e) Benefits and services. (1) An eligible veteran on whose behalf payments are made to the employer shall be provided all other Chapter 31 benefits and services furnished to other veterans receiving employment services. A veteran may not be paid a subsistence allowance during the period in which job training or work experience is furnished under this section.

(2) Notwithstanding any other provisions of these regulations, if the program in which the veteran is participating meets the criteria for approval of on-job training under chapter 30, the veteran may be paid at educational assistance rates provided for this type of training under chapter 30 to the extent that he or she has remaining eligibility and entitlement under chapter 30 and has elected to receive a subsistence allowance in accordance with § 21.7136.

(Authority: 38 U.S.C. 3108(f), 3116(b))

(f) Non-duplication. VA will not make payments under the provisions of this section to an employer receiving payments from any other program for the same training or employment expenses.

(Authority: 38 U.S.C. 3116(b))
(a) General. Vocational rehabilitation will generally be found to have been accomplished by the veteran when he or she achieves suitable employment in the objective selected, in an existing business, agency or organization in the public or private sector. Rehabilitation of the veteran may be achieved through self-employment in a small business, if the veteran's access to the normal channels for suitable employment in the public or private sector is limited because of his or her disability or other circumstances in the veteran's situation warrant consideration of self-employment as an additional option.
(b) Self-employment plan. VA staff will conduct a comprehensive survey and analysis of the feasibility of self-employment prior to authorization of a rehabilitation plan leading to self-employment. The analysis and self-employment plan developed on the basis of such analysis shall be made a part of the veteran's Chapter 31 record. The survey and plan shall include:
(1) An analysis of the economic viability of the proposed small business plan;
(2) A cost analysis which specifies the amount and type of assistance, if any, which VA would be committed to furnish;
(3) Provision for development of a market for the veteran's services during the period of rehabilitation to the point of employability, and/or employment services;
(4) A suitable occupational objective in which employment can normally be secured in the public or private sector;
(5) Training necessary for the operation of a successful small business;
(6) Availability of non-VA financing, including the veteran's financial resources, local banks and other sources;
(7) Coordination with the Small Business Administration to secure special consideration under section 8 of the Small Business Act, as amended;
(8) The location of the site selected for the business and the cost of the site, if any.

§ 21.258 Special assistance for veterans in self-employment.
(a) General. A veteran in a self-employment program is eligible for certain special assistance in addition to the services for which veterans in a vocational rehabilitation program are generally eligible under the provisions of § 21.252. A veteran may be provided the assistance described under § 21.214 to the extent of his or her eligibility for such services as determined under paragraphs (b) and (c) of this section and § 21.254(c).
(b) Special services for the most severely disabled veterans. Special services listed in § 21.214(e) shall be provided as necessary for the most severely disabled veterans. The term most severely disabled veteran means a veteran who has been determined to have a serious employment handicap and limitations on employability arising from the effects of disability (service-connected and nonservice-connected) which necessitates selection of

self-employment as the veteran's vocational goal. This category includes veterans requiring:
(1) Homebound training and self-employment; or
(2) Self-employment for other reasons even though the veteran is able to pursue training on other than a homebound basis, e.g., lack of suitable employment opportunities in the area.
(Authority: 38 U.S.C. 3104(a)(12))

(c) Special services for other veterans. Special services described in § 21.214(e) may be furnished to a veteran with a serious employment handicap if the veteran also meets the following conditions:
(1) Self-employment is clearly shown to be the soundest method of achieving rehabilitation; or
(2) Self-employment is selected as an alternative to retaining the veteran in another occupation, and the cost of a self-employment program will not exceed the cost of retraining in another occupation.
(d) Assisting a veteran with an employment handicap to become self-employed. A veteran with an employment handicap may not be furnished any of the special services described in § 21.214(e). However, if it is determined that consideration of self-employment is warranted, VA may provide:
(1) Incidental training in the management of a small business;
(2) License or other fees required for employment and self-employment; and
(3) The tools and supplies which would ordinarily be required for the veteran to begin employment in the field in which the veteran has trained.

(38 U.S.C. 3104(a)(12))
MONETARY ASSISTANCE SERVICES

§ 21.260 Subsistence allowance.
§ 21.262 Procurement and reimbursement of cost for training and rehabilitation services, supplies, or facilities.
§ 21.264 Election of payment at the 38 U.S.C. chapter 30 educational assistance rate.
§ 21.266 Payment of subsistence allowance under special conditions.
§ 21.268 Employment adjustment allowance.
§ 21.270 Payment of subsistence allowance during leave and between periods of instruction.
§ 21.272 Veteran-student services.
§ 21.274 Revolving fund loan.
§ 21.276 Incarcerated veterans.

§ 21.260 Subsistence allowance.
(a) General. A veteran participating in a rehabilitation program under 38 U.S.C. Chapter 31 will receive a monthly subsistence allowance at the rates in paragraph (b) of this section, unless the veteran elects to receive payment at the rate of monthly educational assistance allowance payable under 38 U.S.C. Chapter 30 for the veteran's type of training. See § 21.264 for election of payment at the Chapter 30 rate and §§ 21.7136, 21.7137, and 21.7138 to determine the applicable Chapter 30 rate.
(Authority: 38 U.S.C. 3108(a), 3108(f))
(b) Rate of payment. VA pays subsistence allowance at the rates stated in the following tables:
(1) Subsistence allowance is paid at the following rates effective October 1, 1994, and before November 2, 1994:

<table>
<thead>
<tr>
<th>Type of program</th>
<th>No dependents</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional amount for each dependent over two</th>
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</thead>
<tbody>
<tr>
<td>Institutional: fn1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time</td>
<td>$ 374.93</td>
<td>$ 465.08</td>
<td>$ 548.05</td>
<td>$ 39.95</td>
</tr>
<tr>
<td>3/4 time</td>
<td>281.71</td>
<td>349.32</td>
<td>409.76</td>
<td>30.73</td>
</tr>
<tr>
<td>1/2 time</td>
<td>188.49</td>
<td>233.56</td>
<td>274.54</td>
<td>20.49</td>
</tr>
<tr>
<td>Nonpay or nominal pay on-job training in a Federal, State, or local agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: Full-time only</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.95</td>
</tr>
</tbody>
</table>

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Nonpay or nominal pay work experience in a Federal, State, or local agency:

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional Amount for Each Dependent Over Two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.95</td>
</tr>
<tr>
<td>3/4 time</td>
<td>281.71</td>
<td>349.32</td>
<td>409.76</td>
<td>30.73</td>
</tr>
<tr>
<td>1/2 time</td>
<td>188.49</td>
<td>233.56</td>
<td>274.54</td>
<td>20.49</td>
</tr>
</tbody>
</table>

Farm cooperative, apprenticeship, or other on-job training: fn2

| Full-time only | 327.81        | 396.44        | 456.88         | 29.71                                      |

Combination of institutional and OJT (Full-time only):

| Institutional greater than 1/2 time | 374.93 | 465.08 | 548.05 | 39.45 |
| OJT greater than 1/2 time          | 327.81 | 396.44 | 456.88 | 29.71 |

Non-farm cooperative (Full-time only):

| Institutional | 374.93 | 465.08 | 548.05 | 39.95 |
| On-job        | 327.81 | 396.44 | 456.88 | 29.71 |

Improvement of rehabilitation potential:

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional Amount for Each Dependent Over Two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time only</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.95</td>
</tr>
<tr>
<td>3/4 time</td>
<td>281.71</td>
<td>349.32</td>
<td>409.76</td>
<td>30.73</td>
</tr>
<tr>
<td>1/2 time</td>
<td>188.49</td>
<td>233.56</td>
<td>274.54</td>
<td>20.49</td>
</tr>
<tr>
<td>1/4 time fn3</td>
<td>94.24</td>
<td>116.78</td>
<td>137.27</td>
<td>10.24</td>
</tr>
</tbody>
</table>

fn1 For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

fn2 For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

fn3 The quarter-time rate may be paid only during extended evaluation.

(2) Subsistence allowance is paid at the following rates effective November 2, 1994, and before October 1, 1995:

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional Amount for Each Dependent Over Two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional: fn1</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.95</td>
</tr>
<tr>
<td>Full-time</td>
<td>$ 374.93</td>
<td>$ 465.08</td>
<td>$ 548.05</td>
<td>$ 39.95</td>
</tr>
<tr>
<td>3/4 time</td>
<td>281.71</td>
<td>349.32</td>
<td>409.76</td>
<td>30.73</td>
</tr>
<tr>
<td>1/2 time</td>
<td>188.49</td>
<td>233.56</td>
<td>274.54</td>
<td>20.49</td>
</tr>
</tbody>
</table>
Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Full-time only</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
</tr>
</tbody>
</table>

Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency:

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.95</td>
</tr>
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<td>1/2 time</td>
<td>188.49</td>
<td>233.56</td>
<td>274.54</td>
<td>20.49</td>
</tr>
</tbody>
</table>

Farm cooperative, apprenticeship, or other on-job training: fn2

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time only</td>
<td>327.81</td>
<td>396.44</td>
<td>456.88</td>
<td>29.71</td>
</tr>
</tbody>
</table>

Combination of institutional and OJT (Full-time only):

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional greater than 1/2 time</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.45</td>
</tr>
<tr>
<td>OJT greater than 1/2 time</td>
<td>327.81</td>
<td>396.44</td>
<td>456.88</td>
<td>29.71</td>
</tr>
</tbody>
</table>

Non-farm cooperative (Full-time only):

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.95</td>
</tr>
<tr>
<td>On-job</td>
<td>327.81</td>
<td>396.44</td>
<td>456.88</td>
<td>29.71</td>
</tr>
</tbody>
</table>

Improvement of rehabilitation potential:

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time only</td>
<td>374.93</td>
<td>465.08</td>
<td>548.05</td>
<td>39.95</td>
</tr>
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<td>188.49</td>
<td>233.56</td>
<td>274.54</td>
<td>20.49</td>
</tr>
<tr>
<td>1/4 time fn3</td>
<td>94.24</td>
<td>116.78</td>
<td>137.27</td>
<td>10.24</td>
</tr>
</tbody>
</table>

fn1 For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

fn2 For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the

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veteran's objective.

fn3 The quarter-time rate may be paid only during extended evaluation.

(3) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1995, and before October 1, 1996:

<table>
<thead>
<tr>
<th>Type of program</th>
<th>No dependents</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional amount for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional: fn1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time</td>
<td>$ 385.80</td>
<td>$ 478.57</td>
<td>$ 563.94</td>
<td>$ 41.11</td>
</tr>
<tr>
<td>3/4 time</td>
<td>289.88</td>
<td>359.45</td>
<td>421.64</td>
<td>31.62</td>
</tr>
<tr>
<td>1/2 time</td>
<td>193.96</td>
<td>240.33</td>
<td>282.50</td>
<td>21.08</td>
</tr>
</tbody>
</table>

Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:

| Full-time only | 385.80 | 478.57 | 563.94 | 41.11 |

Nonpay or nominal pay work experience in a facility of a Federal, State, local, or Indian tribe agency:

| Full-time       | 385.80 | 478.57 | 563.94 | 41.11 |
| 3/4 time        | 289.88 | 359.45 | 421.64 | 31.62 |
| 1/2 time        | 193.96 | 240.33 | 282.50 | 21.08 |

Farm cooperative, apprenticeship, or other on-job training (OJT): fn2

| Full-time only | 337.32 | 407.94 | 470.13 | 30.57 |

Combination of institutional and OJT (Full-time only):

| Institutional greater than 1/2 time | 385.80 | 478.57 | 563.94 | 41.11 |
| OJT greater than 1/2 time          | 337.32 | 407.94 | 470.13 | 30.57 |
Non-farm cooperative (Full-time only):

<table>
<thead>
<tr>
<th>Type of program</th>
<th>No dependent</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional amount for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional</td>
<td>385.80</td>
<td>478.57</td>
<td>563.94</td>
<td>41.11</td>
</tr>
<tr>
<td>On-job fn2</td>
<td>337.32</td>
<td>407.94</td>
<td>470.13</td>
<td>30.57</td>
</tr>
</tbody>
</table>

Improvement of rehabilitation potential:

<table>
<thead>
<tr>
<th>Type of program</th>
<th>No dependent</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional amount for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time only</td>
<td>385.80</td>
<td>478.57</td>
<td>563.94</td>
<td>41.11</td>
</tr>
<tr>
<td>3/4 time</td>
<td>289.88</td>
<td>359.45</td>
<td>421.64</td>
<td>31.62</td>
</tr>
<tr>
<td>1/2 time</td>
<td>193.96</td>
<td>240.33</td>
<td>282.50</td>
<td>21.08</td>
</tr>
<tr>
<td>1/4 time fn3</td>
<td>96.97</td>
<td>120.17</td>
<td>141.25</td>
<td>10.54</td>
</tr>
</tbody>
</table>

fn1 For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

fn2 For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

fn3 The quarter-time rate may be paid only during extended evaluation.

(4) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1996, and before October 1, 1997:

Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:

<table>
<thead>
<tr>
<th>Type of program</th>
<th>No dependent</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional amount for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time only</td>
<td>396.22</td>
<td>491.49</td>
<td>579.17</td>
<td>42.22</td>
</tr>
<tr>
<td>3/4 time</td>
<td>297.71</td>
<td>369.16</td>
<td>433.02</td>
<td>32.47</td>
</tr>
<tr>
<td>1/2 time</td>
<td>199.20</td>
<td>246.82</td>
<td>290.13</td>
<td>21.65</td>
</tr>
</tbody>
</table>
Federal, State, local, or federally recognized Indian tribe agency:

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time</td>
<td>$396.22</td>
<td>$491.49</td>
<td>$579.17</td>
<td>$42.22</td>
</tr>
<tr>
<td>3/4 time</td>
<td>$297.71</td>
<td>$369.16</td>
<td>$433.02</td>
<td>$32.47</td>
</tr>
<tr>
<td>1/2 time</td>
<td>$199.20</td>
<td>$246.82</td>
<td>$290.13</td>
<td>$21.65</td>
</tr>
</tbody>
</table>

Farm cooperative, apprenticeship, or other on-job training (OJT) fn2

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time only</td>
<td>$346.43</td>
<td>$418.95</td>
<td>$482.82</td>
<td>$31.40</td>
</tr>
</tbody>
</table>

Combination of institutional and OJT (Full-time only):

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional greater than 1/2 time</td>
<td>$396.22</td>
<td>$491.49</td>
<td>$579.17</td>
<td>$42.22</td>
</tr>
<tr>
<td>OJT greater than 1/2 time fn2</td>
<td>$346.43</td>
<td>$418.95</td>
<td>$482.82</td>
<td>$31.40</td>
</tr>
</tbody>
</table>

Non-farm cooperative (Full-time only):

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional</td>
<td>$396.22</td>
<td>$491.49</td>
<td>$579.17</td>
<td>$42.22</td>
</tr>
<tr>
<td>On-job fn2</td>
<td>$346.43</td>
<td>$418.95</td>
<td>$482.82</td>
<td>$31.40</td>
</tr>
</tbody>
</table>

Improvement of rehabilitation potential:

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time only</td>
<td>$396.22</td>
<td>$491.49</td>
<td>$579.17</td>
<td>$42.22</td>
</tr>
<tr>
<td>3/4 time</td>
<td>$297.71</td>
<td>$369.16</td>
<td>$433.02</td>
<td>$32.47</td>
</tr>
<tr>
<td>1/2 time</td>
<td>$199.20</td>
<td>$246.82</td>
<td>$290.13</td>
<td>$21.65</td>
</tr>
<tr>
<td>1/4 time fn3</td>
<td>$99.59</td>
<td>$123.41</td>
<td>$145.06</td>
<td>$10.82</td>
</tr>
</tbody>
</table>

fn1 For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

fn2 For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

fn3 The quarter-time rate may be paid only during extended evaluation.

(5) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1997, and before November 1, 1998:

<table>
<thead>
<tr>
<th>Type of Program</th>
<th>No Dependents</th>
<th>One Dependent</th>
<th>Two Dependents</th>
<th>Additional for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional: fn1</td>
<td>$407.31</td>
<td>$505.25</td>
<td>$595.39</td>
<td>$43.40</td>
</tr>
<tr>
<td>Full-time</td>
<td>306.05</td>
<td>379.50</td>
<td>445.14</td>
<td>33.38</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Work Experience Type</th>
<th>Full-time Only</th>
<th>3/4 Time</th>
<th>1/2 Time</th>
<th>1/4 Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonpay or nominal</td>
<td>407.31</td>
<td>306.05</td>
<td>204.78</td>
<td>102.38</td>
</tr>
<tr>
<td>work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time</td>
<td>407.31</td>
<td>306.05</td>
<td>204.78</td>
<td>102.38</td>
</tr>
<tr>
<td>3/4 time</td>
<td>306.05</td>
<td>379.50</td>
<td>445.14</td>
<td>33.38</td>
</tr>
<tr>
<td>1/2 time</td>
<td>204.78</td>
<td>253.73</td>
<td>298.25</td>
<td>22.26</td>
</tr>
<tr>
<td>Farm cooperative, apprenticeship, or other on-job training (OJT):</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time only</td>
<td>407.31</td>
<td>430.68</td>
<td>496.34</td>
<td>32.28</td>
</tr>
<tr>
<td>Improvement of rehabilitation potential:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time only</td>
<td>407.31</td>
<td>505.25</td>
<td>595.39</td>
<td>43.40</td>
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<tr>
<td>3/4 time</td>
<td>306.05</td>
<td>445.14</td>
<td>595.39</td>
<td>43.40</td>
</tr>
<tr>
<td>1/2 time</td>
<td>204.78</td>
<td>298.25</td>
<td>595.39</td>
<td>43.40</td>
</tr>
<tr>
<td>1/4 time fn3</td>
<td>102.38</td>
<td>126.87</td>
<td>148.09</td>
<td>11.12</td>
</tr>
</tbody>
</table>

fn1 For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.
fn2 For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.

fn3 The quarter-time rate may be paid only during extended evaluation.

(6) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1998, and before October 1, 1999:

<table>
<thead>
<tr>
<th>Type of program</th>
<th>No dependents</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional amount for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional: fn1</td>
<td>$413.83</td>
<td>$513.33</td>
<td>$604.92</td>
<td>$44.09</td>
</tr>
<tr>
<td>Full-time</td>
<td>$310.95</td>
<td>$385.57</td>
<td>$452.26</td>
<td>$33.91</td>
</tr>
<tr>
<td>3/4 time</td>
<td>$208.06</td>
<td>$257.79</td>
<td>$303.02</td>
<td>$22.62</td>
</tr>
<tr>
<td>Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: Full-time only</td>
<td>$413.83</td>
<td>$513.33</td>
<td>$604.92</td>
<td>$44.09</td>
</tr>
<tr>
<td>Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency: Full-time</td>
<td>$413.83</td>
<td>$513.33</td>
<td>$604.92</td>
<td>$44.09</td>
</tr>
<tr>
<td>3/4 time</td>
<td>$310.95</td>
<td>$385.57</td>
<td>$452.26</td>
<td>$33.91</td>
</tr>
<tr>
<td>1/2 time</td>
<td>$208.06</td>
<td>$257.79</td>
<td>$303.02</td>
<td>$22.62</td>
</tr>
<tr>
<td>Farm cooperative, apprenticeship, or other on-job training (OJT): fn2 Full-time only</td>
<td>$361.83</td>
<td>$437.57</td>
<td>$504.28</td>
<td>$32.80</td>
</tr>
</tbody>
</table>
(7) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1999, and before October 1, 2000:

<table>
<thead>
<tr>
<th>Type of program</th>
<th>No dependents</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional amount for each dependent over two</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional: fn1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Full-time</td>
<td>$ 420.45</td>
<td>$ 521.54</td>
<td>$ 614.60</td>
<td>$ 44.80</td>
</tr>
<tr>
<td>3/4 time</td>
<td>315.93</td>
<td>391.74</td>
<td>459.50</td>
<td>34.45</td>
</tr>
<tr>
<td>1/2 time</td>
<td>211.39</td>
<td>261.91</td>
<td>307.87</td>
<td>22.98</td>
</tr>
</tbody>
</table>

Nonpay or nominal pay on-job training in a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor; institutional non-

fn1 For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

fn2 For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

fn3 The quarter-time rate may be paid only during extended evaluation.
farm cooperative:
Full-time only  420.45  521.54  614.60  44.80

Nonpay or nominal pay work experience in a Federal, State, local, or federally recognized Indian tribe agency:
Full-time  420.45  521.54  614.60  44.80
3/4 time  315.93  391.74  459.50  34.45
1/2 time  211.39  261.91  307.87  22.98

Farm cooperative, apprenticeship, or other on-job training (OJT): fn2
Full-time  367.62  444.57  512.35  33.32

Combination of institutional and OJT (Full-time only):
Institutional  420.45  521.54  614.60  44.80
greater than 1/2 time
OJT greater than 1/2 time fn2  367.62  444.57  512.35  33.32

Non-farm cooperative (Full-time only):
Institutional  420.45  521.54  614.60  44.80
On-job fn2  367.62  444.57  512.35  33.32

Improvement of rehabilitation potential:
Full-time  420.45  521.54  614.60  44.80
3/4 time  315.93  391.74  459.50  34.45
1/2 time  211.39  261.91  307.87  22.98
1/4 time fn3  105.98  130.96  153.93  11.48

fn1 For measurement of rate of pursuit, see §§ 21.4270 through 21.4275.

fn2 For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

fn3 The quarter-time rate may be paid only during extended evaluation.

(Authority: 38 U.S.C. 3108, 3115(a)(1); Pub. L. 103-446)
(c) Subsistence allowance precluded. A veteran may not receive a subsistence allowance when VA is providing the veteran only the following services:
(1) Initial evaluation;
(2) Placement and post-placement services under 38 U.S.C. 3105(b); or
(3) Counseling.
(Authority: 38 U.S.C. 3108 (a)(1) and (a)(3))

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(d) Dependents. The term dependent means a spouse, child or dependent parent who meets the definition of relationship specified in §§ 3.50, 3.51, 3.57 or 3.59 of this chapter. (Authority: 38 U.S.C. 3108(b))

§ 21.262 Procurement and reimbursement of cost for training and rehabilitation services, supplies, or facilities.

(a) General. Whenever services, supplies and facilities from source outside VA are required by any of these regulations, they shall be provided through contract, agreement of other cooperative arrangement between VA and the vendor. (Authority: 38 U.S.C. 3115(b))

(b) VA Acquisition Regulations. Payments of charges for training and rehabilitation services, supplies, or facilities, authorized under Chapter 31 are subject to the provisions of applicable VA Acquisition Regulations especially 48 CFR part 831 and subpart 871.2. (Authority: 38 U.S.C. 3115(a))

§ 21.264 Election of payment at the 38 U.S.C. chapter 30 educational assistance rate.

(a) Eligibility. A veteran who applies for, and is found entitled to training or education under Chapter 31, may elect to receive payment at the educational allowance rate and other assistance furnished under Chapter 30, for similar training in lieu of a subsistence allowance, provided the following criteria are met:

1. The veteran has remaining eligibility for, and entitlement to educational assistance under Chapter 30;
2. The veteran enrolls in a program of education or training approved for benefits under Chapter 30;
3. The program of education is part of an IWRP (Individualized Written Rehabilitation Plan) approved by VA. (Authority: 38 U.S.C. 3015, 3022, 3108(f))

(b) Reelection of subsistence allowance. Reelection of payment of benefits at the Chapter 31 subsistence allowance rate may be made only after completion of a term, quarter, semester, or other period of instruction unless:

1. Chapter 30 eligibility or entitlement ends earlier;
2. Failure to approve immediate reelection would prevent the veteran from continuing in the rehabilitation program. (Authority: 38 U.S.C. 3015, 3022, 3108(f))

(c) Services precluded. A veteran entitled to vocational rehabilitation training or education who elects payment at the educational assistance rate payable under Chapter 30
shall be provided the same training and rehabilitation services as other veterans under Chapter 31, but may not be provided:
(1) Subsistence allowances;
(2) Loans from the revolving fund loan;
(3) Payment of costs for:
   (i) Vocational and other training services;
   (ii) Supplies; or
   (iii) Individualized tutorial assistance.
(Authority: 38 U.S.C. 3015, 3022, 3108(f))
(d) Chapter 30 provisions applicable. A veteran who has elected payment at the Chapter 30 educational assistance rate must meet the same terms and conditions as other veterans pursuing similar training under these programs.
(Authority: 38 U.S.C. 3015, 3022, 3108(f))
§ 21.266 Payment of subsistence allowance under special conditions.
(a) Hospitalized veteran or serviceperson. A veteran pursuing a VA rehabilitation program under Chapter 31 while hospitalized in a VA medical center or in any other hospital at VA expense may receive the subsistence allowance otherwise payable. The subsistence allowance will be paid at the rates specified in §21.260, except:
(1) The amount of subsistence allowance or the allowance provided under §21.264 that may be paid to a veteran pursuing a rehabilitation program for any month for which the veteran receives compensation at the rate prescribed in §3.401(h) of this title, as the result of hospital treatment (not including post-hospital convalescence) or observation at the expense of VA may not exceed, when added to any compensation to which such veteran is entitled for the month, an amount equal to the greater of:
   (i) The sum of: (A) the amount of monthly subsistence of the allowance payable under §21.264, and (B) the amount of monthly disability compensation that would be paid to the veteran if he or she was not receiving compensation at the temporary 100 percent rate as the result of such hospital treatment or observation, or
   (ii) The amount of monthly disability compensation payable under §3.401(h) of this title.
(2) A veteran pursuing a rehabilitation program while in post hospital convalescence (§3.401(h)) will be paid the regular rate of subsistence allowance.
(3) A serviceperson pursuing a rehabilitation program under Chapter 31 will not receive a subsistence allowance if he or she is hospitalized in a medical facility under the jurisdiction of the Secretary pending final discharge from the armed forces.
(Authority: 38 U.S.C. 3108(h))
(b) Specialized rehabilitation facility--(1) A veteran in a specialized rehabilitation facility will be paid the regular rate of subsistence allowance at the institutional rate. VA may pay the cost of room and board in lieu of subsistence allowance when:
   (i) The specialized rehabilitation facility requires that similarly circumstanced persons pay the same charges for room and board, and
   (ii) The case manager finds and the veteran agrees that it is to the veteran's advantage for VA to pay the cost of room and board.
(2) Even though VA pays the cost of room and board, the veteran will be paid that portion of subsistence allowance otherwise payable for dependents.
(Authority: 38 U.S.C. 3108(e))

c) Non-pay work experience or training in a Federal agency. A veteran in an on-job program or being provided work experience in a Federal agency at no or nominal pay shall receive subsistence allowance at the institutional rate.
(Authority: 38 U.S.C. 3108(e))

d) Extended evaluation and independent living program. A veteran in a program of extended evaluation or independent living service program shall be paid subsistence allowance for full or part-time participation at the rate specified for institutional training in § 21.260. If an extended evaluation or independent living program is pursued on a less than a quarter-time basis, as measured under § 21.310(d), VA will only pay established charges for services furnished.
(Authority: 38 U.S.C. 3108(h))

e) On-job training. A veteran in an on-job training program will be paid subsistence allowance at the rate provided under § 21.260(b), except that subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.
[49 FR 40814, Oct. 18, 1984]

§ 21.268 Employment adjustment allowance.
(a) General. A veteran who completes a period of rehabilitation and reaches the point of employability will be paid an employment adjustment allowance for a period of two months at the full-time subsistence allowance rate for the type of program the veteran was last pursuing. (See § 21.190(d))
(Authority: 38 U.S.C. 3108(a))

(b) Reelection of subsistence allowance. A veteran who has elected payment at the Chapter 30 educational assistance allowance rate may be paid an employment adjustment allowance only if he or she reelects subsistence allowance to become effective no later than the day following completion of the period of rehabilitation to the point of employability.
(Authority: 38 U.S.C. 3108(f))

c) Special programs. An employment adjustment allowance will be paid at the institutional rate of subsistence allowance for veterans in any of the following programs:
(1) On-job training at no or nominal pay in a Federal agency;
(2) Training in the home program;
(3) Independent instructor program;
(4) Cooperative program; or
(5) Self-employment program.

d) Combination program. A veteran who has pursued a combination program will be paid an employment adjustment allowance at the full-time rate for the type of training the veteran was actually pursuing at the completion of the period of rehabilitation to the point of employability.

e) Subsequent payments of employment adjustment allowance. If a veteran has ever received an employment adjustment allowance following rehabilitation to the point of
employability, he or she may, nevertheless, receive it again when completing an additional rehabilitation program to the point of employability if:
(1) The prior determination of rehabilitation to the point of employability is set aside; and
(2) The veteran is reinducted into a new vocational rehabilitation program as provided in § 21.282.
(f) Employment adjustment allowance not charged against entitlement. An employment adjustment allowance will not be charged against the veteran's basic entitlement.
(Authority: 38 U.S.C. 3108(a))

§ 21.270 Payment of subsistence allowance during leave and between periods of instruction.
(a) Payment during leave. VA will pay an eligible veteran a subsistence allowance during any period of approved leave including a veteran:
(1) Receiving medical or rehabilitation services on an outpatient basis at a VA medical center, and who provides his or her own room and board;
(2) Receiving service department retirement or retained pay while not on active duty;
(3) Hospitalized at a VA medical center while on approved leave. If the veteran becomes eligible for payment of disability compensation at the temporary 100 percent rate, under § 3.401(h) of this title due to hospitalization, payment will be made under provisions of § 21.266(a).
(Authority: 38 U.S.C. 3110)
(b) Payment for intervals between periods of instruction. Subsistence allowance will paid to a veteran during the following periods unless the case manager and the veteran jointly determine that such payment is not in the veteran's interest:
(1) A period between consecutive terms within an enrollment period that does not exceed 1 full calendar month;
(2) A period between consecutive school terms, when the veteran, as part of his or her approved program of vocational rehabilitation, transfers from one educational institution to another for the purpose of enrolling in, and pursuing, the same objective at the second institution, provided the period does not exceed 30 days;
(3) A period which does not exceed 30 days, between a semester, term, or quarter, when the educational institution certifies the enrollment of the veteran on an individual semester, term, or quarter basis.
(c) Payment for other periods. Subsistence allowance will be paid for:
(1) Weekend and legal holidays, or customary vacation periods associated with them;
(2) Periods in which the school is closed temporarily under emergency conditions described in § 21.4138(f).
[49 FR 40814, Oct. 18, 1984]

§ 21.272 Veteran-student services.
(a) Eligibility. Veterans who are pursuing a rehabilitation program under chapter 31 on a three-quarter or full-time basis are eligible to receive a work-study allowance.
(Authority: 38 U.S.C. 3104(a)(4), 3485)
(b) Selection criteria. Whenever feasible, VA will give priority to veterans with service-connected disabilities rated at 30 percent or more disabling in selection of recipients of this allowance. VA shall consider the following additional selection criteria:
(1) Need of the veteran to augment the subsistence allowance or payment made by the Chapter 30 rate;
(2) Motivation of the veteran; and
(3) Compatibility of the work assignment with the veteran's physical condition.
(Authority: 38 U.S.C. 3104(a)(4), 3108(f), 3485)
(c) Utilization. Veteran-student services may be utilized in connection with:
(1) VA outreach service program as carried out under the supervision of a VA employee;
(2) Preparation and processing of necessary VA papers and other documents at educational institutions, regional offices or other VA facilities;
(3) Hospital and domiciliary care and medical treatment at VA facilities; and
(4) Any other appropriate activity of VA.
(d) Rate of payment. (1) In return for the veterans' agreement to perform services for VA totaling 25 times the number of weeks contained in an enrollment period, VA will pay an allowance equal to the higher of:
   (i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the veteran has agreed to work; or
   (ii) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran has agreed to work.
(2) VA will pay proportionately less to a veteran who agrees to perform a lesser number of hours of services.
(Authority: 38 U.S.C. 3104(a)(4), 3485)
(e) Payment in advance. VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract (but not more than an amount equal to 50 times the applicable hourly minimum wage).
(Authority: 38 U.S.C. 3104(a)(4), 3485)
(f) Veteran reduces rate of training. In event the veteran reduces his or her training to less than three quarter time before completing an agreement, the veteran, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be at least a three-quarter time student.
(Authority: 38 U.S.C. 3104(a)(4), 3485)
(g) Veteran terminates training. If the veteran terminates all training before completing an agreement, VA;
   (1) Will permit him or her to complete the portion of the agreement represented by the sum of money VA has advanced to the veteran for which he or she has not performed any services; but
   (2) Will not permit him or her to complete that portion of an agreement for which no advance has been made.
(h) Indebtedness for unperformed service. (1) If the veteran has received an advance for hours or unperformed service that remain after application of paragraphs (f) and (g) of this section, that advance;
   (i) Will be a debt due the United States; and
(ii) Will be subject to recovery in the same manner as any other debt due the United States
(2) For each hour of unperformed service, the amount of indebtedness shall equal the hourly wage upon which the contract was made.
(i) Survey. VA will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively.
(Authority: 38 U.S.C. 3104(a)(4), 3485)

§ 21.274 Revolving fund loan.
(a) Establishment of revolving fund loan. A revolving fund is established to provide advances to veterans who would otherwise be unable to begin or continue in a rehabilitation program without such assistance.
(b) Definition. The term advance means a non-interest loan from the revolving fund.
(c) Eligibility. A veteran is eligible for an advance if the following conditions are present:
(1) An Individualized Written Rehabilitation Plan, Individualized Extended Evaluation Plan, or Individualized Independent Living Plan has been prepared; and
(2) The veteran and VA staff agree on the terms and conditions of the plan.
(d) Advance conditions. (1) An advance may be approved when the following conditions are met:
(i) The purpose of the advance is clearly and directly related to beginning, continuing, or reentering a rehabilitation program;
(ii) The veteran would otherwise be unable to begin, continue or reenter his or her rehabilitation program;
(iii) The advance does not exceed either the amount needed, or twice the monthly subsistence allowance for a veteran without dependents in full-time institutional training; and
(iv) The veteran has elected, or is in receipt of, subsistence allowance.
(2) An advance may not be made to a veteran who meets conditions described in paragraph (d)(1) of this section if the veteran:
(i) Has not fully repaid an advance;
(ii) Does not agree to the terms and conditions for repayment; or
(iii) Will not be eligible in the future for payments of pension, compensation, subsistence allowance, educational assistance, or retired pay.
(e) Determination of the amount of the advance. (1) If the conditions described in paragraphs (c) and (d)(2) of this section are met, a counseling psychologist or vocational rehabilitation specialist in the VR&E Division will:
(i) Document the findings; and
(ii) Determine the amount of the advance.
(2) Loans will be made in multiples of $10.
(f) Repayment -- (1) Offset possible. The amount advanced will be repaid in monthly installments from future VA payments for compensation, pension, subsistence allowance, educational assistance allowance or retired pay.
(i) Repayment will begin on the earlier of the following dates:
(A) The first day of the month following the month in which the advance is granted; or
(B) The first day of the month after receipt of the advance in which the veteran receives a subsistence allowance
(ii) The VR&E staff person who approves the advance will determine the rate of repayment.
(iii) The monthly rate of repayment may not be less than 10 percent of the amount advanced unless the monthly benefit against which the advance is being offset is less than that amount.
(2) Offset not possible. If the amount advanced cannot be repaid from the benefits cited in paragraph (f)(1) of this section because the veteran is not in receipt of any of these benefits, collection of the amount due will be made in the same manner as any other debt payable to VA.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3112)

§ 21.276 Incarcerated veterans.
(a) General. The provisions contained in this section describe the limitations on payment of subsistence allowance and charges for tuition and fees for:
(1) Incarcerated veterans;
(2) Formerly incarcerated veterans in halfway houses; and
(3) Incarcerated and formerly incarcerated veterans in work release programs.
(Authority: 38 U.S.C. 3108(g), 3680(a))
(b) Definition. The term incarcerated veteran means any veteran incarcerated in a Federal, State, or local prison, jail, or other penal institution for a felony. It does not include any veteran who is pursuing a rehabilitation program under Chapter 31 while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.
(c) Subsistence allowance not paid to an incarcerated veteran. A subsistence allowance may not be paid to an incarcerated veteran convicted of a felony, but VA may pay all or part of the veteran's tuition and fees.
(Authority: 38 U.S.C. 3108(g))
(d) Halfway house. A subsistence allowance may be paid to a veteran pursuing a rehabilitation program while residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program.
(Authority: 38 U.S.C. 3108(a))
(e) Work-release program. A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.
(f) Services. VA may provide other appropriate services, including but not limited to medical, reader service, and tutorial assistance necessary for the veteran to pursue his or her rehabilitation program.
(Authority: 38 U.S.C. 31089(g))
(g) Payment of allowance at the rates paid under Chapter 30. A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 shall be paid in
accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30.
(Authority: 38 U.S.C. 3108(f), 3680(a))

(h) Apportionment. Apportionment of subsistence allowance which began before October 17, 1980 made to dependents of an incarcerated veteran convicted of a felony may be continued.
(Authority: 38 U.S.C. 3108(g))

ENTERING A REHABILITATION PROGRAM

§ 21.282 Effective date of induction into a rehabilitation program.
§ 21.283 Rehabilitated.
§ 21.284 Reentrance into a rehabilitation program.

§ 21.282 Effective date of induction into a rehabilitation program.
(a) General. Except as provided in paragraph (b) the effective date of induction of a veteran into a rehabilitation program will be one of the dates provided in §§ 21.320 through 21.334.

(Authority: 38 U.S.C. 3108)

(b) Retroactive induction. (1) A veteran may be inducted into a vocational rehabilitation program retroactively when all of the following conditions are met:
   (i) The period for which retroactive induction is requested is within the veteran's basic period of eligibility or extended eligibility as provided in §§ 21.41 through 21.44;
   (ii) The veteran was entitled to disability compensation during the period for which retroactive induction is requested, and met the criteria of entitlement to vocational rehabilitation for that period; and
   (iii) The training the veteran pursued during the period is applicable to the occupational objective that is confirmed in initial evaluation to be compatible with his or her disability, consistent with his or her abilities, interests, and aptitudes, and otherwise suitable for accomplishing vocational rehabilitation.

(Authority: 38 U.S.C. 5113)

(2) A veteran shall not be inducted into a vocational rehabilitation program retroactively if any of the following conditions exist even though all conditions of paragraph (b) of this section are met:
   (i) Timely induction was prevented by the veteran's lack of cooperation in completing an initial evaluation;
   (ii) The veteran has previously received benefits under another VA program of education or training for any period for which retroactive benefits are being requested under Chapter 31;
   (iii) A period of extended evaluation is authorized to determine the reasonable feasibility of a vocational goal; or
   (iv) The veteran's claim is not received within the time limits described in § 21.31.

(Authority: 38 U.S.C. 3101(9))

(c) Effective date of retroactive induction. The effective date of a veteran's retroactive induction into training shall be no earlier than one year prior to the date of application for Chapter 31 benefits but in no event may precede:
   (1) The effective date of the establishment of the veteran's compensable service-connected disability; or
   (2) The first date the veteran began training in the program leading to the occupational objective established in the veteran's plan.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3101(9))
§ 21.283 Rehabilitated.

Discussion and Analysis in the Veterans Benefits Manual

(a) General. For purposes of chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section.

(Authority: 38 U.S.C. 3101 (1), (2))

(b) Definition. The term "suitably employed" includes employment in the competitive labor market, sheltered situations, or on a nonpay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c) (1) or (2) of this section are otherwise met.

(Authority: 38 U.S.C. 3100)

(c) Rehabilitation to the point of employability has been achieved. The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupation objective of a rehabilitation plan for a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veteran's aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veteran's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(d) Rehabilitation to the point of employability has not been completed. A veteran under a rehabilitation plan who obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist:

(1) The veteran obtains and retains employment substantially using the services and assistance provided under the plan for rehabilitation.

(2) The employment obtained is consistent with the veteran's abilities, aptitudes and interests.

(3) Maximum services feasible to assist the veteran to retain the employment obtained have been provided.

(4) The veteran has maintained the employment for at least 60 continuous days.

(Authority: 38 U.S.C. 3101(1), 3107 and 3117)
(e) Independent living. A veteran who has pursued a program of independent living services will be considered rehabilitated when all goals of the program have been achieved, or if not achieved, when:
(1) The veteran, nevertheless, has attained a substantial increase in the level of independence with the program assistance provided;
(2) The veteran has maintained the increased level of independence for at least 60 days; and
(3) Further assistance is unlikely to significantly increase the veteran's level of independence.
(Authority: 38 U.S.C. 3101 (1), (2) 3107)
[58 FR 68768, Dec. 29, 1993]

§ 21.284 Reentrance into a rehabilitation program.
(a) Reentrance into rehabilitation to the point of employability following a determination of rehabilitation. A veteran who has been found rehabilitated under provisions of § 21.283 may be provided an additional period of training or services only if the following conditions are met:
(1) The veteran has a compensable service-connected disability and either;
(2) Current facts, including any relevant medical findings, establish that the veteran's service-connected disability has worsened to the extent that the effects of the service-connected disability considered in relation to other facts precludes him or her from performing the duties of the occupation for which the veteran previously was found rehabilitated; or
(3) The occupation for which the veteran previously was found rehabilitated under Chapter 31 is found to be unsuitable on the basis of the veteran's specific employment handicap and capabilities.
(Authority: 38 U.S.C. 3101(a))
(b) Reentrance into a program of independent living services following a determination of rehabilitation. A finding of rehabilitation following a program of independent living services may only be set aside, and an additional period of independent living services provided, if the following conditions are met:
(1) Either:
(i) The veteran's condition has worsened and as a result the veteran has sustained a substantial loss of independence; or
(ii) Other changes in the veteran's circumstances have caused a substantial loss of independence; and
(2) The provisions of § 21.162 pertaining to participation in a program of independent living services are met.
(Authority: 38 U.S.C. 3109)
(c) Reentrance into rehabilitation to the point of employability during a period of employment services. A finding of rehabilitation to the point of employability by VA may be set aside during a period of employment services and an additional period of training and related services provided, if any of the following conditions are met:
(1) The conditions for setting aside a finding of rehabilitation under paragraph (a) of this section are found;
(2) The rehabilitation services originally given to the veteran are now inadequate to make the veteran employable in the occupation for which he or she pursued rehabilitation;
(3) Experience during the period of employment services has demonstrated that employment in the objective or field for which the veteran was rehabilitated to the point of employability should not reasonably have been expected at the time the program was originally developed; or
(4) The veteran, because of technological change which occurred subsequent to the declaration of rehabilitation to the point of employability, is no longer able:
(i) To perform the duties of the occupation for which he or she trained, or in a related occupation; or
(ii) To secure employment in the occupation for which he or she trained, or in a related occupation.

(38 U.S.C. 3117)
COURSE APPROVAL AND FACILITY SELECTION

§ 21.290 Training and rehabilitation resources.
§ 21.292 Course approvals.
§ 21.294 Selecting the training or rehabilitation facility.
§ 21.296 Selecting a training establishment for on-job training.
§ 21.298 Selecting a farm.
§ 21.299 Use of Government facilities for on-job training or work experience at no or nominal pay.

§ 21.290 Training and rehabilitation resources.
(a) General. For the purpose of providing training and rehabilitation services under Chapter 31 VA may:
(1) Use facilities, staff and other resources of VA;
(2) Employ any additional personnel and experts needed;
(3) Use the facilities and services of any:
   (i) Federal agency;
   (ii) State agency;
   (iii) Other public agency; or
   (iv) Agency maintained by joint Federal and state contributions.
(4) Use the facilities and services of any:
   (i) Public institution or establishment;
   (ii) Private institution or establishment; or
   (iii) Private individual.
(b) Agreement required. Use of facilities and services provided under paragraph (a) of this section shall be procured through contract, agreement, or other cooperative arrangement. The specific requirements for use of contracts or other arrangements are described in 48 CFR 871.2.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3115)

§ 21.292 Course approvals.
(a) Courses must be approved. Only those courses approved by the Department of Veterans Affairs shall be utilized to provide training and rehabilitation services under Chapter 31.
(Authority: 38 U.S.C. 3106)
(b) General. VA staff in consultation with the veteran will select courses and services needed to carry out the rehabilitation plan only from those which VA determines are offered by a training or rehabilitation facility which:
(1) Meets the requirements of §§ 21.120 through 21.162;
(2) Meets the criteria of §§ 21.290 through 21.299; and
(c) Obtaining information necessary for approval. In determining whether services and courses may be approved for a veteran's training and rehabilitation under Chapter 31, the Department of Veterans Affairs may use information relevant to the approval or certification of such services and courses for similar purposes developed by:
(1) The State approving agencies;
(2) The Department of Labor;
(3) State vocational rehabilitation agencies;
(4) Nationally recognized accrediting associations;
(5) The Committee on Accreditation of Rehabilitation Facilities; and
(6) Other organizations and agencies.
(d) Course not approved. If a course or program is not approved by one of the agencies identified in paragraph (c) of this section, VR&E staff shall develop necessary information to determine whether criteria given in paragraphs (a) and (b) of this section are met.
(e) Course disapproved. The VR&E Officer may approve for 38 U.S.C. chapter 31 use courses that one of the agencies in paragraph (c) of this section has disapproved.

Authority: 38 U.S.C. 3115

§ 21.294 Selecting the training or rehabilitation facility.
(a) Criteria the facility must meet. In addition to approval of the courses offered, all facilities which provide training and rehabilitation services under Chapter 31 must meet the criteria contained in §§ 21.290 through 21.299 applicable to the type of facility. Each facility must:
(1) Have space, equipment, instructional material and instructor personnel adequate in kind, quality, and amount to provide the desired service for the veteran;
(2) Fully accept the obligation to give the training or rehabilitation services in all parts of the plan which call for the facility's participation;
(3) Provide courses or services which:
   (i) Meet the customary requirements in the locality for employment in the occupation in which training is given when employment is the objective of the program; and
   (ii) Meet the requirements for licensure or permit to practice the occupation, if such is required;
(4) Agree:
   (i) To cooperate with VA, and
   (ii) To provide timely and accurate information covering the veteran's attendance, performance, and progress in training in the manner prescribed by VA.
(b) Selecting a facility for provision of independent living services. (1) Facilities offering independent living services will be utilized to:
   (i) Evaluate independent living potential;
   (ii) To provide timely and accurate information covering the veteran's attendance, performance, and progress in training in the manner prescribed by VA.
(2) VA may use public and nonprofit agencies and facilities to furnish independent living services. Public and nonprofit facilities may be:
(i) Veterans Health Administration (VHA) facilities that provide independent living services;
(ii) Facilities which meet standards established by the State rehabilitation agency for rehabilitation facilities or for providers of independent living services;
(iii) Facilities which are neither approved nor disapproved by the State rehabilitation agency, but are determined by VA as able to provide the services necessary in an individual veteran's case.

(3) VA also may use for-profit agencies and organizations to furnish programs of independent living services only if services comparable in effectiveness to those provided by for-profit agencies and organizations:
(i) Are not available through public or nonprofit agencies or VHA; or
(ii) Cannot be obtained cost-effectively from public or nonprofit agencies or VHA.

(4) In addition to the criteria described in paragraph (b)(3)(i) of this section for public and private nonprofit agencies; for-profit agencies and organizations must meet any additional standards established by local, state (including the State rehabilitation agency), and Federal agencies which are applicable to for-profit facilities and agencies offering independent living services.

(Authority: 38 U.S.C. 3115, 3120)

(c) Use of facilities. VA policy shall be to use VA facilities, if available, to provide rehabilitation services for veterans in a rehabilitation program under chapter 31. Non-VA facilities may be used to provide rehabilitation services only when necessary services are not readily available at a VHA facility. This policy shall be implemented in accordance with the provisions of paragraph (b) of this section in the case of the use of for-profit facilities to provide programs of independent living services, or in the case of employment services, provision of such services by non-VA sources is permitted under §21.252.

(Authority: 38 U.S.C. 3115)

(d) Selection of individual to provide training or rehabilitation services. Persons selected to provide individual instruction or other services as part of a program leading to the long-range goal of a veteran's plan must meet one of the following criteria:
(1) State requirements for teaching in the field or occupation for which training is being provided; or
(2) Expertise demonstrated through employment in the field in which the veteran is to be trained; or
(3) Requirements established by professional associations to provide the services needed by the veteran.

(e) Relatives. Relatives of the veteran may not be selected to provide services, even if otherwise qualified, unless such use is specifically permitted by VA regulation governing provision of the service. Selection of a training or rehabilitation facility owned by the veteran or a relative, or in which the veteran or a relative of the veteran has an interest is precluded, except for selection of a farm as provided in §21.298. The term relative has the same meaning as in §21.374.

(f) Contracts or agreements required. The Department of Veterans Affairs will negotiate formal contracts for reimbursement to providers of services as required by §21.262. However, a letter contract will be effected immediately to permit the induction of the veteran into a program if:
§ 21.296 Selecting a training establishment for on-job training.

(a) Additional criteria for selecting a training establishment. In addition to meeting all of the requirements of § 21.294 the training establishment must:

1. Sign an agreement to provide on-job training to disabled veterans;
2. Provide continuous training for each veteran without interruption except for normal holidays and vacation periods;
3. Provide daytime training for the veteran except when the veteran cannot obtain necessary on-job or related training during the working hours of the day;
4. Modify the program when necessary to compensate for the limitations resulting from the veteran's disability or needs;
5. Organize training into definite steps or units which will result in progressive training;
6. Encourage rapid progress of each veteran rather than limit the progress of the individual to the progress of the group;
7. Not, during the period of training, use the veteran on production activities beyond the point of efficient training;
8. Agree to pay the veteran during training (except as provided in paragraph (b) of this section) a salary or wage rate;
   i. Commensurate with the value of the veteran's productive labor,
   ii. Not less than that prescribed by the Fair Labor Standards Act of 1938, as amended, and
   iii. Not less than that customarily paid to nonveteran-trainees in the same or similar training situation;
9. Agree to provide the veteran with employment at the end of the training program, provided the veteran's conduct and progress have been satisfactory; and
(10) Agree to furnish VA a statement in writing showing wages, compensation, and other income paid directly or indirectly to each veteran in training under Chapter 31 during the month.

(Authority: 38 U.S.C. 3108(c), 3115)

(b) On-job training at subminimum wage rates. A subminimum hourly wage rate for handicapped workers may be considered where necessary in order to prevent curtailment of opportunities for employment. Payment at the subminimum rate must be approved by the Wage and Hour Division of the Department of Labor.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

(38 U.S.C. 3115)

§ 21.298 Selecting a farm.

(a) Control of the farm--farm operator. A farm selected for farm cooperative training must be under the control of the veteran by ownership, lease or other written tenure arrangement. If the veteran does not own the farm, the lease or other written agreement shall:

(1) Afford the veteran control of the farm at least until the end of his or her course;
(2) Allow the veteran's control to be such that he or she is able:
   (i) To carry out the provisions of the training program; and
   (ii) To operate the farm in accordance with the farm and home plan developed by the case manager and the veteran in collaboration with the instructor, and when appropriate, the landowner or lessor;
(3) Permit instruction in the planning, management, and operation of farming enterprise in the veteran's farm and home plan;
(4) At least by the end of the necessary minimum period of training, assure the veteran a reasonably satisfactory living under normal economic conditions;
(5) Provide for the necessary buildings and equipment to enable the veteran to satisfactorily begin pursuit of the course of farm cooperative training;
(6) Provide for resources which give reasonable promise that any additional items required for the pursuit of the course, including livestock, will be available as they become necessary;
(7) Provide for capital improvements to be made which are necessary for carrying out the farm and home plan, with the veteran furnishing no greater portion of the costs than the benefits accruing to the veteran warrant; and
(8) Provide for the landowner or lesor to share the costs of improved practices put into effect in proportion to the returns he or she will receive from such practices.

(b) Farms on which more than one person trains--farm operator. If a veteran in training is a partner of another person or if more than one person is involved in operating the farm, the farm shall be of such size and character that:

(1) Together with the instruction part of the course will occupy the full time of the veteran; and
(2) Meets all requirements of paragraph (a) of this section.

(c) Selecting a farm--farm manager. The farm on which a veteran trains to become a farm manager shall be of such size and character that, together with the group instruction part of the course the farm:

(1) Will occupy the full time of the veteran;
(2) Will permit instruction in all aspects of the management and operation of a farm of the type for which the veteran is being trained; and
(3) Meets the requirements of paragraph (a) of this section.
(d) Employer agreement. VA may approve a farm on which a veteran is to train to become a farm manager only if the employer-trainer agrees:
(1) To instruct the veteran in various aspects of farm management in accordance with the individual's plan;
(2) To pay the veteran for each successive period of training a salary or wage rate:
   (i) Commensurate with the value of the veteran's productive labor; and
   (ii) Not less than that customarily paid to a nonveteran trainee in the same or similar training situation in that community; and
(3) To employ the veteran as a manager of the farm on which he or she is being trained if his or her conduct and progress remain satisfactory, or assure that the veteran will be employed as manager of a specified comparable farm.
[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

(38 U.S.C. 3115)

§21.299 Use of Government facilities for on-job training or work experience at no or nominal pay.

(a) Types of facilities which may be used to provide training. Notwithstanding any other provision of regulations governing chapter 31, the facilities of any agency of the United States or of any State or local government receiving Federal financial assistance may be used to provide training or work experience at no or nominal pay as all or part of the veteran's program of vocational training under §§21.123, 21.294, and 21.296 of this part. The counseling psychologist and case manager must determine that the training work experience is necessary to accomplish vocational rehabilitation and providing such training or work experience is in the best interest of the veteran and the Federal government.

(Authority: 38 U.S.C. 3115, Pub. L. 100-689)

(b) Employment status of veterans. (1) While pursuing on-job training or work experience in a facility of the United States, a veteran:
   (i) Shall be deemed to be an employee of the United States for the purposes of benefits under chapter 81, title 5 U.S.C.; but
   (ii) Shall not be deemed an employee of the United States for the purpose of laws administered by the Office of Personnel Management.

   (2) While pursuing on-job training or work experience in a State or local government agency the veteran shall have the employment status and rights comparable to those provided in paragraph (b)(1) of this section for a veteran pursuing on-job training or work experience at a Federal agency.

   (Authority: 38 U.S.C. 3115, Pub. L. 100-689)

(c) Terms applicable to training in State and local government. (1) The term State means each of the several States Territories, any possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

   (Authority: 38 U.S.C. 101(20))
(2) The term local government agency means an administrative subdivision of a
government including a county, municipality, city, town, township, public authority,
district, school district, or other such agency or instrumentality of a local government.
(3) The term Federal financial assistance means the direct or indirect provision of funds
by grant, loan, contract, or any other arrangement by the Federal government to a State or
local government agency.
(d) Additional considerations in providing on-job training and work experience in State
and local government agencies. (1) The veteran's progress and adjustment in a
rehabilitation program conducted wholly or in part at a State or local government agency
shall be closely monitored by VR&E staff members to assure that:
(i) Training and rehabilitation services are provided in accordance with the veteran's
rehabilitation plan. The plan shall provide for:
(A) Close supervision of the veteran's progress and adjustment by the case manager
during the period he or she is at the State or local government agency; and
(B) The employer's periodic certification (not less than once every three months) that the
veteran's progress and adjustment are in accordance with the program which has been
jointly developed by VA, the veteran and the employer; and
(ii) The veteran achieves his or her employment goal.
(2) Training may not be provided for a position which involves religious or political
activities;
(3) The veteran's training:
(i) Will not result in the displacement of currently employed workers; and
(ii) Will not be in a job while another person is laid off from a substantially equivalent
job, or will not be in a job the opening for which was created as a result of the employer
having terminated the employment of any regular employee or otherwise having reduced
its workforce with the intention of using the opening for a Chapter 31 trainee.
[55 FR 3739, Feb. 5, 1990]

(Pub. L. 100-689)
RATE OF PURSUIT

§ 21.310 Rate of pursuit of a rehabilitation program.
§ 21.312 Reduced work tolerance.
§ 21.314 Pursuit of training under special conditions.

§ 21.310 Rate of pursuit of a rehabilitation program.
(a) Programs offered at educational institutions. This section provides policy for determining the full-time and part-time rate of pursuit of a rehabilitation program by a veteran whose ability to pursue a program has not been reduced by the effects of disability.
(1) Measuring full and part-time training. VA will measure the full-time and part-time rate of pursuit of training offered at educational institutions according to the criteria found in §§ 21.4270 through 21.4275, except as provided in paragraphs (a) (2) and (3) of this section.
(2) Independent study course. (i) For certain seriously disabled veterans described in subdivision (i)(A) of this subparagraph VA may measure the veteran's enrollment:
(A) In an independent study course as half-time or greater training, or
(B) Both in independent study subjects and subjects requiring class attendance on the basis of the combined training load when the number of credit hours of independent study equals or exceeds the number of other credit hours.
(ii) To qualify for measurement described in paragraph (a)(2)(i) of this section:
(A) The seriously disabled veteran must have a disability or circumstances which preclude regular attendance at an institution of higher learning, and
(B) Independent study must be a sound method for providing the training necessary for restoring the veteran's employability.
(iii) In all other cases VA will measure independent study according to the provisions of § 21.4280.
(3) Special school. If training is pursued in a special school, such as those for persons with visual or hearing disabilities, the rate of pursuit will be measured under §§ 21.2470 through 21.4275 unless it is the established policy of the school to measure the rate of pursuit for full-time or particular level or part-time training based upon fewer semester, credit, or clock hours of attendance than prescribed in these regulations.
(4) Farm cooperative. If training in a farm cooperative program is provided by an educational institution, the rate of pursuit shall be determined the same as under § 21.4270 for that type of training.
(5) Course offered under contract. When a school or other entity furnishes all or part of a vocational rehabilitation program under contract with another school, VA will measure the course or courses as appropriate for the school or other entity actually providing the training.
(b) Education or training not furnished by an educational institution. The following types of training which are not furnished by an educational institution (§ 21.35(k)(3) may only be pursued full-time:
(1) On-job training. Full-time training in an on-job program is the lesser of the number of hours in the prevailing workweek for:
(i) Journeyman employees in the same job categories at the establishment where training is being provided;
(ii) Other persons in on-job training for the same or similar occupations at the facility where the veteran is training or at other facilities in the locality.
(2) Farm cooperative training. If training in a farm cooperative program is provided by an individual instructor, the full-time rate of pursuit must meet the requirements of § 21.126.
(3) Independent instructor. The full-time rate of pursuit for a veteran in an independent instructor program must meet the requirements of § 21.146.
(4) Training in the home. The full-time rate for a training program provided in the veteran's home must meet the requirements of § 21.146.
(5) Vocational course in a rehabilitation facility or sheltered workshop. A vocational course of training offered by a rehabilitation facility or sheltered workshop (§ 21.35(k)(5) and (6)), will be measured under provisions of § 21.4270(b) for trade or technical nonaccredited courses, unless it is the established policy of the facility to measure the rate of pursuit for full-time or a particular level of part-time training based upon fewer clock hours of attendance than provided in that regulation.
(c) Combination and cooperative programs. The rate of pursuit of a program which combines institutional training and on job training will be measured as follows:
(1) The institutional part will be assessed under §§ 21.4270 through 21.4275, and
(2) The on-the-job part will be assessed under paragraph (b)(1) of this section.
(d) Rehabilitative services. Measurement of the rate of pursuit for veterans in programs consisting primarily of services designed to evaluate and improve physical and psychological functioning will be assessed under this paragraph.
(1) The services assessed under this paragraph include:
(i) Evaluation and improvement of the rehabilitation potential of a veteran for whom attainment of a vocational goal is reasonably feasible;
(ii) Extended evaluation to determine whether attainment of a vocational goal is reasonably feasible; or
(iii) A program of independent living services to enable a veteran to function more independently in his or her family and community when attainment of a vocational goal is not reasonably feasible.
(2) Measurement of the rate of pursuit for services and programs named in paragraph (d)(1) of this section will be:
(i) As provided in paragraph (a) of this section for services furnished by educational institutions; or
(ii) According to the noneducational facility's customary criteria for full-time and part-time pursuit. If the facility does not have established criteria for full-time and part-time pursuit, or services are being provided by more than one facility, the rate of pursuit will be assessed in the following manner:

<table>
<thead>
<tr>
<th>Rate of pursuit</th>
<th>Clock hours per month</th>
</tr>
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<tbody>
<tr>
<td>Full-time</td>
<td>120 or more</td>
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<tr>
<td>Three-quarter time fn1</td>
<td>90-119</td>
</tr>
<tr>
<td>Half-time fn1</td>
<td>60-89</td>
</tr>
<tr>
<td>Quarter-time fn1</td>
<td>30-59</td>
</tr>
</tbody>
</table>

fn1 Extended evaluation and independent living.

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§ 21.312 Reduced work tolerance.
(a) General. VA will consider that a veteran with reduced work tolerance is pursuing a rehabilitation program full-time when the amount of time the veteran is devoting to his or her program is as great as the effects of his or her disability (service and nonservice-connected) will permit.
(b) Pursuit of a program. A veteran with reduced work tolerance may pursue a rehabilitation program when the following conditions are met:
   (1) Reduced work tolerance has been determined.
   (2) Achievement of the goals of the program are reasonably feasible;
   (3) The IWRP (Individualized Written Rehabilitation Plan) or other plan provides for completion of the program under Chapter 31.
(c) Redetermination of work tolerance. As necessary, but not less than once yearly, the veteran's work tolerance will be reevaluated. The rate of pursuit required to meet the standard of full-time pursuit will be modified if there is either an increase or decrease in the work tolerance of the veteran.
(d) Payment of allowance. A veteran with a reduced work tolerance will be paid a subsistence allowance, at the full-time rate for the type of program being pursued, when the veteran meets the standard for full-time pursuit established for him or her in the Plan. A veteran with reduced work tolerance, who elects benefits at the Chapter 34 rate, will have to meet normal attendance requirements for that chapter, however.
(e) Determining work tolerance. A VA physician will make all determinations and redeterminations of work tolerance.

§ 21.314 Pursuit of training under special conditions.
A veteran is required to pursue a rehabilitation program at a rate which meets the requirement for full- or part-time participation described in §§ 21.310 and 21.312. However, a veteran may pursue a rehabilitation program at a lesser rate, if such pursuit is a part of the veteran's plan. Subsistence allowance is not payable during such periods.
AUTHORIZATION OF SUBSISTENCE ALLOWANCE AND TRAINING AND REHABILITATION SERVICES

§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.
§ 21.322 Commencing dates of subsistence allowance.
§ 21.324 Reduction or termination dates of subsistence allowance.
§ 21.326 Authorization of employment services.
§ 21.328 Two veteran cases -- dependents.
§ 21.330 Apportionment.
§ 21.332 Payments of subsistence allowance.
§ 21.334 Election of payment at the chapter 30 rate.

§ 21.320 Awards for subsistence allowance and authorization of rehabilitation services.
Awards providing for payment of a subsistence allowance and authorization of services necessary for rehabilitation may be prepared when an IWRP (Individualized Written Rehabilitation Plan) or other plan has been completed and other requirements for entrance or reentrance into a rehabilitation program have been met.
(a) Commencing date of subsistence allowance. The commencing date of an award of subsistence allowance will be determined under the provisions of § 21.322.
(b) Commencing date of authorization of training and rehabilitation services. The commencing date for authorization of training and rehabilitation services is the same as the effective date for awards for subsistence allowance under provisions of § 21.322, except when:
   (1) The commencing date for authorization of a program of employment services is determined under provisions of § 21.326;
   (2) An earlier commencement date is established in the veteran's plan or the veteran is entitled to earlier induction under § 21.282;
   (3) The veteran elects payment at the educational assistance allowance rate, in which case the commencing date of payment is determined under provisions applicable to commencement of payment under Chapter 30.
   (Authority: 38 U.S.C. 3108 (a) and (f))
(c) Ending date of subsistence allowance. The ending date of an award for subsistence allowance will be the earliest of the following dates:
   (1) The ending date provided in the veteran's IWRP or other plan;
   (2) The ending date of a period of enrollment as certified by a training or rehabilitation facility;
   (3) The ending date specified in § 21.324.
   (Authority: 38 U.S.C. 3108)
(d) Ending date for training and rehabilitation services. The ending date of training and rehabilitation services will be the same as the termination date for subsistence allowance under paragraph (c) of this section, except when:
   (1) The ending date for a period of employment services is determined under provisions of § 21.326;
   (2) A later termination date is established in the veteran's plan;
§ 21.322 Commencing dates of subsistence allowance.

(a) General. VA will determine the commencing date of an award or increased award of subsistence allowance under this section. VA will not authorize subsistence allowance for any period prior to the earliest date for which disability compensation is payable or would be payable but for the veteran's receipt of retired pay.

(b) Entrance or reentrance into vocational rehabilitation, extended evaluation, independent living services. Except in the case of retroactive induction into a rehabilitation program, as provided in § 21.282, the commencing date of an award of subsistence allowance shall be the earlier of:

(1) The date the facility requires the veteran to report for prescribed activities; or
(2) The date training or rehabilitation services begin.

(c) Increases for dependents—(1) Dependency exists at the time of entrance or reentrance into a rehabilitation program. A veteran may have one or more dependents on or before the date he or she enters or reenters a rehabilitation program. When this occurs, the following rules apply:

(i) The effective date of the increase will be the date of entrance or reentrance if:

(A) VA receives the claim for the increase within one year of the date of entrance or reentrance; and

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) The effective date of the increase will be the date VA receives notice of the dependents existence if:

(A) VA receives the claim for the increase more than one year after the date of entrance or reentrance; and

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(iii) The effective date of the increase will be the date VA receives all necessary evidence if that evidence is received more than one year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(2) Dependency arises after entrance or reentrance into a rehabilitation program. If the veteran acquires a dependent after he or she enters or reenters a rehabilitation program, the increase will be effective on the latest of the following dates:
(i) Date of claim. This term means the following listed in order of their applicability:
(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within one year from the date of the event;
(B) Date notice is received of the dependents's existence if evidence is received within 1 year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.
(C) Date VA receives evidence of the dependent's existence if this date is more than one year after VA requested this evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of the time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.
(ii) Date dependency arises--(3) Increased award not permitted. No increased award for dependency may be paid prior to the date the law permits benefits for dependents generally.
(Authority: 38 U.S.C. 3108(b))
(d) Correction of military records. In accordance with the facts found, but not earlier than the date the change, correction, or modification was made by the service department, if eligibility of a veteran arises as the result of correction or modification of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other competent military authority.
(e) Bar to benefits removed by VA. In accordance with the facts found, but not earlier than the date the change was made by VA, if eligibility of a veteran arises as the result of review of the evidence of record regarding the character of discharge by VA, when the veteran's discharge or dismissal was a bar to benefits under 38 U.S.C. 5301.
(Authority: 38 U.S.C. 3103(b))
(f) Incarcerated veterans. (1) Date of release from Federal, State, or local penal institution of a veteran incarcerated for conviction of a felony.
(2) Earlier of the following dates in the case of a veteran residing in a half-way house or participating in a work-release program as a result of a felony conviction.
(i) Date of release from the half-way house or work-release program, or
(ii) Date a veteran becomes obligated to pay part of his or her living expenses.
(Authority: 38 U.S.C. 3108(g))
(g) Temporary 100 percent award terminated. Date of reduction of a temporary award of disability compensation at the 100 percent rate because of hospitalization.
(Authority: 38 U.S.C. 3108(h))
(h) Liberalizing laws and VA issues. In accordance with facts found, but not earlier than the date of the act or administrative issue.

(38 U.S.C. 5113)
CROSS-REFERENCE. See § 21.260(c) for definition of dependents.

§ 21.324 Reduction or termination dates of subsistence allowance.
(a) General. The effective date of the reduction of the amount paid or termination of payment of subsistence allowance will be the earliest of the dates specified in this section. If an award is reduced, the reduced rate will be effective the day following the date of termination of the greater benefit.

(b) Death of a veteran. Date of death, if death occurs while the veteran is in attendance or authorized leave status; otherwise date of last attendance.

(c) Death of a dependent. (1) Before October 1, 1982. Last day of the calendar year in which death occurs, unless the veteran's program is terminated earlier under other provisions.  
    (Authority: 38 U.S.C. 5113)  
    (2) After September 30, 1982. Last day of the month in which death occurs unless discontinuance is required at an earlier date under other provisions.  
    (Authority: 38 U.S.C. 5112(b), 5113)

(d) Divorce -- (1) Before October 1, 1982. Last day of the calendar year in which divorce occurs, unless the veteran's program is terminated earlier under other provisions.  
    (Authority: 38 U.S.C. 5113)  
    (2) After September 30, 1982. Last day of the month in which divorce occurs unless discontinuance is required at an earlier date under other provisions.  
    (Authority: 38 U.S.C. 5112(b), 5113)

(e) Child -- (1) Marriage -- (i) Before October 1, 1982. Last day of the month in which the marriage occurs, unless the veteran's program is terminated earlier under other provisions.  
    (Authority: 38 U.S.C. 5113)  
    (ii) After September 30, 1982. Last day of the month in which the marriage occurs, unless discontinuance is required at an earlier date under other provisions.  
    (Authority: 38 U.S.C. 5112(b), 5113)  
    (2) Age 18. Day preceding the child's 18th birthday.  
    (3) School attendance.  
        (i) Last day of the month in which the child ceases attending school; or  
        (ii) The day preceding the child's 23rd birthday, whichever is earlier.  
    (4) Helplessness. Last day of the month in which 60 days has passed from VA's notice to the payee that the child's helplessness has ceased.  
    (f) Interrupted, rehabilitation to the point of employability, independent living program completed, and extended evaluation completed status. Last day of attendance, or approved leave status, whichever is applicable.  
    (Authority: 38 U.S.C. 5113)

(g) Discontinued. Last day of attendance or approved leave status, whichever is applicable, except as follows:  
    (1) If VA places the veteran in "discontinued" status following the veteran's withdrawal from all courses with nonpunitive grades or following his or her completion of all courses with nonpunitive grades and the case manager does not find mitigating circumstances, VA will terminate subsistence allowance effective:  
        (i) The first date of the term, or  
        (ii) December 1, 1976, whichever is later.
(2) If VA places the veteran in "discontinued" status following a term in which the grades the veteran receives include both those that count in the grade point average and nonpunitive grades, and the case manager does not find mitigating circumstances:
   (i) VA will terminate subsistence allowance for courses in which the veteran receives nonpunitive grades effective the first day of the term or December 1, 1976, whichever is later.
   (ii) VA will terminate subsistence allowance for courses in which the veteran receives grades that will count in the grade point average effective the veteran's last day of attendance or approved leave status, whichever is applicable.
   (Authority: 38 U.S.C. 3680(a))

(h) Wages or salary received in apprentice or on-job training. (1) If the sum of the training wage plus the scheduled subsistence allowance is more than the journeyman wage when the training commences, the subsistence allowance will be decreased by VA effective the first day of the second month following the month in which the veteran enters on-job training.
   (2) Subsequent adjustments will be effective the first day of the second month following the month in which wages or salary changes are made which justify the adjustment under provisions of § 21.266(e).
   (Authority: 38 U.S.C. 3108)

(i) Reduction in rate of pursuit of the program. End of month in which reduction occurs, except that if the rate of pursuit is reduced as a result of the veteran's withdrawal from a unit course or courses with nonpunitive grade(s) or as a result of the veteran's completion of a unit course or courses with nonpunitive grade(s) (§ 21.4200(j)), VA will reduce subsistence allowance as follows:
   (1) If it is determined that there are mitigating circumstances:
      (i) Withdrawal with nonpunitive grades: The end of the month or the end of the term in which the veteran withdraws, whichever is earlier; if the reduction occurs at the beginning of the term benefits will be reduced the first day of the term in which the veteran withdraws.
      (ii) Completion with nonpunitive grades. No reduction required.
   (2) If it is determined there are no mitigating circumstances VA will reduce the veteran's subsistence allowance effective the first day of the term in which the veteran withdraws or which the veteran completes with nonpunitive grades. The term mitigating circumstances means circumstances beyond the veteran's or serviceperson's control which prevent him or her from continuously pursuing a rehabilitation program. The following circumstances are representative of those which are considered mitigating.
      (i) An illness of the program participant;
      (ii) An illness or death in the program participant's family;
      (iii) An unavoidable change in the veteran's conditions of employment;
      (iv) An unavoidable geographical transfer resulting from the veteran's employment;
      (v) Immediate family or financial obligations beyond the control of the veteran which are found by VA to require the veteran to suspend pursuit of the rehabilitation program;
      (vi) Discontinuance of the course by the educational institution;
      (vii) In the first instance of withdrawal on or after June 1, 1989 by a program participant from a course or courses with respect to which such veteran has been paid subsistence allowance under the provisions of § 21.260(b), mitigating circumstances shall be
considered to exist with respect to courses totaling not more than six semester hours or
the equivalent thereof;
(viii) Difficulties in obtaining child care or changes in such arrangements which are
beyond the control of the program participant and which require interruption of the
rehabilitation program is order for the participant to provide or arrange for such care.
(Authority: 38 U.S.C. 3680(a))

(j) Severance of service-connection. Last day of the month in which the severance
becomes final.
(Authority: 38 U.S.C. 5113)

(k) Fraud. The later of the following dates:
(1) The beginning date of the award of subsistence allowance, or
(2) The day preceding the date of the fraudulent act.
(Authority: 38 U.S.C. 6103(a))

(l) Error -- (1) Payee error. Effective date of the award of subsistence allowance or day
preceding the act, whichever is later, but not prior to the date the veteran's entitlement
ceases, on an erroneous award based on an act of commission or omission by a payee
with his or her knowledge.
(2) Administrative error. Except as provided in paragraph (j) of this section, date of last
payment on an erroneous award based solely on administrative error or an error in
judgment by a VA employee.

(m) Treasonable acts, subversive activities. The later of the following dates:
(1) Beginning date of the award of subsistence allowance, or
(2) Day preceding the date of commission of the treasonable act or subversive activities
for which the veteran is convicted.
(Authority: 38 U.S.C. 5113)

(n) Incarceration in prison or jail -- (1) Felony conviction. If a veteran's subsistence
allowance must be reduced because of incarceration for a felony conviction under
provisions of § 21.276, his or her rate of payment will be reduced the later of:
(i) The date of his or her incarceration in a prison or jail; or
(ii) The commencing date of his or her award as determined by § 21.322.
(2) Halfway house or work-release program. The subsistence allowance of a veteran in a
halfway house or work release program as a result of conviction of a felony will not be
reduced under the provisions of § 21.276 the date on which the Federal Government or a
State or local government pays all of the veteran's living expenses.
(Authority: 38 U.S.C. 3108(g))

(o) Specialized rehabilitation facility. Date payment for room and board by VA begins,
reduce the rate paid to the amount payable for dependents.
(Authority: 38 U.S.C. 3108(i))

(p) Termination of subsistence allowance while hospitalized at VA expense. Date before
the beginning date of the increased disability compensation award, which results in a
reduced subsistence allowance under the provisions of § 21.266.
(Authority: 38 U.S.C. 3108(h))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22808, June 23, 1986; 51 FR 25525,

§ 21.326 Authorization of employment services.

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(a) General. Authorization of employment services shall be based upon the services identified and goals established in an IEAP (Individualized Employment Assistance Plan) under provisions of § 21.88. The effective dates for the commencement, or termination of such services will be determined under this section. 

(Authority: 38 U.S.C. 3117(a)) 

(b) Commencing date. The commencing date authorizing a period of employment services will be the later of: 

(1) The date following completion of the period of rehabilitation to the point of employability; or 

(2) The date of the original IEAP.

(Authority: 38 U.S.C. 3107, 3117(a))

(c) Termination of the authorization of employment services. Authorization for employment services will be terminated the earliest of: 

(1) The last day employment services are provided under the terms of an IEAP when employment services are interrupted, discontinued, or the veteran is rehabilitated; 

(2) The date the authorization is found to be erroneous because of an act of omission or commission by the veteran, or with his or her knowledge; 

(3) The last day of the month in which severance of service connection becomes final; 

(4) The day preceding the date of a fraudulent act; 

(5) The date preceding the commission of a treasonable or subversive act for which the veteran is convicted.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3108, 5113)

§ 21.328 Two veteran cases -- dependents.

If both partners in a marriage are veterans, and if each is receiving either subsistence allowance for a vocational rehabilitation program or an educational assistance allowance under another VA program, each is entitled to receive the additional allowances payable for each other and for their children.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3108(a))

§ 21.330 Apportionment.

(a) General. Where in order, VA will apportion subsistence allowance in accordance with § 3.451 of this title, subject to the limitations of § 3.458 of this title. If the veteran is in receipt of benefits at the Chapter 30 rate, VA will not apportion these benefits.

(Authority: 38 U.S.C. 5307(c))

(b) Effective date. The effective date of apportionment will be as prescribed in § 3.400(e) of this title.

(Authority: 38 U.S.C. 5307(c))

(c) Child adopted out of family. Where evidence establishes that a veteran is the natural parent of a child or children legally adopted outside of the veteran's family, VA will apportion in favor of the child or children only that additional amount of subsistence allowance payable on account of the existence of the child or children. The veteran is not entitled in his or her own right to the additional amount of subsistence allowance payable
for the child because of the existence of the child unless the veteran is contributing to the child's support.
(Authority: 38 U.S.C. 5207(c))
(d) Veteran convicted of a felony. The subsistence allowance of a veteran in a rehabilitation program after October 17, 1980, may not be apportioned if the veteran is incarcerated because of conviction for a felony.
(Authority: 38 U.S.C. 3108(g))


§ 21.332 Payments of subsistence allowance.
(a) Eligibility. At the end of the month, VA shall pay to an eligible veteran enrolled in a rehabilitation program, subsistence allowance at the rates specified in § 21.260 for the type of program pursued during the month, unless advance payment is approved. VA will continue payments during those intervals described in § 21.270.
(Authority: 38 U.S.C. 3108)
(b) Advance payment criteria. VA will make an advance payment of subsistence allowance only when:
(1) The veteran specifically requests an advance payment; and
(2) The educational institution at which the veteran is accepted or enrolled has agreed to, and can carry out, satisfactorily, the provisions of 38 U.S.C. 3680(d) (4) and (5) pertaining to:
(i) Receipt, delivery or return of advance checks; and
(ii) Certifications of delivery and enrollment.
(c) Advance payment. (1) The amount of advance payment is not to exceed:
(i) The veteran's subsistence allowance for the month or part of a month in which his or her course will begin; plus
(ii) The veteran's subsistence allowance for the following month.
(2) Upon application and completion of arrangements for enrollment of a veteran who meets the criteria for an advance payment, VA shall mail a check payable to the veteran to the institution for delivery to the veteran upon registration.
(3) An institution shall not deliver an advance payment check to a veteran more than 30 days in advance of commencement of his or her program.
(d) Certification for advance payment. VA will authorize advance payment upon receipt of the institution's certification of the following information:
(1) The veteran is eligible for benefits;
(2) The institution has accepted the veteran or he or she is eligible to continue his or her training;
(3) The veteran has notified the institution of his or her intention to attend or to reenroll;
(4) The number of semester or clock hours the veteran will pursue; and
(5) The beginning and ending dates of the enrollment period.
(e) Time of advance payment. VA will authorize advance payment only:
(1) At the beginning of an ordinary school year; or
(2) At the beginning of any other enrollment period which begins after a break in enrollment of one full calendar month or longer.
(Authority: 38 U.S.C. 3680(d))
(f) Other payments. (1) VA will make all payments other than advance payments at the end of the month for the veteran's training during that month.
(2) VA may withhold final payment until:
(i) VA receives certification that the veteran has completed his or her course; and
(ii) VA makes all necessary adjustments in the veteran's award resulting from that certification.
(Authority: 38 U.S.C. 3680(g))

(g) Payments for courses which are repeated. VA may pay subsistence allowance to a veteran who repeats a course under conditions described in § 21.132.
[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

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

§ 21.334 Election of payment at the chapter 30 rate.
(a) Election. When the veteran elects payment of an allowance at the chapter 30 rate, the effective dates for commencement, reduction and termination of the allowance shall be in accordance with §§ 21.7130 through 21.7135 and § 21.7050 under chapter 30.
(Authority: 38 U.S.C. 1808(f), 1780)

(b) Election of payment at the Chapter 30 rate subsequent to induction into a rehabilitation program. Election of payment at the Chapter 30 rate subsequent to induction into training is permissible under provisions of § 21.264 (a) and (b). The effective date of the election is the latest of the following dates:
(1) The commencing date determined under § 21.7131 in the case of a veteran who has elected payment at the chapter 30 rate; or
(2) The day following the end of the period for which VA paid tuition, fees or other program charges under this Chapter.
(Authority: 38 U.S.C. 3108(f))

(c) Reelection of subsistence allowance subsequent to induction. If a veteran reelects subsistence allowance under provisions of § 21.264(b) of this part, the effective date of change is earliest of the following:
(1) The date following completion of the term, semester, quarter, or other period of instruction in which the veteran is currently enrolled;
(2) The veteran's Chapter 30 delimiting date;
(3) The day after exhaustion of Chapter 30 entitlement; or
(4) The day following the date of a VA determination that failure to approve reelection would prevent the veteran from continuing the rehabilitation program.
(Authority: 38 U.S.C. 3108(f))

(d) Election or reelection during leave or between periods of instruction -- (1) Payment at the Chapter 30 rate. If an otherwise eligible veteran elects payment at the Chapter 30 rate during a period between periods of instruction, the effective date of the election shall be the first day of the next period of instruction.
(2) Subsistence allowance. If an otherwise eligible veteran reelects subsistence allowance during leave or between periods of instruction following election of payment at the Chapter 30 rate, the effective date of the change will be the date of the reelection or the beginning of the next period of training, whichever is to the veteran's benefit.
(Authority: 38 U.S.C. 3108(f))
(e) Effect of Chapter 34 program termination. (1) Since Chapter 34 benefits are not payable beyond December 31, 1989, any previous election of benefits at that rate is terminated as of that date;
(2) A veteran entitled to chapter 30 benefits based on his or her chapter 34 eligibility as of December 31, 1989, and whose election of chapter 34 rates terminated as of the date under paragraph (e)(1) of this section must, if the individual desires payment at the chapter 30 rate, elect such payment.
(Authority: 38 U.S.C. 1411(a))
LEAVES OF ABSENCE

§ 21.344 Facility offering training or rehabilitation services.
§ 21.346 Facility temporarily not offering training or rehabilitation services.
§ 21.348 Leave following completion of a period of training or rehabilitation services.
§ 21.350 Unauthorized absences.

(a) General. VA may approve leaves of absence under certain conditions. During approved leaves of absence, a veteran in receipt of subsistence allowance shall be considered to be pursuing a rehabilitation program. Leave may be authorized for a veteran during a period of:
(1) Rehabilitation to the point of employability;
(2) Extended evaluation; or
(3) Independent living services.
(b) Election of subsistence allowance. If a veteran elects to receive subsistence allowance and payment of rehabilitation services by VA, he or she may be authorized leave of absence under §§ 21.342 through 21.350.
(c) Election of benefits at the chapter 30 rate. If a veteran elects to receive a subsistence allowance paid at the chapter 30 rate, the effect of absences is determined under §§ 21.7139 and 21.7154.
(38 U.S.C. 1508(f) and 1510)

(a) Amount of leave. A veteran pursuing one of the programs listed in § 21.340(a) may be authorized up to 30 days of leave by the case manager during a twelve-month period. The beginning date of the first twelve-month period is the commencing date of the original award, and the ending date is twelve months from the beginning date, with subsequent twelve-month periods running consecutively thereafter.
(b) Additional leave under exceptional circumstances. A veteran in a program may be authorized up to 15 additional days of leave during the twelve-month period by the case manager under exceptional circumstances, such as extended illness or family problems.
(c) Absence. For the purpose of determining when a leave of absence may be authorized, a veteran who elects subsistence allowance shall be considered absent during any period in which he or she is:
(1) Not in attendance under the rules and regulations of the educational institution, rehabilitation center, or sheltered workshop;
(2) Not considered at work under the rules of the training establishment; or
(3) Not present at a scheduled period of individual instruction.
(d) System of records. An educational institution, training establishment, rehabilitation center, or other facility or individual providing training and rehabilitation services under
Chapter 31 may utilize the same system of records to determine absence as the one used for similarly circumstanced nonveterans.

(e) Change in rate of pursuit. The amount of approved leave is not affected by the veteran's rate of pursuit of a rehabilitation program.

(f) Charging leave. VA shall charge 1 day of leave for each day or part of a day of absence from pursuit of a rehabilitation program.

(g) Limitation on carrying leave over to another period. The veteran may not carry over unused days of leave from one twelve-month period to another.

§ 21.344 Facility offering training or rehabilitation services.
(a) Approval of leaves of absence required. Leaves of absence normally must be approved in advance by the case manager when the facility offering training or rehabilitation services arranges for the leave. The approval of the case manager is required:
(1) During periods in a rehabilitation program identified in § 21.342(c); or
(2) A period of hospitalization at VA expense during one of the periods identified in § 21.342(c).

(b) Responsibility of the veteran in obtaining leave. VA will not authorize leave without a verbal or written request by the veteran, and the approval of the facility.

(c) Conditions permitting approval of leaves of absence. (1) The case manager may approve leaves of absence up to a total of 30 days during a twelve-month period if the facility certifies that the use of the leave does not interfere materially with the veteran's progress;
(2) An additional period of up to 15 days of leave in the same twelve-month period under exceptional circumstances may be approved by the case manager if failure to approve leave will:
(i) Result in personal hardship, or
(ii) Adversely affect the veteran's ability to continue in his or her rehabilitation program.

§ 21.346 Facility temporarily not offering training or rehabilitation services.
(a) Approval of leave of absence not required. A veteran may receive subsistence allowance, during a period when the facility temporarily is not offering services, without the veteran's being charged with leave when:
(1) The facility is closed temporarily under an executive order of the President or due to an emergency situation;
(2) The veteran is pursuing on-job training and he or she receives holidays established by Federal or State law;
(3) The veteran is pursuing farm cooperative training and is required in the ordinary day to day conduct of farm business to be absent:
(i) From the farm; or
(ii) From that part of a farm cooperative course which is given at the educational institution.
(4) The veteran is pursuing a standard college degree; and
(i) There is an interval between consecutive semesters, terms, quarters or periods of instruction within a certified enrollment period which does not exceed a full calendar month;
(ii) There is an interval, which does not exceed a full calendar month between semesters, terms or quarters when the educational institution only certifies enrollment on a semester, term, or quarter basis; or
(iii) There is an interval, which does not exceed 30 days, when the veteran, as part of his or her approved program of vocational rehabilitation, transfers from one educational institution to another for the purpose of enrolling in and pursuing a similar program at the second institution;
(5) The veteran is pursuing a non-college-degree course and there is a period of up to 5 days per twelve-month period during which the school offering non-college-degree courses is not operating, because instructors are attending professional meetings.
(b) Case manager responsibility. The case manager may disapprove leave under paragraph (a)(4) of this section if:
(1) Approval would result in or lead to use of more than 48 months of entitlement under Chapter 31, alone; or
(2) Approval would require extension of the scheduled completion date of the veteran's program.
(c) Approval of leaves of absence required. A veteran, who wishes to receive subsistence allowance while the facility temporarily is not offering training under conditions other than those identified in paragraph (a) of this section, must seek an approved leave of absence and be charged leave.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3110)

§ 21.348 Leave following completion of a period of training or rehabilitation services.
(a) Leave following completion of training or rehabilitation services. Leave may not be approved following completion of a period of rehabilitation services described in § 21.340(a).
(b) Postponement of the date of completion of a period of rehabilitation services prohibited. The date of completion of the veteran's program may not be extended for the purpose of allowing the veteran to use leave.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3110)

§ 21.350 Unauthorized absences.
A veteran who is unable to obtain an authorized leave of absence in advance may seek to have the unauthorized absence excused.
(a) Excusing unauthorized absences. VA may excuse an unauthorized absence and make proper charges against the veteran's leave when:
(1) The veteran has absented himself or herself when advance approval from VA is impracticable; and
(2) Conditions for approval of leave are otherwise met.
(b) Unexcused, unauthorized absences. When an unauthorized absence is not satisfactorily explained, VA will take necessary action, including recoupment of subsistence allowance for that period of absence.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3110)

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§ 21.362 Satisfactory conduct and cooperation.

§ 21.364 Unsatisfactory conduct and cooperation.

§ 21.362 Satisfactory conduct and cooperation.

(a) General. The successful development and implementation of a program of rehabilitation services require the full and effective participation of the veteran in the rehabilitation process.

(1) The veteran is responsible for satisfactory conduct and cooperation in developing and implementing a program of rehabilitation services under Chapter 31;

(2) The staff is responsible for insuring satisfactory conduct and cooperation on the veteran's part; and

(3) VA staff shall take required action when the veteran's conduct and cooperation are not satisfactory. (See § 21.364)

(b) VA responsibility. VA shall make a reasonable effort to inform the veteran and assure his or her understanding of:

(1) The services and assistance which may be provided under Chapter 31 to help the veteran maintain satisfactory cooperation and conduct and to cope with problems directly related to the rehabilitation process, especially counseling services;

(2) Other services which VR&E staff can assist the veteran in securing through non-VA programs; and

(3) The specific responsibilities of the veteran in the process of developing and implementing a program of rehabilitation services, especially the specific responsibility for satisfactory conduct and cooperation.

(c) Veteran's responsibility. A veteran requesting or being provided services under Chapter 31 must:

(1) Cooperate with VA staff in carrying out the initial evaluation and developing a rehabilitation plan;

(2) Arrange a schedule which allows him or her to devote the time needed to attain the goals of the rehabilitation plan;

(3) Seek the assistance of VA staff, as necessary, to resolve problems which affect attainment of the goals of the rehabilitation plan;

(4) Conform to procedures established by VA governing pursuit of a rehabilitation plan including:

(i) Enrollment and reenrollment in a course;

(ii) Changing the rate at which a course is pursued;

(iii) Requesting a leave of absence;

(iv) Requesting medical care and treatment;

(v) Securing supplies; and

(vi) Other applicable procedures.

(5) Conform to the rules and regulations of the training or rehabilitation facility at which services are being provided.

(d) Responsibility for determining satisfactory conduct and cooperation. VR&E staff with case management responsibility in the veteran's case will:
(1) Monitor the veteran's conduct and cooperation as necessary to assure consistency with provisions of paragraph (c) of this section.
(2) Provide assistance which may be authorized under Chapter 31, or for which arrangements may be made under other programs to enable the veteran to maintain satisfactory conduct and cooperation.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3111)

§ 21.364 Unsatisfactory conduct and cooperation.

(a) General. If VA determines that a veteran has failed to maintain satisfactory conduct or cooperation, VA may, after determining that all reasonable counseling efforts have been made and are found not reasonably likely to be effective, discontinue services and assistance to the veteran, unless the case manager determines that mitigating circumstances exist. In any case in which such services and assistance have been discontinued, VA may reinstitute such services and assistance only if the counseling psychologist determines that:
(1) The unsatisfactory conduct or cooperation of such veteran will not be likely to recur; and
(2) The rehabilitation program which the veteran proposes to pursue (whether the same or revised) is suitable to such veteran's abilities, aptitudes, and interests.

(b) Unsatisfactory conduct or cooperation exists. When the case manager determines that the veteran's conduct and/or cooperation are not in conformity with provisions of § 21.362(c), the case manager will:
(1) Discuss the situation with the veteran;
(2) Arrange for services, particularly counseling services, which may assist in resolving the problems which led to the veteran's unsatisfactory conduct or cooperation;
(3) Interrupt the program to allow for more intense efforts, if the unsatisfactory conduct and cooperation persist. If a reasonable effort to remedy the situation is unsuccessful during the period in which the program is interrupted, the veteran's case will be discontinued and assigned to "discontinued" status unless mitigating circumstances are found. When mitigating circumstances exist the case may be continued in "interrupted" status until VA staff determines the veteran may be reentered into the same or a different program because the veteran's conduct and cooperation will be satisfactory, or if a plan has been developed, to enable the veteran to reenter and try to maintain satisfactory conduct and cooperation. Mitigating circumstances include:
(i) The effects of the veteran's service and nonservice-connected condition;
(ii) Family or financial problems which have led the veteran to unsatisfactory conduct or cooperation; or
(iii) Other circumstances beyond the veteran's control.

[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3111)
§ 21.370 Intraregional travel at government expense.

(a) Introduction. VA may authorize transportation expenses for intraregional travel to a veteran in a rehabilitation program or a program of employment services for the purposes presented in paragraph (b) of this section. When approved for purposes stated in paragraph (b) of this section, authorization of travel is limited to the veteran's transportation, and does not include transportation for the veteran's dependents, or for moving personal effects.

(Authority: 38 U.S.C. 11, 3104(a)(13))

(b) Necessary condition for intraregional travel at government expense. VA may authorize a veteran to travel at government expense within the regional territory of the VA field station of jurisdiction when:

(1) VA determines that the travel is necessary in the discharge of the government's obligation to the veteran; and

(2) The veteran is instructed to travel for any of the following reasons:

(i) To report to the chosen school or training facility for the purpose of starting training;

(ii) To report to a prospective employer-trainer for an interview prior to induction into training, when there is definite assurance in advance of approving the travel that, upon interview, the employer will start the veteran in training, if the employer finds the veteran acceptable, or

(iii) To report to the chosen school for a personal interview prior to induction into training when:

(A) The school requires the interview as a condition of admission,

(B) There is assurance before the travel is approved that the veteran's records (school, counseling, etc.) show he or she meets all basic requirements for induction under § 21.282; and

(C) The veteran submits to the school a transcript of his or her high school credits and a transcript from any school he or she attended following high school.

(iv) To report to a rehabilitation facility or sheltered workshop;

(v) To return to his or her home from the training or rehabilitation facility when:

(A) Services are not available for a period of 30 days or more (including summer vacation periods), and

(B) Travel from his or her home to the training or rehabilitation facility was at government expense;

(vi) To return to the training or rehabilitation facility from his or her home, when:

(A) The purpose of the travel is to continue the rehabilitation program, and

(B) Travel from the training or rehabilitation facility to the veteran's home was at government expense;
(vii) To return to the point from which he or she was transported at government expense, upon being placed in "discontinued" or "interrupted" status for any reason, except abandonment of training by the veteran without good reason;
(viii) To report to a place of prearranged satisfactory employment upon completion of vocational rehabilitation for the purpose of beginning work;
(ix) To return to his or her home from the place of training following rehabilitation to the point of employability, when suitable employment is not available;
(x) To return from the place of training to the veteran's prior location, when VA could have approved travel to the place of training at government expense, but did not issue the necessary travel authorization; and
(xi) To report to a place to take a scheduled examination required to practice the trade or profession for which the veteran has been trained. This travel shall be limited to points within the state in which the veteran has pursued his or her training or, if the veteran returned to the state from which he or she was sent to pursue training, he or she may be sent at government expense to a place within that state to take the examination. If there is more than one place within the state at which the veteran may take the examination, travel shall be limited to the nearest place.

(Authority: 38 U.S.C. 111)

(c) Approval of intraregional transfer. Intraregional travel must be approved by the case manager.
[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

(38 U.S.C. 3104(a)(13))

§ 21.372 Interregional transfer at government expense.
(a) Introduction. A veteran may need to transfer from the jurisdiction of one VA facility to another in order to accomplish rehabilitation. This section states the conditions which will permit the transfer to be made at government expense. Authorization of travel is limited to the veteran's transportation, and does not include transportation for the veteran's dependents or for moving personal effects.

(Authority: 38 U.S.C. 111, 3104(a)(13))

(b) Conditions which permit interregional transfers at government expense. A veteran may be provided travel at government expense when it has been determined that such travel is necessary to accomplish rehabilitation. VA will authorize an interregional transfer at government expense only to allow the veteran:

(1) To enter training in the nearest satisfactory facility if:
(i) The nearest satisfactory facility is within the jurisdiction of another VA facility; or
(ii) There are no satisfactory facilities within the jurisdiction of the facility in which the veteran resides.
(2) To enter training in the state in which the veteran has long-standing family and social ties, and in which he or she plans to live following rehabilitation;
(3) To report to an employer-trainer when all necessary steps have been taken to establish an on-job training program;
(4) To report to rehabilitation facility or sheltered workshop;
(5) To return to his or her home from the place of training when:
(i) Training is not available for a period of 30 days or more (including summer vacation periods), and
(ii) Travel from his or her home to the place of training or rehabilitation services was at government expense;
(6) To return to the place of training or rehabilitation services from his or her home, when;
   (i) The purpose of the travel is to continue training or rehabilitation services; and
   (ii) Travel from the place of training or rehabilitation services to the veteran's home was at government expense;
(7) To return to the point from which he or she was transferred at government expense, upon being assigned to "discontinued" or "interrupted" status, for any reason, except abandonment of training by the veteran without good reason;
(8) To report to a place of prearranged satisfactory employment or for a prearranged employment interview following completion of his or her program of vocational rehabilitation, when:
   (i) There is no satisfactory opportunity for employment in the veteran's occupation within the jurisdiction of the facility which has jurisdiction over his or her residence, and
   (ii) The veteran has a serious employment handicap.
(9) To return to his or her home, from which he or she was transferred at government expense to pursue training, when, upon completion of his or her course, satisfactory employment is not available;
(10) To return to the location from which he or she traveled without authorization because VA did not issue the necessary travel authorization on a timely basis.
(Authority: 38 U.S.C. 111)

c) Approval of interregional transfer. Interregional travel must be approved by the case manager.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3104(a)(13))

(a) Travel for attendants. The services of an attendant to accompany a veteran while traveling for rehabilitation purposes may be provided when such services are necessitated by the severity of the veteran's disability. Attendants may only be used to enable a veteran to attend appointments for initial evaluation, counseling, or intraregional or interregional travel at government expense under § 21.370 and § 21.372.
(Authority: 38 U.S.C. 111)
(b) Attendants not employed by the Federal government. (1) VA may authorize persons not in regular civilian employment of the Federal government to act as attendants. Payment of travel expenses for attendants will be authorized on the same basis as for the veteran the attendant is accompanying. VA:
   (i) Will furnish the attendant with common-carrier transportation, meal and lodging expenses; or
   (ii) Will grant the attendant a mileage allowance in lieu of furnishing the assistance cited in paragraph (b)(1)(i) of this section.
(2) VA will not pay the attendant a fee if he or she is a relative of the veteran. A relative, for this purpose, is a person who by blood or marriage is the veteran's
   (i) Spouse,
   (ii) Parent,
(iii) Child,
(iv) Brother,
(v) Sister,
(vi) Uncle,
(vii) Aunt,
(viii) Niece, or
(ix) Nephew.

(c) Attendant employed by the Federal government. (1) VA may authorize a person in the regular civilian employment of the Federal government to act as an attendant. When assigned, the attendant:
(i) Will be entitled to transportation and expenses, or
(ii) May be allowed per diem in place of subsistence in accordance with the provisions of the Federal Travel Regulations (5 U.S.C. Chapter 57).

(2) VA will pay no fee to civilian employees of the Federal government who act as attendants.
[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

§ 21.376 Travel expenses for initial evaluation and counseling.
When VA asks a disabled veteran to report to a designated place for an initial evaluation, reevaluation or counseling (including personal or vocational adjustment counseling), the veteran will travel to and from the place of evaluation and counseling at government expense. When a veteran, because of a severe disability, requires the services of an attendant while traveling, VA will authorize payment of travel expenses for the attendant under the provisions of § 21.374.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 111)
PERSONNEL TRAINING AND DEVELOPMENT

§ 21.380 Establishment of qualifications for personnel providing assistance under Chapter 31.
§ 21.382 Training and staff development for personnel providing assistance under Chapter 31.

§ 21.380 Establishment of qualifications for personnel providing assistance under Chapter 31.
(a) General. Notwithstanding any other provision of law or regulation, VA shall establish qualification standards for VBA personnel providing evaluation, rehabilitation, and case management services to eligible veterans under chapter 31, including:
(1) Counseling psychologists;
(2) Vocational rehabilitation specialists; and
(3) Other staff providing professional and technical assistance.
(b) Rehabilitation Act of 1973. VA shall consider qualification standards established for comparable personnel under the Rehabilitation Act of 1973, when setting agency standards.
[49 FR 40814, Oct. 18, 1984]
(38 U.S.C. 3118(c))

§ 21.382 Training and staff development for personnel providing assistance under Chapter 31.
(a) General. VA shall provide a program of ongoing professional training and development for staff of the VR&E Service engaged in providing rehabilitation services under chapter 31. The objective of such training shall be to insure that rehabilitation services for disabled veterans are provided in accordance with the most advanced knowledge, methods, and techniques available for the rehabilitation of disabled persons. The areas in which training and development services may be provided to enhance staff skills include:
(1) Evaluation and assessment;
(2) Medical aspects of disability;
(3) Psychological aspects of disability;
(4) Counseling theory and techniques;
(5) Personal and vocational adjustment;
(6) Occupational information;
(7) Placement processes and job development;
(8) Special considerations in rehabilitation of the seriously disabled;
(9) Independent living services;
(10) Resources for training and rehabilitation; and
(11) Utilizing research findings and professional publications.
(Authority: 38 U.S.C. 3118)
(b) Training and development resources. For the purpose of carrying out the provisions of paragraph (a) of this section VA may:
(1) Employ the services of consultants;
(2) Make grants to and contract with public and private agencies, including institutions of higher learning, to conduct workshop and training activities;
(3) Authorize individual training at institutions of higher learning and other appropriate facilities; and
(4) Utilize chapter 41 of title 5, U.S.C., and related instructions to provide training and staff development activities on a group and individual basis.
(Authority: 38 U.S.C. 3118(b))
(c) Interagency coordination. VA shall coordinate with the Commissioner of the Rehabilitation Services Administration and the Assistant Secretary for Veterans' Employment in planning and carrying out personnel training in areas of mutual programmatic concern.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3118(c))
§ 21.390 Rehabilitation research and special projects.

(a) General. VA shall carry out an ongoing program of activities for the purpose of advancing the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans. For this purpose, VA may conduct research and development, provide support for research and development, or both conduct and provide support for the development and conduct of:

(1) Studies and research concerning the psychological, educational, social, vocational, industrial, and economic aspects of rehabilitation; and

(2) Projects which are designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.

(Authority: 38 U.S.C. 3119(a))

(b) Grants. VA may make grants to, or contract with, public on nonprofit agencies, including institutions of higher learning, to carry out the provisions of paragraph (a) of this section.

(Authority: 38 U.S.C. 3119(b))

(c) Research by Vocational Rehabilitation and Employment (VR&E) staff members. VA will encourage research by VR&E staff members. This research will address problems affecting service delivery, initiation and continuation in rehabilitation programs, and other areas directly affecting the quality of VR&E services to veterans.

(Authority: 38 U.S.C. 3119(a))

(d) Interagency coordination. VA shall cooperate with the Commissioner of the Rehabilitation Services Administration and the Director of the National Institute of Handicapped Research in the Department of Education, the Assistant Secretary for Veterans' Employment in the Department of Labor, and the Secretary of Health and Human Services regarding rehabilitation studies, research, and special projects of mutual programmatic concern. 'Advisory Committee on Rehabilitation

(Authority: 38 U.S.C. 3119(c))

§ 21.400 Veterans' Advisory Committee on Rehabilitation.

§ 21.402 Responsibilities of the Veterans' Advisory Committee on Rehabilitation.

§ 21.400 Veterans' Advisory Committee on Rehabilitation.
(a) General. The Secretary shall appoint an advisory committee to be known as the Veterans' Advisory Committee on Rehabilitation.
(b) Purpose. The purposes of the Veterans' Advisory Committee on Rehabilitation, hereafter referred to as the committee, are to:
(1) Assess the rehabilitation needs of service and nonservice-disabled veterans; and
(2) Review the programs and activities of VA designed to meet such needs;
(Authority: 38 U.S.C. 3121(c))
(c) Members. The committee shall include:
(1) Members of the general public;
(2) Appropriate representation of veterans with service-connected disabilities; and
(3) Persons who have distinguished themselves in the public and private sectors in the fields of rehabilitation, and employment and training programs.
(d) Members terms. The Secretary shall appoint members of the committee for three-year terms. Members may be reappointed for additional three-year terms.
(e) Chairperson. The Secretary will designate one of the members of the committee to chair the committee.
(f) Ex-officio members. The committee shall also include ex-officio members named by the following agencies. The ex-officio members shall include one representative from:
(1) The Veterans Health Services and Research Administration;
(2) The Veterans Benefits Administration;
(3) The Rehabilitation Services Administration and one from the National Institute for Handicapped Research of the Department of Education; and
(4) The Assistant Secretary of Labor for Veterans' Employment of the Department of Labor.
[49 FR 40814, Oct. 18, 1984]
(38 U.S.C. 3121(a))

§ 21.402 Responsibilities of the Veterans' Advisory Committee on Rehabilitation.
(a) Consultation with the Secretary. The Secretary shall regularly, but not less than twice yearly, consult with and seek the advice of the committee with respect to the administration of veterans' rehabilitation programs authorized under Title 38, United States Code.
(b) Submission of an annual report. The committee shall:
(1) Submit to the Secretary an annual report on the rehabilitation programs and activities of the VA; and
(2) Submit such other reports and recommendations to the Secretary as the committee determines appropriate.
(c) Contents of the committee's annual report. The committee's annual report shall include:
(1) An assessment of the rehabilitation needs of veterans; and
(2) A review of the programs and activities of VA designed to meet needs identified in paragraph (c)(1) of this section.
(d) Secretary's annual report. The findings of the committee shall be incorporated in the Secretary's annual report submitted to the Congress under 38 U.S.C. 529. In addition the Secretary shall submit, together with this annual report, a copy of all reports and recommendations of the committee submitted to the Secretary since the previous annual report was submitted to the Congress.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 3121(c))

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ADDITIONAL ADMINISTRATIVE CONSIDERATION

§ 21.412 Finality of decisions.
§ 21.414 Revision of decision.

The Secretary delegates authority to the Under Secretary for Benefits to make findings and decisions under 38 U.S.C. chapter 31 and regulations, precedents, and instructions that affect vocational rehabilitation services for disabled veterans. The Under Secretary for Benefits may further delegate this authority to supervisory and non-supervisory Vocational Rehabilitation and Employment staff members.

(38 U.S.C. 512(a))

§ 21.412 Finality of decisions.
(a) Facility of original jurisdiction. The decision of a VA facility in a given veteran's case:
(1) Will be final and binding upon all field stations of VA as to conclusions based on evidence on file at that time; and
(2) Will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §§ 21.410 and 21.414. (See §§ 19.153, 19.154, and 19.155.
(Authority: 38 U.S.C. 512(a), 7103)
(b) Adjudicative determinations. Current determinations of line of duty, character of discharge, relationship, and other pertinent elements affecting eligibility for training and rehabilitation services or payment of subsistence allowance under Chapter 31, made by an adjudicative activity by application of the same criteria and based on the same facts, are binding upon all other adjudicative activities in the absence of clear and unmistakable error.
[49 FR 40814, Oct. 18, 1984]

(38 U.S.C. 512(a))

§ 21.414 Revision of decision.
The revision of a decision on which an action is based is subject to the following regulations:
(a) Clear and unmistakable error, § 3.105(a);
(b) Difference of opinion, § 3.105(b);
(c) Character of discharge, § 3.105(c);
(d) Severance of service-connection, § 3.105(d);
(e) Reduction to less than compensable evaluation, § 3.105(e). (See §§ 21.48, 21.322, and 21.324)
[49 FR 40814, Oct. 18, 1984]
§ 21.420 Informing the veteran.
§ 21.422 Reduction in subsistence allowance following the loss of a dependent.

§ 21.420 Informing the veteran.
(a) General. VA will inform a veteran in writing of findings affecting receipt of benefits and services under Chapter 31. This includes veterans:
(1) Requesting benefits and services; or
(2) In receipt of benefits and services.
(b) Notification. (1) Each notification should include the decision or finding, the reasons, including fact and law, for the decision, the effective date of the decision or finding; and
(2) The veteran's appeal rights, if any.
(c) Adverse action. An adverse action is one, other than an interim action such as a suspension of benefits pending development, which:
(1) Denies Chapter 31 benefits, when such benefits have been requested;
(2) Reduces or otherwise diminishes benefits being received by the veteran; or
(3) Terminates receipt of benefits for reasons other than scheduled interruptions which are a part of the veteran's plan.
(d) Prior notification of adverse action. VA shall give the veteran a period of at least 30 days to indicate his or her disagreement with an adverse action other than one which arises as a consequence of a change in training time or other such alteration in circumstances. If the veteran disagrees, he or she shall be given the opportunity, before appealing the adverse action as provided in § 21.59 of this part, to:
(1) Meet informally with a representative of VA;
(2) Review the basis for VA decision, including any relevant written documents or material; and
(3) Submit to VA any material which he or she may have relevant to the decision.

§ 21.422 Reduction in subsistence allowance following the loss of a dependent.
(a) Notice of reduction required when a veteran loses a dependent. (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:
(i) VA has notified the veteran of the adverse action, and
(ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.
(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;
(i) VA is not required to send a pre-reduction notice as stated in paragraph (a)(1) of this section, but;
(ii) VA will send notice contemporaneous with the reduction in subsistence allowance.
(Authority: 38 U.S.C. 5112, 5113)
(b) Pre-reduction notice. Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, VA will:
(1) Prepared a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;
(2) Notify the veteran at his or her latest address of record of the proposed action;
(3) Furnish detailed reasons for the proposed reduction;
(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that VA receives a request for such a hearing within 30 days from the date of the notice; and
(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level.

(Authority: 38 U.S.C. 5112, 5113)

(c) Predetermination hearing. (1) If VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility.

(Authority: 38 U.S.C. 5112, 5113)

(d) Final action. VA will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days.

(2) If a predetermination hearing was conducted, VA will base final action upon:

(i) Evidence presented at the hearing;

(ii) Evidence contained in the claims file at the time of the hearing; and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.324 of this part.

[54 FR 40872, Oct. 4, 1989]

(38 U.S.C. 5112, 5113)
ACCOUNTABILITY

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

(a) General. VA shall maintain policies and procedures which provide accountability in the authorization and payment of program costs for training and rehabilitation services. The procedures established under this section are applicable to all program costs except subsistence allowance (or the optional allowance at Chapter 34 rates). Policies and procedures governing payment of subsistence allowance are governed by §§ 21.260 through 21.276, and §§ 21.320 through 21.334.

(b) Determining necessary costs for training and rehabilitation services. The estimates of program costs during a calendar year or lesser period shall be based upon the services necessary to carry out the veteran's rehabilitation plan during that period (§§ 21.80 through 21.98). The estimates will be developed by the VBA case manager. If additional approval is required, the VBA case manager shall secure such additional approval prior to authorization of services.

(c) Vocational Rehabilitation and Employment (VR&E) Officer's review of program costs. The VR&E Officer will review the program costs for the services in paragraphs (c)(1) through (c)(3) of this section if the case manager's program cost estimate for a calendar year exceeds $25,000. The VR&E Officer may not delegate this responsibility. The case manager will neither sign a rehabilitation plan nor authorize expenditures before the VR&E Officer approves the program costs. The services subject to this review are:

(1) Providing supplies to help establish a small business;
(2) A period of extended evaluation; or
(3) A program of independent living services.


(38 U.S.C. 3115(b)(4))
Subpart B -- Claims and Applications for Educational Assistance

CLAIMS
EDITORIAL NOTE: The regulations formerly appearing under this subpart were revoked at 30 FR 14103, Nov. 9, 1965. That order provided in part, "these regulations remain in force insofar as they are pertinent to any problems, appeals, litigation, or determinations of liability of educational institutions or training establishments for overpayments under 38 U.S.C. 1666."
CLAIMS

§ 21.1029 Definitions.
§ 21.1030 Claims.
§ 21.1031 VA responsibilities when a claim is filed.
§ 21.1032 Time limits.

§ 21.1029 Definitions.

These definitions apply to this subpart, and to subparts C, D, G, H, K, and L of this part.

(a) Abandoned claim. A claim is an abandoned claim if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant --

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and --

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request.

(Authority: 38 U.S.C. 5103(a))

(b) Date of claim. The date of claim is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by § 21.1032, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim is as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 5103)

(c) Formal claim. A claim is a formal claim when the claimant (or his or her authorized representative) files the claim with VA, and --

(1) The claim is a claim for --

(i) Educational assistance;

(ii) An increase in educational assistance; or

(iii) An extension of the eligibility period for receiving educational assistance; and

(2) If there is a form (either paper or electronic) prescribed under this part, the claim is filed on that form.

(Authority: 38 U.S.C. 5101(a))

(d) Informal claim. (1) If a form (either paper or electronic) has been prescribed under this part to use in claiming the benefit sought, the term informal claim means --
(i) Any communication from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance; or
(ii) A claim from an individual or from an authorized representative on that individual's behalf for a benefit described in paragraph (c)(1)(i) of this section that is filed in a document other than in the prescribed form.
(2) If a form (either paper or electronic) has not been prescribed to use in claiming the benefit sought, the term informal claim means any communication, other than a formal claim, from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance.
(3) When VA requests evidence in connection with a claim, and the claimant submits that evidence to VA after having abandoned the claim, the claimant's submission of the evidence is an informal claim.
(4) The act of enrolling in an approved school is not an informal claim.
(5) VA will not consider a communication received from a service organization, an attorney, or agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a), 5102, 5901)
(e) VA. The term VA means the United States Department of Veterans Affairs.
(Authority: 38 U.S.C. 301)
[64 FR 23769, 23770, May 4, 1999]

[EFFECTIVE DATE NOTE: 64 FR 23769, 23770, May 4, 1999, added this section, effective June 3, 1999.]

§ 21.1030 Claims.
An individual must file a formal claim for educational assistance for pursuit of a program of education, indicating the proposed place of training, the school or training establishment, the objective of the program of education, and such other information as the Secretary may require. A servicemember also must consult with his or her service education officer before filing a formal claim for educational assistance.
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0596.)

(38 U.S.C. 3471)
[EFFECTIVE DATE NOTE: 63 FR 23769, 23771, May 4, 1999, revised this section, effective June 3, 1999.]

§ 21.1031 VA responsibilities when a claim is filed.
(a) VA will furnish forms. VA will furnish all necessary claim forms, instructions, and, if appropriate, a description of any supporting evidence required upon receipt of an informal claim.
(Authority: 38 U.S.C. 5102)
(b) Request for additional evidence. If a formal claim for educational assistance is incomplete, or if VA requires additional evidence or information to adjudicate the claim, VA will notify the claimant of the evidence and/or information necessary to complete or adjudicate the claim and of the time limit provisions of § 21.1032(a).
(Authority: 38 U.S.C. 5103)

[EFFECTIVE DATE NOTE: 64 FR 23769, 23771, May 4, 1999, revised this section, effective June 3, 1999.]

§ 21.1032 Time limits.

The provisions of this section are applicable to informal claims and formal claims.

(a) Failure to furnish form, information, or notice of time limit. VA's failure to give a claimant or potential claimant any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the time periods allowed for these actions.
(Authority: 38 U.S.C. 5101, 5113)

(b) Notice of time limit for filing evidence. If a claimant's claim is incomplete, VA will notify the claimant of the evidence necessary to complete the claim. Unless payment of educational assistance is permitted by paragraph (e) of this section, if the evidence is not received within one year from the date of such notification, VA will not pay educational assistance by reason of that claim.
(Authority: 38 U.S.C. 5103)

(c) Time limit for filing a claim for an extended period of eligibility under 38 U.S.C. chapter 30, 32, or 35, and 10 U.S.C. chapter 1606. VA must receive a claim for an extended period of eligibility provided by § 21.3047, § 21.5042, § 21.7051, or § 21.7551 by the later of the following dates.
(1) One year from the date on which the spouse's, surviving spouse's, veteran's, or reservist's original period of eligibility ended; or
(2) One year from the date on which the spouse's, surviving spouse's, veteran's, or reservist's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.
(Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3512)

(d) Time limit for filing for an extension of eligibility due to suspension of program (38 U.S.C. chapter 35).

VA must receive a claim for an extended period of eligibility due to a suspension of an eligible child's program of education as provided in § 21.3043 by the later of the following dates.
(1) One year from the date on which the child's original period of eligibility ended; or
(2) One year from the date on which the condition that caused the suspension of the program of education ceased to exist.
(Authority: 38 U.S.C. 3512(c))

(e) Extension for good cause. (1) VA may extend for good cause a time limit within which a claimant or beneficiary is required to act to perfect a claim or challenge an
adverse VA decision. VA may grant such an extension only when the following conditions are met:
(i) When a claimant or beneficiary requests an extension after expiration of a time limit, he or she must take the required action concurrently with or before the filing of that request; and
(ii) The claimant or beneficiary must show good cause as to why he or she could not take the required action during the original time period and could not have taken the required action sooner.
(2) Denials of time limit extensions are separately appealable issues.
(Authority: 38 U.S.C. 5101, 5113)
(f) Computation of time limit. (1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, VA will exclude the first day of the specified period, and will include the last day. This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, the VA will include the next succeeding day in the computation.
(2) The first day of the specified period referred to in paragraph (f)(1) of this section will be the date of the letter of notification to the claimant or beneficiary for purposes of computing time limits. As to appeals, see §§ 20.302 and 20.305 of this chapter.
(Authority: 38 U.S.C. 501(a))

(38 U.S.C. 3462)
[EFFECTIVE DATE NOTE: 64 FR 23769, 23771, May 4, 1999, revised this section, effective June 3, 1999.]
[CROSS REFERENCES: Due process; procedural and appellate rights with regard to disability and death benefits and related relief. See § 3.103 of this chapter. Computation of time limit. See § 3.110 of this chapter.]
SUBPART C -- SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CHAPTER 35

§ 21.3002 Administration of Survivors' and Dependents' Educational Assistance Program.

GENERAL
CLAIMS
ELIGIBILITY AND ENTITLEMENT
Counseling
PAYMENTS
SPECIAL RESTORATIVE TRAINING
PAYMENTS; SPECIAL RESTORATIVE TRAINING
Special Assistance and Training

Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. chapter 35 and the applicable regulations, precedents and instructions, as to the program authorized by this subpart.
(Authority: 38 U.S.C. 512(a))
[61 FR 26107, 26108, May 24, 1996]

[EFFECTIVE DATE NOTE: 61 FR 26107, 26108, May 24, 1996, which added this section, became effective May 24, 1996.]

§ 21.3002 Administration of Survivors' and Dependents' Educational Assistance Program.
Subpart D of this part applies to the Survivors' and Dependents' Educational Assistance Program, unless the provisions of a section in that subpart are explicitly limited to one or more of the other educational assistance programs VA administers.
(Authority: 38 U.S.C. 501, 3501-3566)
[61 FR 21607, 21608, May 24, 1996]

[EFFECTIVE DATE NOTE: 61 FR 21607, 21608, May 24, 1996, which added this section, became effective May 24, 1996.]
GENERAL

§ 21.3020 Educational assistance.
§ 21.3021 Definitions.
§ 21.3022 Nonduplication -- programs administered by VA.
§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.
§ 21.3025 Nonduplication; Federal programs.

§ 21.3020 Educational assistance.
The program of educational assistance under 38 U.S.C. Chapter 35 captioned Survivors' and Dependents' Educational Assistance, may be referred to as Dependents' Educational Assistance.
(Authority: Sec. 309, 90 Stat. 2383)
(a) General. A program of education or special restorative training may be authorized for an eligible person who meets the definition contained in § 21.3021.
(b) 45 months limitation. Educational assistance may not exceed a period of 45 months, or the equivalent in part-time training, unless it is determined that a longer period is required for special restorative training under the circumstances outlined in § 21.3300(c) or except as specified in § 21.3044(c).
(Authority: 38 U.S.C. 3511(a), 3533, 3541(b))
(c) Courses in foreign countries. A course to be pursued at a school not located in a State or in the Philippines may not be approved except under the circumstances outlined in § 21.4260.

§ 21.3021 Definitions.
(a) Eligible person means:
(1) A child of a:
(i) Veteran who died of a service-connected disability.
(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability.
(iii) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.
(iv) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.
(2) The surviving spouse of a:
(i) Veteran who died of a service-connected disability.
(ii) Veteran who died while having a disability evaluated as total and permanent in nature resulting from a service-connected disability, arising out of active military, naval or air
service after the beginning of the Spanish-American War. (See §§ 3.6(a) and 3.807 of this chapter.)

(3) The spouse of a:
(i) Veteran, serviceman or servicewoman who has a total disability permanent in nature resulting from a service-connected disability.
(ii) Person who is on active duty as a member of the Armed Forces and who now is, and, for a period of more than 90 days, has been, listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(b) Child means a son or daughter of a veteran as defined in § 3.807(d) of this chapter. The term includes a child of a Philippine Commonwealth Army veteran and a Philippine Scout (designated as a New Philippine Scout under 38 U.S.C. 3566(b)), as defined in § 3.40(b), (c), or (d) of this chapter, but educational assistance allowance may not be authorized based on such service for any period before September 30, 1966.

(c) Wife and widow, spouse and surviving spouse. The terms wife and widow mean an individual as defined in § 3.807(d) of this chapter and the terms spouse and surviving spouse shall have the same respective meaning when used in the regulations in part 21, Title 38, Code of Federal Regulations. Educational assistance allowance may not be authorized for any such individuals for any period before December 1, 1968.

(Authority: 38 U.S.C. 3500, 3501, and 3511)

(d) Parent or guardian means a natural or adoptive parent, a fiduciary legally appointed by a court of competent jurisdiction or any person who is determined to be otherwise legally vested with the care of the eligible person (38 U.S.C. 3501(a)(4)) or it may be the eligible person if he or she has attained majority under laws applicable in his or her State of residence as shown on the application and is under no known legal disability. (38 U.S.C. 3501(b)) The eligible person may be designated as the person by whom required actions may be taken even though he or she has not attained majority, or having attained majority, is under a legal disability, when it is determined that to do otherwise would not be in his or her best interest, would result in undue delay or would not be administratively feasible. Where necessary to protect his or her interest and there is reason why the eligible person should not act for himself or herself, some other individual may be designated as the person by whom required actions should be taken.

(Authority: 38 U.S.C. 3501(c))

(e) Armed Forces, as to service by the eligible person, means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the Reserve components of each, the National Guard of the United States and the Air National Guard of the United States. (38 U.S.C. 3501 (a)(3) and (d) and 3512(a)) Effective December 31, 1970, the term includes the National Oceanic and Atmospheric Administration, the Environmental Science Services Administration and the Coast and Geodetic Survey, as to full-time duty of officers commissioned therein.

(Authority: 38 U.S.C. 101(21)(C))

(f) Duty with the Armed Forces, as to service by the eligible person, means active duty, active duty for training for a period of 6 or more consecutive months, or an initial period of active duty for training of not less than 3 months or more than 6 months in the Ready Reserve. (38 U.S.C. 3501(a)(3) and (d), 3512(a)) See §§ 21.3041 and 21.3042.
(g) State means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and the Canal Zone. (38 U.S.C. 101(20)) (Although the Republic of the Philippines is not included in the definition of a State, eligible persons may pursue courses of training in that country.)

(h) Program of education. The term program of education means any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. (Authority: 38 U.S.C. 3501(a)(5))

(i) Educational objective. An educational objective is one that leads to the awarding of a diploma, degree, or certificate which reflects educational attainment. (Authority: 38 U.S.C. 3501(a)(5))

(j) Professional or vocational objective. A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective. (Authority: 38 U.S.C. 3501(a)(5))

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

1. A vocational school or business school;
2. A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;
3. A public or private secondary school;
4. A training establishment as defined in § 21.4200(c); or
5. An institution that provides specialized vocational training, generally recognized as on the secondary school level or above, for people with mental or physical disabilities. (Authority: 38 U.S.C. 3501(a)(6), 3535)

(l) Disabling effects of chronic alcoholism. (1) The term disabling effects of chronic alcoholism means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which in the particular case:

i. Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

ii. Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

2. A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

3. Injury sustained by an eligible spouse or surviving spouse as a proximate and immediate result of activity undertaken by the eligible spouse or surviving spouse while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism. (Authority: 38 U.S.C. 105, 3512(b))

(m) Additional definitions. The definitions of all terms that are defined in §§ 21.1029 and 21.4200 but that are not defined in this section apply to subpart C of this part. (Authority: 38 U.S.C. 501, 3501)
§ 21.3022 Nonduplication -- programs administered by VA.
A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. The election is subject to the conditions specified in § 21.4022 of this part.

The provisions of law are:
(a) 38 U.S.C. chapter 30,
(b) 38 U.S.C. chapter 31,
(c) 38 U.S.C. chapter 32,
(d) 38 U.S.C. chapter 34,
(e) 10 U.S.C. chapter 1606,
(f) 10 U.S.C. chapter 107,
(g) Section 903 of the Department of Defense Authorization Act, 1981,
(h) The Hostage Relief Act of 1980, and

§ 21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.
(a) Child; age 18. A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.
(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on school attendance on or after the age of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.
(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.
(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance.

for periods, including vacation periods, prior to the commencement of educational assistance.
(b) Child; under 18 or helpless. Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line.
(c) Child; election. An election by a child under this section must be submitted to VA in writing.
(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.
(2) An election based on erroneous information furnished by an authorized representative of the Department of Veterans Affairs is not considered final.
(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of education under DEA may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran's death.
(d) Spouse or surviving spouse. Educational assistance allowance may be paid for an eligible spouse or surviving spouse concurrently with pension, compensation or dependency and indemnity compensation.

(a) Civilian employment. The provisions of this paragraph are applicable to cases where there is eligibility for benefits from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based on the disability or death
as a result of civilian employment of the veteran from whom eligibility for educational assistance is derived.

(1) Child, spouse or surviving spouse. A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive.

(2) Veteran, spouse and child—surviving spouse and child. An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

(3) Election. An election of Office of Workers' Compensation Programs benefits, under the Federal employees' Compensation Act (FECA), by or for a child filed on or after July 4, 1966, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility. An election of Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) by a surviving spouse filed on or after December 1, 1968, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility.

(b) Military service. The provisions of this paragraph are applicable to cases where there is eligibility for benefits from Office of Workers' Compensation Program, under the Federal Employee's Compensation Act (FECA) based on the disability or death as a result of military service by the veteran from whom eligibility for educational assistance is derived.

(1) Child, spouse or surviving spouse. A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive. The election may be made at any time.

(2) Veteran, spouse and child—surviving spouse and child. An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

[40 FR 42879, Sept. 17, 1975, as amended at 50 FR 27826, July 8, 1985]

CROSS REFERENCE: Federal Employees' Compensation. See § 3.708 of this chapter.

§ 21.3025 Nonduplication; Federal programs.
Payment of subsistence allowance and special training allowance is prohibited to an otherwise eligible person --
(a) Who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service); or
(b) For a unit course or courses which are being paid for under 5 U.S.C. chapter 41.
(38 U.S.C. 3681(a))
[31 FR 6773, May 6, 1966; 61 FR 26107, 26108, May 24, 1996]

[EFFEICTIVE DATE NOTE: 61 FR 26107, 26108, May 24, 1996, which revised this section, became effective May 24, 1996.]
 CLAIMS

§ 21.3030 Claims.

§ 21.3030 Claims.
The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.
(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)
[43 FR 35290, Aug. 9, 1978; 64 FR 23769, 23771, May 4, 1999]

[EFFECTIVE DATE NOTE: 64 FR 23769, 23771, May 4, 1999, revised this section, effective June 3, 1999.]
ELIGIBILITY AND ENTITLEMENT

§ 21.3040 Eligibility; child.
§ 21.3041 Periods of eligibility; child.
§ 21.3042 Service with Armed Forces.
§ 21.3043 Suspension of program; child.
§ 21.3044 Entitlement.
§ 21.3045 Entitlement charges.
§ 21.3046 Periods of eligibility; spouses and surviving spouses.
§ 21.3047 Extended period of eligibility due to physical or mental disability.

§ 21.3040 Eligibility; child.
(a) Commencement. A program of education or special restorative training may not be afforded prior to the eligible person's 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed:
(1) Compulsory school attendance age under State law; or
(2) His or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training.
(b) Secondary schooling. Completion of secondary schooling means completion of a curriculum offered by a public or private school which satisfies the requirements for a high school diploma or its equivalent -- usually completion of the 12th grade in the public school system.
(c) Age limitation for commencement. No person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces on whose service eligibility is claimed as being in one of the missing status categories of § 21.3021 (a)(1)(iv) and (3)(ii).
(d) Termination of eligibility. No person is eligible for educational assistance beyond his or her 31st birthday, except as provided under § 21.3041(e)(2). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 45 months. See § 21.3300.
(Authority: 38 U.S.C. 3512(a))

§ 21.3041 Periods of eligibility; child.
(a) Basic beginning date. The basic beginning date of an eligible child's period of eligibility is his or her 18th birthday or successful completion of secondary schooling, whichever occurs first. See paragraph (b) of this section and § 21.3040 (a) and (b).
(Authority: 38 U.S.C. 3512(a))
(b) Exceptions to basic beginning date. (1) An eligible child may have a beginning date earlier than the basic beginning date when he or she has:
(i) Completed compulsory school attendance under applicable State law, or
(ii) Passed his or her 14th birthday and has a physical or mental handicap. See § 21.3040(a).
(2) The eligible child may have a beginning date later than the basic beginning date when any of the following circumstances exist.
(i) If the effective date of the permanent and total disability rating is before the child has reached 18 but the date of notification to the veteran from whom the child derives eligibility occurs after the child has reached 18, the beginning date of eligibility shall be the basic beginning date as determined in paragraph (a) of this section, or the date of notification to the veteran, whichever is more advantageous to the eligible child.
(ii) If the effective date of the permanent and total disability rating occurs after the child has reached 18 but before he or she has reached 26, the beginning date of eligibility will be the effective date of the rating or the date of notification to the veteran from whom the child derives eligibility, whichever is more advantageous to the eligible child.
(Authority: 38 U.S.C. 3512(a)(3), 3512(d))
(iii) If the child becomes eligible through the death of a veteran, the date of death will be the beginning date of eligibility if it occurs after the child's 18th birthday and before his or her 26th birthday.
(iv) The child may become eligible through qualifying as the veteran's adopted child (see § 3.57(c)) or by becoming a stepchild of the veteran and a member of the veteran's household. If either of these events occurs after the child's 18th birthday and before his or her 26th birthday, the effective date of eligibility will be whichever of the following is appropriate:
(A) The date the child qualifies as an adopted child under § 3.57(c), or
(B) The date the child becomes the veteran's stepchild and a member of his or her household.
(Authority: 38 U.S.C. 3501)
(c) Basic ending date. The eligible person's 26th birthday.
(d) Modified ending date. When one of the following occurs between ages 18 and 26, the ending date will be the eligible person's 26th birthday or 8 years from the date of happening specified in paragraphs (d)(1) to (7) of this section and 10 years in paragraph (d)(8); whichever is later. When paragraph (d)(9) is applicable, the ending date will be as stated in paragraph (d)(9). Where the ending date is subject to modification under more than one of paragraph (d) (3), (4), (5), (6) or (7) of this section, the more favorable date will apply. In no case will the modified ending date extend beyond the eligible person's 31st birthday.
(1) Effective date of permanent total rating of veteran-parent or the date of notification to him or her of such rating, whichever is the more advantageous to the eligible person.
(Authority: 38 U.S.C. 3512)
(2) Death of veteran-parent.
(3) Date of first unconditional discharge or release from "duty with the Armed Forces" served as an eligible person if he or she served after age 18 and before age 26. See § 21.3042.
(4) Enactment of Pub. L. 88-361 on July 7, 1964, providing eligibility based on permanent total disability; that is, July 6, 1969.
(5) Enactment of Pub. L. 89-349 on November 8, 1965, providing eligibility based on peacetime service after the Spanish-American War and prior to September 16, 1940; or during World War I or World War II solely by reason of the provisions of 38 U.S.C. 1101; that is, November 7, 1970.
(6) Enactment of Pub. L. 89-613 on September 30, 1966, providing eligibility based on service with the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.40 (b), (c), or (d) of this chapter; that is, September 29, 1971. See § 3.807 of this chapter.
(7) Effective date of Pub. L. 90-77, section 307, October 1, 1967, providing eligibility for persons solely by virtue of that section who were over age 23 and below age 26 on that date; that is September 30, 1972.
(8) Enactment of Pub. L. 92-540 (86 Stat. 1074) on October 24, 1972, providing for a course of apprentice or other on-the-job training approved under the provisions of § 21.4261 or 21.4262; that is, October 24, 1982 or until age 31, whichever is earlier.
(9) The child may lose eligibility through ceasing to be the veteran's stepchild either because the veteran and the child's natural or adoptive parent divorce or because the veteran and the child's natural or adoptive parent separate and the child is no longer a member of the veteran's household. If this occurs, the ending date of the child's period of eligibility will be determined as follows:
(i) If the child ceases to be the veteran's stepchild while the child is not in training, the ending date of the child's eligibility shall be the date on which the child ceases to be the veteran's stepchild.
(ii) If the child ceases to be the veteran's stepchild while the child is in training in a school organized on a term, semester or quarter basis, the ending date of the child's eligibility will be the last date of the term, semester or quarter during which the child ceases to be the veteran's stepchild.
(iii) If the child ceases to be the veteran's stepchild while the child is in training in a school not organized on a term, semester or quarter basis, the ending date of the child's period of eligibility will be the end of the course or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier. See § 21.4135(g).
(e) Extensions to ending dates. (1) Suspension of program due to conditions determined by the Department of Veterans Affairs to have been beyond the person's control (see § 21.3043): extended for length of period of suspension, but not beyond age 31. See § 21.3040(d).
(2) Period of eligibility as specified in paragraph (c) or (d) of this section ends while enrolled in an educational institution regularly operated on the quarter or semester system and such period ends during a quarter or semester, such period shall be extended to the end of the quarter or semester, or for courses at educational institutions operated on other than a quarter or semester system, if the period ends after a major portion of the course is completed, such period shall be extended to the end of the course, or until 12 weeks have expired, whichever first occurs. Extension may be authorized beyond age 31, but may not exceed maximum entitlement. See § 21.3044(a). No extension of the period of eligibility
will be made where training is pursued in a training establishment as defined in §
21.4200(c).
(Authority: 38 U.S.C. 3512(a)(5))
(3) Child is enrolled and eligibility ceases because veteran is no longer rated permanently
and totally disabled: extended to date specified in paragraph (e)(2) of this section without
regard to whether the midpoint of the quarter, semester or term has been reached. See §
21.3135(h).
(4) Child is enrolled and eligibility ceases because the member of the Armed Forces upon
whose service eligibility is based is no longer listed by the Secretary concerned in any of
the categories specified in § 21.3021(a)(1)(iv): extended to date specified in paragraph
(e)(2) of this section without regard to whether the midpoint of the quarter, semester or
term has been reached. See § 21.3135(i).
[30 FR 15632, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 31 FR 13993,
30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9,

§ 21.3042 Service with Armed Forces.
(a) No educational assistance under 38 U.S.C. chapter 35 may be provided an otherwise
eligible person during any period he or she is on duty with the Armed Forces. See §
21.3021 (e) and (f). This does not apply to brief periods of active duty for training. See §
21.3135(f).
(Authority: 38 U.S.C. 3501(d))
(b) If the eligible person served with the Armed Forces, his or her discharge or release
from each period of service must have been under conditions other than dishonorable.
(Authority: 38 U.S.C. 3501(d))
(c) The term unconditional discharge, as used in § 21.3041 means unconditional
discharge or release from duty with the Armed Forces. See § 3.13 of this chapter.

[EFFECTIVE DATE NOTE: 61 FR 26107, 26109, May 24, 1996, which removed
paragraph (d) and revised paragraph (a), became effective May 24, 1996.]

§ 21.3043 Suspension of program; child.
For an eligible person who suspends his program due to conditions determined by the
Department of Veterans Affairs to have been beyond his or her control the period of
eligibility may, upon his request, be extended by the number of months and days
intervening the date the suspension began and the date the reason for suspension ceased
to exist. The burden of proof is on the eligible person to establish that suspension of a
program was due to conditions beyond his or her control. The period of suspension shall
be considered to have ended as of the date of the person's first available opportunity to
resume training after the condition which caused it ceased to exist. The following
circumstances may be considered as beyond the eligible person's control:

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(a) While in active pursuit of a program of education he or she is appointed by the responsible governing body of an established church, officially charged with the selection and designation of missionary representatives, in keeping with its traditional practice, to serve the church in an official missionary capacity and is thereby prevented from pursuit of his or her program of studies.
(b) Immediate family or financial obligations beyond his or her control require the eligible person to take employment, or otherwise preclude pursuit of his or her program.
(c) Unavoidable conditions arising in connection with the eligible person's employment which preclude pursuit of his or her program.
(d) Pursuit of his or her program is precluded because of the eligible person's own illness or illness or death in his or her immediate family.
(e) Active duty, including active duty for training in the Armed Forces.

[41 FR 47929, Nov. 1, 1976]

§ 21.3044 Entitlement.
(a) Limitations on entitlement. Each eligible person in entitled to educational assistance not in excess of 45 months, or the equivalent thereof in part-time training. The Department of Veterans Affairs will not authorize an extension of entitlement except as provided in paragraph (c) of this section. The period of entitlement when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance. The period of entitlement will not be reduced by any period during which employment adjustment allowance was paid after the eligible person completes a period of rehabilitation and reaches a point of employability.
(b) Continuous pursuit is not required. The 45-month period of entitlement is any 45 months within the period of eligibility. The eligible person is not required to pursue his or her program for 45 consecutive months.
(Authority: 38 U.S.C. 3511(a))
(c) Exceeding the 45 months limitation. The 45 months limitation may be exceeded only in the following cases:
(1) Where no charge against the entitlement is made based on a course or courses pursued by a spouse or surviving spouse under the special assistance for the educationally disadvantaged program (See § 21.3344(d); or
(2) Where special restorative training authorized under § 21.3300 exceeds 45 months.
(Authority: 38 U.S.C. 3541(b), 3533(b))

[EFFECTIVE DATE NOTE: 61 FR 26107, 26109, May 24, 1996, which substituted "§ 21.3344(d)" for "§ 21.4237(d)" in paragraph (c)(1), became effective May 24, 1996.]

§ 21.3045 Entitlement charges.
VA will make charges against an eligible person's entitlement only when required by this section. Charges for institutional training will be based upon the principle that an eligible person who trains full time for 1 day should be charged 1 day of entitlement.
(a) No entitlement charge for eligible persons receiving tutorial assistance. VA will make no charge against the entitlement of an eligible person for tutorial assistance received in accordance with § 21.4236. 
(Authority; 38 U.S.C. 3492, 3533(b))

(b) Entitlement charges for elementary and secondary education.

(1) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.3344, there are two sets of circumstances which will always result in VA's making no charge against his or her entitlement. These are as follows:
   (i) Either the eligible spouse or surviving spouse completed training during the period beginning on October 1, 1980, and ending on August 14, 1989, and remained continuously enrolled from October 1, 1980, through the time the spouse or surviving spouse either completed training or August 14, 1989, whichever is earlier; or
   (ii) The eligible spouse or surviving spouse completed training before August 15, 1989, and received educational assistance based upon the tuition and fees charged for the course.

(2) When an eligible spouse or surviving spouse is pursuing a course leading to a secondary school diploma or an equivalency certificate as described in § 21.3344, the following circumstances will always result in VA's making a charge against his or her entitlement unless the provisions of paragraph (d) of this section would exempt the spouse or surviving spouse from receiving an entitlement charge. 
   (i) The spouse or surviving spouse elects to receive dependents' educational assistance at the rate described in § 21.3131(a), and
   (ii) Either was not pursuing a course leading to a secondary school diploma or equivalency certificate on October 1, 1980, or has not remained continuously enrolled in such a course since October 1, 1980.

(3) When an eligible person pursues refresher, remedial or deficiency training before August 15, 1989, the following provisions govern the charge against the entitlement. 
   (i) VA will not make a charge against the entitlement of an eligible spouse or surviving spouse.
   (ii) VA will make a charge against the entitlement of an eligible child.

(4) The following provisions apply to an eligible person for training received after August 14, 1989. When he or she is pursuing a course leading to a secondary school diploma or equivalency certificate or refresher, remedial or deficiency training.
   (i) VA will make no charge against the entitlement of an eligible person for the first five months of full time pursuit (or its equivalent in part-time pursuit).
   (ii) VA will make a charge against the entitlement of an eligible person for pursuit in excess of the pursuit described in paragraph (b)(4)(i) unless the provisions of paragraph (d) of this section would exempt the eligible person from receiving an entitlement charge. 

(c) Other courses for which entitlement will be charged. Except when the requirements of paragraph (d) of this section are met, VA will make a charge against the period of entitlement --
   (1) An eligible person for pursuit of a program of apprenticeship or other on-job training;
   (2) A spouse or surviving spouse for pursuit of a correspondence course; or
(3) An eligible person for the pursuit of any course not described in paragraph (a) or (b) of this section.
(Authority: 38 U.S.C. 3534)

(d) Exemption from entitlement charge. (1) VA will not make a charge against the entitlement of an eligible person for the pursuit of any course or courses when VA finds that the eligible person --
   (i) Had to discontinue pursuit of the course or courses as the result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b, or 688 of title 10, U.S. Code; and
   (ii) Failed to receive credit or training time toward completion of the eligible person's approved educational, professional or vocational objective as a result of having to discontinue, as described in paragraph (d)(1)(i) of this section, his or her course pursuit.
(2) The period for which VA will not make a charge against entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the eligible person failed to receive credit or with respect to which the eligible person lost training time.

(e) Determining entitlement charge. The provisions of this paragraph apply to all courses except those courses for which VA is not making a charge against the eligible person's entitlement, apprenticeship or other on-job training, correspondence courses, and courses offered solely through independent study.
(1) After making any adjustments required by paragraph (e)(3) of this section, VA will make a charge against entitlement --
   (i) On the basis of total elapsed time (one day for each day of pursuit) if the eligible person is pursuing the program of education on a full-time basis,
   (ii) On the basis of a proportionate rate of elapsed time, if the eligible person is pursuing a program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.
(2) VA will compute elapsed time from the commencing date of enrollment to date of discontinuance. If the eligible person changes his or her training time after the commencing date of enrollment, VA will --
   (i) Divide the enrollment period into separate periods of time during which the eligible person's training time remains constant; and
   (ii) Compute the elapsed time separately for each time period.
(3) An eligible person may concurrently enroll in refresher, remedial or deficiency training for which paragraph (b)(3) or (b)(4)(i) of this section requires no charge against entitlement and in a course or courses for which paragraph (b)(2) or (b)(4)(ii) or (c) of this section requires a charge against entitlement. When this occurs, VA will charge entitlement for the concurrent enrollment based only on pursuit of the courses described in paragraph (b)(2) or (b)(4)(ii) or (c) of this section, measured in accordance with §§ 21.4270 through 21.4275 of this part, as appropriate.
(Authority: 38 U.S.C. 3533(a); Pub. L. 100-689)
if he or she is pursuing a program of education solely by independent study. For all other enrollments where the eligible person is pursuing a program of education solely by independent study, the computation will be made as though the eligible person's training were one-quarter time.

(Authority: 38 U.S.C. 3482(b), 3532(a))

(g) Entitlement charge for apprenticeship or other on-job training. The charge against entitlement for pursuit of apprenticeship or other on-job training program shall be 1 month for each month of training assistance allowance paid to the eligible person for the program. If there is a reduction in the eligible person's monthly training assistance allowance due to his or her failure to complete 120 hours of training during the month, VA will combine the portions of those months for which a reduction was made. VA will make no charge against entitlement for the period of combined reductions.

(Authority: 38 U.S.C. 3534, 3687)

(h) Entitlement charge for correspondence courses. The charge against entitlement of a spouse or surviving spouse for pursuit of a course exclusively by correspondence will be 1 month for each of the following amounts paid as an educational assistance allowance:

1. $680.00 paid after September 30, 2002, and before October 1, 2003;
2. $695.00 paid after September 30, 2003, and before July 1, 2004; and
3. $788.00 paid after June 30, 2004.

(Authority: 38 U.S.C. 3534(b), 3564, 3686(a)).

(i) Overpayment cases. VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and is not recovered, or is compromised.

1. If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).
2. If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).
3. If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by --
   (i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,
   (ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (i)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),
   (iii) Dividing the result obtained in paragraph (h)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and
(iv) Multiplying the percentage obtained in paragraph (h)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.
(Authority: 38 U.S.C. 3471, 3532)

(j) Interruption to conserve entitlement. An eligible person may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the eligible person is enrolled for the term, quarter or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the eligible person is otherwise eligible for benefits, except when benefits are interrupted under any of the following conditions:
(1) Enrollment is actually terminated;
(2) The eligible person cancels his or her enrollment, and does not negotiate an educational benefits check for any part of the certified period of enrollment;
(3) The eligible person interrupts his or her enrollment at the end of any term, quarter, or semester within the certified period of enrollment, and does not negotiate a check for educational benefits for the succeeding term, quarter, or semester;
(4) The eligible person requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the eligible person negotiated a check for educational benefits for the certified period is immaterial.
(Authority: 38 U.S.C. 3511)

(k) Education loan after otherwise applicable delimiting date -- spouse or surviving spouse. VA will make a charge against the entitlement of a spouse or surviving spouse who receives an education loan pursuant to § 21.4501(c) at the rate of 1 day for each day of entitlement that would have been used had the spouse or surviving spouse been in receipt of educational assistance allowance for the period for which the loan was granted.
(Authority: 38 U.S.C. 3512)


[EFFECTIVE DATE NOTE: 68 FR 34319, 34320, June 9, 2003, revised paragraph (h), effective June 9, 2003.]

§ 21.3046 Periods of eligibility; spouses and surviving spouses.
This section states how VA will compute the beginning date, the ending date and the length of a spouse's or surviving spouse's period of eligibility. The period of eligibility of a spouse computed under the provisions of paragraph (a) of this section will be recomputed under the provisions of paragraph (b) of this section if her or his status changes to that of surviving spouse.
(Authority: 38 U.S.C. 3512(b))

(a) Beginning date of eligibility period-spouses. (1) If the permanent total rating is effective before December 1, 1968, the beginning date of the 10-year period of eligibility is December 1, 1968.
(2) The beginning date of eligibility --
   (i) Shall be determined as provided in paragraph (a)(2) of this section when --
   (A) The permanent total rating is effective after November 30, 1968, or the notification to
       the veteran of the rating was after that date, and
   (B) Eligibility does not arise under § 21.3021(a)(3)(ii) of this part.
   (ii) For spouses for whom VA made a final determination of eligibility before October 28,
       1986, shall be --
       (A) The effective date of the rating, or
       (B) The date of notification, whichever is more advantageous to the spouse.
   (iii) For spouses for whom VA made a final determination of eligibility after October 27,
       1986, shall be --
       (A) The effective date of the rating, or
       (B) The date of notification, or
       (C) Any date between the dates specified in paragraphs (a)(2)(iii) (A) and (B) of this
           section as chosen by the eligible spouse.
   (iv) May not be changed once a spouse has chosen it as provided in paragraph (a)(2)(iii)
       of this section.
(3) If eligibility arises under § 21.3021(a)(3)(ii) of this part, the beginning date of the
    10-year eligibility period is --
    (i) December 24, 1970, or
    (ii) The date the member of the Armed Forces on whose service eligibility is based was
         so listed by the Secretary concerned, whichever last occurs.
    (Authority: 38 U.S.C. 3501(a); Pub. L. 99-576)
(b) Beginning date of eligibility period-surviving spouses. (1) If VA determines before
    December 1, 1968, that the veteran died of a service-connected disability, the beginning
    date of the 10-year period is December 1, 1968.
    (Authority: 38 U.S.C. 3512)
    (2) If the veteran's death occurred before December 1, 1968, but VA does not determine
        that the veteran died of a service-connected disability until after November 30, 1968, the
        beginning date of the 10-year period is the date on which VA determines that the veteran
        died of a service-connected disability.
    (3) If the veteran's death occurred before December 1, 1968, while a total,
        service-connected disability evaluated as permanent in nature was in existence, the
        beginning date of the 10-year period is December 1, 1968.
    (4) If the veteran's death occurred after November 30, 1968, and VA makes a final
        decision concerning the surviving spouse's eligibility for dependents' educational
        assistance before October 28, 1986, the beginning date of the 10-year period is --
        (i) The date of death of the veteran who dies while a total, service-connected disability
            evaluated as permanent in nature was in existence, or
        (ii) The date on which VA determines that the veteran died of a service-connected
             disability.
    (5) If the veteran's death occurred after November 30, 1968, and VA makes a final
        decision concerning the surviving spouse's eligibility for dependents educational
        assistance after October 27, 1986, VA will determine the beginning date of the 10-year
        period as follows.
(i) If the surviving spouse's eligibility is based on the veteran's death while a total, service-connected disability evaluated as permanent in nature was in existence, the beginning date of the 10-year period is the date of death.

(ii) If the surviving spouse's eligibility is based on the veteran's death from a service-connected disability, the surviving spouse will choose the beginning date of the 10-year period. That date will be no earlier than the date of death and no later than the date of the VA determination that the veteran's death was due to a service-connected disability.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99-576)

(6) Once a surviving spouse has chosen a beginning date of eligibility as provided in paragraph (b)(5) of this section, the surviving spouse may not revoke that choice.

(Authority: 38 U.S.C. 3512(b); Pub. L. 99-576)

(c) Ending date of eligibility period. (1) The period of eligibility cannot exceed 10 years and can be extended only as provided in paragraph (d) of this section and § 21.3047.

(2) If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-job training or correspondence approved under the provisions §§ 21.4256, 21.4261, and 21.4262 of this part will not be afforded later than October 23, 1982, unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section.

(Authority: 38 U.S.C. 3512)

(d) Extension to ending date. (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

   (i) The veteran is no longer rated permanently and totally disabled;
   (ii) The spouse is divorced from the veteran without fault on the spouse's part; or
   (iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii) of this part.

(2) If the spouse is enrolled in a school operating on a quarter or semester system, VA will extend the period of eligibility to the end of the quarter or semester, regardless of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, VA will extend the period of eligibility to the earlier of the following:

   (i) The end of the course, or
   (ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, VA will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

   (i) The end of the course, or
   (ii) The total additional amount of instruction that--

   (A) $1,904 will provide during the period October 1, 2002, through September 30, 2003;
   (B) $1,946 will provide during the period October 1, 2003, through June 30, 2004; or
   (C) $2,206 will provide after June 30, 2004.

   (Authority: 38 U.S.C. 3511(b))

(5) VA will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c) of this part.
(6) An extension may not --
(i) Exceed maximum entitlement, or
(ii) Extend beyond the delimiting date specified in paragraph (a) of this section or §
21.3047, as appropriate.
(Authority: 38 U.S.C. 3511(b); 3512(b), 3532, 3586)
[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29799, July 7, 1992; 57 FR 60735,
62206, Oct. 25, 2004]

[EFFECTIVE DATE NOTE: 62 FR 51783, 51784, Oct. 3, 1997, removed paragraph (e),
effective Oct. 3, 1997; 62 FR 59579, Nov. 4, 1997, amended paragraphs (c)(1) and
(d)(6)(ii), effective Nov. 4, 1997.]

§ 21.3047 Extended period of eligibility due to physical or mental disability.
(a) General. (1) An eligible spouse or surviving spouse shall be granted an extension of
the applicable period of eligibility as otherwise determined by § 21.3046 provided the
eligible spouse or surviving spouse:
(i) Applies for the extension within the appropriate time limit;
(ii) Was prevented from initiating or completing the chosen program of education within
the otherwise applicable period of eligibility because of a physical or mental disability
that did not result from the willful misconduct of the eligible spouse or surviving spouse;
(iii) Provides VA with any requested evidence tending to show that the requirement of
paragraph (a)(1)(ii) of this section has been met; and
(iv) Is otherwise eligible for payment of educational assistance for the training pursuant
to 38 U.S.C. chapter 35.
(2) In determining whether the eligible spouse or surviving spouse was prevented from
initiating or completing the chosen program of education because of a physical or mental
disability, VA will consider the following:
(i) It must be clearly established by medical evidence that such a program of education
was medically infeasible.
(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less
will not be considered as having been prevented from initiating or completing a chosen
program, unless the evidence establishes that the eligible spouse or surviving spouse was
prevented from enrolling or reenrolling in the chosen program of education, or was
forced to discontinue attendance, because of the short disability.
(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of
willful misconduct and will consider those disabling effects as physical or mental
disabilities.
(b) Commencing date. The eligible spouse or surviving spouse shall elect the
commencing date of an extended period of eligibility. The date chosen --
(1) Must be on or after the original date of expiration of eligibility as determined by §
21.3046(c); and
(2) Must be on or before the ninetieth day following the date on which the eligible
spouse's or surviving spouse's application for an extension was approved by VA, if the
eligible spouse or surviving spouse is training during the extended period of eligibility in
a course not organized on a term, quarter, or semester basis; or

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(3) Must be on or before the first ordinary term, quarter, or semester following the ninetieth day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis. (Authority: 38 U.S.C. 3512(b))

c) Length of extended periods of eligibility. An eligible spouse's or surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:
   (i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;
   (ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046(c); or
   (iii) The date the eligible spouse or surviving spouse resumed training.

(2) If the eligible spouse or surviving spouse is training in a course not organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earlier of the following dates:
   (i) The date the eligible spouse's or surviving spouse's training became medically feasible; or
   (ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by § 21.3046.

Counseling

§ 21.3100 Counseling.
§ 21.3102 Required counseling.
§ 21.3103 Failure to cooperate.
§ 21.3104 Special training.
§ 21.3105 Travel expenses.

§ 21.3100 Counseling.
(a) Purpose of counseling. The purpose of counseling is to assist:
1) In selecting an educational or training objective;
   (Authority: 38 U.S.C. 3520)
2) In developing a suitable program of education or training;
   (Authority: 38 U.S.C. 3520)
3) In selecting an educational institution or training establishment appropriate for the
   attainment of the educational or training objective;
   (Authority: 38 U.S.C. 3561(a))
4) In resolving any personal problems which are likely to interfere with successful
   pursuit of a program;
   (Authority: 38 U.S.C. 3561(a))
5) In selecting an employment objective for the eligible person that would be likely to
   provide the eligible person with satisfactory employment opportunities in light of his or
   her circumstances.
   (Authority: 38 U.S.C. 3520, 3561(a))
(b) Availability of counseling. Counseling assistance is available for --
   (1) Identifying and removing reasons for academic difficulties which may result in
       interruption or discontinuance of training; or
   (2) In considering changes in career plans, and making sound decisions about the
       changes.
   (Authority: 38 U.S.C. 3520, 3561(a))
(c) Provision of counseling. VA shall provide counseling as needed for the purposes
   identified in paragraphs (a) and (b) of this section upon the request of the eligible person.
   (Authority: 38 U.S.C. 3520, 3561(a))
[61 FR 26107, 26109, May 24, 1996]

[EFFECTIVE DATE NOTE: 61 FR 26107, 26109, May 24, 1996, which added this
section, became effective May 24, 1996.]

§ 21.3102 Required counseling.
(a) Child. The VA counseling psychologist will provide counseling and assist in
   preparing the educational plan only if the eligible child or his or her parent or guardian
   requests assistance, except that counseling is required for an eligible child if --
   (1) The eligible child may require specialized vocational training or special restorative
   training; or
(2) The eligible child has reached the compulsory school attendance age under State law, but has neither reached his or her 18th birthday, nor completed secondary schooling. See § 21.3040(a).

(b) Spouse or surviving spouse. Counseling is required for a spouse or surviving spouse only if he or she desires specialized vocational training.

(Authority: 38 U.S.C. 3520, 3536, 3541, 3561)

[61 FR 26107, 26109, May 24, 1996]

[EFFECTIVE DATE NOTE: 61 FR 26107, 26109, May 24, 1996, which added this section, became effective May 24, 1996.]

§ 21.3103 Failure to cooperate.
VA will not act further on an eligible person's application for assistance under 38 U.S.C. chapter 35 when counseling is required for him or her and the eligible person --

(a) Fails to report;
(b) Fails to cooperate in the counseling process; or
(c) Does not complete counseling to the extent required under § 21.3102.

(Authority: 38 U.S.C. 3536, 3541, 3561(a))

[61 FR 26107, 26109, May 24, 1996]

[EFFECTIVE DATE NOTE: 61 FR 26107, 26109, May 24, 1996, which added this section, became effective May 24, 1996.]

§ 21.3104 Special training.
(a) Initial counseling. A counseling psychologist in the Vocational Rehabilitation and Employment Division will counsel a disabled child, spouse, or surviving spouse before referring the case to the Vocational Rehabilitation Panel (established under § 21.60) for consideration as to the child's, spouse's or surviving spouse's need for a course of specialized vocational training or the child's need for special restorative training. After consulting with the panel, and considering the panel's report, the counseling psychologist will determine if the disabled child, spouse, or surviving spouse needs a course of specialized vocational training or the disabled child needs special restorative training, and where need is found to exist will prescribe a course which is suitable to accomplish the goals of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3536, 3540-3543, 3561(a))

(b) Counseling after special restorative training. When an eligible child completes or discontinues a course of special restorative training without having selected an objective and a program of education, a counseling psychologist in the Vocational Rehabilitation and Employment Division will provide additional counseling to assist the child in selecting a program of education suitable to accomplish the purposes of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3561)

[61 FR 26107, 26109, May 24, 1996]

§ 21.3105 Travel expenses.
(a) General. VA shall determine and pay the necessary expense of travel to and from the place of counseling for an eligible person who is required to receive counseling as provided under 38 U.S.C. 111 (a), (d), (e), and (g).
(Authority: 38 U.S.C. 111 (a), (d), (e), and (g))
(b) Restriction. VA will not pay the necessary cost of travel to and from the place of counseling when counseling is not required, but is provided as a result of a voluntary request by the eligible person.
(Authority: 38 U.S.C. 111)
[61 FR 26107, 26109, May 24, 1996]

[EFFECTIVE DATE NOTE: 61 FR 26107, 26109, May 24, 1996, which added this section, became effective May 24, 1996.]
PAYMENTS

§ 21.3130 Educational assistance.
§ 21.3133 Payment procedures.
§ 21.3135 Reduction or discontinuance dates for awards of educational assistance allowance.

§ 21.3130 Educational assistance.
(a) Approval of a program of education. VA will approve a program of education selected by an eligible person if:
   (1) The program is described in § 21.3021 (h) and (i) or (j);
   (2) The individual is not already qualified for the objective of the program of education;
   (3) The proposed educational institution or training establishment is in compliance with all the requirements of 38 U.S.C. chapters 35 and 36; and
   (4) It does not appear that the enrollment in or pursuit of such person's program of education would violate any provision of 38 U.S.C. chapters 35 and 36.
   (Authority: 38 U.S.C. 3521)
(b) Payments. VA will pay educational assistance at the rate specified in § 21.3131 (subject to the reductions required by § 21.3132) while the eligible person is pursuing an approved program of education or training.
   (Authority: 38 U.S.C. 3521, 3532)
(c) No payment for excessive training. (1) VA will make no payment for:
   (i) Training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency or VA; or
   (ii) Lessons completed in a correspondence course in excess of the number approved by the State approving agency.
   (2) A school's standards of progress may permit a student to repeat a course or portion of a course in which he or she has done poorly. VA considers the repeated courses to be part of the program of education. VA will make no payment for courses or training if the courses or training are not part of the eligible person's program of education.
   (Authority: 38 U.S.C. 3501(a)(5), 3521)
(d) Courses precluded. VA may not pay educational assistance:
   (1) For pursuit of a course if approval of the enrollment in the course is precluded by § 21.4252;
   (2) For training in a foreign country unless the training is in the Philippines or is approved pursuant to the provisions of § 21.4260; or
   (3) For pursuit of a course offered by open-circuit television, unless the eligible person's pursuit meets the requirements of § 21.4233(c).
   (Authority: 38 U.S.C. 3523)
(e) Commencing date. In determining the commencing date of an award of educational assistance, VA will apply the provisions of § 21.4131.
   (Authority: 38 U.S.C. 5113)
   [61 FR 26107, 26109, May 24, 1996]

(a) Rates. Except as provided in § 21.3132, educational assistance allowance is payable at the following rates for pursuit of education or training that occurs after September 30, 2001, and before January 1, 2002:

<table>
<thead>
<tr>
<th>Type of course</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional:</td>
<td></td>
</tr>
<tr>
<td>Full time</td>
<td>$ 608.00</td>
</tr>
<tr>
<td>3/4 time</td>
<td>456.00</td>
</tr>
<tr>
<td>1/2 time</td>
<td>304.00</td>
</tr>
<tr>
<td>Less than 1/2 but more than 1/4 time fn1</td>
<td>304.00</td>
</tr>
<tr>
<td>1/4 time or less fn1</td>
<td>152.00</td>
</tr>
<tr>
<td>Cooperative training (other than farm cooperative) (Full time only)</td>
<td></td>
</tr>
<tr>
<td>Apprenticeship or on-the-job (full time only) fn2</td>
<td></td>
</tr>
<tr>
<td>First six months</td>
<td>443.00</td>
</tr>
<tr>
<td>Second six months</td>
<td>331.00</td>
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<tr>
<td>Third six months</td>
<td>219.00</td>
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<tr>
<td>Fourth six months and thereafter</td>
<td>111.00</td>
</tr>
<tr>
<td>Farm cooperative:</td>
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<tr>
<td>Full time</td>
<td>491.00</td>
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<tr>
<td>3/4 time</td>
<td>368.00</td>
</tr>
<tr>
<td>1/2 time</td>
<td>246.00</td>
</tr>
<tr>
<td>Correspondence</td>
<td>55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school -- Allowance paid quarterly fn3</td>
</tr>
</tbody>
</table>

fn1 If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $ 304.00 or $ 152.00, as appropriate, per month, if the maximum allowance is not initially authorized.

fn2 See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

fn3 Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))
(b) Rates. Except as provided in § 21.3132, educational assistance allowance is payable at
the following rates for pursuit of education or training that occurs after December 31,
2001, and before October 1, 2002:

<table>
<thead>
<tr>
<th>Type of course</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full time</td>
<td>$ 670.00</td>
</tr>
<tr>
<td>3/4 time</td>
<td>503.00</td>
</tr>
<tr>
<td>1/2 time</td>
<td>335.00</td>
</tr>
<tr>
<td>Less than 1/2 but more than 1/4 time fn1</td>
<td>335.00</td>
</tr>
<tr>
<td>1/4 time or less fn1</td>
<td>167.50</td>
</tr>
<tr>
<td>Cooperative training (other than 670.00 farm cooperative) (Full time only)</td>
<td></td>
</tr>
<tr>
<td>Apprenticeship or on-the-job (full time only) fn2 :</td>
<td></td>
</tr>
<tr>
<td>First six months</td>
<td>488.00</td>
</tr>
<tr>
<td>Second six months</td>
<td>365.00</td>
</tr>
<tr>
<td>Third six months</td>
<td>242.00</td>
</tr>
<tr>
<td>Fourth six months and thereafter</td>
<td>122.00</td>
</tr>
<tr>
<td>Farm cooperative:</td>
<td></td>
</tr>
<tr>
<td>Full time</td>
<td>541.00</td>
</tr>
<tr>
<td>3/4 time</td>
<td>406.00</td>
</tr>
<tr>
<td>1/2 time</td>
<td>271.00</td>
</tr>
</tbody>
</table>

Correspondence: 55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school -- Allowance paid quarterly fn3

fn1 If an eligible person under 38 U.S.C. chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $ 335.00 or $ 167.50, as appropriate, per month, if the maximum allowance is not initially authorized.

fn2 See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

fn3 Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is less. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

(Authority: 38 U.S.C. 3532(a), 3542(a), 3687(b)(2), (d))

(c) Less than half time. The monthly rate for an eligible person who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course computed on basis of the total cost for tuition and fees which the school requires similarly circumstanced individuals enrolled in the same course to pay. "Cost of the course" does not include the cost of books or supplies which the student is required to purchase at his or her own expense.
(Authority: 38 U.S.C. 3532(a)(2))
(d) Courses leading to a secondary school diploma or equivalency certificate. The monthly rate of Survivors' and Dependents' Educational Assistance payable for an eligible person enrolled in a course leading to a secondary school diploma or equivalency certificate shall be the rate for institutional training stated in paragraph (a) of this section.
(Authority: 38 U.S.C. 3532(d), 3533)
(e) Payments made to eligible persons in the Republic of the Philippines or to certain Filipinos. When the eligible person is pursuing training at an institution located in the Republic of the Philippines or when an eligible child's entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.40 (b), (c), or (d) of this chapter, payments of educational assistance allowance made after December 31, 1994, will be made at the rate of 50 cents for each dollar authorized.
(Authority: 38 U.S.C. 3532(d), 3565)

[EFFECTIVE DATE NOTE: 68 FR 34319, 34321, June 9, 2003, amended this section, effective June 9, 2003.]

The monthly rates established in § 21.3131 shall be reduced as stated in this section whenever the circumstances described in this section arise.
(a) No educational assistance allowance for some incarcerated eligible persons. VA will pay no educational assistance allowance to an eligible person who:
(1) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and
(2) Is enrolled in a course:
(i) For which there are no tuition or fees, or charges for books, supplies, and equipment;
or
(ii) For which tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and the eligible person is incurring no charge for the books, supplies, and equipment necessary for the course.
(Authority: 38 U.S.C. 3532(e))
(b) Reduced educational assistance allowance for some incarcerated eligible persons -- felony conviction. (1) VA will pay a reduced educational assistance allowance to an eligible person who:
(i) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and
(ii) Is enrolled in a course:
(A) For which the eligible person pays some (but not all) of the charges for tuition and fees; or
(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the eligible person to pay for books, supplies, and equipment.

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(2) The monthly rate of educational assistance allowance payable to such an eligible person who is pursuing a course on a half-time or greater basis shall be the lesser of the following:
(i) The monthly rate of the portion of the tuition and fees that the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books, and equipment; or
(ii) The monthly rate stated in § 21.3131.
(3) The monthly rate of educational assistance payable to such an eligible person who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:
(i) The monthly rate of the tuition and fees charged for the course;
(ii) The monthly rate of tuition and fees which the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books, and equipment; or
(iii) The monthly rate stated in § 21.3131.
(Authority: 38 U.S.C. 3482(g))
(c) Reduction in training assistance allowance. (1) For any month in which an eligible person pursuing an apprenticeship or on-job training program fails to complete 120 hours of training, VA shall reduce the rate specified in § 21.3131(a) proportionally. In this computation VA shall round the number of hours worked to the nearest multiple of eight.
(2) For the purpose of this paragraph hours worked include only:
(i) The training hours the eligible person worked; and
(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages.
(Authority: 38 U.S.C. 3687(b)(3))
(d) Mitigating circumstances. (1) VA will not pay benefits to any eligible person for a course from which the eligible person withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless the provisions of this paragraph are met.
(i) The eligible person withdraws because he or she is ordered to active duty; or
(ii) All of the following criteria are met:
(A) There are mitigating circumstances;
(B) The eligible person submits a description of the circumstances in writing to VA either one year from the date VA notifies the eligible person that he or she must submit the mitigating circumstances or at a later date if the eligible person is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and
(C) The eligible person submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the eligible person is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.
(2) The following circumstances are representative of those which the Department of Veterans Affairs considers to be mitigating provided they prevent the eligible person from pursuing the program of education continuously. This list is not all inclusive.
(i) An illness of the eligible person,
(ii) An illness or death in the eligible person's family,
(iii) An unavoidable geographical transfer resulting from the eligible person's employment,
(iv) An unavoidable change in the eligible person's conditions of employment,
(v) Immediate family or financial obligations beyond the control of the eligible person which require him or her to suspend pursuit of the program of education to obtain employment,
(vi) Discontinuance of a course by a school,
(vii) Unanticipated active duty military service including active duty for training,
(viii) Unanticipated difficulties in caring for the eligible person's child or children.

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

(3) If the eligible child fails to complete satisfactorily a course of special restorative training or if the eligible person fails to complete satisfactorily a course under section 3533, Title 38 U.S.C., without fault, the Department of Veterans Affairs will consider the circumstances which caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(4) In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the eligible person received educational assistance under title 38 U.S.C. or under chapter 1606, title 10 U.S.C., VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. Eligible persons to whom the provisions of this subparagraph apply are not subject to the reporting requirement found in paragraph (d)(1)(ii) of this section.

( Authority: 38 U.S. C. 3680(a)(4); Pub. L. 100-689)

(5) If an eligible person withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating. Eligible persons who withdraw from a course during a drop-add period are not subject to the reporting requirement found in paragraph (d)(1)(ii) of this section.

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

(e) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(f) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(g) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(h) [Redesignated as paragraph (d). See 61 FR 26107, 26110, May 24, 1996.]
(i) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(j) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(k) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(l) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(m) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(n) [Removed. See 61 FR 26107, 26110, May 24, 1996.]
(o) [Removed. See 61 FR 26107, 26110, May 24, 1996.]

( Authority: 38 U.S.C. 501(a).)

§ 21.3133 Payment procedures.
(a) Release of payments and payment procedures. In determining whether payments of educational assistance allowance may be made in a lump sum, in advance, for an interval or if a certification is required from an eligible person before a payment may be made, VA will apply the provisions of § 21.4138.
(Authority: 38 U.S.C. 3680)
(b) Payee. (1) VA will pay an educational assistance allowance to the eligible person if he or she has attained majority and has no known legal disability.
(2) If an eligible person has not attained majority, VA will pay an educational assistance allowance directly to an eligible person, a relative, or some other person for the use and benefit of the eligible person notwithstanding a legal disability on the part of the eligible person when VA determines:
(i) The best interest of the eligible person would be served;
(ii) Undue delay in payment would be avoided; or
(iii) Payment would otherwise not be feasible.
(Authority: 38 U.S.C. 3501(a)(4), 3501(c), 3531(a), 5502)
(c) Payment of accrued benefits. Educational assistance remaining due and unpaid at the date of the eligible person's death is payable under the provisions of § 3.1000 of this chapter.
(Authority: 38 U.S.C. 5121)
(d) Tutorial assistance. An individual who is otherwise eligible to receive benefits under the Survivors' and Dependents' Educational Assistance program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.
(Authority: 38 U.S.C. 3492, 3533(b))
(e) Offsets: 38 U.S.C. chapter 35, compensation, pension and dependency and indemnity compensation. Payment of dependents' educational assistance will be subject to offset of amounts of pension, compensation or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.
(Authority: 38 U.S.C. 3562)
(f) Final payment. VA may withhold final payment until VA receives proof of continued enrollment and adjusts the eligible person's account.
(Authority: 38 U.S.C. 3680)
[61 FR 26107, 26111, May 24, 1996]

§ 21.3135 Reduction or discontinuance dates for awards of educational assistance allowance.

[eccxviii]Discussion and Analysis in the Veterans Benefits Manual
The reduction or discontinuance date of an award of educational assistance will be as stated in this section. If more than one basis for reduction or discontinuance is involved, the earliest date will control.

(a) Ending date of course. Educational assistance allowance will be discontinued on the ending date of the course or period of enrollment as certified by the school.

(Authority: 38 U.S.C. 3531, 3680(a))

(b) Ending date of eligibility. Educational assistance allowance will be discontinued on the ending date of the eligible person's eligibility as determined by § 21.3041, § 21.3042, § 21.3043, or § 21.3046.

(Authority: 38 U.S.C. 3512)

(c) General reduction or discontinuance dates. Educational assistance allowance will be reduced or discontinued on the date specified in § 21.4135.

(Authority: 38 U.S.C. 3482(g), 3531, 3671(g), 3672(a), 3680, 3683, 3690, 5112, 5113, 6103, 6104, 6105)

(d) Divorce. If the veteran and eligible spouse divorce, the discontinuance date for the eligible spouse's award of educational assistance will be:

1. The end of the quarter or semester if the school is operated on a quarter or semester system, and the divorce was without fault on the eligible spouse's part;
2. The end of the course or a 12-week period, whichever is earlier, if the school does not operate on a quarter or semester system, and the divorce was without fault on the eligible spouse's part; or
3. In all other instances, the date the divorce decree becomes final.

(Authority: 38 U.S.C. 3501(a)(1)(D), 3511(b))

(e) Remarriage or other relationship of spouse or surviving spouse. (1) If an eligible surviving spouse remarries, the date of discontinuance of his or her award of educational assistance allowance will be the last date of attendance before remarriage.

2. If a spouse or surviving spouse begins a relationship by living with another person and holding himself or herself out openly to the public to be the spouse of the other person, the date of discontinuance of his or her award of educational assistance allowance will be the last date of the month before the spouse's or surviving spouse's relationship began.


(f) Entrance on active duty (§ 21.3042). If an eligible person enters on active duty, VA will terminate his or her educational assistance allowance on the day before the day of entrance on active duty. Brief periods of active duty for training, if the school permits such an absence without interruption of training, will not result in termination of the allowance under this paragraph.

(Authority: 38 U.S.C. 3501(d))

(g) Eligible child ceases to be a stepchild. When an eligible child loses eligibility because he or she ceases to be the stepchild of the veteran, VA will discontinue the dependent's educational assistance allowance on the last day of the child's eligibility as determined by § 21.3041(d)(9).

(Authority: 38 U.S.C. 101(4)(A), 3501)

(h) Veteran no longer rated permanently and totally disabled. (1) If the veteran on whose service an eligible person's eligibility is based is no longer permanently and totally disabled, VA will discontinue the educational assistance allowance --
(i) On the last date of the quarter or semester during which VA rated the veteran as no longer permanently and totally disabled if the eligible person's educational institution is organized on a quarter or semester basis; or
(ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:
   (A) The last date of the course;
   (B) The end of a 12-week period beginning on the date VA rated the veteran as being no longer permanently and totally disabled.
   (Authority: 38 U.S.C. 3511(b), 3512(a)(6)(A))
(i) Serviceperson is removed from "missing status" listing. (1) If the serviceperson on whose service an eligible person's eligibility is based is removed from the "missing status" listing, VA will discontinue the educational assistance allowance --
   (i) On the last date of the quarter or semester during which the serviceperson was removed from the "missing status" listing if the eligible person's educational institution is organized on a quarter or semester basis; or
   (ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:
       (A) The last date of the course;
       (B) The end of a 12-week period beginning on the date the serviceperson was removed from the "missing status" listing.
   (Authority: 38 U.S.C. 3512(a)(6)(A))
(j) Fugitive felons. (1) VA will not award educational assistance allowance to an otherwise eligible person for any period after December 26, 2001, during which the--
   (i) Eligible person is a fugitive felon; or
   (ii) Veteran from whom eligibility is derived is a fugitive felon.
   (2) The date of discontinuance of an award of educational assistance allowance to an eligible person is the later of--
       (i) The date of the warrant for the arrest of the felon; or
   (Authority: 38 U.S.C. 5313B)
[61 FR 26107, 26111, May 24, 1996; 70 FR 25785, May 16, 2005]

[EFFECTIVE DATE NOTE: 61 FR 26107, 26111, May 24, 1996, which added this section, became effective May 24, 1996.]
§ 21.3300 Special restorative training.
§ 21.3301 Need.
§ 21.3302 Agreements.
§ 21.3303 Extent of training.
§ 21.3304 Assistance during training.
§ 21.3305 'Interrupted' status.
§ 21.3306 Reentrance after interruption.
§ 21.3307 'Discontinued' status.

§ 21.3300 Special restorative training.
(a) Purpose of special restorative training. The Department of Veterans Affairs may prescribe special restorative training where needed to overcome or lessen the effects of a physical or mental disability for the purpose of enabling an eligible child to pursue a program of education, special vocational program or other appropriate goal. Medical care and treatment or psychiatric treatment are not included.
(b) Special restorative training courses. The counseling psychologist, after consulting with the Vocational Rehabilitation Panel, may prescribe for special restorative training purposes courses such as --
(1) Speech and voice correction or retention,
(2) Language retraining,
(3) Speech (lip) reading,
(4) Auditory training,
(5) Braille reading and writing,
(6) Training in ambulation,
(7) One-hand typewriting,
(8) Nondominant handwriting,
(9) Personal, social and work adjustment training,
(10) Remedial reading, and
(11) Courses at special schools for mentally and physically disabled or
(12) Courses provided at facilities which are adapted or modified to meet special needs of disabled students.
(Authority: 38 U.S.C. 3540)
(c) Duration of special restorative training. VA may provide special restorative training in excess of 45 months where an additional period of time is needed to complete the training. Entitlement, including any authorized in excess of 45 months, may be expended through an accelerated program requiring a rate of payment for tuition and fees in excess of--
(1) $213.00 a month for the period beginning October 1, 2002, and ending September 30, 2003;
(2) $218.00 a month for the period beginning October 1, 2003, and ending June 30, 2004; and
(3) $247.00 a month for months after June 30, 2004.
(Authority: 38 U.S.C. 3541(b), 3542)
§ 21.3301 Need.
(a) Determination of need. When special restorative training has been requested or is being considered for a handicapped child, a counseling psychologist will obtain all information necessary to determine the need for and feasibility of special restorative training. After the counseling psychologist completes this task, he or she will refer the case to the Vocational Rehabilitation Panel. The panel will consider whether--
(1) There exists a handicap which will interfere with pursuit of a program of education;
(2) It is in the best interests of an eligible child to begin special restorative training after his or her 14th birthday;
(3) The period of special restorative training materially will improve the eligible child's ability to:
   (i) Pursue a program of education,
   (ii) Pursue a program of specialized vocational training,
   (iii) Obtain continuing employment in a sheltered workshop, or
   (iv) Adjust in his or her family or community;
   (Authority: 38 U.S.C. 3541(a))
(4) The special restorative training may be pursued concurrently with a program of education; and
(5) Training will affect adversely the child's mental or physical condition;
(6) The Department of Veterans Affairs:
   (i) Has considered assistance available under provisions of State-Federal programs for education of handicapped children, and
   (ii) Has determined that it is in the child's interest to receive benefits under Chapter 35,
   (Authority: 38 U.S.C. 3541(a))
(b) Report. The Vocational Rehabilitation Panel will prepare a written report of its findings and recommendations as to the need for assistance and the types of assistance which should be provided. The report will be sent to the counseling psychologist.
(c) Development and implementation. Following consultation with the panel or receipt of the panel's report, or both, the counseling psychologist will determine the need and feasibility of special restorative training. If an affirmative finding is made, an individualized, written plan comparable to that developed in cases of extended evaluation under 38 U.S.C. Chapter 31 will be prepared. The plan will be developed jointly with the eligible child and parent or guardian.
(Authority: 38 U.S.C. 3541(a))
(d) Notification of disallowance. When a parent or guardian has requested special restorative training on behalf of an eligible child, and the counseling psychologist finds
that this training is not needed or will not materially improve the child's condition, the Department of Veterans Affairs will inform the parent or guardian in writing of the finding. The Department of Veterans Affairs will also inform the parent or guardian of his or her appeal rights.
(e) Reentrance after interruption. The case of an eligible child shall be referred to the panel for consideration of whether the eligible child may be permitted reentrance into special restorative training following interruption. The panel will recommend approval to the counseling psychologist if there is a reasonable expectation that the purpose of special restorative training will be accomplished. See § 21.3306.

§ 21.3302 Agreements.
(a) Agreements to provide training. The Department of Veterans Affairs may make agreements with public or private educational institutions or others to provide suitable and necessary special restorative training for an eligible child.
(b) Tuition charge. When a customary tuition charge is not applicable, the agreement will include the fair and reasonable amounts which may be charged the parent or guardian for the training provided an eligible child.
(c) Content of agreement. Each agreement will include the same type of information required for special restorative training for disabled veterans under 38 U.S.C. Chapter 31, including the requirement that the educational institutions, or others with whom arrangements have been made, report to the Department of Veterans Affairs promptly the eligible child's enrollment in, interruption or termination of the course of special restorative training.
(Authority: 38 U.S.C. 3543)
[48 FR 37973, Aug. 22, 1983]

§ 21.3303 Extent of training.
(a) Length of special restorative training. Ordinarily, special restorative training may not exceed 12 months. When the counseling psychologist, after consulting with the Vocational Rehabilitation Panel, determines that more than 12 months of training is necessary, he or she will refer the program to the Director, Vocational Rehabilitation and Employment Service for prior approval. Where the plan for a program of special restorative training itself (not in combination with the program of education) will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to the Director, Vocational Rehabilitation and Employment Service for approval.
(Authority: 38 U.S.C. 3543(b))
(b) Age limitation. No eligible child may receive special restorative training after reaching age 31.
(Authority: 38 U.S.C. 3512)
(c) Full-time training. An eligible child will pursue special restorative training on a full-time basis.
(1) Full-time training requires training for:
(i) That amount of time per week which commonly is required for a full-time course at
the educational institution when, based on medical findings, the Department of Veterans
Affairs determines that the eligible child's physical or mental condition permits training
for that amount of time, or
(ii) The maximum time per week permitted by the child's disability, as determined by the
Department of Veterans Affairs, based on medical findings, if the disability precludes the
weekly training time stated in paragraph (c)(1)(i) of this section.
(2) If the hours per week that can reasonably be devoted to restorative training will not of
themselves equal the time required by paragraph (c)(1) of this section, the course will be
supplemented with subject matter which will contribute toward the objective of the
program of education.
(Authority: 38 U.S.C. 3542(c))
44053, Aug. 22, 2001]

[EFFECTIVE DATE NOTE: 66 FR 44052, 44053, Aug. 22, 2001, amended paragraph
(a), effective Aug. 22, 2001.]

§ 21.3304 Assistance during training.
(a) General. A vocational rehabilitation specialist will provide the professional and
technical assistance needed by the eligible child in pursuing special restorative training.
The assistance will be timely, sustained and personal.
(b) Adjustments in the training situation. The vocational rehabilitation specialist must be
continually aware of the eligible child's progress. At frequent intervals he or she will
determine whether the eligible child is progressing satisfactorily. When the vocational
rehabilitation specialist determines that adjustments are needed in the course or in the
training situation, he or she will act immediately to bring about the adjustments in
accordance with the following:
(1) When the eligible child or his or her instructor indicates dissatisfaction with elements
of the program, the vocational rehabilitation specialist, through personal discussion with
the eligible child or his or her instructor or both, will, if possible, correct the difficulty
through such means as making minor adjustments in the course or by persuading the
eligible child to give more attention to performance.
(2) When major difficulties cannot be corrected, the vocational rehabilitation specialist
will prepare a report of pertinent facts and recommendations for action by the counseling
psychologist in consultation with the Vocational Rehabilitation Panel.
(3) Action will be taken to terminate the eligible child's course at the proper time so that
his or her entitlement may be conserved when the vocational rehabilitation specialist
determines that:
(i) The eligible child is progressing much faster than anticipated, and
(ii) The eligible child's course may be terminated with satisfactory results before the time
originally planned.
(Authority: 38 U.S.C. 3541)

§ 21.3305 'Interrupted' status.

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(a) Special restorative training should be uninterrupted. An eligible child once entered into special restorative training should pursue his or her course to completion without interruption. Wherever possible, continuous training shall be provided for each eligible child, including training during the summer, except where, because of his or her physical condition or other good reason, it would not be to his or her best interest to pursue training. As long as the eligible child is progressing satisfactorily toward overcoming his or her handicap, the eligible child will be continued in his or her course of training without accounting for days of nonattendance within the authorized enrollment.

(Authority: 38 U.S.C. 3541)

(b) Interrupting special restorative training. Special restorative training will be interrupted as necessary under the following conditions:

1. During summer vacations or periods when no instruction is given before and after summer sessions.
2. During a prolonged period of illness or medical infeasibility.
3. When the eligible child voluntarily abandons special restorative training.
4. When the eligible child fails to make satisfactory progress in the special restorative training course.
5. When the eligible child is no longer acceptable to the institution because of failure to maintain satisfactory conduct or progress in accordance with the rules of the institution.
6. When the eligible child's progress is materially retarded because of his or her negligence, lack of application or misconduct.

(Authority: 38 U.S.C. 3541, 3543(b))

[48 FR 37973, Aug. 22, 1983]

§ 21.3306 Reentrance after interruption.

When a course of special restorative training has been interrupted and the eligible child presents himself or herself for reentrance, the Department of Veterans Affairs will act as follows:

(a) Action by a vocational rehabilitation specialist. A vocational rehabilitation specialist will approve reentrance when special restorative training was interrupted:

1. For a scheduled vacation period, such as a summer break,
2. For a short period of illness, or
3. For other reasons which permit reentrance in the same course of special restorative training without corrective action.

(Authority: 38 U.S.C. 3543(B))

(b) Referral to the counseling psychologist. The vocational rehabilitation specialist will refer the eligible child's case to the counseling psychologist when special restorative training was interrupted--

1. By reason of failure to maintain satisfactory conduct or progress, or
2. For any other reason, which requires corrective action, such as changes of place of training, change of course, personal adjustment, etc.

(2) The counseling psychologist will consult with the Vocational Rehabilitation Panel. If he or she determines that the conditions which caused the interruption can be overcome, he or she will approve the necessary adjustment.

(3) The counseling psychologist will make a finding of infeasibility if--

1. All efforts to effect proper adjustment in the case have failed; and
(ii) There is substantial evidence, resolving any reasonable doubt in favor of the child (as discussed in § 3.102 of this chapter), that additional efforts will be unsuccessful.
(Authority: 38 U.S.C. 3541, 3543(b))

§ 21.3307 'Discontinued' status.
(a) Placement in "discontinued" status. If reentrance from interrupted status into a program of special restorative training is not approved by a counseling psychologist under the provisions of § 21.3306, the vocational rehabilitation specialist will place the case in discontinued status.
(b) Notification. In any case of discontinuance the Department of Veterans Affairs will:
   (1) Notify the eligible child's parent or guardian of the action taken, and
   (2) Inform him or her of the eligible child's potential right to a program of education.
(c) Effect of discontinuance. An eligible child who has been placed in discontinued status is precluded from any further pursuit of special restorative training until a Department of Veterans Affairs counseling psychologist in the Vocational Rehabilitation and Employment Division determines that the cause of the discontinuance has been removed.
(Authority: 38 U.S.C. 3543(b))
PAYMENTS; SPECIAL RESTORATIVE TRAINING

§ 21.3330 Payments.
§ 21.3331 Commencing date.
§ 21.3332 Discontinuance dates.
§ 21.3333 Rates.

§ 21.3330 Payments.
(a) Payments will be made to the person designated to receive the payments under the provisions of § 21.3133(b).
(b) VA will pay special training allowance only for the period of the eligible child's approved enrollment as certified by the vocational rehabilitation specialist. In no event, however, will VA pay such allowance for any period during which:
(1) The eligible child is not pursuing the prescribed course of special restorative training that has been determined to be full-time training with respect to his or her capacities.
(2) An educational assistance allowance is paid.
(Authority: 38 U.S.C. 3542)
(c) The provisions of § 21.3133(e) apply to the payment of special restorative training allowance.
(Authority: 38 U.S.C. 3562)

[EFFECTIVE DATE NOTE: 61 FR 26107, 26112, May 24, 1996, which amended this section, became effective May 24, 1996.]

§ 21.3331 Commencing date.
The commencing date of an authorization of a special training allowance will be the date of entrance or reentrance into the prescribed course of special restorative training, or the date the counseling psychologist approved the course for the eligible child whichever is later. See also § 21.3130(c).
(Authority: 38 U.S.C. 3542)


§ 21.3332 Discontinuance dates.
VA will discontinue special training allowance as provided in this section on the earliest date of the following:
(a) The ending date of the course.
(b) The ending date of the period of enrollment as certified by the vocational rehabilitation specialist.
(c) The ending date of the period of eligibility.
(d) The expiration of the eligible child's entitlement.
(e) Date of interruption of course as determined by the vocational rehabilitation specialist under § 21.3305.
(f) Date of discontinuance under the applicable provisions of § 21.3130(d).

(Authority: 38 U.S.C. 3543(b))


§ 21.3333 Rates.

(a) Rates. Special training allowance is payable at the following monthly rates, except as provided in paragraph (c) of this section.

(1) For special restorative training that occurs after September 30, 2001, and before January 1, 2002:

<table>
<thead>
<tr>
<th>Course</th>
<th>Monthly rate</th>
<th>Accelerated charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special restorative</td>
<td>$ 608.00</td>
<td>If costs for tuition and fees average in excess of $ 190.00 per month, rate may be increased by such amount in excess of $ 190.00.</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3542)

(2) For special restorative training that occurs after December 31, 2001:

<table>
<thead>
<tr>
<th>Course</th>
<th>Monthly rate</th>
<th>Accelerated charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special restorative</td>
<td>$ 670.00</td>
<td>If costs for tuition and fees average in excess of $ 210.00 per month, rate may be increased by such amount in excess of $ 210.00.</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3542)

(b) Accelerated charges. (1) VA may pay the additional monthly rate if the parent or guardian concurs in having the eligible child's period of entitlement reduced by 1 day for each $ 20.28 that the special training allowance exceeds the basic monthly rate of $ 608.00 for the period between October 1, 2001, through December 1, 2001, and for each $ 22.33 that the special training allowance exceeds the basic monthly rate of $ 670.00 for months beginning January 1, 2002.

(2) VA will:

(i) Charge fractions of more than one-half day as 1 day;
(ii) Disregard fractions of one-half or less; and
(iii) Record charges when the eligible child is entered into training.

(Authority: 38 U.S.C. 3542)

(c) Payments made to eligible persons in the Republic of the Philippines or to certain Filipinos. When the eligible person is pursuing training at an institution located in the Republic of the Philippines or when an eligible child's entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.40(b), (c), or (d) of this chapter, payments of special training allowance made after December 31, 1994, will be made at the rate of 50 cents for each dollar authorized.
(Authority: 38 U.S.C 3532(d), 3542, 3565)

[EFFECTIVE DATE NOTE: 68 FR 34319, 34322, June 9, 2003, revised paragraph (a), and amended paragraph (b)(1), effective June 9, 2003.]
Special Assistance and Training

§ 21.3344 Special assistance for the educationally disadvantaged.

(a) Enrollment. VA may approve the enrollment of an eligible person in an appropriate course or courses at the secondary school level. This approval may be made only if the eligible person --
(1) Has not received a secondary school diploma (or an equivalency certificate);
(2) Needs additional secondary school education, remedial, refresher, or deficiency courses, to qualify for admission to an appropriate educational institution in a State in order to pursue a program of education; and
(3) Is to pursue the course or courses in a State.
(Authority: 38 U.S.C. 3491(a), 3533)
(b) Measurement. VA will measure remedial, deficiency, or refresher courses offered at the secondary school level as provided in §§ 21.4270(a)(2) and 21.4272(k).
(Authority: 38 U.S.C. 3533)
(c) Educational assistance. VA will authorize educational assistance at the monthly rates specified in § 21.3131.
(Authority: 38 U.S.C. 3491(a), 3533)
(d) Entitlement charge. The provisions of § 21.3045 will determine whether VA will make a charge against the period of the entitlement of the eligible person because of enrollment in a course under the provisions of this section.
(Authority: 38 U.S.C. 3533)
(e) Certifications. (1) Certifications of the eligible person's need for deficiency or remedial courses in basic English language skills and mathematics skills may be made by:
(i) A VA counseling psychologist in the Vocational Rehabilitation and Employment Division;
(ii) The educational institution administering the course; or
(iii) The educational institution where the student has applied for admission.
(2) Certification of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution --
(i) Administering the course which the eligible person is planning to enter; or
(ii) Where the eligible person has applied for admission.
(Authority: 38 U.S.C. 3533)
(f) Basic skills. Basic English language courses or mathematics courses will be authorized when it is found by accepted testing methods that the eligible person is lacking in basic reading, writing, speaking, or essential mathematics.
(Authority: 38 U.S.C. 3533)
[61 FR 26107, 26112, May 24, 1996]
SUBPART D -- ADMINISTRATION OF EDUCATIONAL ASSISTANCE PROGRAMS

ADMINISTRATIVE
GENERAL
COUNSELING
PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE
STATE APPROVING AGENCIES
SCHOOLS
PROGRAMS OF EDUCATION
COURSES
ASSESSMENT AND PURSUIT OF COURSES
10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.
§ 21.4001 Delegations of authority.
§ 21.4002 Finality of decisions.
§ 21.4003 Revision of decisions.
§ 21.4005 Conflicting interests.
§ 21.4006 False or misleading statements.
§ 21.4007 Forfeiture.
§ 21.4009 Overpayments -- waiver or recovery.

§ 21.4001 Delegations of authority.
(a) Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or adjudicative personnel within the jurisdiction of the Education Service, designated by him or her to make findings and decisions under 38 U.S.C. Chapters 34 and 36 and the applicable regulations, precedents and instructions, as to programs authorized by these paragraphs.
(b) Authority is delegated to the Under Secretary for Benefits' and the Director, Education Service, to enter into agreements for the reimbursement of State approving agencies under § 21.4153.
(Authority: 38 U.S.C. 512(a))
(c) Authority is delegated to the Director, Education Service, to exercise the functions required of the Secretary for:
(1) Waiver of penalties for conflicting interests as provided by § 21.4005;
(2) Actions otherwise required of State approving agencies under § 21.4150(c);
(3) Approval of courses under § 21.4250(c)(2).
(Authority: 38 U.S.C. 512(c))
(d) The Under Secretary for Benefits is delegated responsibility for obtaining evidence of voluntary compliance for vocational rehabilitation, education and special restorative training to implement Title VI, Civil Rights Act of 1964. Authority is delegated to him or her and his or her designee to take any necessary action as to programs of vocational rehabilitation, education or special restorative training under 38 U.S.C. Chapters 31, 34, 35 and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Secretary has delegated responsibility for various schools or training establishments to implement §§ 18.1 through 18.13 of this chapter.
(e) The Under Secretary for Benefits is delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in facilities under his or her jurisdiction.
(f) The Under Secretary for Benefits is delegated responsibility to enter into an agreement with the Federal Trade Commission to utilize, where appropriate, its services and facilities, consistent with its available resources, to carry out investigations and make determinations as to enrollment of an eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive, or misleading either by actual statement, omission, or intimation.
(Authority: 38 U.S.C. 3696)
(g) Authority is delegated to the Director, Vocational Rehabilitation and Employment Service to exercise the functions required of the Secretary for approval of courses under § 21.4250(c)(1).

(38 U.S.C. 512(a))

§ 21.4002 Finality of decisions.
(a) The decision of a duly constituted agency of original jurisdiction on which an action was predicated will be final and binding upon all field offices of the Department of Veterans Affairs as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 21.4003. (See §§ 19.192 and 19.183 of this chapter.)
(b) Current determinations of line of duty, character of discharge, relationship, and other pertinent elements of eligibility for a program of education or special restorative training, made by either an adjudicative activity or an insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

§ 21.4003 Revision of decisions.
The revision of a decision on which an action was predicated will be subject to the following sections:
(a) Clear and unmistakable error, § 3.105(a) of this chapter;
(b) Difference of opinion, § 3.105(b) of this chapter;
(c) Character of discharge, § 3.105(c) of this chapter;
(d) Severance of service connection, § 3.105(d) of this chapter;
(e) Veteran no longer totally and permanently disabled, § 21.4135(o).
[31 FR 6774, May 6, 1966]

§ 21.4005 Conflicting interests.
(a) General. (1) An officer or employee of VA will be immediately dismissed from his or her office or employment, if while such an officer or employee he or she has owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from, any school operated for profit in which a veteran or eligible person was pursuing a course of education under 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 34, 35 or 36. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3034(a), 3241, 3683(a))
(2) VA will discontinue payments under § 21.4153 to a State approving agency when the Secretary finds that any person who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from a school operated for profit in which a veteran or eligible person was pursuing a course of education or training under 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 34, 35 or 36 unless that agency takes, without delay such steps as may be necessary to terminate
the employment of such a person. VA will not resume payments while such a person is
an officer or employee of
(i) The State approving agency, or
(ii) State Department of Veterans’ Affairs, or
(iii) State Department of Education.
(3) A State approving agency will not approve any course offered by a school operated
for profit and, if any such course has been approved, will disapprove each such course, if
it finds that any officer or employee of the Department of Veterans Affairs, or the State
approving agency owns an interest in, or receives any wages, salary, dividends, profits,
gratuities, or service from, such school.
(4) The Secretary may, after reasonable notice, and public hearings if requested, waive in
writing the application of this paragraph in the case of any officer or employee of the
Department of Veterans Affairs or of a State approving agency, if it is found that no
detriment will result to the United States or to veterans or eligible persons by reason of
such interest or connection of such officer or employee.
(Authority: 38 U.S.C. 3683)
(b) Waiver. (1) Where a request is made for waiver of application of paragraph (a)(1) of
this section, it will be considered that no detriment will result to the United States or to
veterans or eligible persons by reason of such interest or connection of such officer or
employee of the Department of Veterans Affairs, if the officer or employee:
(i) Acquired his or her interest in the school by operation of law, or before the statute
became applicable to the officer or employee, and his or her interest has been disposed of
and his or her connection discontinued, or
(ii) Meets all of the following conditions:
(a) His or her position involves no policy determinations, at any administrative level,
having to do with matters pertaining to payment of educational assistance allowance, or
special training allowance.
(b) His or her position has no relationship with the processing of any veteran's or eligible
person's application for education or training.
(c) His or her position precludes him or her from taking any adjudicative action on
individual applications for education or training.
(d) His or her position does not require him or her to perform duties involved in the
investigation of irregular actions on the part of schools or veterans or eligible persons in
connection with 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 34, 35 or 36.
(e) His or her position is not connected with the processing of claims by, or payments to,
schools, or their students enrolled under the provisions of 10 U.S.C. chapter 1606 or 38
U.S.C. chapters 30, 32, 34, 35 or 36.
(f) His or her work is not connected in any way with the inspection, approval, or
supervision of schools desiring to train veterans or eligible persons.
(2) Where a request is made for waiver of application of paragraph (a) (2) of this section,
it will be considered that no detriment will result to the United States or to veterans or
eligible persons by reason of such interest or connection of such officer or employee of a
State approving agency, if the officer or employee:
(i) Acquired his or her interest in the school by operation of law, or before the statute
became applicable to the officer or employee, and his or her interest has been disposed of
and his or her connection discontinued, or

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(ii) Meets all of the following conditions:
(a) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of schools or veterans or eligible persons in connection with 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 34, 35 or 36. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3034(a), 3241, 3683(b))
(b) His or her work is not connected in any way with the inspection, approval, or supervision of schools desiring to train veterans or eligible persons.
(c) Authority. (1) Authority is delegated to the Director, Education Service, and to the facility head in the cases of VA employees under his or her jurisdiction, to waive the application of paragraph (a)(1) of this section in the case of any VA employee who meets the criteria of paragraph (b)(1) of this section, and to deny request for a waiver which do not meet those criteria. If the circumstances warrant, a waiver request may be submitted to the Secretary for a decision.
(2) Authority is delegated to the Director, Education Service, in cases of State approving agency employees to waive the application of paragraph (a)(2) of this section in the case of anyone who meets the criteria of paragraph (b)(2) of this section, and to deny requests for a waiver which do not meet those criteria. If the circumstances warrant, a waiver request may be submitted to the Secretary for a decision.
(3) Authority is reserved to the Secretary to waive the requirement of paragraphs (a)(1) and (2) of this section in the case of an officer of the Department of Veterans Affairs or a State approving agency and in the case of any employee of either who does not meet the criteria of paragraph (b) of this section.
(d) Disapproval of courses. Where it is found that an officer or employee of the Department of Veterans Affairs has any interest in, or receives any wages, salary, dividends, profits, gratuities, or services from any such school, and waiver has not been granted, the State approving agency and the school will be notified immediately that the courses offered by the school shall be disapproved, the reason for disapproval, and the conditions under which the disapproval may be lifted.
(e) Notice to veterans and eligible persons. The veteran or eligible person will be notified in writing sent to his or her latest address of record when:
(1) The course or courses are disapproved by the State approving agency, or
(2) The State approving agency fails to disapprove the course or courses within 15 days after the date of written notice to the agency, and no waiver has been requested, or
(3) Waiver has been denied.

The veteran or eligible person will be informed that he or she may apply for enrollment in an approved course in another school, but that in the absence of such transfer, educational assistance allowance payments will be discontinued effective the date of discontinuance of the course, or the 30th day following the date of such letter, whichever is earlier.
(f) Definition of "officer." For the purposes of this section a person will be considered to be an officer of the State approving agency or the Department of Veterans Affairs, when he or she has authority to exercise supervisory authority.

§ 21.4006 False or misleading statements.
(a) Payments may not be based on false statements. Except as provided in this section payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the veteran or eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States.
(Authority: 38 U.S.C. 3690)
(1) Where it is determined prior to payment that a certification or claim is false or misleading, payment will be authorized for only that portion of the claim to which entitlement is established on the basis of other evidence of record.
(2) When the Department of Veterans Affairs discovers that a certification or claim is false after it has released payment, the Department of Veterans Affairs will establish an overpayment for only that portion of the claim to which the claimant was not entitled.
(Authority: 38 U.S.C. 3680)
(b) Effect of false statements on subsequent payments. A claimant's false or misleading statements are not a bar to payments based on further training.
(Authority: 38 U.S.C. 3680)
(c) Forfeiture. The provisions of this section do not apply when forfeiture of all rights has been or may be declared under the provisions of § 21.4007.
(38 U.S.C. 6103)

§ 21.4007 Forfeiture.
The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter.
[54 FR 4286, Jan. 30, 1989]
(38 U.S.C. 6103, 6104 and 6105)

When approval of a course may be withdrawn, and overpayments may exist or be created, the Department of Veterans Affairs may suspend further payments to veterans or eligible persons enrolled in the school until the question of withdrawing approval is resolved. See § 21.4210.
[48 FR 37976, Aug. 22, 1983; 63 FR 35830, 35831, July 1, 1998]
(38 U.S.C. 3690(b))
§ 21.4009 Overpayments -- waiver or recovery.

(a) General. (1) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the education institution if the Department of Veterans Affairs determines that the overpayment was made as the result of willful or negligent:

(i) Failure of the educational institution to report, as required by §§ 21.4203 and 21.4204, discontinuance or interruption of a course by a veteran, reservist or eligible person, or

(ii) False certification by the educational institution.

(3) If it appears that the falsity or misrepresentation was deliberate, the Department of Veterans Affairs may not pursue administrative collection pending a determination whether the matter should be referred to the Department of Justice for possible civil or criminal action. However, the Department of Veterans Affairs may recover the amount of the overpayment from the educational institution by administrative collection procedure when the Department of Veterans Affairs determines the false certification or misrepresentation resulted from an administrative error or a misstatement of fact and that no criminal or civil action is warranted.

(4) If the Department of Veterans Affairs recovers any part of the overpayment from the educational institution, it may reimburse the educational institution, if the Department of Veterans Affairs subsequently collects the overpayment from a veteran or eligible person. The reimbursement --

(i) Will be made when the total amount collected from the educational institution and from the veterans and eligible persons (less any amount applied toward marshal fees, court costs, administrative cost of collection and interest) exceeds the total amount for which the educational institution is liable, and

(ii) Will be equal to the excess.

(5) This paragraph does not preclude the imposition of any civil or criminal liability under this or any other law.

(b) Reporting. (1) If a school is required to make periodic or other certifications, the Department of Veterans Affairs may consider the following in determining whether a school is potentially liable for an overpayment:

(i) The school's failure to report, or to report timely facts which resulted in an overpayment, or

(ii) The school's submission of an incorrect certification as to fact.

(2) In either instance the Department of Veterans Affairs will consider other pertinent factors such as:

(i) Allowing for occasional clerical error or occasional administrative error;

(ii) The school's past reliability in reporting;

(iii) The adequacy of the school's reporting system; and

(iv) The extent of noncompliance with reporting requirements.

(Authority: 38 U.S.C. 3685)

(c) Committee on school liability. Each field station having jurisdiction over schools with courses approved for training under Chapter 1606, Title 10 U.S.C., Chapters 30, 32, 34, 35 and/or 36, Title 38 U.S.C. shall establish a Committee on School Liability. The
committee or a panel designated by the committee chairperson and drawn from the committee, is authorized to find whether a school is liable for an overpayment. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3034(A0, 3241, 3685) 
(d) Initial determination. The Veterans Service Center Manager of the Department of Veterans Affairs facility of jurisdiction will determine whether there is evidence that would warrant a finding that the school is potentially liable for an overpayment. When the decision is in the affirmative, the Finance Officer of the Department of Veterans Affairs facility of jurisdiction will notify the school in writing of the Department of Veterans Affairs's intent to apply the liability provisions of paragraph (a) of this section. The notice will identify the students overpaid and will set out in each student's case the actions or omissions by the school which resulted in the finding that the school was potentially liable for the overpayment. The notice will also state that a determination of liability will be made on the basis of the evidence of record, unless additional evidence or a request for a hearing is received within 30 days of the date of receipt of such notice by the school.

(e) Hearings. A school is entitled to a hearing before a panel drawn from the Committee on School Liability before a decision is made as to whether it is liable for an overpayment. Every hearing will be preceded by a prehearing conference unless the conference is waived by the school. The Committee on School Liability will consider all evidence and testimony presented at the hearing.

(f) Extent of liability. Waiver of collection of an overpayment as to a veteran or eligible person will not relieve the school of liability for the overpayment. Recovery in whole or in part from the veteran or eligible person will limit such liability accordingly. If an overpayment has been recovered from the school and the veteran or eligible person subsequently repays the amount in whole or in part, the amount repaid will be reimbursed to the school.

(g) Notice to school. The school shall be notified in writing of the decision of the Committee on School Liability. If the school is found liable for an overpayment, the school also will be notified of the right to appeal the decision to the Central Office School Liability Appeals Board within 60 days from the date of the letter to the school containing notice of the decision. The 60-day time limit may be extended to 90 days at the discretion of the chairperson of the Committee on School Liability. The appeal must be in writing setting forth fully the alleged errors of fact and law. If an appeal is not received within the 60-day time limit, the Committee decision is final.

(h) Appeals. An appeal will be forwarded to Central Office where it will be considered by the School Liability Appeals Board. The Board's decision will serve as authority for instituting collection proceedings, if appropriate, or for discontinuing collection proceedings instituted on the basis of the original decision of the Committee on School Liability in any case where the Board reverses a decision made by the Committee that the school is liable.

(i) Review. Review by the School Liability Appeals Board is limited to the issues raised by the school and shall be on the record and not de novo in character. The Board may affirm, modify or reverse a decision of the Committee on School Liability or may remand an appeal for further consideration by the appropriate Committee on School Liability. If new and material evidence is discovered while the School Liability Appeals Board is
considering a case, the Board may remand the case to the appropriate Committee on School Liability.

(j) Finality of decisions. The School Liability Appeals Board has authority to act for the Secretary in deciding appeals concerning a school's liability for an overpayment. There is no right of additional administrative appeal of a decision of the School Liability Appeals Board.


__________________________
GENERAL

§ 21.4020 Two or more programs.
§ 21.4022 Nonduplication-programs administered by VA.

§ 21.4020 Two or more programs.
(a) Limit on training under two or more programs. The aggregate period for which any person may receive assistance under two or more of the following laws may not exceed 48 months (or the part-time equivalent):
   (1) Part VII or VIII, Veterans Regulations numbered 1(a), as amended:
   (2) Title II of the Veterans' Readjustment Assistance Act of 1952;
   (3) The War Orphans' Educational Assistance Act of 1956;
   (4) 38 U.S.C. Chapters 30, 32, 34, 35 and 36 and the former Chapter 33;
   (5) 10 U.S.C. Chapters 107 and 1606;
   (6) Section 903 of the Department of Defense Authorization Act, 1981,
   (7) The Hostage Relief Act of 1980, and
   (Authority: 38 U.S.C. 3695(a))
(b) Limit on combining assistance received under Chapter 31 with assistance under another program. No person may receive assistance under Chapter 31, Title 38 U.S.C. in combination with any provisions of law listed in paragraph (a) of this section in excess of 48 months (or the part-time equivalent) unless the Department of Veterans Affairs determines that additional months of benefits under Chapter 31 are necessary to accomplish the purpose of the veteran's rehabilitation program.
   (38 U.S.C. 3695(b))

§ 21.4022 Nonduplication-programs administered by VA.
A veteran or eligible person who is eligible for education or training benefits under more than one of the provisions of law listed in this paragraph based on his or her own service or based on the service of another person cannot receive such benefits concurrently. The individual must elect which benefit he or she will receive for the particular period or periods during which education or training is to be pursued. Except for an election between 38 U.S.C. chapters 32 and 34 which is irrevocable once a check has been negotiated, the person may reelect at any time.
(a) 38 U.S.C. chapter 30,
(b) 38 U.S.C. chapter 31,
(c) 38 U.S.C. chapter 32,
(d) 38 U.S.C. chapter 34,
(e) 38 U.S.C. chapter 35,
(f) 10 U.S.C. chapter 1606,
(g) Section 903 of the Department of Defense Authorization Act, 1981
(h) The Hostage Relief Act of 1980, or
(Authority: 38 U.S.C. 3681)

[EFFECTIVE DATE NOTE: 61 FR 20727, 20728, May 8, 1996, which substituted "1606" for "106" in paragraph (a)(6), became effective May 8, 1996; 61 FR 26107, 26113, May 24, 1996, which removed the heading for paragraph (a), removed paragraph (b), and redesignated the introductory text of paragraph (a) and paragraphs (a)(1) through (a)(9) as introductory text and paragraphs (a) through (i), became effective May 24, 1996.]
PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

§ 21.4131 Commencing dates.
§ 21.4135 Discontinuance dates.
§ 21.4136 Withdrawals or nonpunitive grades may result in nonpayment.
§ 21.4138 Certifications and release of payments.
§ 21.4145 Work-student services.
§ 21.4146 Assignments of benefits prohibited.

§ 21.4131 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 32. When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

   (i) The date the educational institution certifies under paragraph (b) or (c) of this section;

   (ii) One year before the date of claim as determined by § 21.1029(b);

   (iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of --

   (i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

   (ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3672, 5103, 5110(b), 5113)

(b) Certification by school -- the course or subject leads to a standard college degree. (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.

(2) Except as provided in paragraphs (b)(3), (b)(4) and (b)(5) of this section when a student enrolls in a resident course or subject, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter or semester in which the student is enrolled.

(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school’s academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of

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the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course or subject.

(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date the student reports to the school provided that --

(i) The published standards of the school require the student to register before reporting, and

(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered, and no later than the first scheduled date of classes for the term, quarter or semester for which the student has registered.

(5) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3481(a), 3680(a); Pub. L. 98-525)

(c) Certification by school or establishment -- course does not lead to a standard college degree. (1) Residence school: See paragraph (b) of this section.

(2) Correspondence school: Date first lesson sent or date of affirmance whichever is later.

(3) Job training: First date of employment in training position.

(Authority: 38 U.S.C. 3481, 3687)

d) Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 35. When a person eligible to receive educational assistance under 38 U.S.C. chapter 35 enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the eligible person is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The beginning date of eligibility as determined by § 21.3041(a) or (b) or by § 21.3046(a) or (b), whichever is applicable;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The date the educational institution certifies under paragraph (b) or (c) of this section;

(iv) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for that program, the effective date of the award of educational assistance is the later of --

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 5103)

e) [Reserved]

(f) Liberalizing laws and Department of Veterans Affairs issues. In accordance with facts found, but not earlier than the effective date of the act or administrative issue.
(g) Correction of military records. Eligibility of a veteran or eligible person may arise as the result of correction or modification of military records under 10 U.S.C. 1552, or a change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other competent military authority. In these cases the commencing date of educational assistance allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department.

(Authority: 38 U.S.C. 3462(b), 3501(d))

(h) Individuals in a penal institution. If a veteran or eligible person is paid a reduced rate of educational assistance or no educational assistance under § 21.3132(a) or (b) or § 21.5139, the rate will be increased or benefits will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program, or a State or local program, or
(2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 3482(g), 3532(e))

(i) Fugitive felons. An award of educational assistance allowance to an otherwise eligible veteran or person will begin effective the date the warrant for the arrest of the felon is cleared by--

(1) Arrest;
(2) Surrendering to the issuing authority;
(3) Dismissal; or
(4) Court documents (dated after the warrant for the arrest of the felon) showing the individual is no longer a fugitive.

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

(j) [Reserved]


(Pub. L. 98-77, sec. 13; Pub. L. 99-238, sec. 201(a))

[EFFECTIVE DATE NOTE: 66 FR 38938, July 26, 2001, removed and reserved paragraph (i), effective July 26, 2001.]

§ 21.4135 Discontinuance dates.
The effective date of reduction or discontinuance of educational assistance allowance will be as specified in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) Death of veteran or eligible person. (1) If the veteran or eligible person receives an advance payment pursuant to 38 U.S.C. 3680(d) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.
(2) In all other cases if the veteran or eligible person dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

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(Authority: 38 U.S.C. 3680)
(b) Election to receive educational assistance under the Montgomery GI Bill-Active Duty. If a veteran makes a valid election, as provided in § 21.7045(d), to receive educational assistance under the Montgomery GI Bill-Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election was made pursuant to procedures described in § 21.7045(d)(2).

(c)-(d) [Reserved]
(e) Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from. (1) If the individual receives all nonpunitive grades, or withdraws from all courses other than because of being ordered to active duty, and no mitigating circumstances are found, VA will terminate the individual's educational assistance allowance effective the first date of the term in which the withdrawal occurs.
(2) If the individual withdraws from all other courses other than courses in paragraph (e)(3) of this section and with mitigating circumstances, or withdraws from all courses such that a punitive grade is or will be assigned for those courses:
(i) Residence training: Last date of attendance.
(ii) Independent study: Official date of change in status under the practices of the institution.
(3) If the individual withdraws from correspondence, flight, farm cooperative, cooperative or job training, benefits will be terminated effective:
(i) Correspondence training: Date last lesson is serviced.
(ii) Flight training: Date of last instruction.
(iii) Job training: Date of last training.
(iv) Farm cooperative training: Date of last class attendance.
(v) Cooperative training: Date of last training.
(f) Discontinued by VA (§§ 21.4215, 21.4216). If VA discontinues payments of educational assistance as provided by §§ 21.4215(d) and 21.4216, the effective date of discontinuance will be as follows:
(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance were preceded by such a suspension.
(2) End of the month in which the decision to discontinue is effective pursuant to § 21.4215(d), if the Director of a VA facility did not suspend payments prior to the discontinuance.
(g) Unsatisfactory progress, conduct or attendance § 21.4277. The date the veteran's or eligible person's enrollment is discontinued by the school or the date determined under § 21.4277, whichever is earlier.
(h) Required certifications not received after certification of enrollment (§§ 21.4203 and 21.4204). (1) If required certification of attendance of a veteran or eligible person enrolled in a course not leading to a standard college degree is not timely received,
payments will be terminated date of last certification. If certification is later received, adjustment will be made based on facts found.
(2) If verification of enrollment and certificate of delivery of the check is not received within 60 days, in the case of an advance payment, the actual facts will be determined and adjustment made, if required, on the basis of facts found. If student failed to enroll, termination will be effective the beginning date of the enrollment period.
(i) False or misleading statements. See § 21.4006.
(j) Disapproval by State approving agency (§ 21.4259(a)). If a State approving agency disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:
(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.
(2) End of the month in which disapproval is effective or notice of disapproval is received in the Department of Veterans Affairs, whichever is later, provided that the Director of a Department of Veterans Affairs facility did not suspend payments prior to the disapproval.
(Authority: 38 U.S.C. 3672(a), 3690)
(k) Disapproval by Department of Veterans Affairs (§§ 21.4215, 21.4259(c)). If VA disapproves a course, the date of discontinuance of payments to those receiving educational assistance while enrolled in the course will be as follows:
(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if disapproval were preceded by such a suspension.
(2) End of the month in which disapproval occurred, provided that the Director of a Department of Veterans Affairs facility did not suspend payments prior to the disapproval.
(Authority: 38 U.S.C. 3671(b), 3672(a), 3690)
(l) Conflicting interests (not waived) (§ 21.4005). Thirty days after date of letter notifying veteran or eligible person, unless terminated earlier for other reason.
(m) Incarceration in prison or penal institution for conviction of a felony. (1) The provisions of this paragraph apply to a veteran or eligible person whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance allowance at a reduced rate under § 21.3132(a) or (b) or § 21.5139.
(2) The reduced rate or discontinuance will be effective the latest of the following dates.
(i) The first day on which all or part of the veteran's or eligible person's tuition and fees were paid by a Federal, State or local program,
(ii) The date the veteran or eligible person is incarcerated in prison or penal institution, or
(iii) The commencing date of the award as determined by § 21.4131.
(Authority: 38 U.S.C. 3482(g), 3532(e))
(n) Fugitive felons: veterans eligible under 38 U.S.C. chapter 32. VA will not award educational assistance allowance to an otherwise eligible veteran for any period after December 26, 2001, during which the veteran is a fugitive felon. The date of discontinuance of an award of educational assistance allowance to a veteran who is a fugitive felon is the later of--
(1) The date of the warrant for the arrest of the felon; or
(Authority: 38 U.S.C. 5313B)
(o) [Reserved]
(p) Error; payee's or administrative. (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge. (2) Date of last payment on an erroneous award based solely on administrative error by VA or error in judgment by VA. (Authority: 38 U.S.C. 5112(b)(10) and 5113)
(q) Fraud; forfeiture resulting (§ 21.4007). Beginning date of award or day preceding date of fraudulent act whichever is later.
(r) Treasonable acts or subversive activities; forfeiture (§ 21.4007). Beginning date of award or date preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later.
(s) Reduction in rate of pursuit of course (§ 21.4270). (1) VA will reduce an individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term. (2) VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when: (i) The reduction does not occur at the beginning of the term; (ii) The individual received a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and (iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew. (3) VA will reduce an individual's educational assistance allowance effective the date on which an individual reduces training when: (i) The reduction does not occur at the beginning of the term; (ii) The individual did not receive a lump-sum payment for the quarter, semester, term or other enrollment period during which he or she reduced training; and (iii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdrew. (4) If the individual reduces training by withdrawing from a part of a course and the withdrawal does not occur because the individual was ordered to active duty; there are not mitigating circumstances; and the individual receives a nonpunitive grade from that portion of the course from which he or she withdrew; VA will reduce the individual's educational assistance effective the later of the following: (i) The first date of enrollment of the term in which the reduction occurs; or (ii) December 1, 1976. See paragraphs (e) and (w) of this section also. (5) An individual who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects completed, if the requirements of § 21.4138(f) of this part are met. If those requirements are not met, VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed. (Authority: 38 U.S.C. 5113, 3680)
§ 21.4136 Withdrawals or nonpunitive grades may result in nonpayment.

(a) General. VA will not pay benefits to an individual for a course from which the individual withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless:

(1) The individual withdraws because he or she is ordered to active duty; or

(2) All of the following criteria are met:

(i) There are mitigating circumstances;

(ii) The individual submits a description of the circumstances in writing to VA either within one year from the date VA notifies the individual that he or she must submit the mitigating circumstances or at a later date if the veteran is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The individual submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date.

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date if the individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.
(Authority: 38 U.S.C. 3680(a))
(b) Representative mitigating circumstances. The following circumstances, which are not all inclusive, are representative of those that VA considers to be mitigating provided they prevent the individual from pursuing the program of education continuously:
(1) An illness of the individual;
(2) An illness or death in the individual's family;
(3) An unavoidable geographical transfer resulting from the individual's employment;
(4) An unavoidable change in the individual's conditions of employment;
(5) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;
(6) Discontinuance of the course by the school;
(7) Unanticipated active duty for training;
(8) Unanticipated difficulties in caring for the individual's child or children.
(Authority: 38 U.S.C. 3680(a))
(c) Failure to complete a course for the educationally disadvantaged. If the individual fails to satisfactorily complete a course under 38 U.S.C. 3491(a) without fault, VA will consider the circumstances that caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.
(d) Withdrawals after May 31, 1989. In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the individual received educational assistance under 38 U.S.C. chapter 32, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.
(Authority: 38 U.S.C. 3680(a)(3))
(e) Withdrawals during a drop-add period. If the individual withdraws from a course during a drop-add period, VA will consider the circumstances that caused the withdrawal to be mitigating, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.
(Authority: 38 U.S.C. 3680(a))

[EFFECTIVE DATE NOTE: 61 FR 26107, 26113, May 24, 1996, which amended this section, became effective May 24, 1996.]

§ 21.4138 Certifications and release of payments.
(a) Advance payments. (1) VA will make payments of educational assistance in advance when:
(i) The veteran, servicemember, reservist, or eligible person has specifically requested such a payment;
(ii) The student is enrolled for half time or more;
(iii) The educational institution at which the veteran, servicemember, reservist, or eligible person is accepted or enrolled has agreed to and can satisfactorily carry out the provisions...
of 38 U.S.C. 3680(d)(4)(B) and (C) and (5) pertaining to receipt, delivery, or return of checks and certifications of delivery and enrollment;
(iv) The Director of the VA field facility of jurisdiction has not acted under paragraph (a)(4) of this section to prevent advance payments being made to the veteran's, servicemember's, reservist's, or eligible person's educational institution;
(v) There is no evidence in the veteran's, servicemember's, reservist's, or eligible person's claim file showing that he or she is not eligible for an advance payment;
(vi) The period for which the veteran, servicemember, reservist, or eligible person has requested a payment either --
(A) Is preceded by an interval of nonpayment of 30 days or more; or
(B) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and
(vii) The educational institution or the veteran, servicemember, reservist, or eligible person has submitted the certification required by § 21.7151.
(2) The amount of the advance payment to a veteran, reservist, or eligible person is the educational assistance for the month or fraction thereof in which the term or course will begin plus the educational assistance for the following month. The amount of the advance payment to a servicemember is the amount payable for the entire term, quarter, or semester, as applicable.
(3) VA will mail advance payments to the educational institution for delivery to the veteran, servicemember, reservist, or eligible person. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the period for which VA makes the advance payment.
(4) The Director of the VA field station of jurisdiction may direct that advance payments not be made to individuals attending an educational institution if:
(i) The educational institution demonstrates an inability to comply with the requirements of paragraph (a)(3) of this section;
(ii) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the veteran, servicemember, reservist, or eligible person or return to VA; or
(iii) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034, 3680(d))
(b) Lump-sum payments. A lump-sum payment is a payment of all educational assistance due for an entire quarter, semester, or term. VA will make a lump-sum payment to:
(1) A veteran or servicemember pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 30;
(2) A servicemember pursuing a program of education at the half-time rate or greater under 38 U.S.C. chapter 30, provided that VA did not make an advance payment to the servicemember for the term for which a lump-sum payment would otherwise be due; and
(3) An eligible person pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 35.
(Authority: 38 U.S.C. 3034(c), 3680(f))
(c)-(d) [Reserved]
(e) Other payments. An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

1. VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after—
   i. The educational institution has certified his or her enrollment as provided in § 21.4203; and
   ii. VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

2. VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after—
   i. The training establishment has certified his or her enrollment in the training program as provided in § 21.4203; and
   ii. VA has received from the individual and the training establishment a certification of hours worked.

3. VA will pay educational assistance to an individual who is pursuing a correspondence course only after—
   i. The educational institution has certified his or her enrollment;
   ii. VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and
   iii. VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individual and serviced by the educational institution.

(Authority: 38 U.S.C. 5113, 3680(b), 3680(g))

(f) Payment for intervals between terms. A certification such as described by this section may result in payment for intervals between individual terms, quarters or semesters. In determining whether a veteran or eligible person will be paid for such an interval the Department of Veterans Affairs will first determine whether any of the provisions of paragraph (f)(1) of this section apply. If any do, the Department of Veterans Affairs will make no payment for the interval. If none of the provisions of paragraph (f)(1) of this section apply the Department of Veterans Affairs will examine the appropriate provisions of paragraphs (f)(2) and (3) of this section to determine if payments may be made for the interval.

1. The Department of Veterans Affairs will make no payment for an interval described in paragraph (f)(2) of this section if:
   i. The student is training at less than the half-time rate on the last date of his or her training during the term, quarter, semester or summer term preceding the interval;
   ii. The student is on active duty;
   iii. The student requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;
   iv. The student will exhaust his or her entitlement by receipt of such payment, and it is to the advantage of the individual not to receive payment;
(v) The interval occurs between school years at a school which is not organized on a term, quarter or semester basis;

(vi) The veteran or eligible person withdraws from all his or her courses in the term, quarter, or semester or summer session preceding the interval, or discontinues training before the scheduled start of an interval in a school not organized on a term, quarter or semester basis; or

(vii) The veteran receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

(2) If none of the provisions of paragraph (f)(1) of this section apply, the Department of Veterans Affairs will use the provisions of this paragraph and paragraph (f)(3) of this section to determine if an interval payment should be made. In determining the length of a summer term the Department of Veterans Affairs will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(i) The Director of the VA facility of jurisdiction may authorize payment to be made for breaks, including intervals between terms, within a certified period of enrollment during which the school is closed under an established policy based upon an order of the President or due to an emergency situation.

(A) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(B) A school which disagrees with a decision made under this paragraph by a Director of a VA facility, has 1 year from the date of the letter notifying the school of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA facility where the decision was made. The Director, Education Service shall review the evidence of record and any other pertinent evidence the school may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a VA facility.

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

(ii) If a veteran or eligible person transfers from one approved educational institution for the purpose of enrolling in and pursuing a similar course at the second institution, the Department of Veterans Affairs may make payments for any intervals which do not exceed 30 days and which occur between consecutive terms, quarters or semesters. If the veteran or eligible person does not enroll in a similar course at the second institution, the Department of Veterans Affairs shall not make payments for the interval.

(iii) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters as defined in § 21.4200(b);

(B) A semester or quarter and a term that is at least as long as the interval;

(C) A semester or quarter and a summer term that is at least as long as the interval;

(D) Consecutive terms (other than semesters or quarters as defined in § 21.4200(b)) provided that both terms are at least as long as the interval; or

(E) A term and a summer term provided that both the term and the summer term are at least as long as the interval.
(iv) If the veteran or eligible person remains enrolled at the same educational institution, VA may make payment for an interval which does not exceed 30 days and which occurs between summer sessions within a summer term.

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

(3) If a veteran is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), the Department of Veterans Affairs will determine whether the veteran or eligible person is entitled to a payment during an interval as follows:

(i) The Department of Veterans Affairs will treat the ending date of each enrollment period as though it were the veteran's or eligible person's last date of training before the interval.

(ii) The Department of Veterans Affairs will treat the beginning date of each enrollment period as though it were the veteran's or eligible person's first date of training after the interval.

(iii) The Department of Veterans Affairs will examine the interval payment which would be made to the veteran or eligible person on the basis of the various combinations of beginning and ending dates. The ending date and beginning date of the enrollment periods which will result in payment for the interval at the highest rate will be chosen as the start and finish of the interval for Department of Veterans Affairs measurement purposes.

(iv) Payment for the interval will be made at the rate determined in paragraph (f)(4)(iii) of this section. The Department of Veterans Affairs shall not reduce the rate as the result of training the veteran or eligible person may take during the interval, but it shall increase the rate if warranted by such training.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0604)


§ 21.4145 Work-student services.

(a) Eligibility. (1) A veteran or reservist pursuing a program of education under either 38 U.S.C. chapter 30 or 32 or 10 U.S.C. chapter 1606 at a rate of three-quarter time or full time is eligible to receive a work-study allowance.

(2) An eligible person is eligible to receive a work-study allowance when --

(i) The eligible person is pursuing a program of education under 38 U.S.C. chapter 35 on at least a three-quarter-time basis;

(ii) The eligible person is pursuing a program of education in a State; and

(iii) The eligible person is not pursuing a program of special restorative training.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)
(b) Selection criteria. Whenever feasible, the Department of Veterans Affairs will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Department of Veterans Affairs shall consider the following additional selection criteria:
(1) Need of the veteran, reservist, or eligible person to augment his or her educational assistance allowance;
(2) Availability to the veteran, reservist, or eligible person of transportation to the place where his or her services are to be performed;
(3) Motivation of the veteran, reservist, or eligible person; and
(4) Compatibility of the work assignment to the veteran's, reservist's, or eligible person's physical condition.
(c) Utilization. Work-study services may be utilized in connection with:
(1) Outreach services program as carried out under the supervision of a Department of Veterans Affairs employee;
(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs;
(3) Hospital and domiciliary care and medical treatment at VA facilities;
(4) For a reservist training under 10 U.S.C. chapter 1606, activities relating to the administration of 10 U.S.C. chapter 1606 at Department of Defense facilities, Coast Guard facilities, or National Guard facilities; and
(5) Any other appropriate activity of VA.
(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)
(d) Rate of payment. In return for the veteran's, reservist's, or eligible person's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of:
(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) times the number of hours the veteran, reservist, or eligible person has agreed to work; or
(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran, reservist, or eligible person has agreed to work.
(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)
(e) Payment in advance. VA will pay in advance an amount equal to the lesser of the following:
(1) 40 percent of the total amount payable under the contract; or
(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date the contract is signed.
(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)
(f) Veteran, reservist, or eligible person reduces rate of training. In the event the veteran, reservist, or eligible person reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, reservist, or eligible person, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter, or semester in which the veteran, reservist, or eligible person ceases to be a three-quarter-time student.
(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(g) Veteran, reservist, or eligible person terminates training. (1) If the veteran, reservist, or eligible person terminates all training before completing an agreement, the Director of the Department of Veterans Affairs facility or designee:
(i) May permit him or her to complete the portion of the agreement represented by the money the Department of Veterans Affairs has advanced to the veteran, reservist, or eligible person for which he or she has performed no services, but
(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.

(2) The veteran, reservist, or eligible person must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran, reservist, or eligible person terminates training.

(h) Indebtedness for unperformed service. (1) If the veteran, reservist, or eligible person has received an advance for hours of unperformed service, and the Department of Veterans Affairs has evidence that he or she does not intend to perform that service, the advance:
(i) Will be a debt due the United States, and
(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis of the contract.

(Authority: 38 U.S.C. 3485)

(i) Survey. The Department of Veterans Affairs will conduct an annual survey of its regional offices to determine the number of veterans, reservists, or eligible persons whose services can be utilized effectively.


(38 U.S.C. 3485)

[EFFECTIVE DATE NOTE: 61 FR 26107, 26113, May 24, 1996, which amended this section, became effective May 24, 1996.]

§ 21.4146 Assignments of benefits prohibited.

(a) General. Section 5301(a), Title 38 U.S.C., provides that payments of benefits due or to become due under the laws administered by the Department of Veterans Affairs shall not be assigned, except to the extent specifically authorized by law. No law specifically authorizes assignments of educational assistance allowances payable under 38 U.S.C. chapters 30, 32, 35, or 36, or 10 U.S.C. chapter 1606, and therefore none shall be made.

(b) Designating an attorney-in-fact. In any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(c) Arrangements amounting to an assignment. Payments may be made to a post office box address or a bank address only if the educational institution attests that it has not entered into an assignment agreement with the student, and is not the attorney-in-fact of the student with power to negotiate an educational assistance check on behalf of the student and is not otherwise able to control the proceeds of the benefits check. Such
statements shall be subject to review and when determined to be false, may be cause for creation of an overpayment to the account of the veteran or other eligible person, for which the educational institution may be liable under the provisions of § 21.4009.

(d) Correspondence school addresses. A request by a veteran or other eligible person to send the benefit check payable to him or her at an address which is an educational institution primarily engaged in correspondence course instruction will be presumed not to be the actual address of the veteran or other eligible person and will not be honored. Benefits checks will not be sent to the veteran or other eligible person in that event until a new address is provided designating the individual's mailing address.

(e) Referral to Committee on Educational Allowances. When the evidence of record indicates that an educational institution has violated the terms of this section, the matter will be referred to the facility Committee on Educational Allowances as provided in §§ 21.4210(g) and 21.4212.

(Authority: 38 U.S.C. 5301(a))


(Sec. 305(c)(1), Pub. L. 95-202, 91 Stat. 1433)
[Effective Date Note: 63 FR 35830, 35831, July 1, 1998, substituted "§§ 21.4210(g) and 21.4212" for "§§ 21.4207 and 21.4202(b)(4)" in paragraph (e), effective July 31, 1998.]
SECTION 21.4150 Designation.

(a) The Chief Executive of each State is requested to create or designate a State department or agency as the State approving agency for his State, for the purpose of assuming the responsibilities delegated to the State under 38 U.S.C. chapter 36, or if the law of the State provides otherwise, to indicate the agency provided by such law (38 U.S.C. 3671(a)).

(b) The Chief Executive of each State will notify the Department of Veterans Affairs of any change in the designation of a State approving agency.

(c) The provisions of 38 U.S.C. chapter 36 and the sections in this part which refer to the State approving agency will, with respect to a State, be deemed to refer to VA when that State:

(1) Does not have and fails or declines to create or designate a State approving agency, or
(2) Fails to enter into an agreement as provided in § 21.4153 of this part.

(Authority: 38 U.S.C. 3671(b)(1))

(d) Any function, power or duty otherwise required to be exercised by a State, or by an officer or agency of a State, will, with respect to the Republic of Philippines, be exercised by the station head.

(Authority: 38 U.S.C. 512(a), 3561(b))

(e) The Secretary shall act as State approving agency for programs of apprenticeship, the standards for which have been approved by the Secretary of Labor pursuant to section 50a of title 29 U.S.C. as a national apprenticeship program for operation in more than one State and the training establishment is a carrier directly engaged in interstate commerce which provides such training in more than one State.

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

(f) Approval of a course of education offered by any agency or instrumentality of the Federal Government shall be under the authority of the Secretary.


(38 U.S.C. 3672(b))

CROSS REFERENCE: Approval of courses. See § 21.4250.

SECTION 21.4151 Cooperation.

(a) The Department of Veterans Affairs and the State approving agencies will take cognizance of the fact that definite duties, functions and responsibilities are conferred upon each of them. To assure that programs of education are administered effectively and

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efficiently, the cooperation of the Department of Veterans Affairs and the State approving agencies is essential.
(Authority: 38 U.S.C. 3673(A))
(b) State approving agency responsibilities. State approving agencies are responsible for:
(1) Inspecting and supervising schools within the borders of their respective States;
(2) Determining those courses which may be approved for the enrollment of veterans and eligible persons;
(3) Ascertaining whether a school at all times complies with its established standards relating to the course or courses which have been approved; and
(4) Under an agreement with VA rendering services and obtaining information necessary for the Secretary's approval or disapproval under chapters 30 through 36, title 38 U.S.C. and chapters 1606 and 107, title 10 U.S.C., of courses of education offered by any agency or instrumentality of the Federal Government within the borders of their respective States.
(Authority: 38 U.S.C. 3672, 3673, 3674; Pub. L. 100-323)
(c) The Department of Veterans Affairs will furnish State approving agencies with copies of such Department of Veterans Affairs informational and instructional material as may aid them in carrying out the provisions of 38 U.S.C. chapter 36.

§ 21.4152 Control by agencies of the United States.
(a) Control of educational institutions and State agencies generally prohibited. No department, agency, or officer of the United States will exercise any supervision or control over any State approving agency or State educational agency, or any educational institution.
(Authority: 38 U.S.C. 3682; Pub. L. 100-323)
(b) Authority retained by VA. The provisions of paragraph (a) of this section do not restrict authority conferred on VA
(1) To define full-time training in certain courses.
(2) To determine whether overcharges were made by a school and to disapprove the school for enrollment of veterans or eligible persons not previously enrolled. See § 21.4210(d).
(3) To determine whether the State approving agencies under the terms of contract or reimbursement agreements are complying with the standards and provisions of the law.
(4) To examine the records and accounts of schools which are required to be made available for examination by duly authorized representatives of the Federal Government. See §§ 21.4209 and 21.4263.
(5) To disapprove schools or courses for reasons stated in the law and to approve schools or courses notwithstanding lack of State approval.
§ 21.4153 Reimbursement of expenses.
(a) Expenses will be reimbursed under contract -- (1) Scope of contracts. (i) If a State or local agency requests payment for service contemplated by law, and submits information prescribed in paragraph (e) of this section, VA will negotiate a contract or agreement with the State or local agency to pay (subject to available funds and acceptable annual evaluations) reasonable and necessary expenses incurred by the State or local agency in -- (A) Determining the qualifications of educational institutions and training establishments to furnish programs of education to veterans and eligible persons, (B) Supervising educational institutions and training establishments, and (C) Furnishing any other services VA may request in connection with the law governing VA education benefits. (ii) VA will take into account the results of annual evaluations carried out under § 21.4155 of this part when negotiating the terms and conditions of the contract or agreement. (Authority: 38 U.S.C. 3674, 3674(a); Pub. L. 100-343) (2) Reimbursable supervision. Supervision will consist of the services required: (i) To determine that the programs are furnished in accordance with the law and with any other reasonable criteria as may be imposed by the State, and (ii) To disapprove any programs which fail to meet the law and the established criteria. (Authority: 38 U.S.C. 512(a)) (b) Reimbursement. The Under Secretary for Benefits and the Director, Education Service, are authorized to enter into agreements necessary to fulfill the purpose of paragraph (a) of this section. See § 21.4001(b). (Authority: 38 U.S.C. 512(a)) (c) Reimbursable expenses. Reimbursement may be made from the funds provided in the existing contract with the State approving agency under the provisions of this section. No reimbursement may be authorized for expenses incurred by any individual who is not an employee of the State approving agency. (1) Salaries. Salaries for which reimbursement may be authorized under a contract: (i) Will not be in excess of the established rate of pay for other employees of the State with comparable or equivalent duties and responsibilities, (ii) Will be limited to the actual salary expense incurred by the State, and (iii) Will include the basic salary rate plus fringe benefits, such as social security, retirement, and health, accident, or life insurance, that are payable to all similarly circumstanced State employees. (2) Travel. (i) Reimbursement will be made under the terms of the contract for travel of personnel engaged in activities in connection with the inspection, approval or supervision of educational institutions, including -- (A) Travel of personnel attending training sessions sponsored by VA and the State approving agencies. (B) Expenses of attending out-of-State meetings and conferences only if the Director, Education Service, authorizes the travel.
(ii) Travel expenses for which reimbursement may be authorized under a contract will be limited to:
(A) Expenses allowable under applicable State laws or travel regulations of the State or agency;
(B) Expenses for travel actually performed by employees specified under the terms of the contract and;
(C) Either actual expenses for transportation, meals, lodging and local telephone calls, or the regular State or agency per diem allowance.
(iii) All claims for travel expenses payable under the terms of a contract must be supported by factual vouchers and all transportation allowances must be supported by detailed claims which can be checked against work assignments in the office of the State approving agency.

(3) Administrative expenses. In determining the allowance for administrative expenses for which payment may be authorized, VA will apply the provisions of 38 U.S.C. 3674(b). In making that application, VA will determine reimbursable salary cost pursuant to paragraph (c)(1) of this section.

(4) Subcontracts. The State approving agency may also be reimbursed for work performed by a subcontractor provided:
(i) The work has a direct relationship to the requirements of Chapter 1606 of Title 10 U.S.C. or Chapter 30, 32, 34, 35 or 36 of Title 38 U.S.C., and
(ii) The Contracting Officer has approved the subcontract in advance.

(d) Nonreimbursable expenses. The Department of Veterans Affairs will not provide reimbursement under reimbursement contracts for:
(1) Expenditures other than salaries and travel of personnel required to perform the services specified in the contract and Department of Veterans Affairs regulations.
(2) Supplies, equipment, printing, postage, telephone services, rentals, and other miscellaneous items or a service furnished directly or indirectly.
(3) Except as provided in paragraph (c)(2) of this section, the salaries and travel of personnel while attending training sessions, or when they are engaged in activities other than those in connection with the inspection, approval, or supervision of educational institutions.
(4) The supervision of educational institutions which do not have veterans or eligible persons enrolled.
(5) Expenses incurred in the administration of an educational program which are costs properly chargeable as tuition costs, such as the development of course material or individual educational programs, teacher training or teacher improvement activities, expenses of coordinators, or administrative costs, such as those involving selection and employment of teachers. (This does not preclude reimbursement for expenses of the State agency incurred in the development of standards and criteria for the approval of courses under the law.)
(6) Expenses of a State approving agency for inspecting, approving or supervising courses when the agency is responsible for establishing, conducting or supervising those courses.

(7) Any expense for supervision or other services to be covered by contract which are already being reimbursed or paid from tuition funds under this law.

(e) Agency operating plan. A request by a State approving agency for reimbursement under the law will be subject to the requirements of 41 CFR 8-7.5101-8 as to "Equal Opportunity". The request will be accompanied by the proposed plan of operation and the specific duties and responsibilities of all personnel for which reimbursement of salaries and travel expense is required.

(1) The Department of Veterans Affairs will determine personnel requirements for which the Department of Veterans Affairs provides reimbursement on the basis of estimated workloads agreed upon between the Department of Veterans Affairs and the State agency. Agreements are subject to review and adjustment.

(2) Workloads will be determined upon three factors:
   (i) Inspection and approval visits,
   (ii) Supervisory visits, and
   (iii) Special visits at the request of the Department of Veterans Affairs.

(f) Contract compliance. Reimbursement under each contract or agreement is conditioned upon compliance with the standards and provisions of the contract and the law. If the Contracting Officer determines that the State has failed to comply with the standards or provisions of the law or with terms of the reimbursement contract, he or she will withhold reimbursement for claimed expenses under the contract. If the State disagrees, the State may request the Contracting Officer to reconsider his or her decision or may initiate action under the Disputes clause of the contract. See 48 CFR 801.602.

(Authority: 38 U.S.C. 3674)

(g) Contract disputes. The State approving agency reimbursement contract is subject to the Contract Disputes Act of 1978. Disputes arising under, or relating to, the contract will be resolved in accordance with the disputes article of the contract and with appropriate procurement regulations.


(a) State approving agencies must report their activities. Each State approving agency entering into a contract or agreement under § 21.4153 of this part must submit a report of its activities to VA. The report may be submitted monthly or quarterly by the State approving agency as provided in the contract or agreement.

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

(b) Content of the report. The report:
   (1) Shall be in the form prescribed by the Secretary;
(2) Shall detail the activities of the State approving agencies under the agreement or contract during the preceding month or quarter, as appropriate;
(3) May include, at the option of the State approving agency, a cumulative report of its activities from the beginning of the fiscal year to date;
(4) Shall describe the services performed and the determination made in supervising and ascertaining the qualifications of educational institutions in connection with the programs of the Department of Veterans Affairs; and
(5) Shall include other information as the Secretary may prescribe.

(Approved by the Office of Management and Budget under control number 2900-0051) [49 FR 26227, June 27, 1984, as amended at 54 FR 49757, Dec. 1, 1989; 57 FR 28087, June 24, 1992]

(38 U.S.C. 3674)

§ 21.4155 Evaluations of State approving agency performance.
(a) Annual evaluations required. (1) VA shall conduct in conjunction with State approving agencies an annual evaluation of each State approving agency. The evaluation shall be based on standards developed by VA with State approving agencies. VA shall provide each State approving agency an opportunity to comment upon the evaluation. (2) VA shall take into account the result of the annual evaluation of a State approving agency when negotiating the terms and conditions of a contract or agreement as provided in § 21.4153(a) of this part.

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

(b) Development of a training curriculum. (1) VA shall cooperate with State approving agencies in developing and implementing a uniform national curriculum, to the extent practicable, for --

(i) Training new employees of State approving agencies, and
(ii) Continuing the training of the employees of the State approving agencies.

(2) VA with the State approving agencies shall sponsor the training and continuation of training provided by this paragraph.

(c) Development, adoption and application of qualification and performance standards for employees of State approving agencies. (1) VA shall:

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

(i) Develop with the State approving agencies prototype qualification and performance standards;
(ii) Prescribe those standards for State approving agency use in the development of qualification and performance standards for State approving agency personnel carrying out approval responsibilities under a contract or agreement as provided in § 21.4153(a) of this part; and
(iii) Review the prototype qualification and performance standards with the State approving agencies no less frequently than once every five years.

(2) In developing and applying standards described in paragraph (d)(1) of this section, a State approving agency may take into consideration the State's merit system requirements and other local requirements and conditions. However, no State approving agency may develop, adopt or apply qualification or performance standards that do not meet the requirements of paragraph (d)(3) of this section.
(3) The qualification and performance standards adopted by the State approving agency shall describe a level of qualification and performance which shall equal or exceed the level of qualification and performance described in the prototype qualification and performance standards developed by VA with the State approving agencies. The State approving agency may amend or modify its adopted qualification and performance standards annually as circumstances may require.

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

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

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

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

(6) A State approving agency may not apply these standards to any person employed by the State approving agency on May 20, 1988, as long as that person remains in the position in which the person was employed on that date.

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


[EFFECTIVE DATE NOTE: 61 FR 29293, 29296, June 10, 1996, which removed paragraph (b) and redesignated paragraphs (c) and (d) as (b) and (c), became effective June 10, 1996.]
§ 21.4200 Definitions.
§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.
§ 21.4202 Overcharges; restrictions on enrollments.
§ 21.4203 Reports -- requirements.
§ 21.4204 Periodic certifications.
§ 21.4206 Reporting fee.
§ 21.4209 Examination of records.
§ 21.4210 Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.
§ 21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.
§ 21.4212 Referral to Committee on Educational Allowances.
§ 21.4213 Notice of hearing by Committee on Educational Allowances.
§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.
§ 21.4215 Decision of Director of VA facility of jurisdiction.
§ 21.4216 Review of decision of Director of VA facility of jurisdiction.

§ 21.4200 Definitions.

Discussion and Analysis in the Veterans Benefits Manual

(a) School, educational institution, institution. The terms school, educational institution and institution mean:
(1) A vocational school or business school;
(2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;
(3) A public or private elementary school or secondary school;
(4) A training establishment as defined in paragraph (c) of this section;
(5) Any entity during the period beginning on November 2, 1994, and ending on September 30, 1996, other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program; or
(6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation.

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

(b) Divisions of the school year. (1) Ordinary School Year is generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.
(2) Term, any regularly established division of the ordinary school year under which the school operates.
(3) Quarter, a division of the ordinary school year, usually a period from 10 to 13 weeks long.
(4) Semester, a division of the ordinary school year, usually a period from 15 to 19 weeks long.
(5) Summer term, the whole of the period of instruction at a school which takes place between ordinary school years. A summer term may be divided into several summer sessions. 
(Authority: 38 U.S.C. 3680(a))

(6) Summer session, any division of a summer term. 
(Authority: 38 U.S.C. 3680(a))

(c) Training establishment. The term means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training. 
(Authority: 38 U.S.C. 3501(a)(9))

(d) External degree. This term means a standard college degree given by an accredited college or university based on satisfactory completion of a prescribed program of independent study. The program may require occasional attendance for a workshop or seminar and may include some regular residence course work. 
(e) Standard college degree. The term means an associate or higher degree awarded by:
(1) An institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or
(2) An institution of higher learning that is a candidate for accreditation, as that term is used by the regional or the national accrediting agencies; or
(3) An institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs. 
(Authority: 38 U.S.C. 3452)

(f) Undergraduate college degree. The term means a college or university degree obtained through the pursuit of unit subjects which are below the graduate level. Included are associate degrees, bachelors' degrees and first professional degrees. 
(g) Standard class session. The term standard class session means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit. It is not less than 1 hour (or one 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours (or three 50-minute periods) of workshop training. 
(Authority: 38 U.S.C. 3688(c))

(h) Institution of higher learning. This term means:
(1) A college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree.
(2) When there is no State law to authorize the granting of a degree, a school which:
(i) Is accredited for degree programs by a recognized accrediting agency, or 
(ii) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.
(3) A hospital offering medical-dental internships or residencies approved in accordance with § 21.4265(a) without regard to whether the hospital grants a post-secondary degree. 

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(4) An educational institution which:
(i) Is not located in a State,
(ii) Offers a course leading to a standard college degree or the equivalent, and
(iii) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located.
(Authority: 38 U.S.C. 3452)
(i) Audited course. The term means any credit course which a student attends as a listener only with a prior understanding between school officials and the student that such attendance will not result in credit being granted toward graduation. See § 21.4252(i).
(Authority: 38 U.S.C. 3680(a)(3))
(j) Nonpunitive grade. The term means any grade assigned for pursuit of a course, whether upon completion of the course or at the time of withdrawal from the course, which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation. No credit toward the school's requirements for graduation is granted for such a grade, nor does the grade affect any other criteria for graduation by the policies of the school, such as a grade point average. Therefore, it has the same effect as an audited course. See § 21.4135(e).
(k) Punitive grade. The term means a grade assigned for pursuit of a course which is used in determining the student's overall progress toward completion of the school's requirements for graduation. Unlike the nonpunitive grade, the punitive grade does affect the criteria to be met by the student for graduation, i.e., it is a factor in computing the student's grade average or grade point average, for example. For this reason it is not the same as an audited course, since it does have an effect upon the student's ability to meet the school's criteria for graduation. See § 21.4135(e).
(l) Drop-add period. The term means a reasonably brief period at the beginning of a term, not to exceed 30 days, officially designated by a school for unrestricted enrollment changes by students.
(Authority: 38 U.S.C. 3680(a)(4))
(m) Normal commuting distance. Two locations that are within 55 miles of each other are within normal commuting distance. Furthermore, a branch, extension or additional facility of a school located more than 55 miles from the school's main campus or parent facility will be considered within normal commuting distance only if:
(1) School records show that, prior to the establishment of the additional teaching site, at least 20 students or 5 percent of the enrollment, whichever is the lesser, on the main campus or parent facility were regularly commuting from the area where the additional teaching site is located; or
(2) Other comparable evidence clearly shows that students commute regularly between the two locations.
(Authority: 38 U.S.C. 3689(c))
(n) Enrollment. This term means the state of being on that roll, or file of a school which contains the names of active students.
(o) Pursuit of a program of education. (1) This term means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institution policy and regulations and applicable criteria of Title 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through:
(i) Resident courses,
(ii) Independent study courses,
(iii) Correspondence courses,
(iv) An apprenticeship or other on-the-job training program,
(v) Flight courses,
(vi) A farm cooperative course,
(vii) A cooperative course, or
(viii) A graduate program of research in absentia.
(2) The Department of Veterans Affairs will consider a veteran or eligible person who
qualifies under § 21.4138 for payment during an interval or school closing, or who
qualifies under § 21.4205 for payment during a holiday vacation to be in pursuit of a
program of education during the interval, school closing or holiday vacation.
(p) Enrollment period. (1) This term means an interval of time during which a veteran or
eligible person:
(i) Is enrolled in an educational institution; and
(ii) Is pursuing his or her program of education.
(2) This term applies to each unit course or subject in the veteran's or eligible person's
program of education.
(q) Attendance. This term means the presence of a veteran or eligible person:
(1) In the class where the approved course is being taught in which he or she is enrolled;
(2) At a training establishment; or
(3) Any other place of instruction, training or study designated by the educational
institution or training establishment where the veteran or eligible person is enrolled and is
pursuing a program of education.
(Authority: 38 U.S.C. 3680(g))
(r) In residence on a standard quarter- or semester-hour basis. This term means study at a
site or campus of a college or university, or off-campus at an official resident center,
requiring pursuit of regularly scheduled weekly class instruction at the rate of one
standard class session per week throughout a standard quarter or semester for one
quarter- or one semester-hour credit.
(Authority: 38 U.S.C. 3688(c))
(s) Deficiency course. This term means any secondary level course or subject not
previously completed satisfactorily which is specifically required for pursuit of a
post-secondary program of education.
(t) Remedial course. This term means a special course designed to overcome a deficiency
at the elementary or secondary level in a particular area of study, or a handicap, such as
in speech.
(u) Refresher course. This term means a course at the elementary or secondary level to
review or update material previously covered in a course that has been satisfactorily
completed.
(Authority: 38 U.S.C. 3491(a)(2))
(v) Reservist. The term reservist means a member of the Selected Reserve of the Ready
Reserve of any of the reserve components (including the Army National Guard of the
United States and the Air National Guard of the United States) of the Armed Forces who
is eligible to receive educational assistance under 38 U.S.C. chapter 30 or 10 U.S.C.
chapter 1606.
(Authority: 38 U.S.C. 3002)
(w) Alternative teacher certification program. The term alternative teacher certification program, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (a)(5) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

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

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

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

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

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

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

(1) Is not a public educational institution;

(2) Is in a State; and

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

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

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

(1) Biotechnology;

(2) Life science technologies;

(3) Opto-electronics;

(4) Computers and telecommunications;

(5) Electronics;

(6) Computer-integrated manufacturing;

(7) Material design;

(8) Aerospace;

(9) Weapons;

(10) Nuclear technology; and

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

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

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

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

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

(1) Life and physical scientists;

(2) Engineers;

(3) Mathematical specialists;
(4) Engineering and science technicians; 
(5) Computer specialists; and 
(6) Engineering, scientific, and computer managers. 
(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6)) 
(dd) Computer specialists. The term computer specialists includes the following occupations:
(1) Database, system, and network administrators;
(2) Database, system, and network developers;
(3) Computer and network engineers;
(4) Systems analysts;
(5) Programmers;
(6) Computer, database, and network support specialists;
(7) All computer scientists;
(8) Web site designers;
(9) Computer and network service technicians;
(10) Computer and network electronics specialists; and
(11) All certified professionals, certified associates and certified technicians in the information technology field. 
(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(ee)-(jj) [Reserved]

(kk) Fugitive felon. The term fugitive felon means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of-
(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;
(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or
(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law. 
(Authority: 38 U.S.C. 5313B)

(ll) Felony. The term felony means a major crime or offense defined as such under the law of the place where the offense was committed or under Federal law. It includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law. 
(Authority: 38 U.S.C. 5313B)


[EFFECTIVE DATE NOTE: 68 FR 35177, 35178, June 12, 2003, amended this section, effective June 12, 2003.]

§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support. 
(a) General. Except as otherwise provided in this section the Department of Veterans Affairs shall not approve an enrollment in any course for an eligible veteran, not already
enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by the Department of Veterans Affairs pursuant to Title 38 U.S.C. This restriction may be waived in whole or in part. (Authority: 38 U.S.C. 3473(d))

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

(c) Affected courses. (1) The following courses or programs are exempt from the requirements of paragraph (a) of this section:
   (i) Any farm cooperative course; and
   (ii) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as nonappropriated sundry fund activities which are governmental instrumentalities.
(2) The provisions of paragraph (a) of this section apply to the enrollment of a serviceperson in a course leading to a high school diploma, equivalency certificate, or a refresher, remedial or deficiency course, but they do not apply to the enrollment of a veteran in such a course.

(3) Except as provided in paragraph (c)(2) of this section, the provisions of paragraph (a) of this section do not apply to an approved course which:
   (i) Is offered under contract with the Department of Defense,
   (ii) Is on or immediately adjacent to a military base, or a facility of the National Guard (including the Air National Guard) or the Selected Reserve, 
   (iii) Has been approved by the State approving agency of the State:
      (A) Where the base is located or
      (B) Where the parent school is located if the course is offered overseas, and
   (iv) Is available only to:
      (A) Military personnel and their dependents, or
      (B) Military personnel, their dependents and civilian employees of a base located in a State, or
      (C) Persons authorized by the base commander to attend the course provided the base is located outside the United States.
      (D) In the case of a course offered on or immediately adjacent to a facility of the National Guard or the Selected Reserve, members of the National Guard, members of the Selected Reserve and their dependents.

(4) The provisions of paragraph (a) of this section generally do not apply to a course when the total number of veterans, eligible persons, and reservists receiving assistance under chapters 30, 31, 32, 34, 35 and 36, title 38, United States Code, and chapter 1606, title 10, United States Code, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). However, the provisions of paragraph (a) of this section will apply to such a course when --
   (Authority: 38 U.S.C. 3473(d); Pub. L. 98-525, Pub. L. 100-689)
(i) The course is a course of Special Assistance for the Educationally Disadvantaged and a serviceperson enrolls in it, or

(ii) The Director of the Department of Veterans Affairs facility of jurisdiction has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course.

(Authority: 38 U.S.C. 3473, 3491(c))

(d) Applications for exemptions. No applications are required for any exemptions except that found in paragraph (c)(4) of this section. To obtain an exemption as stated in paragraph (c)(4) of this section schools must submit reports as required in paragraph (f)(1) of this section.

(Authority: 38 U.S.C. 3473)

(e) Computing the 85-15 percent ratio -- (1) Determining when separate computations are required. Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85-15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions, as well as courses or curricula leading to a secondary school diploma or equivalency certificate offered at any branch or extension, must have an 85-15 percent ratio computed separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(i) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(A) General 2-year curricula at 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2-year courses (i.e., AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(B) Students attending 4-year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85-15 percent computation must be made for each specific curriculum, i.e., BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.
(ii) NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85-15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Branch or extension courses will be computed separately from courses at the parent facility. Courses offered on a full- and part-time basis which are identical in length and content will be combined for computing the ratio.

(2) Assigning students to each part of the ratio. Notwithstanding the provisions of paragraph (a) of this section, the following students will be considered to be nonsupported provided VA is not furnishing them with educational assistance under title 38, United States Code or under chapter 1606, title 10, United States Code:

(i) Students who are not veterans or reservists, and are not in receipt of institutional aid.

(Authority: 38 U.S.C. 3473(d); Pub. L. 98-525, Pub. L. 100-689)

(ii) All graduate students in receipt of institutional aid.

(iii) Students in receipt of any Federal aid (other than Department of Veterans Affairs benefits).

(iv) Undergraduates and non-college degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike.

(Authority: 38 U.S.C. 3473(d))

(3) Calculation. (i) To determine if the requirement of paragraph (a) of this section has been met for all courses except flight courses the full-time equivalent, nonsupported students as defined by paragraph (e)(2) of this section will be compared to the full-time equivalent students enrolled in the course. If the full-time equivalent, nonsupported students do not equal at least 15 percent of the total full-time enrollment, the 85-15 percent requirement has not been met for the course. If a non-Department of Veterans Affairs student in a correspondence course has not completed a lesson nor made a payment toward the cost of the course during the 6-month period immediately prior to the computation, the student will not be counted in computing the 85-15 percent ratio.

(ii) The 85-15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All approved courses offered under 14 CFR parts 141 and 142 at a flight school will be considered to be one course for the purpose of making this computation. Similarly, all other approved courses offered at a flight school will be considered to be one course for the purpose of making this computation. In this computation hours of training or tuition charges for students enrolled --

(A) In the recreational pilot certification course and the private pilot certification course will be excluded;

(B) In a ground instructor certification course will be included;

(C) In courses approved under 14 CFR part 141, other than a ground instructor certification course, will be actual hours of logged instructional flight time or the charges for those hours; and

(D) In courses not approved under 14 CFR part 141, such as courses offered by flight simulator or courses for navigator or flight engineer, shall include ground training time or
charges; actual logged instructional flight time or charges; and instructional time in a
flight simulator or charges for that training.
(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3680A(d))
(f) Reports. (1) Schools must submit to VA all calculations needed to support the
exemption found in paragraph (c)(4) of this section. If the school is organized on a term,
quarter, or semester basis, it shall make that submission no later than 30 days after the
beginning of the first term for which the school wants the exemption to apply. If the
school is not organized on a term, quarter or semester basis, it shall make that submission
no later than 30 days after the beginning of the first calendar quarter for which the school
wishes the exemption to apply. A school having received an exemption found in
paragraph (c)(4) of this section shall not be required to certify that 85 percent or less of
the total student enrollment in any course is receiving Department of Veterans Affairs
assistance:
(Authority: 38 U.S.C. 3473)
(i) Unless the Director of the VA facility of jurisdiction has reason to believe that the
enrollment of eligible veterans and eligible persons in a specific course may exceed 85
percent of the total enrollment in a specific course, or
(ii) Until such time as the total number of veterans, eligible persons and reservists
receiving assistance under chapters 30, 31, 32, 34, 35, or 36, title 38 U.S.C., or chapter
1606, title 10 U.S.C., who are enrolled in the educational institution offering the course,
equals more than 35 percent of the total student enrollment at the educational institution
(computed separately for the main campus and any branch or extension of the institution).
At that time the procedures contained in paragraph (f)(2) of this section shall apply.
(Authority: 38 U.S.C. 3473(d); Pub. L. 98-525, Pub. L. 100-689)
(2) The school must submit all calculations made under paragraph (e)(3) of this section to
the Department of Veterans Affairs according to these time limits.
(i) If the school is organized on a term, quarter or semester basis, the calculations must be
submitted no later than 30 days after the beginning of each regular school term
(excluding summer sessions), or before the beginning date of the next term, whichever
occurs first.
(ii) If a school is not organized on a term, quarter or semester basis, reports must be
received by the Department of Veterans Affairs no later than 30 days after the end of
each calendar quarter.
(Authority: 38 U.S.C. 3473)
(g) Effect of the 85-15 percent ratio on processing new enrollments. (1) The Department
of Veterans Affairs will process new enrollments of eligible veterans (and servicepersons
where this provision applies to them), in a course on the basis of the school's submission
of the most recent computation showing that:
(i) The 85-15 percent ratio is satisfactory, or
(ii) The course is exempt under paragraph (c)(4) of this section.
(2) Except for those enrollments with a beginning date before or the same as the date the
school completed the most recent computation, no benefits will be paid either under
Chapter 1606, Title 10 U.S.C., or under Chapters 30, 32, 34, or 36, Title 38 U.S.C., when
that computation establishes that the course:
(Authority: 10 U.S.C. 16136, 38 U.S.C. 3034, 3241, 3473(d); Pub. L. 98-525)
(i) Neither has a satisfactory 85-15 percent ratio, nor
(ii) Is exempt under paragraph (c)(4) of this section.

(Authority: 10 U.S.C. 16136, 38 U.S.C. 3034, 3241, 3473(d))

(3) If a school fails to submit a timely computation, no benefits will be paid for:

(i) The enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate if the enrollment has beginning dates beyond the expiration of the allowable computation period, or

(ii) The enrollment of a veteran in any course to which the provisions of paragraph (a) of this section apply if the enrollment has beginning dates beyond the expiration of the allowable computation period.

(4) Enrollments with later beginning dates may be processed only after the school certifies that:

(i) The proper ratio has been reestablished for the course, or

(ii) The course is exempt from the requirement under paragraph (c)(4) of this section.

(5) When a school shows a reestablished 85-15 percent ratio, each new veteran enrollment or enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate which is submitted after reestablishment must be individually computed into the ratio to ensure that the 85 percent limitation is not again immediately exceeded. The Department of Veterans Affairs will require individual computations until:

(i) The end of the term for which the ratio was reestablished, or

(ii) The end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis.

(Authority: 38 U.S.C. 3473, 3491(c))

(6) Once a student is properly enrolled in a course which either meets the 85-15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85-15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) Waivers. Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving VA education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education Service, through the Director of the VA facility of jurisdiction. When applying, a school must submit sufficient information to allow the Director, Education Service, to judge the merits of the request against the criteria shown in this paragraph. This information and any other pertinent information available to VA shall be considered in relation to these criteria:

(1) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(2) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of its notice from the Department of Education that the school is eligible to be considered for a grant under the Strengthening Institutions Program or the Special Needs Program, if applicable.
Otherwise the school should submit data sufficient to allow the Director, Education Service, to judge whether the school is similar to institutions which the Department of Education considers to be eligible to apply for a grant under these programs. The pertinent criteria and data categories are published in Title 34, Code of Federal Regulations, Chapter VI, part 624, subpart A; part 625, subpart A; and part 626, subpart A. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(3) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to VA.

(4) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, ratio of educational and general expenditures to full-time equivalency enrollment, etc. (Authority: 38 U.S.C. 3473(d); Pub. L. 94-502, Pub. L. 95-202)


§ 21.4202 Overcharges; restrictions on enrollments.

(a) [Reserved]
(b) [Reserved]
(c) Restrictions; proprietary schools. Enrollment will not be approved for any veteran or eligible person under the provisions of Chapter 34 or 35 respectively, in any proprietary school of which the veteran or eligible person is an official authorized to sign certificates of enrollment or monthly certificates of attendance, an owner or an officer.


[EFFECTIVE DATE NOTE: 63 FR 35830, 35831, July 1, 1998, removed and reserved paragraphs (a) and (b), effective July 31, 1998.]

§ 21.4203 Reports -- requirements.

(a) General. All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) Except as provided in paragraph (a)(2) of this section each educational institution, veteran and eligible person shall report without delay such information on enrollment, entrance, reentrance, change in the hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or eligible person enrolled in an approved
course as the Secretary may require and using a form specified by the Secretary. See paragraphs (b) through (h) of this section.

(2) An educational institution may delay in reporting the enrollment or reenrollment of a veteran or an eligible person until the end of the term, quarter, or semester when --

(i) The veteran or eligible person is enrolled in a program of independent study;
(ii) The veteran or eligible person is pursuing the program on a less than half-time basis;
(iii) The educational institution has asked the Director of the VA facility of jurisdiction in writing for permission to delay in making the report; and
(iv) The Director of the VA facility of jurisdiction has determined that it is not feasible for the educational institution to monitor interruption or termination of the veteran's or eligible person's pursuit of the program.

(3) An educational institution which disagrees with a decision of a Director of a VA facility as to whether it may delay reporting enrollments or reenrollments as provided in paragraph (a)(2) of this section may ask to have that decision reviewed by the Director, Education Service. That request must be made in writing to the Director of the VA facility within one year of the date of the letter notifying the educational institution of the original decision.

(4) An educational institution which, under paragraph (a)(2) of this section, is delaying the reporting of the enrollment or reenrollment of a veteran shall provide the veteran with notice of the delay at the time that the veteran enrolls or reenrolls.

(5) In addition, educational institutions must --


(i) Verify enrollment for each veteran and eligible person receiving an advance payment; and
(ii) Verify the delivery of advance payment check and education loan check for each veteran and eligible person receiving an advance payment or loan.

(6) Nothing in this section or in any section in 38 CFR part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.


(b) Certifications of enrollment. All the reports required by this paragraph shall be in a form specified by the Secretary.

(1) VA requires that educational institutions report all entrances and reentrances on a certification of enrollment.

(2) All educational institutions, regardlesss of the way in which they are organized, must clearly specify the course in which the veteran or eligible person is enrolled.

(3) Schools organized on a term, quarter or semester basis --

(i) May report enrollment for the term, quarter, semester, ordinary school year plus the following summer term.
(ii) May not report enrollment for a period that exceeds the ordinary school year plus the following summer term.
(iii) Must report the dates for the break between terms if --

(A) The certification covers two or more terms, and a term ends and the following term does not begin in the same or the next calendar month;
(B) The veteran or eligible person elects not to be paid for the intervals between terms;
(C) The certification covers two or more summer sessions; or
(D) The certification covers at least one summer session and at least one term which is
not a standard semester or quarter.
(iv) Must submit a separate enrollment certification for each term, quarter or semester if
the student --
(A) Is a veteran or eligible person pursuing a program on a less than half-time basis, or
(B) Is a serviceperson.
(Authority: 38 U.S.C. 3684(a); Pub. L. 99-576)
(v) Where a veteran or an eligible person, who is pursing a course leading to a standard
college degree, transfers between consecutive school terms from one approved institution
to another approved institution, for the purpose of enrolling in, and pursuing, a similar
course at the second institution, the veteran or eligible person shall, for the purpose of
entitlement to the payment of educational assistance allowance be considered to be
enrolled at the first institution during the interval, if the interval does not exceed 30 days,
following the termination date of the school term of the first institution.
(Authority: 38 U.S.C. 3680)
(c) Nonpunitive grade. A school may assign a nonpunitive grade for a course or subject in
which the veteran or eligible person is enrolled even though the veteran or eligible person
does not withdraw from the course or subject. When this occurs, the school must report
the assignment of the nonpunitive grade in a form specified by the Secretary in time for
VA to receive it before the earlier of the following dates is reached:
(1) Thirty days from the date on which the school assigns the grade, or
(2) Sixty days from the last day of the enrollment period for which the nonpunitive grade
is assigned.
(d) Interruptions, terminations and changes in hours of credit or attendance. When a
veteran or eligible person interrupts or terminates his or her training for any reason,
including unsatisfactory conduct or progress, or when he or she changes the number of
hours of credit or attendance, this fact must be reported to VA by the school in a form
specified by the Secretary.
(1) If the change in status or change in number of hours of credit of attendance occurs on
a day other than one indicated by paragraph (d)(2) or (3) of this section, the school will
initiate a report of the change in time for the VA to receive it within 30 days of the date
on which the change occurs. If the course in which the veteran or eligible person is
enrolled does not lead to a standard college degree, and attendance must be certified for
the course, the school may include the information on the monthly certification of
attendance.
(Authority: 38 U.S.C. 3684(a), 1788(a); Pub. L. 99-576)
(2) If the enrollment of the veteran or eligible person has been certified by the school for
more than one term, quarter or semester and the veteran or eligible person interrupts or
terminates his or her training at the end of a term, quarter or semester within the certified
period of enrollment, the school shall report the change in status to the Department of
Veterans Affairs in time for the Department of Veterans Affairs to receive the report
within 30 days of the last officially scheduled registration date for the next term, quarter
or semester.
(3) If the change in status or change in the number of hours of credit or attendance occurs
during the 30 days of a drop-add period, the school must report the change in status or
change in the number of hours of credit or attendance to the Department of Veterans Affairs in time for the Department of Veterans Affairs to receive the report within 30 days from the last date of drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.
(Authority: 38 U.S.C. 3684(a))

(e) Correspondence courses. Where the course in which a veteran is enrolled under 38 U.S.C. chapter 34 or a spouse or surviving spouse is enrolled under 38 U.S.C. chapter 35 is pursued exclusively by correspondence, the school will report by an endorsement on the veteran's or eligible spouse's or surviving spouse's certification the number of lessons completed by the veteran, spouse or surviving spouse and serviced by the school. Such reports will be submitted quarterly in a form specified by the Secretary.
(Authority: 38 U.S.C. 3680)

(f) Certification. All reports required by this paragraph must be in a form specified by the Secretary.

(1) Courses not leading to a standard college degree.

(i) Except as provided in this paragraph VA requires that a certification of attendance be submitted monthly for each veteran or eligible person enrolled in a course not leading to a standard college degree. The fact that the course may be pursued on a quarter, semester or term basis will not relieve the veteran or eligible person and the school of this requirement. Unless exempted by this paragraph this requirement also applies to courses measured on a credit-hour basis. This requirement does not apply to --
(A) Courses measured on a credit-hour basis pursuant to footnote 6 of § 21.4270(a),
(B) A course pursued on a less than one-half-time basis,
(C) A course pursued by a serviceperson while on active duty, or
(D) A correspondence course which must meet the requirements of paragraph (e) of this section.

(2) Courses leading to a standard college degree. Schools which have veterans or eligible persons enrolled in courses which lead to a standard college degree are not required to submit periodic certifications for students enrolled in such courses. Certifications are, however, required under paragraphs (b), (c), (d) and (h) of this section.

(3) Apprentice or other on-the-job training. A certification of attendance must be submitted monthly during the period of enrollment in the same manner as certifications required in paragraph (f)(1) of this section.

(g) Flight training courses. Where the course consists exclusively of flight training, the school will report by an endorsement on the veteran's certification the type and number of hours of actual flight training received by, and the cost thereof to, the veteran. Such reports may be submitted monthly.

(h) Unsatisfactory progress, conduct or attendance. At times the unsatisfactory progress, conduct or attendance of a veteran or eligible person is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with paragraph (d) of this section. If the veteran or eligible person continues in training despite unsatisfactory progress, conduct, or despite having failed to meet the regularly prescribed standards of attendance at the school, the school must report the fact of his or her unsatisfactory progress, conduct or attendance to VA within the time limit allowed by paragraph (h) (1) and (2) of this section.
§ 21.4204 Periodic certifications.
Educational assistance allowance is payable on the basis of a required certification concerning the pursuit of a course during the reporting period.
(a) Reports by eligible persons. An eligible person enrolled in a course which leads to a standard college degree, excepting eligible persons pursuing the course on a less than half-time basis, must verify each month his or her continued enrollment in and pursuit of his or her courses. In the case of an eligible person who completed, interrupted or terminated his or her course, any communication from the student or other authorized person notifying VA of the eligible person's completion of course as scheduled or earlier termination date, will be accepted to terminate payments accordingly. Reports by other eligible persons will be submitted in accordance with § 21.4203(e), (f) or (g).

(b) Requirements. The certifications required by § 21.4203 and paragraph (a) of this section will include a report on the following items when applicable:
(1) Continued enrollment in and pursuit of the course.
(2) Conduct and progress. See § 21.4277.
(3) Date of interruption or termination of training.
(4) Changes in number of semester hours or clock hours of attendance.
(5) Any other changes or modifications in the course as certified at enrollment.
(c) Term, quarter, or semester. For a course which does not lead to a standard college degree, if a school organized on a term, quarter, or semester basis has reported enrollment:
(1) For the ordinary school year or the complete course, the periodic certification will show the intervals between terms, quarters, or semesters as absences.
(2) By term, quarter, or semester, the periodic certification will not cover the intervals between terms, quarters, or semesters.
(d) Year-round courses. The periodic certifications will show any vacation period or interval between periods of instruction as absences. The periodic certification will not cover the period between school years.
(e) Farm cooperative courses. The monthly certification will cover only those periods of classroom instruction which are included in the prescheduled institutional portion of the course.

(Authority: 38 U.S.C. 3684(a))

[Effective August 1, 1999.] (Approved by the Office of Management and Budget under control number 2900-0465)

§ 21.4206 Reporting fee.
VA may pay annually to each educational institution furnishing education or each joint apprenticeship training committee acting as a training establishment under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapters 30, 32, 34, 35 or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.
(a) Except as provided in paragraph (b) of this section the reporting fee will be computed for each calendar year by multiplying $ 7.00 by the number of eligible veterans and eligible persons enrolled under 10 U.S.C. Chapter 1606, or 38 U.S.C. Chapters 30, 32, 34, 35 or 36 on October 31 of that year.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3684(C))

(b) For any school or joint apprenticeship training committee where the peak enrollment of veterans and eligible persons varies more than 15 percent from the enrollment on October 31, another date may be established as representative of peak enrollment.

(Authority: 38 U.S.C. 3684(C))

(c) An additional $ 4 will be paid to those institutions which have delivered to the veteran or eligible person at registration the educational assistance check representing an advance payment, or which have delivered educational loan checks in accordance with the provisions of Subpart F. If an institution delivers both an advance payment check and educational loan check(s) to the same veteran or eligible person within 1 calendar year, it shall receive only one additional $ 4 fee. In order to receive this fee, the institution shall submit to the Department of Veterans Affairs a certification of delivery of each check. If an advance payment check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Department of Veterans Affairs. If an education loan check is not delivered within 30 days of the date the educational institution received it, the check shall be returned to the Department of Veterans Affairs.
(Authority: 38 U.S.C. 3684, 3698)

(d) No reporting fee payable to an educational institution under this section shall be subject to offset by the Department of Veterans Affairs against any liability of the educational institution for any overpayment which the Department of Veterans Affairs has administratively determined to exist unless the liability of the educational institution was not contested by the educational institution or was upheld by a final decree of a court of appropriate jurisdiction.

(Authority: 38 U.S.C. 3684)

(e) Before payment of a reporting fee the Department of Veterans Affairs will require an educational institution to certify that:

(1) It has exercised reasonable diligence in determining whether it or any course offered by it approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of chapter 1606 of title 10 U.S.C. or chapters 30, 32, 34, 35 and 36 of title 38 U.S.C.; and

(Authority: 10 U.S.C. 16136, 38 U.S.C. 3034, 3241, 3684(B); PUB. L. 98-525)

(2) It will, without delay, report any failure to meet any requirement to the Department of Veterans Affairs.

(38 U.S.C. 3684(b))


[EFFECTIVE DATE NOTE: 61 FR 20727, 20728, May 8, 1996, which amended this section, became effective May 8, 1996.]

§ 21.4209 Examination of records.

(a) Availability of records. Notwithstanding any other provision of law, educational institutions must make the following records and accounts available to authorized Government representatives:

(1) Records and accounts pertaining to veterans or eligible persons who received educational assistance under Chapter 1606 of Title 10 U.S.C. or Chapters 30, 32, 34, 35 or 36 of Title 38 U.S.C.

(2) Other students' records necessary for the Department of Veterans Affairs to ascertain institutional compliance with the requirements of these chapters.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3244, 3690)

(b) Type of records. Each school will upon request of duly authorized representatives of the Government make available for examination all appropriate records and accounts, including but not limited to:

(1) Records and accounts which are evidence of tuition and fees charged to and received from or on behalf of all veterans and eligible persons and from other students similarly circums tanced.

(2) Records of previous education or training of veterans and eligible persons at the time of admission as students and records of advance credit, if any, granted by the school at the time of admission.

(3) Records of the veteran's or eligible person's grades and progress.

(4) Records of all advertising, sales or enrollment materials as required by § 21.4252(h) and section 3696(b), title 38 U.S.C.
(5) Records and computations showing compliance with the requirements of § 21.4201 regarding the 85-15 percent ratio of students for each course.
(6) Records necessary to demonstrate compliance with the requirements of § 21.4252(e) pertaining to the time necessary to complete a correspondence course.
(7) Records necessary to demonstrate compliance with the requirements of § 21.4252(g) pertaining to employment of graduates of the course.
(c) Noncollege degree, apprentice, and other on-the-job. The school having veterans, servicemembers, reservists, and/or eligible persons enrolled in a course that does not lead to a standard college degree will make available, in addition to the records and accounts required in paragraph (b) of this section, the records of leave, absences, class cuts, makeup work, and tardiness. Each training establishment that has enrolled veterans under 38 U.S.C. chapter 30 or 32, reservists under 10 U.S.C. chapter 1606, or eligible persons under 38 U.S.C. chapter 35 will also make available payroll records.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3690(c)).
(d) Nonaccredited courses. The school having veterans or eligible persons enrolled in nonaccredited courses will make available, in addition to the records and accounts required in paragraphs (b) and (c) of this section the following:
(1) Records of interruptions for unsatisfactory conduct or attendance.
(2) Records of refunds of tuition, fees and other charges made to a veteran or eligible person who fails to enter the course or withdraws or is discontinued prior to completion of the course.
(e) Nonavailability. Failure to make such records available as provided in this section will be grounds for discontinuing the payment of educational assistance allowance or special training allowance.
(f) Retention of records. The records and accounts, including those pertaining to students not receiving benefits from the Department of Veterans Affairs, as described in this section, pertaining to each period of enrollment of a veteran or eligible person, will be kept intact and in good condition at the school for at least 3 years following the termination of such enrollment period. Longer retention will not be required unless a written request is received from the General Accounting Office or the Department of Veterans Affairs not later than 30 days prior to the end of the 3-year period.


[EFFECTIVE DATE NOTE: 61 FR 26107, 26114, May 24, 1996, amended paragraph (c), effective May 24, 1996.]

§ 21.4210 Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.
(a) Overview. (1) VA may pay educational assistance to an individual eligible for such assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 35, or 36, only if the individual is pursuing a course approved in accordance with the provisions of 38 U.S.C. chapter 36. In general, courses are approved for this purpose by a State approving agency designated to do so (or by VA in some instances). Notwithstanding such approval, however, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend,
discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of courses or training approved under 38 U.S.C. chapter 36.

(2) For the purposes of this section and the purposes of §§ 21.4211 through 21.4216, except as otherwise expressly stated to the contrary --

(i) The term "course" includes an apprenticeship or other on-job training program;
(ii) The term "educational institution" includes a training establishment; and
(iii) Reference to action suspending, discontinuing, or otherwise denying enrollment or reenrollment means such action with respect to providing educational assistance under the chapters listed in paragraph (a)(1) of this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452, 3671, 3690)

(b) Denial of payment in individual cases. VA may deny payment of educational assistance to a specific individual for pursuit of a course or courses if, following an examination of the individual's case, VA has credible evidence affecting that individual that --

(1) The course fails to meet any of the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 34, 35, or 36; or
(2) The educational institution offering the individual's course has violated any of those requirements of law.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690(b)(1), 3690(b)(2))

(c) Notice in individual cases. Except as provided in paragraph (e) of this section, when VA denies payment of educational assistance to an individual under paragraph (b) of this section, VA will provide concurrent written notice to the individual. The notice shall state --

(1) The adverse action;
(2) The reasons for the action; and
(3) The individual's right to an opportunity to be heard thereon in accordance with part 19 of this title.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) Actions affecting groups. (1) The Director of the VA facility of jurisdiction may suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course, and may disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course. The decision to take such action, except as provided in paragraph (d)(2) of this section, must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course receiving educational assistance to which they are not entitled because:

(i) One or more of the course approval requirements of 38 U.S.C. chapter 36 are not met, including the course approval requirements specified in §§ 21.4253, 21.4254, 21.4261, 21.4262, 21.4263, and 21.4264; or
(ii) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of 10 U.S.C. chapter 1606, or of 38 U.S.C. chapters 30, 32, 34, 35, and 36. These violations may include, but are not limited to, the following:
(A) Willful and knowing submission of false reports or certifications concerning students or courses of education;
(B) Failure to report to VA a veteran's, servicemember's, reservist's, or eligible person's reduction, discontinuance, or termination of education or training; or
(C) Submission of improper or incorrect reports in such number, manner, or period of time as to indicate negligence on its part, including failure to maintain an adequate reporting or recordkeeping system.

(2) The Director also may make a decision to take the action described in paragraph (d)(1) of this section when the Director has evidence that one or more prohibited assignments of benefits have occurred at an educational institution as a result of that educational institution's policy. This decision may be made regardless of whether there is a substantial pattern of erroneous payments at the educational institution. See § 21.4146.

(3) The Director may disapprove the enrollment of all individuals not already enrolled in an educational institution (which for the purposes of this paragraph does not include a training establishment) when the Director finds that the educational institution:
(i) Has charged or received from veterans, servicemembers, reservists, or eligible persons an amount for tuition and fees in excess of the amount similarly circumstanced nonveterans are required to pay for the same course; or
(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other charges that substantially denies to veterans, servicemembers, reservists, or eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §§ 21.4138(d), 21.7140(a), and 21.7640(d); or
(iii) Has used erroneous, deceptive, or misleading practices as set forth in § 21.4252(h).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3680A(d), 3684, 3685, 3690, 3696, 5301)

(e) Actions that must accompany a mass suspension of educational assistance payments or suspension of approval of enrollments and reenrollments in a course or educational institution. (1) The Director of the VA facility of jurisdiction may suspend payment of educational assistance and may suspend approval of new enrollments and reenrollments as provided in paragraph (d) of this section, only after:
(i) The Director notifies in writing the State approving agency concerned and the educational institution of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements; and
(ii) The educational institution --
(A) Refuses to take corrective action; or
(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director).

(2) Not less than 30 days before the Director acts to make a mass suspension of payments of educational assistance and/or suspend approval of new enrollments and reenrollments, the Director will, to the maximum extent feasible, provide written notice to each veteran, servicemember, reservist, and eligible person enrolled in the affected courses. The notice will:
(i) State the Director's intent to suspend payments and/or suspend approval of new enrollments and reenrollments unless the educational institution takes corrective action; and
(ii) Give the reasons why the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments; and
(iii) State the date on which the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments.
(f) Actions in cases indicating submission of false, misleading, or fraudulent claims or statements. The Director of the VA facility of jurisdiction will take the following action, as indicated, that may be in addition to suspending payments or further approval of enrollments or reenrollments in a course or educational institution.

(1) If the Director has evidence indicating that an educational institution has willfully submitted a false or misleading claim, or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim, the Director will make a complete report of the facts of the case to the appropriate State approving agency and to the Office of Inspector General for appropriate action.

(2) If the Director believes that an educational institution has submitted a false, fictitious, or fraudulent claim or written statement within the meaning of the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812) or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim or made such a written statement, the Director will follow the procedures in part 42 of this title.

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801-3812; 38 U.S.C. 3034(a), 3241(a), 3690(d))

(g) Referral to the Committee on Educational Allowances. If the Director of the VA facility of jurisdiction suspends payment of educational assistance to, or suspends approval of the enrollment or reenrollment of, individuals in any course or courses as provided in paragraph (d) of this section, the Director will refer the matter to the Committee on Educational Allowances as provided in §21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) Withdrawal of referral to Committee on Educational Allowances. (1) If, following a suspension of payments and/or of approval of enrollments or reenrollments, the Director of the VA facility of jurisdiction determines that the conditions which justified the suspension have been corrected, and the State approving agency has not withdrawn or suspended approval of the course or courses, the Director may resume payments to and/or approval of enrollments or reenrollments of the affected veterans, servicemembers, reservists, or eligible persons. If the case has already been referred to the Committee on Educational Allowances under paragraph (g) of this section at the time such action is taken, the Director will advise the Committee that the original referral is withdrawn.

(2) If, following a referral to the Committee on Educational Allowances, the Director finds that the State approving agency will suspend or withdraw approval, the Director may, if otherwise appropriate, advise the Committee that the original referral is withdrawn.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35830, 35831, July 1, 1998]

[EFFECTIVE DATE NOTE: 63 FR 35830, 35831, July 1, 1998, added this section, effective July 31, 1998.]

§21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.
(a) Authority. VA is authorized by 38 U.S.C. 3690 to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that the program of education or course in which such individuals are enrolled fails to meet any of the requirements of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, or when VA finds an educational institution or training establishment has violated any such statute or regulation, or fails to meet any such statutory or regulatory requirement. Sections 21.4210 and 21.4216 implement that authority. This section provides for establishment of a Committee on Educational Allowances within each VA facility of jurisdiction whose findings of fact and recommendations will be provided to the Director of that VA facility, to whom such authority to discontinue educational benefits or disapprove enrollments or reenrollments has been delegated.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) Purpose. (1) The Committee on Educational Allowances is established to assist the Director of the VA facility of jurisdiction in reaching a conclusion as to whether, in a specific case, educational assistance to all individuals enrolled in any course or courses offered by the educational institution should be discontinued and, if appropriate, whether approval of all further enrollments or reenrollments in those courses should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs administered by VA because a requirement of 38 U.S.C. chapter 30, 32, 34, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part, is not being met or a provision of such statute or regulation has been violated.

(2) The function of the Committee on Educational Allowances is to develop facts and recommend action to be taken on the basis of the facts found. A hearing before the Committee is not in the nature of a trial in a court of law. Instead, it is an administrative inquiry designed to create a full and complete record upon which a recommendation can be made as to whether the Director should discontinue payment of educational benefits and/or deny approval of new enrollments or reenrollments. Both the interested educational institution and VA Regional Counsel, or designee, representing VA, will be afforded the opportunity to present to the Committee any evidence, argument, or other material considered pertinent.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) Jurisdiction. The Committee on Educational Allowances will consider only those cases which are referred in accordance with §§ 21.4210(g) and 21.4212.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) Committee members. The Committee on Educational Allowances will consist of three employees of the VA facility of jurisdiction, at least one of whom is familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. The Director of the VA facility of jurisdiction will designate a Chairperson. In the event that any member becomes unable to serve for any reason, the Director may appoint a replacement member. Before the Committee resumes its proceedings, the new member will be given an opportunity to apprise himself or herself of the actions and testimony already taken by the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) Duties and responsibilities of the Committee. (1) The function of the Committee on Educational Allowances is to make recommendations to the Director of the VA facility of
jurisdiction in connection with specific cases referred for consideration as provided in §§ 21.4210(g) and 21.4212.

(2) The performance of this function will include:
(i) Hearing testimony or argument from witnesses or representatives of educational institutions and VA, as appropriate, when such persons appear personally before the Committee;
(ii) Receiving and reviewing all the evidence, testimony, briefs, statements, and records included in each case; and
(iii) Furnishing the Director of the VA facility of jurisdiction a written statement setting forth specifically the question or questions considered, a summation of the essential facts of record, recommendations as to issues referred for consideration by the Committee, and the basis therefor. In any case where there is not unanimity, both the majority and the minority views and recommendations will be furnished.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35830, 35833, July 1, 1998]

§ 21.4212 Referral to Committee on Educational Allowances.
(a) Form and content of referral to Committee. When the Director of the VA facility of jurisdiction refers a case to the Committee on Educational Allowances, as provided in § 21.4210(g), the referral will be in writing and will --
(1) State the approval, reporting, recordkeeping, or other criteria of statute or regulation which the Director has cause to believe the educational institution has violated;
(2) Describe the substantial pattern of veterans, servicemembers, reservists, or eligible persons receiving educational assistance to which they are not entitled which the Director has cause to believe exists, if applicable;
(3) Outline the nature of the evidence relied on by the Director in reaching the conclusions of paragraphs (a)(1) and (a)(2) of this section;
(4) Describe the Director's efforts to obtain corrective action and the results of those efforts; and
(5) Ask the Committee on Educational Allowances to perform the functions described in §§ 21.4211, 21.4213, and 21.4214 and to recommend to the Director whether educational assistance payable to individuals pursuing the courses in question should be discontinued and approval of new enrollments or reenrollments denied.

(b) Notice of the referral. (1) At the time of referral the Director will --
(i) Send notice of the referral, including a copy of the referral document, by certified mail to the educational institution. The notice will include statements that the Committee on Educational Allowances will conduct a hearing; that the educational institution has the right to appear before the Committee and be represented at the hearing to be scheduled; and that, if the educational institution intends to appear at the hearing, it must notify the Committee within 60 days of the date of mailing of the notice;
(ii) Provide an information copy of the notice and referral document to the State approving agency of jurisdiction; and
(iii) Place a copy of the notice and referral document on display at the VA facility of jurisdiction for review by any interested party or parties.
The Director will provide a copy of the notice and referral document to the VA Regional Counsel, or designee, of jurisdiction, who will represent VA before the Committee on Educational Allowances.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35830, 35834, July 1, 1998]

[EFFECTIVE DATE NOTE: 63 FR 35830, 35834, July 1, 1998, added this section, effective July 31, 1998.]

§ 21.4213 Notice of hearing by Committee on Educational Allowances.

(a) Content of hearing notice. In any case referred to the Committee on Educational Allowances for consideration, a hearing will be held. If, as provided in §21.4212(b), the educational institution has timely notified the Committee of its intent to participate in the hearing, the educational institution will be notified by certified letter from the Chairperson of the date when the hearing will be held. This hearing notification will inform the educational institution of--

1. The time and place of the hearing;
2. The matters to be considered;
3. The right of the educational institution to appear at the hearing with representation by counsel, to present witnesses, to offer testimony, to present arguments, and/or to submit a written statement or brief; and
4. The complete hearing rules and procedures.

(b) Expenses connected with hearing. The notice also will inform the educational institution that VA will not pay any expenses incurred by the educational institution resulting from its participation in the hearing, including the expenses of counsel or witnesses on behalf of the educational institution.

(c) Publication of hearing notice. Notice of the hearing will be published in the Federal Register, which will constitute notice to any interested individuals, and will indicate that, while such individuals may attend and observe the hearing, they may not participate unless called as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35830, 35834, July 1, 1998]

[EFFECTIVE DATE NOTE: 63 FR 35830, 35834, July 1, 1998, added this section, effective July 31, 1998.]

§ 21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) Rule 1. The Chairperson of the Committee on Educational Allowances will be in charge of the proceedings, will administer oaths or affirmations to witnesses, and will be responsible for the official conduct of the hearing. A majority of the members of the Committee will constitute a quorum. No party to the proceedings may conduct a voir dire of the Committee members.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) Rule 2. At the opening of the hearing, the Chairperson of the Committee on Educational Allowances will inform the educational institution of the purpose of the hearing, the nature of the evidence of record relating to the asserted failures or violations,
and the applicable provisions of law and VA regulations. The Chairperson will advise the VA Regional Counsel, or designee, representing VA, that the Committee on Educational Allowances will entertain any relevant evidence or witnesses which VA Counsel presents to the Committee and which would substantiate a decision by the Committee to recommend that the Director of the VA facility of jurisdiction take an adverse action on the issues submitted for its review. The educational institution will be advised of its right to present any evidence, relevant to the issues submitted for the Committee's review, by oral or documentary evidence; to submit rebuttal evidence; to present and cross-examine witnesses; and to make such statements as may be appropriate on its behalf for a true and full disclosure of the facts. VA Counsel will be allowed to cross-examine any witnesses offered by the educational institution and to reply to any written briefs or arguments submitted to the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(c) Rule 3. Any testimony or evidence, either oral or written, which the Committee on Educational Allowances deems to be of probative value in deciding the question at issue will be admitted in evidence. While irrelevant, immaterial, or unduly repetitious evidence, testimony, or arguments should be excluded, reasonable latitude will be permitted with respect to the relevancy, materiality, and competency of evidence. In most instances the evidence will consist of official records of the educational institution and VA, and these documents may be attested to and introduced by affidavit; but the introduction of oral testimony by the educational institution or by VA will be allowed, as appropriate, in any instance where the educational institution or VA Counsel desires. VA, however, will neither subpoena any witness on behalf of the educational institution for such purposes nor bear any expenses in connection with the appearance of such witness. In instances where the evidence reasonably available consists of signed written statements, secondary or hearsay evidence, etc., such evidence may be introduced into the record and will be given the weight and consideration which the circumstances warrant.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(d) Rule 4. A verbatim stenographic or recorded transcript of the hearing will be made. This transcript will become a permanent part of the record, and a copy will be furnished to the educational institution and the VA Counsel at the conclusion of the proceeding, unless furnishing of the copy of the transcript is waived by the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(e) Rule 5. The Chairperson of the Committee on Educational Allowances will identify all exhibits in the order of introduction or receipt (numerically for VA exhibits and alphabetically for exhibits introduced by the educational institution). All such original exhibits or documents shall be attached to the original of the transcript. VA shall make photocopies or certified copies and attach them to the copy of the transcript furnished to the educational institution and the VA Counsel. The original transcript will accompany the Committee's recommendation to the Director of the VA facility of jurisdiction along with all exhibits, briefs, or written statements received by the Committee during the course of the proceedings. Such documents should be clearly marked to indicate which were received into evidence and relied upon by the Committee in making its recommendations.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)
(f) Rule 6. The Committee on Educational Allowances, at its discretion, may reasonably limit the number of persons appearing at the hearing, including any affected individuals presented as witnesses by VA or the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(g) Rule 7. Any person who is presented to testify will be required to be duly placed under oath or affirmation by the Chairperson of the Committee on Educational Allowances. If an official of the educational institution desires to present a statement personally, the individual will be required to be placed under oath or affirmation. The Chairperson will advise each witness that the Committee understands that he or she is voluntarily appearing before the Committee; that any testimony or statement given will be considered as being completely voluntary; and that no one has authority to require the individual to make any statement or answer any question against his or her will before the Committee, except that a person called as a witness on behalf of either VA or the educational institution must be willing to submit to cross-examination with respect to testimony given. Each witness will also be advised that his or her testimony or statement, if false, even though voluntary, may subject him or her to prosecution under Federal statutes.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(h) Rule 8. Any member of the Committee on Educational Allowances may question any witness presented to testify at the hearing or either a representative of the educational institution or the VA Counsel concerning matters that are relevant to the question at issue. Generally, questioning by a Committee member will be limited to the extent of clarifying information on the facts and issues involved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(i) Rule 9. If the educational institution fails to timely notify the Committee of its intent to participate in a hearing or if a representative of the educational institution is scheduled to appear for a hearing but, without good cause, fails to appear either in person or by writing, the Committee will proceed with the hearing and will review the case on the basis of the evidence of record which shall be presented by the VA Counsel.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(j) Rule 10. Any objection by an authorized representative of the educational institution or the VA Counsel on a ruling by the Chairperson of the Committee on Educational Allowances regarding the admissibility of testimony or other evidence submitted will be made a matter of record, together with the substance in brief of the testimony intended or other evidence concerned. If the other evidence concerned is in the form of an affidavit or other document, it may be accepted for filing as a future reference if it is later ruled admissible as part of the record of the hearing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(k) Rule 11. Objections relating to the jurisdiction or membership of the Committee on Educational Allowances or the constitutionality of statutes or the constitutionality of, or statutory authority for, VA regulations, are not before the Committee for decision. The time of the Committee will not be used to hear arguments in this regard. However, any such matters outside the province of the Committee may be the subject of a brief or a letter for consideration by the VA Office of General Counsel upon completion of the hearing. The ruling of such authority upon such issues will be obtained and included in the record before the Committee's recommendations are submitted to the Director of the
VA facility of jurisdiction. If the VA General Counsel's ruling on such legal issues necessitates reopening the proceeding, that shall be done before the Committee makes its recommendations to the Director of the VA facility of jurisdiction.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(l) Rule 12. The hearing will be open to the public.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(m) Rule 13. The hearing will be conducted in an orderly manner with dignity and decorum. The conduct of members of the Committee on Educational Allowances, the VA Counsel, and any representatives of the educational institution shall be characterized by appropriate impartiality, fairness, and cooperation. The Chairperson of the Committee shall take such action as may be necessary, including suspension of the hearing or the removal of the offending person from the hearing room for misbehavior, disorderly conduct, or the persistent disregard of the Chairperson's ruling. Where this occurs, the Chairperson will point out that the Committee is entitled to every possible consideration in order that the case may be presented clearly and fully, which may be accomplished only through observance of orderly procedures.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(n) Rule 14. The Chairperson of the Committee on Educational Allowances will conduct the hearing proceedings in such a manner that will protect from disclosure information which tends to disclose or compromise investigative sources or methods or which would violate the privacy of any individual. The salient facts, which form the basis of charges, may be disclosed and discussed without revealing the source.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(o) Rule 15. At the close of the hearing, the Chairperson of the Committee on Educational Allowances shall inform the appropriate representative of the educational institution that the arguments and the evidence presented will be given careful consideration; and that notice of the decision of the Director of the VA facility of jurisdiction, together with the Committee's recommendations, will be furnished to the educational institution and the VA Counsel at the earliest possible time. The Chairperson will also indicate that notice of the Director's decision will be published in the Federal Register for the information of all other interested persons.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(p) Rule 16. In making its findings of facts and recommendations, the Committee on Educational Allowances will consider only questions which are referred to it by the Director of the VA facility of jurisdiction as being at issue and which are within the jurisdiction of the Committee.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

[63 FR 35830, 35834, July 1, 1998]

[EFFECTIVE DATE NOTE: 63 FR 35830, 35834, July 1, 1998, added this section, effective July 31, 1998.]

§ 21.4215 Decision of Director of VA facility of jurisdiction.

(a) Decision. The Director of the VA facility of jurisdiction will render a written decision on the issue of discontinuance of payments of benefits and/or denial of further enrollments or reenrollments in the course or courses at the educational institution which was the subject of the Committee on Educational Allowances proceedings.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)

(b) Basis of decision. (1) The decision of the Director of the VA facility of jurisdiction will be based upon all admissible evidence of record, including --
(i) The recommendations of the Committee on Educational Allowances;
(ii) The hearing transcript and the documents admitted in evidence; and
(iii) The ruling on legal issues referred to appropriate authority.
(2) The decision will clearly describe the evidence and state the facts on which the decision is based and, in the event that the decision differs from the recommendations of the Committee on Educational Allowances, will give the reasons and facts relied upon by the Director in deciding not to follow the Committee majority's recommendations.

(c) Correction of deficiencies. If the Director of the VA facility of jurisdiction believes that the record provided for review is incomplete or for any reason should be reopened, before rendering a decision he or she will order VA staff to gather any additional necessary evidence and will notify the educational institution that it may comment upon the new evidence added. The Director will then notify the educational institution as to whether the matter will be resubmitted to the Committee on Educational Allowances for further proceedings, on the basis of the new circumstances. If the matter is referred back to the Committee, the Director will defer a decision until he or she has received the Committee's new recommendations based upon all of the evidence of record.

(d) Effective date. If the decision of the Director of the VA facility of jurisdiction is adverse to the educational institution, the decision shall indicate specifically the effective date of each adverse action covered by the decision.

(e) Notification of decision. (1) The Director of the VA facility of jurisdiction shall send a copy of the decision to the educational institution by certified mail, return receipt requested. A copy of the decision also will be provided by regular mail to the institution's legal representative of record, if any. If the decision is adverse to the educational institution, the Director will enclose a notice of the educational institution's right to have the Director, Education Service review the decision.
(2) The Director of the VA facility of jurisdiction will also send a copy of the decision to:
(i) The State approving agency; and
(ii) VA Counsel.
(3) The Director of the VA facility of jurisdiction shall post a copy of the decision at the VA facility of jurisdiction. A copy of the decision shall be published in the Federal Register.

§ 21.4216 Review of decision of Director of VA facility of jurisdiction.
(a) Decision is subject to review by Director, Education Service. A review by the Director, Education Service of a decision of a Director of a VA facility of jurisdiction to terminate payments or disapprove new enrollments or reenrollments, when requested by
the educational institution, will be based on the evidence of record when the Director of
the VA facility of jurisdiction made that decision. It will not be de novo in nature and no
hearing on review will be held.
(b) Authority of Director, Education Service. The Director, Education Service has the
authority to affirm, reverse, or remand the original decision. In the case of such a review,
the reviewing official's decision, other than a remand, shall become the final Department
decision on the issue presented.
(c) Notice of decision of Director, Education Service is required. Notice of the reviewing
official's decision will be provided to the interested parties and published in the Federal
Register, in the same manner as is provided in § 21.4215(e) for decisions of the Director
of the VA facility of jurisdiction, for the information of all concerned.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)
[63 FR 35830, 35836, July 1, 1998]

[EFFECTIVE DATE NOTE: 63 FR 35830, 35836, July 1, 1998, added this section,
effective July 31, 1998.]
(a) Eligibility requirements for specialized vocational training. (1) The Department of Veterans Affairs may provide a program of a specialized course of vocational training to an eligible person who:
(i) Is not in need of special restorative training, and
(ii) Requires specialized vocational training because of a mental or physical handicap.
(2) The counseling psychologist will:
(i) After consulting with the Vocational Rehabilitation Panel, determine whether such a course is in the best interest of the eligible person; and
(ii) Deny the application for the program when the course is not in the eligible person's best interest.
(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program, if the counseling psychologist has previously determined that the course is in the eligible person's best interest.
(4) The Department of Veterans Affairs may authorize specialized vocational training for an eligible child only if the child has passed his or her 14th birthday at the time training is to begin.
(b) Program objective. The objective of a program of specialized vocational training will be designated as a vocational objective.
(c) Special assistance. When needed, special assistance will be provided under § 21.4276.
(d) Length of specialized vocational training. When the program of specialized vocational training will exceed 45 months, the counseling psychologist will refer the program to the Director, Vocational Rehabilitation and Employment Service for prior approval.

§ 21.4233 Combination.
An approved program may consist of a combination of courses with instruction offered by a school alternating with instruction in a business or industrial establishment (a cooperative course); courses offered by two schools concurrently; or courses offered through class attendance and by television concurrently. A farm cooperative program may be approved which consists of a combination of institutional agricultural courses and
concurrent agricultural employment (see § 21.4264). A school may contract the actual training to another school or entity, provided the course is approved by the State approving agency having approval jurisdiction of the school or entity which actually provides the training.

(a) Cooperative courses. A full-time program of education consisting of phases of school instruction alternated with training in a business or industrial establishment with such training being strictly supplemental to the school instruction may be approved. Alternating periods may be a part-day in school and a part-day on job or may be such periods which alternate on a daily, weekly, monthly or on a term basis. For purposes of approval the school offering the course must submit to the State approving agency, with its application, statements of fact showing at least the following:

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continuous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in § 21.4270(c) of this part. The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time.

(Authority: 38 U.S.C. 3482(a)(2) and 3532(b))

(2) That the course is set up as a cooperative course in the school catalog or other literature of the school;

(3) That the school itself arranges with the employer's establishment for providing the alternate on-job periods of training on such basis that the on-job portion of the course will be training in a real and substantial sense and will supplement the in-school portion of the course;

(4) That the school arranges directly with the employer's establishment for placing the individual student in that establishment and exercises supervision and control over the student's activities at the establishment to an extent that assures training in a true sense to the student; and

(5) That the school grants credit for the on-job portion of the course for completion of a part of the work required for granting a degree or diploma.

(Authority: 38 U.S.C. 3482(a)(2) and 3532(b))

(b) Concurrent enrollment. Where a veteran or eligible person cannot successfully schedule his or her complete program at one school, a program of concurrent enrollment may be approved. When requesting such a program the veteran or eligible person must show that his or her complete program of education or training is not available at the school in which he or she will pursue the major portion of his or her program (the primary school), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program.

(1) If VA measures the courses pursued at both institutions on either a clock-hour basis or a credit-hour basis, VA will measure the veteran's or eligible person's enrollment by adding together the units of measurement in the second school to the units of
measurement for the courses in the primary institution. The standard for full time will be
the full-time standard for the courses at the primary institution.
(2) Where the standards for measurement of the courses pursued concurrently in the two
schools are different, VA will measure the veteran's or eligible person's enrollment by
converting the units of measurement for courses in the second school to the equivalent in
value expressed in units of measurement required for the courses in the program of
education which the veteran or eligible person is pursuing at the primary institution.
(Authority: 38 U.S.C. 3688)
(3) If the provisions of paragraph (b)(2) of this section require VA to convert clock hours
to credit hours, it will do so by --
(i) Dividing the number of credit hours which VA considers to be full-time at the
educational institution whose courses are measured on a credit-hour basis by the number
of clock hours which are full-time at the educational institution whose courses are
measured on a clock-hour basis; and
(ii) Multiplying each clock hour of attendance by the decimal determined in paragraph
(b)(3)(i) of this section. VA will drop all fractional hours.
(4) If the provisions of paragraph (b)(2) of this section require VA to convert credit hours
to clock hours, it will do so by --
(i) Dividing the number of clock hours which VA considers to be full-time at the
educational institution whose courses are measured on a clock-hour basis by the number
of credit hours which are full-time at the educational institution whose courses are
measured on a credit-hour basis; and
(ii) Multiplying each credit hour by the number determined in paragraph (b)(4)(i) of this
section. VA will drop all fractional hours.
(5) Periodic certifications of training will be required from the veteran and each of the
schools where concurrent enrollment is approved in a course which does not lead to a
standard college degree and to which the measurement provisions of § 21.4270(b) of this
part do not apply. (See §§ 21.4203 and 21.4204.)
(Authority: 38 U.S.C. 3688)
(c) Television. (1) A course offered by open-circuit television is an independent study
course. In order for an eligible person to receive educational assistance while pursuing
such a course, the course must meet all the requirements for independent study found in §
21.4267.
(Authority: 38 U.S.C. 3523, 3680A)
(d) Farm cooperative course. A program of education consisting of institutional
agricultural courses pursued by an eligible person who is concurrently engaged in
agricultural employment which is relevant to such institutional course may be approved if
the course meets the requirements of § 21.4264.
(e) Contract. All or part of the program of education of a school may be provided by
another school or entity under contract. Such school or entity actually providing the
training must obtain approval of the course from the State approving agency in the State
having jurisdiction of that school or entity. If the course is a course of flight training, the
school or entity actually providing the training must also obtain approval of the course
from the Federal Aviation Administration. Measurement of the course and payment of an
allowance will be appropriate for the course as offered by the school or entity actually
providing the training.
§ 21.4234 Change of program.

(a) Definition. (1) Except as provided in paragraph (a)(2) of this section, a change of program consists of a change in the educational professional or vocational objective for which the veteran or eligible person entered training.

(2) VA does not consider any of the following to be changes of program.

(i) A change in the type of courses needed to attain a vocational objective.

(ii) A change in the individual's educational, professional or vocational objective following the successful completion of the immediately preceding program of education.

(iii) A return to the individual's prior program of education following a change of program if the individual resumes training in the program without any loss of credit or standing in that program, or

(iv) An enrollment in a new program of education when that program leads to a vocational, educational or professional objective in the same general field as the immediately preceding program of education.

(Authority: 38 U.S.C. 3691)

(b) Application. A veteran or eligible person may request a change of program by any form of communication. However, if the veteran or eligible person does not furnish sufficient information to allow the Department of Veterans Affairs to process the request, the Department of Veterans Affairs will furnish the prescribed form for a change of program to him or her for completion.

(Authority: 38 U.S.C. 3471)

(c) Optional change of program. A veteran eligible to receive educational assistance under Chapter 34 or a spouse or surviving spouse eligible to receive educational assistance under Chapter 35 may make one optional change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect or lack of application.

(Authority: 38 U.S.C. 3691(b))

(d) Other changes of program. (1) The following changes of program may not be made solely at the option of the veteran or eligible person. The Department of Veterans Affairs must approve them before paying educational assistance allowance:
(i) A second or subsequent change of program made by a veteran or eligible spouse or surviving spouse,
(ii) An initial change of program made by a veteran or eligible spouse or surviving spouse if the first program was interrupted or discontinued due to his or her own misconduct, neglect or lack of application, or
(iii) Any change of program made by a child.

(2) The Department of Veterans Affairs will approve a change of program listed in paragraph (d)(1) of this section if:

(i) The program of education which the veteran or eligible person proposes to pursue is suitable to his or her aptitudes, interests and abilities,
(ii) In any instance where the veteran or eligible person has interrupted, or failed to progress in his or her program due to his or her own misconduct, neglect or lack of application, there is a reasonable likelihood with respect to the program the veteran or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress, and
(iii) In the case of an eligible child the new program meets the criteria applicable to final approval of an original application. See § 21.4230.

(3) The Department of Veterans Affairs may approve a third or subsequent change of program if applicable conditions of paragraph (d)(2) of this section are met and the additional change or changes are necessitated by circumstances beyond the control of the veteran or eligible person. Circumstances beyond the control of the veteran or eligible person include, but are not limited to:

(i) The course being discontinued by the school when no other similar course leading to the same objective is available within normal commuting distance.
(ii) Unexpected financial difficulties preventing completion of the last program because of the overall cost of the program needed to reach the objective, or
(iii) The veteran or eligible person being required to relocate because of health reasons in an area where training for the last objective is not available within normal commuting distance.

(Authority: 38 U.S.C. 3691)

(4) Notwithstanding any provision of any other paragraph of this section, if a third or subsequent change of program occurs after May 31, 1991, VA will apply only the applicable provisions of paragraph (d)(2) of this section. If the applicable provisions of paragraph (d)(2) of this section are met, VA will approve the change of program. VA will not apply any of the provisions of paragraph (d)(3) of this section in determining whether the change of program should be approved.

(Authority: 38 U.S.C. 3691; Pub. L. 101-366) (June 1, 1991)

(e) Adjustments; transfers. A change in courses or places of training will not be considered a change of objective in the following instances:

(1) The pursuit of the first program is a prerequisite for entrance into and pursuit of a second program.
(2) A transfer from one school to another when the program at the second school leads to the same educational, professional or vocational objective, and does not involve a material loss of credit, or increase training time.
(3) Revision of a program which does not involve a change of objective or material loss of credit nor loss of time originally planned for completion of the veteran's or eligible
person's program. For example, an eligible person enrolled for a bachelor of science degree may show a professional objective such as chemist, teacher or engineer. His or her objective for purposes of this paragraph shall be considered to be "bachelor degree" and any change of courses will be considered only an adjustment in the program, not a change, so long as the subjects he or she pursues lead to the bachelor degree and there is no extension of time in the attaining of that degree.


[EFFECTIVE DATE NOTE: 61 FR 6780, 6783, Feb. 22, 1996, revised paragraphs (a)(2)(ii) and (a)(2)(iii), and added paragraph (a)(2)(iv), effective Feb. 22, 1996.]

CROSS REFERENCE: Counseling. See § 21.4100.

§ 21.4235 Programs of education that include flight training. VA will use the provisions of this section to determine whether an individual may be paid educational assistance for pursuit of flight training. See § 21.4263 for approval of flight courses for VA training.

(a) Eligibility. A veteran or servicemember who is otherwise eligible to receive educational assistance under 38 U.S.C. chapter 30 or 32, or a reservist who is eligible for expanded benefits under 10 U.S.C. chapter 1606 as provided in § 21.7540(b), may receive educational assistance for flight training in an approved course provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (f) of this section, the individual must --

(1) Possess a valid private pilot certificate or higher pilot certificate such as a commercial pilot certificate;

(2) If enrolled in a course other than an Airline Transport Pilot (ATP) course, hold a second-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training.

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

(b) Approval of program. VA may approve the individual's program of education as described on the individual's application if:

(1) The flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; and

(2) The flight training included in the program --

(i) Is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(ii) Is given by an educational institution of higher learning for credit toward a standard college degree that the individual is pursuing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))
(c) Pursuit of flight courses. (1) VA will pay educational assistance to an eligible individual for an enrollment in a commercial pilot certification course leading to Federal Aviation Administration certification for a particular category even if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for a different category, since each category represents a different vocational objective.

(2) VA will pay educational assistance to an eligible individual for an enrollment in an instrument rating course only if the individual simultaneously enrolls in a course required for a commercial pilot certificate for the category for which the instrument rating course is pursued or if, at the time of enrollment in the instrument rating course, the individual has a commercial pilot certificate issued by the Federal Aviation Administration for such category. The enrollment in an instrument rating course alone does not establish that the individual is pursuing a vocational objective, as required for VA purposes, since that rating equally may be applied to an individual's private pilot certificate, only evidencing an intent to pursue a non-vocational objective.

(3) VA will pay educational assistance to an eligible individual for an enrollment in a flight course other than an instrument rating course or a ground instructor course, including courses leading to an aircraft type rating, only if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for the category to which the particular course applies.

(4) VA will pay educational assistance to an eligible individual for an enrollment in a ground instructor certificate course, even though the individual does not have any other flight certificate issued by the Federal Aviation Administration, since the Federal Aviation Administration does not require a flight certificate as a prerequisite to ground instructor certification and ground instructor is a recognized vocational objective.

(5) VA will not pay an eligible individual for simultaneous enrollment in more than one flight course, except as provided in paragraph (c)(2) of this section.

(d) Some individuals are already qualified for a flight course objective. (1) The provisions of §§ 21.5230(a)(4), 21.7110(b)(4), and 21.7610(b)(4), prohibiting payment of educational assistance for enrollment in a course for whose objective the individual is already qualified, apply to enrollments in flight courses.

(2) A former military pilot with the equivalent of a commercial pilot certificate and an instrument rating may obtain a commercial pilot certificate and instrument rating from the Federal Aviation Administration without a flight exam within 12 months of release from active duty. Therefore, VA will consider such a veteran to be already qualified for the objectives of a commercial pilot certification course and an instrument rating course if begun within 12 months of the individual's release from active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3471(4))

(e) Some flight courses are refresher training. The provisions of §§ 21.5230(c), 21.7020(b)(26), 21.7122(b), 21.7520(b)(20), and 21.7610(b)(4) that provide limitations on payment for refresher training that is needed to update an individual's knowledge and skill in order to cope with technological advances while he or she was on active duty service apply to flight training.

(1) An individual who held a Federal Aviation Administration certificate before or during active duty service may have surrendered that certificate or the Federal Aviation Administration may have canceled it. The individual may receive the equivalent of the
number of months of educational assistance necessary to complete the course that will qualify him or her for the same grade certificate.
(2) A reservist is not eligible for refresher training unless he or she has had prior active duty.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))
(i) Flight training at an institution of higher learning. (1) An individual who is eligible for educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 is exempt from the provisions of paragraphs (a)(2) through (d) of this section when his or her courses include flight training that is part of a program of education that leads to a standard college degree.
(2) An individual described in paragraph (f)(1) of this section may pursue courses that may result in the individual eventually receiving recreational pilot certification or private pilot certification, provided that the courses also lead to a standard college degree.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))
[63 FR 34127, 34129, June 23, 1998; 65 FR 12117, 12118, Mar. 8, 2000]

§ 21.4236 Tutorial assistance.
(a) Enrollment. A veteran or eligible person may receive supplemental monetary assistance to provide tutorial services if he or she:
(1) Is pursuing a post-secondary educational program on a half-time or more basis at an educational institution, and
(2) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.
(b) Approval. The Department of Veterans Affairs will grant approval when:
(1) The educational institution certifies that:
(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;
(ii) The tutor selected:
(A) Is qualified, and
(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and
(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and
(2) The assistance is furnished on an individual basis.
(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3492, 3533(b))
(c) Limits on tutorial assistance. (1) VA will authorize the cost of tutorial assistance in an amount not to exceed $ 100 per month.
(2) The total amount of all tutorial assistance provided under this section will not exceed $ 1200.
(Authority: 38 U.S.C. 3019, 3492, 3533(b))
(d) Entitlement charge. VA will make no charge against the veteran's or eligible person's entitlement to educational assistance for any amount of tutorial assistance authorized.
(Authority: 38 U.S.C. 3019, 3492, 3533(b))


[EFFECTIVE DATE NOTE: 61 FR 26107, 26114, May 24, 1996, which amended this section, became effective May 24, 1996.]
COURSES

§ 21.4250 Approval of courses.
§ 21.4251 Minimum period of operation requirement for educational institutions.
§ 21.4252 Courses precluded.
§ 21.4253 Accredited courses.
§ 21.4254 Nonaccredited courses.
§ 21.4255 Refund policy; nonaccredited courses.
§ 21.4256 Correspondence programs and courses.
§ 21.4257 Cooperative courses.
§ 21.4258 Notice of approval.
§ 21.4259 Suspension or disapproval.
§ 21.4260 Courses in foreign countries.
§ 21.4261 Apprentice courses.
§ 21.4262 Other training on-the-job courses.
§ 21.4263 Approval of flight training courses.
§ 21.4264 Farm cooperative courses.
§ 21.4265 Practical training approved as institutional training or on-job training.
§ 21.4266 Courses offered at subsidiary branches or extensions.
§ 21.4267 Approval of independent study.

§ 21.4250 Approval of courses.

(a) General. A course of education, including the class schedules of a resident course (other than a flight course) not leading to a standard college degree, offered by a school must be approved by the State approving agency for the State in which the school is located, or by the State approving agency which has appropriate approval authority, or, where appropriate, by the Department of Veterans Affairs.

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

(1) A course approved under 38 U.S.C. chapter 36 shall be deemed approved for purposes 38 U.S.C. chapter 35.

(2) Any course which was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 prior to March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters will be deemed to be approved for purposes of 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3670)

(b) State approving agencies. Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. Chapter 36 and such regulations and policies as the agency may adopt not in conflict therewith.

(1) Notice of approval. Each State approving agency will furnish to the Department of Veterans Affairs a current list of schools specifying courses which it has approved, and will furnish such other information as it and the Department of Veterans Affairs may determine to be necessary. See § 21.4258.

(2) Notice of suspension of approval or disapproval. Each State approving agency will notify the Department of Veterans Affairs of the suspension of approval or disapproval of any course previously approved and will set forth the reasons for such suspension of approval or disapproval. See § 21.4259.
(Authority: 38 U.S.C. 3672(a))

(3) Failure to act. If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Department of Veterans Affairs.

(c) Department of Veterans Affairs approval. (1) The Director, Vocational Rehabilitation and Employment Service may approve special restorative training in excess of 12 months to overcome or lessen the effects of a physical or mental disability to enable an eligible child to pursue a program of education under 38 U.S.C. chapter 35.

(2) The Director, Education Service may approve --

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapters 30, 32, 35, or 36 offered by a school located in the Canal Zone, Guam or Samoa;


(iii) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36; and

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of Title 29 U.S.C. as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State.

(Authority: 38 U.S.C. 3241, 3476, 3523, 3672(b), 3672(c))


[CROSS REFERENCE: State approving agencies. See § 21.4150(e).]

§ 21.4251 Minimum period of operation requirement for educational institutions.

(a) Definitions. The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) Control. The term control (including the term controlling) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) Person. The term person means an individual, corporation, partnership, or other legal entity.

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

(b) Some educational institutions must be in operation for 2 years. Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course
not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution --
(1) Has been operating for less than 2 years;
(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or
(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution, after such change or move, has been in operation for at least 2 years.

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

(c) Exception to the 2-year operation requirement. Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that --
(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and
(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

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

(d) Operation for 2 years. VA will consider, for the purposes of paragraph (b) of this section, that a proprietary educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution) --
(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and
(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students.

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

(e) Move outside the same general locality. A proprietary educational institution (or a branch or extension thereof) will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, i.e., 55 miles or more from the original location.

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

(f) Change of ownership. (1) A change of ownership of a proprietary educational institution occurs when --
(i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or
(ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:
(i) The sale of the educational institution;
(ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;
(iii) The merger of 2 or more educational institutions; and
(iv) The division of one educational institution into 2 or more educational institutions.
(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:
(i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or
(ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer.
(Authority: 38 U.S.C. 3680A(e))
(g) Substantially the same faculty, student body, and courses. VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.
(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.
(2) VA will consider that the courses remain substantially the same at an educational institution when:
(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and
(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.
(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution after the move or change in ownership.
(Authority: 38 U.S.C. 3680A(e) and (f)(1))
§ 21.4252 Courses precluded.
(a) Bartending and personality development. Enrollment will not be approved in any bartending or personality development course.
(b) Avocational and recreational. Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraphs (b)(1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or
(2) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or
(3) Any other type of course which the Department of Veterans Affairs determines to be avocational or recreational.

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

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

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

(1) A course of flight training to obtain a private pilot's license or equivalent level training; or
(2) Any course of flight training under Chapter 35.

(3) [Redesignated as paragraph (c)(2). See 61 FR 26107, 26114, May 24, 1996.]

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

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

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

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

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

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

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

(g) Independent study. (1) Effective October 29, 1992, VA may pay educational assistance to a veteran who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if --
(i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran to complete his or her program of education; and the veteran --
(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and
(B) Has remained continuously enrolled in that program of education from October 29, 1992, to the date the veteran enrolls in the nonaccredited independent study course or unit subject; or
(ii) Was enrolled in and receiving educational assistance for the nonaccredited independent study course or unit subject on October 29, 1992, and remains continuously enrolled in that course or unit subject.

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


(h) Erroneous, deceptive, misleading practices. (1) The Department of Veterans Affairs will not approve an enrollment in any course offered by an institution which uses advertising, sales, or enrollment practices which are erroneous, deceptive, or misleading by actual statement, omission, or intimation. As provided by section 3696, Title 38 U.S.C., the Department of Veterans Affairs shall use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement:
(i) To carry out investigations, and
(ii) To make determinations under this paragraph.

(2) To ensure compliance, any institution offering courses approved for the enrollment of veterans or eligible persons shall maintain a complete record of all advertising, sales, or enrollment materials (and copies of each) used by or on behalf of the institution during the preceding 12-month period. This record shall be available for inspection by the State approving agency or the Department of Veterans Affairs. These materials shall include, but are not limited to:
(i) Any direct mail pieces,
(ii) Brochures,
(iii) Printed literature used by sales people,
(iv) Films, video cassettes and audio tapes disseminated through broadcast media,
(v) Material disseminated through print media,
(vi) Tear sheets,
(vii) Leaflets,
(viii) Handbills,
(ix) Fliers, and
(x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution.

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

(i) Audited courses. The school's certifications shall exclude courses which are being audited by the veteran or eligible person, since no educational assistance allowances shall be paid for such courses.

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

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

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

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

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

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

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

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

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

(A) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university;
(B) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program;
(C) At least 90 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted;
(D) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

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

(A) Certifies to the appropriate State approving agency that as a result of an agreement between that college or university and the college or university offering the second part of the program, all of the courses taken by the veteran or eligible person in the first part of the program, will be accepted by the college or university offering the second part of the program without any loss of credit in partial fulfillment of the requirements for an
associate or higher degree. This certification may be made once for each program for which an agreement exists.
(B) Certifies to VA that the veteran or eligible person has stated to an appropriate official of the college or university offering the first part of the program that he or she is pursuing the program.
(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an associate degree may be given at a 2-year college, while the remainder may be offered at a 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional study at the 2-year college, VA may approve an enrollment in a course offered in the program at the 2-year college only if the certifications described in either paragraph (l)(3)(i) or (ii) of this section are made.
(i) The college or university granting the baccalaureate degree certifies that:
(A) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree,
(B) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and
(C) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.
(ii) Either the 2-year college or the college or university granting the baccalaureate degree:
(A) Certifies to the appropriate State approving agency that as a result of agreement between the 2-year college and the college or university offering the baccalaureate degree all of the courses pursued beyond the associate degree will be accepted without any loss of credit in partial fulfillment of the requirements for a baccalaureate degree. This certification may be made once for each program for which an agreement exists.
(B) Certifies to VA that the veteran or eligible person is enrolled in courses covered by the agreement.
(4) Except as provided in paragraphs (l)(1), (2), and (3) of this section, the Department of Veterans Affairs will not approve a veteran's or eligible person's enrollment in a course or subject if the veteran or eligible person:
(i) Is pursuing a degree, and
(ii) Is not matriculated.
(5) Nothing in this paragraph shall prevent a State approving agency from including more restrictive matriculation requirements in its approval criteria.
(Authority: 38 U.S.C. 3452)
(m) Courses offered under contract. VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by §§ 21.4253, 21.4254, 21.4256, 21.4257, 21.4260, 21.4261, 21.4263, 21.4264, 21.4265, 21.4266, or 21.4267, as appropriate.
(Authority: 38 U.S.C. 3680A(f) and (g))
§ 21.4253 Accredited courses.
(a) General. A course may be approved as an accredited course if it meets one of the following requirements:
(1) The course has been accredited and approved by a nationally recognized accrediting agency or association. "Candidate for accreditation" status is not a basis for approval of a course as accredited.
(2) Credit for such course is approved by the State department of education for credit toward a high school diploma.
(3) The course is conducted under the Act of February 23, 1917 (20 U.S.C. 11 et seq.).
(4) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree.
(5) The course is approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).
(Authority: 38 U.S.C. 3675(a))
(b) Course objective. Any curriculum offered by an educational institution which is a member of one of the nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will be accepted as an accredited course when approved as such by the State approving agency. Any curriculum accredited by one of the specialized nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will also be accepted as an accredited course when approved as such by the State approving agency. Approval of the individual subjects, required or elective, which are designated as a part of a degree curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum. The course objective may be educational (high school diploma or a standard college degree) or it may be vocational or professional (an occupation).
(c) Accrediting agencies. A nationally recognized accrediting agency or association is one that appears on the list published by the Secretary of Education as required by 38 U.S.C. 3675(a). The State approving agencies may use the accreditation of these accrediting agencies or associations for approval of the course specifically accredited and approved by the agency or association.
(d) School qualification. A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school
when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency:

(1) The institution (other than an elementary or secondary school) has submitted to the State approving agency copies of its catalog or bulletin which are certified as true and correct in content and policy by an authorized representative, and the publication shall:

(i) State with specificity the requirements of the institution with respect to graduation;
(ii) Include institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, a description of the probationary period, if any, allowed by the institution, conditions of reenforcement for those students dismissed for unsatisfactory progress, and a statement regarding progress records kept by the institution and furnished the student);
(iii) Include institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct; and
(iv) Include any attendance standards of the institution if the institution has and enforces such standards.

(Authority: 38 U.S.C. 3675(a), 3676(b))

(2) Adequate records are kept by the school to show the progress of each veteran or eligible person. The records must be sufficient to show continued pursuit at the rate for which enrolled and the progress being made. They must include final grade in each subject for each term, quarter, or semester; record of withdrawal from any subject to include the last date of attendance for a resident course; and record of reenrollment in subjects from which there was a withdrawal; and may include such records as attendance for resident courses, periodic grades and examination results.

(3) The school maintains a written record of previous education and training of the veteran or eligible person which clearly indicates that appropriate credit has been given by the school for previous education and training, with the training period shortened proportionately, and the person and the Department of Veterans Affairs so notified. The record must be cumulative in that the results of each enrollment period (term, quarter or semester) must be included so that it shows each subject undertaken and the final result, i.e., passed, failed, incomplete or withdrawn.

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

(4) The school enforces a policy relative to standards of conduct and progress required of the student. The school policy relative to standards of progress must be specific enough to determine the point in time when educational benefits should be discontinued, pursuant to 38 U.S.C. 3474 when the veteran or eligible person ceases to make satisfactory progress. The policy must include the grade or grade point average that will be maintained if the student is to graduate. For example, a 4-year college may require a 1.5 grade point average the first year, a 1.75 average at mid-year the second year, and a cumulative average of 2.0 thereafter on the basis of 4.0 for an A.

(5) If the school has a standard of attendance, it maintains records of attendance for veterans and eligible persons enrolled in resident courses which are adequate to show the student meets the school's standard of attendance.

(Authority: 38 U.S.C. 3474, 3675)
(6) The accredited courses, the curriculum of which they form a part, and the instruction connected with those courses are consistent in quality, content, and length with similar courses in public educational institutions and other private educational institutions in the State with recognized accepted standards.

(7) There is in the educational institution offering the course adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(8) The educational and experience qualifications of directors, and administrators of the educational institution offering the courses, and instructors teaching the courses for which approval is sought, are adequate.

(Authority: 38 U.S.C. 3675(b), 3676(c)(1), (2), (3))

(e) College level. Under the provisions of paragraph (a)(1) of this section, any course at college level approved by the State approving agency as an accredited course will be accepted by the Department of Veterans Affairs as an accredited course when all of the following conditions are met:

(1) The college or university is accredited by a nationally recognized regional accrediting agency listed by the Secretary of Education or the course is accredited at the college level by a specialized accrediting agency or association recognized by the Secretary of Education; and

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

(2) The course has entrance requirements of not less than the requirements applicable to the college level program of the school; and

(3) Credit for the course is awarded in terms of standard semester or quarter hours or by recognition at completion by the granting of a standard college degree.

(f) Courses not leading to a standard college degree. Any course in a school approved by the State approving agency will be accepted as an accredited course when all of the following conditions are met:

(1) The course or the school offering such course is accredited by the appropriate accrediting agency; and

(2) The course offers training in the field for which the accrediting agency is recognized and at a level for which it is recognized; and

(3) The course leads to a high school diploma or a vocational objective.


[EFFECTIVE DATE NOTE: 65 FR 81740, 81742, Dec. 27, 2000, added paragraphs (d)(6), (d)(7), and (d)(8), effective Dec. 27, 2000.]

§ 21.4254 Nonaccredited courses.

(a) General. Nonaccredited courses are courses which are not approved as accredited courses and which are offered by a public or private, profit or nonprofit, educational institution. These include nonaccredited courses offered by extension centers or divisions, or vocational or adult education departments of institutions of higher learning.

(b) Application. Any school desiring to enroll veterans or eligible persons in nonaccredited courses will submit a written application to the appropriate State approving agency for approval of such courses (38 U.S.C. 3676(a)). Such application will be
accompanied by not less than two copies of the current catalog or bulletin which is
certified as true and correct in content and policy by an authorized owner or official of
the school and will include the following:
(1) Identifying data, such as volume number, and date of publication;
(2) Names of the school and its governing body, officials, and faculty;
(3) A calendar of the school showing legal holidays, beginning and ending date of each
quarter, term, or semester, and other important dates;
(4) School policy and regulations on enrollment with respect to enrollment dates and
specific entrance requirements for each course;
(5) School policy and regulations relative to leave, absences, class cuts, makeup work,
tardiness, and interruptions for unsatisfactory attendance;
(6) School policy and regulations relative to standards of progress required of the student.
This policy will define the grading system of the school, the minimum grades considered
satisfactory conditions for interruption for unsatisfactory grades or progress, and a
description of the probationary period, if any, allowed by the school, and conditions of
reentrance for those students dismissed for unsatisfactory progress. A statement will be
made regarding progress records kept by the school and furnished the student;
(7) School policy and regulations relating to student conduct and conditions for dismissal
for unsatisfactory conduct;
(8) Detailed schedule of fees, charges for tuition, books, supplies, tools, student activities,
laboratory fees, service charges, rentals, deposits, and all other charges;
(9) Policy and regulations relative to the refund of the unused portion of tuition, fees, and
other charges in the event the student does not enter the course, or withdraws, or is
discontinued therefrom;
(10) A description of the available space, facilities, and equipment;
(11) A course outline for each course for which approval is requested, showing subjects
or units in the course, type of work, or skill to be learned, and approximate time and
clock hours to be spent on each subject or unit; and
(12) Policy and regulations relative to granting credit for previous education and training.
(Authority: 38 U.S.C. 3676(b))
(c) Approval criteria. The appropriate State approving agency may approve the
application of such school when the school and its nonaccredited courses are found upon
investigation to have met the following criteria:
(1) The courses, curriculum, and instruction are consistent in quality, content, and length
with similar recognized accepted standards.
(2) There is in the school adequate space, equipment, instructional material, and
instructor personnel to provide training of good quality.
(3) Educational and experience qualifications of directors, administrators, and instructors
are adequate.
(4) The school maintains a written record of the previous education and training of the
veteran or eligible person and clearly indicates that appropriate credit has been given for
previous education and training, with the training period shortened proportionately, and
the veteran or eligible person and the Department of Veterans Affairs so notified.
(5) A copy of the course outline, schedule of tuition, fees, and other charges, regulations
pertaining to absences, grading policy, and rules of operation and conduct will be
furnished the veteran or eligible person upon enrollment.
(6) Upon completion of training, the veteran or eligible person is given a certificate by the school indicating the approved course and indicating that training was satisfactorily completed.
(7) Adequate records as prescribed by the State approving agency are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.
(8) The school complies with all local, city, county, municipal, State, and Federal regulations, such as fire codes, building, and sanitation codes. The State approving agency may require such evidence of compliance as it deemed necessary.
(9) The school is financially sound and capable of fulfilling its commitments for training.
(10) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation. The school will not be deemed to have met this requirement until the State approving agency:
   (i) Has ascertained from the Federal Trade Commission whether the Commission has issued an order to the school to cease and desist from any act or practice, and
   (ii) Has, if such an order has been issued, given due weight to that fact.
(11) The school does not exceed its enrollment limitations as established by the State approving agency.
(12) The school administrators, directors, owners, and instructors are of good reputation and character.
(13) The school either: (i) Has and maintains a policy for the pro rata refund of the unused portion of tuition, fees and charges if the veteran or eligible person fails to enter the course or withdraws or is discontinued from it before completion, or (ii) Has obtained a waiver of this requirement. See § 21.4255.
(Authority: 38 U.S.C. 3676)
(14) Such additional reasonable criteria as may be deemed necessary by the State approving agency.
(d) Limitations on course approval. Notwithstanding any other provision of this section, a State approving agency shall not approve a nonaccredited course if it is to be pursued in whole or in part by independent study.
(Authority: 38 U.S.C. 3676(e))

(38 U.S.C. 3676(c))
[EFFECTIVE DATE NOTE: 61 FR 6780, 6783, Feb. 22, 1996, which added paragraph (d) and its authority citation, became effective Feb. 22, 1996.]

§ 21.4255 Refund policy; nonaccredited courses.
(a) Acceptable refund policy. A refund policy meets the requirements of § 21.4254(c)(13), if it provides that the amount charged for tuition, fees, and other charges for a portion of the course does not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to the total length. The school may make provision for refund within the following limitations:
(1) Registration fee. An established registration fee in an amount not to exceed $10 need not be subject to proration. Where the established registration fee is more than $10, the amount in excess of $10 will be subject to proration.

(2) Breakage fee. Where the school has a breakage fee, it may provide for the retention of only the exact amount of the breakage, with the remaining part, if any, to be refunded.

(3) Consumable instructional supplies. Where the school makes a separate charge for consumable instructional supplies, as distinguished from laboratory fees, the exact amount of the charges for supplies consumed may be retained but any remaining part must be refunded.

(4) Books, supplies and equipment. (i) A veteran or eligible person may retain or dispose of books, supplies and equipment at his or her discretion when:
(A) He or she purchased them from a bookstore or other source, and
(B) Their cost is separate and independent from the charge made by the school for tuition and fees.
(ii) The school will make a refund in full for the amount of the charge for unissued books, supplies and equipment when:
(A) The school furnishes the books, supplies and equipment.
(B) The school includes their cost in the total charge payable to the school for the course.
(C) The veteran or eligible person withdraws or is discontinued before completing the course.
(iii) The veteran or eligible person may dispose of issued items at his or her discretion even if they were included in the total charges payable to the school for the course.

(5) Tuition and other charges. Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran or eligible person than the approximate pro rata basis as provided in this paragraph, such established policy will be applicable. Otherwise, the school may charge a sum which does not vary more than 10 percent from the exact pro rata portion of such tuition, fees, and other charges that the length of the completed portion of the course bears to its total length. The exact proration will be determined on the ratio of the number of days of instruction completed by the student to the total number of instructional days in the course.

(6) Prompt refund. In the event that the veteran, spouse, surviving spouse or child fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion of the course, the unused portion of the tuition, fees and other charges paid by the individual shall be refunded promptly. Any institution which fails to forward any refund due within 40 days after such a change in status, shall be deemed, prima facie, to have failed to make a prompt refund, as required by this paragraph.

(b) Waiver. (1) An educational institution may apply through the appropriate State approving agency to the Director of the VA facility of jurisdiction for a waiver of the requirements of paragraph (a) of this section as they apply to a veteran or eligible person. The State approving agency shall forward the application to the Director along with its recommendations. The Director shall consider the recommendations and shall grant a waiver only when he or she finds that the educational institution:
(i) Is a college, university, or similar institution offering post-secondary level academic instruction leading to an associate or higher degree;
(ii) Is operated by an agency of a State or a unit of local government;
§ 21.4256 Correspondence programs and courses.

(a) Approval of correspondence programs and courses. (1) An educational institution desiring to enroll veterans under 38 U.S.C. chapter 30 or 32, spouses and/or surviving spouses under 38 U.S.C. chapter 35, and/or reservists under 10 U.S.C. chapter 1606 in a program of education to be pursued exclusively by correspondence, or in the correspondence portion of a combination correspondence-residence course, may have the program or course approved only when the educational institution meets the requirements of §§ 21.4252(e), 21.4253, and 21.4279, as applicable.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0575)

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

(2) The application of an educational institution for approval of a program of education to be pursued exclusively by correspondence or the correspondence portion of a combined correspondence-residence course must demonstrate that the program or course is satisfactory in all elements. The educational institution must certify to the State approving agency that at least 50 percent of those pursuing the program or course require six months or more to complete it. For applications for approval that are pending approval by the State approving agency on February 2, 1995, and for applications received by the State approving agency after that date, the required certification shall be based on the experience of students who completed the program or course during the six-month period immediately preceding the educational institution's application for approval.

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

(3) State approving agencies have the authority to review periodically the length of time needed to complete each approved correspondence program or approved correspondence-residence course in order to determine whether the program or course should continue to be approved. In implementing this authority, a State approving agency will examine the results over a prior two-year period reasonably related to the date on which such a review is conducted.

(Authority: 38 U.S.C. 3672(e))
(b) Enrollment agreement. (1) An educational institution offering a program of education to be pursued exclusively by correspondence must enter into an enrollment agreement with the veteran, spouse, surviving spouse, or reservist who wishes to receive educational assistance from VA while pursuing the program. The enrollment agreement shall disclose fully the obligations of the institution and the veteran, spouse, surviving spouse, or reservist, and shall display in a prominent place on the agreement the conditions for affirmance, termination, refund, and payment of the educational assistance by VA.  

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(a)(1), 3686(b))

(2) A copy of the agreement shall be given to the veteran, spouse, surviving spouse, or reservist when it is signed.  

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(3) The agreement shall not be effective unless the veteran, spouse, surviving spouse, or reservist after the expiration of 10 days after the agreement is signed, shall have signed and submitted to VA a written statement, with a signed copy to the institution, specifically affirming the agreement.  

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0576)

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(c) Mandatory refund policy. (1) Upon notification of the educational institution by the veteran, spouse, surviving spouse, or reservist of an intention not to affirm the enrollment agreement, any fees paid by the individual shall be returned promptly in full to him or her.  

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(2) Upon termination of enrollment under an affirmed enrollment agreement for training in the accredited course by the veteran, spouse, surviving spouse, or reservist, without having completed any lessons, a registration fee not in excess of 10 percent of the tuition for the course or $50, whichever is less, may be charged him or her. When the individual terminates the agreement after completion of less than 25 percent of the lessons of the course, the institution may retain the registration fee plus 25 percent of the tuition. When the individual terminates the agreement after completing 25 percent but less than 50 percent of the lessons, the institution may retain the registration fee plus 50 percent of the tuition. If 50 percent or more of the lessons are completed, no refund of tuition is required.  

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(3) Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran, spouse, surviving spouse, or reservist than the pro rata basis as provided in paragraph (b)(2) of this section, such established policy will be applicable.  

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(4) Any institution that fails to forward any refund due to the veteran, spouse, surviving spouse, or reservist within 40 days after receipt of a notice of termination or disaffirmance, shall be deemed, prima facie, to have failed to make a prompt refund as required by this section.  

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

§ 21.4257 Cooperative courses.
A cooperative course may be approved when the course meets the requirement of § 21.4233(a).
[31 FR 6774, May 6, 1966]

§ 21.4258 Notice of approval.
(a) The State approving agency, upon determining that a school has complied with all the requirements for approval will notify the school by letter setting forth the courses which have been approved, and will furnish to the Department of Veterans Affairs an official copy of the letter and attachments and any subsequent amendments. The letter of approval for each school will be accompanied by a copy of the catalog or bulletin of the school, as approved by the State approving agency, and will contain the following information:
(1) Date of letter and effective date of approval of courses;
(2) Proper address and name of each school;
(3) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin published by the school;
(4) Name of each course approved;
(5) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;
(6) Signature of responsible official of State approving agency; and
(7) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency.
(Authority: 38 U.S.C. 3678)
(b) For institutions of higher learning, the letter of approval may identify approved courses and subjects by reference to page numbers in the school catalog or bulletin in lieu of a listing by name as required in paragraph (a)(4) of this section.
(c) For apprentice and other on-the-job training, the provisions of paragraph (a) of this section are applicable to approval of courses pursued in training establishments. The copy of the notice of approval furnished to the Department of Veterans Affairs will be accompanied by one copy of the application submitted by the training establishment.
(d) Compliance with equal opportunity laws. (1) The State approving agency shall solicit assurance of compliance with:
(i) Title VI, Civil Rights Act of 1964,
(ii) Title IX, Education Amendments of 1972, as amended,
(iii) Section 504, Rehabilitation Act of 1973,
(iv) The Age Discrimination Act of 1975, and
(v) All Department of Veterans Affairs regulations adopted to carry out these laws.
(2) The State approving agency shall solicit this assurance from:
(i) Proprietary vocational, trade, technical, or other institutions and such schools not a part of a public elementary or secondary school.

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(ii) All other educational institutions which the Department of Education has not
determined to be in compliance with the equal opportunity laws listed in paragraph (d)(1)
of this section.
(3) Whenever a State approving agency forwards to VA a Notice of Approval for a
course offered by an institution described in paragraph (d)(2) of this section, it shall also
forward the institution's signed statement of compliance with these equal opportunity
laws.


§ 21.4259 Suspension or disapproval.
(a) The appropriate State approving agency, after approving any course:
(1) May suspend the approval of the course for new enrollments for a period not to
exceed 60 days to allow the institution to correct any deficiencies, if the evidence of
record establishes that the course fails to meet any of the requirements for approval.
(2) Will immediately disapprove the course, if any of the requirements for approval are
not being met and the deficiency cannot be corrected within a period of 60 days.
(3) Upon suspension or disapproval, the State approving agency will notify the school by
certified or registered letter with a return receipt secured (38 U.S.C. 3679). It is
incumbent upon the State approving agency to determine the conduct of courses and to
take immediate appropriate action in each case in which it is found that the conduct of a
course in any manner fails to comply with the requirements for approval.
(b) Each State approving agency will immediately notify the Department of Veterans
Affairs of each course which it has suspended or disapproved.
(c) The Department of Veterans Affairs will suspend approval for or disapprove courses
under conditions specified in paragraph (a) of this section where it functions for the State
approving agency. See § 21.4150(c).
(d) The Department of Veterans Affairs will immediately notify the State approving
agency in each case of Department of Veterans Affairs suspension or disapproval of any
school under Chapter 31.
[41 FR 30640, July 26, 1976]

(38 U.S.C. 3679)

§ 21.4260 Courses in foreign countries.
(a) Approval of postsecondary courses in foreign countries. (1) In order to be approved a
postsecondary course offered in a foreign country must meet all the provisions of this
paragraph. A course offered by a foreign medical school (other than one located in
Canada) must also meet all of the provisions of paragraph (b) of this section.
(i) The educational institution offering the course is an institution of higher learning, and
(ii) The course leads to a standard college degree or its equivalent.
(2) For the purpose of this paragraph, a degree is the equivalent of a standard college
degree when the program leading to the degree has the same entrance requirements as
one leading to a degree granted by a public degree-granting institution of higher learning
in that country.
(b) Approval of courses offered by a foreign medical school. In addition to meeting all the criteria stated in paragraph (a) of this section, a course offered by a foreign medical school (other than one located in Canada) must also meet all of the following criteria:

1. The school satisfies the criteria for listing as a medical school in the World Directory of Medical Schools published by the World Health Organization (WHO).
2. The evaluating bodies (such as medical associations or educational agencies) whose views are considered relevant by the Director, Education Service, and which are located in the same country as the school --
   i. Recognize the school as a medical school, and
   ii. Approve the school.
3. The school provides, and in the normal course requires its students to complete, a program of clinical and classroom instruction at least 32 months long. This program must be --
   i. Supervised closely by members of the school's faculty, and
   ii. Provided either.
   A. Outside the United States in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or
   B. Inside the United States, through a training program for foreign medical students which has been approved by all the medical licensing boards and evaluating bodies whose views are considered relevant by the Director, Education Service.
4. The school has graduated classes during each of the two 12-month periods immediately preceding the date on which VA receives the school's application for approval of its courses.
5. The Director, Education Service, shall withdraw approval of any course when the course or the school offering it fails to meet any of the approval criteria in this section or in Chapter 36, Title 38 U.S.C.
6. In making the decisions required by this paragraph, the Director, Education Service, may consult with the Secretary of Education. The Director may review any information about a foreign medical school which the Secretary may make available.

c) Approval of enrollments in foreign courses. (1) Except as provided in paragraph (c)(2) of this section, the Department of Veterans Affairs will approve the enrollment of a veteran or eligible person in a course offered by an educational institution not located in a State when --
   i. The eligible person, serviceperson, veteran, or reservist meets the eligibility and entitlement requirements of either §§ 21.3040 through 21.3046, §§ 21.5040 and 21.5041, §§ 21.7040 through 21.7045, or § 21.7540, as appropriate;
   ii. The eligible person's, serviceperson's, veteran's, or reservist's program of education meets the requirements of either § 21.3021(h), § 21.5230, § 21.7020(b)(23), or § 21.7520(b)(17), as appropriate; and
   iii. The course meets the requirements of this section and all other applicable VA regulations.
2. VA may deny or discontinue the payment of educational assistance allowance to a veteran, serviceperson, eligible person or reservist pursuing a course in an institution of higher learning not located in a State when VA finds that the veteran's, serviceperson's, eligible person's, or reservist's enrollment is not in his or her best interest or the best interest of the Federal Government.
§ 21.4261 Apprentice courses.

(a) General. An apprentice course is any training on-the-job course which has been established as an apprentice course by a training establishment as defined in § 21.4200(c) and which has been approved as an apprentice course by the State approving agency.

(b) Application. Any training establishment desiring to furnish a course of apprentice training will submit a written application to the appropriate State approving agency setting forth the following:

1. Title and description of the specific job objective for which the veteran or eligible person is to be trained;
2. The length of the training period;
3. A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;
4. The number of hours of supplemental related instruction required; and
5. Any additional information required by the State approving agency.

(c) Approval criteria. The appropriate State approving agency may approve a course of apprentice training when the training establishment and its apprentice courses are found upon investigation to have met the following criteria:

1. The standards of apprenticeship published by the Secretary of Labor pursuant to 29 U.S.C. 50a;
2. A signed copy of the training agreement for each veteran or eligible person, making reference to the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Department of Veterans Affairs and the State approving agency by the employer; and
3. The course meets such other reasonable criteria as may be established by the State approving agency.

(Authority: 38 U.S.C. 3687)

(d) Promotion. As funding permits, Department of Veterans Affairs employees will promote the development of apprenticeships. They will:

1. Visit employers and joint apprenticeship committees,
2. Coordinate their efforts with activities of any State approving agencies that may choose to promote the development of apprenticeships, and
3. Avoid duplicating the efforts of others by coordinating their promotional efforts with similar activities of the Department of Labor and State employment security agencies as
provided by written agreements covering these activities, including utilization of disabled veterans' outreach program specialists.

(38 U.S.C. 3672(d))

§ 21.4262 Other training on-the-job courses.
(a) General. An "other training on-the-job" course is any training on the job which does not qualify as an apprentice course, as defined in § 21.4261, but which otherwise meets the requirements of paragraph (c) of this section.
(b) Application. Any training establishment desiring to furnish a course of other training on-the-job will submit to the appropriate State approving agency a written application setting forth the following:
(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;
(2) The length of the training period;
(3) A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;
(4) The number of hours of supplemental related instruction required;
(5) The entrance wage or salary paid by the training establishment to employees already trained in the kind of work for which the veteran or eligible person is to be trained;
(6) A certification that the wages to be paid the veteran or eligible person upon entrance into training are not less than wages paid nonveterans in the same training position and are at least 50 percent of the wages paid for the job for which he or she is to be trained, and will be increased in regular periodic increments until, not later than the last full month of the scheduled training period they will be at least 85 percent of the wages paid for the job for which the veteran or eligible person is being trained;
(7) A certification that there is reasonable certainty that the job for which the veteran or eligible person is to be trained will be available to him or her at the end of the training period; and
(8) Any additional information required by the State approving agency.
(c) Approval criteria. The appropriate State approving agency may approve the application submitted under paragraph (b) of this section, when the training establishment and its courses are found upon investigation to have met the criteria outlined in this paragraph. Approval will not be granted for training in occupations which require a relatively short period of experience for a trainee to obtain and hold employment at the market wage in the occupation. This includes occupations such as automobile service station attendant or manager, soda fountain attendant, food service worker, salesman, window washer, building custodian or other unskilled or common labor positions as well as clerical positions for which on-the-job training is not the normal method of procuring qualified personnel.
(1) The job which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on-the-job and not on such factors as length of service and normal turnover;
(2) The training content of the course is adequate to qualify the veteran or eligible person for appointment to the job for which he or she is to be trained;
(3) The job customarily requires a period of training of not less than 6 months and not more than 2 years of full-time training;
(4) The length of the training period is not longer than that customarily required by the training establishments in the community to provide the veteran or eligible person with the required skills, arrange for the acquiring of job knowledge, technical information, and other facts which the veteran or eligible person will need to learn in order to become competent on the job for which he or she is being trained;
(5) Provision is made for related instruction for the individual veteran or eligible person who may need it;
(6) There is in the training establishment adequate space, equipment, instructional material, and instructor personnel to provide satisfactory training on-the-job;
(7) Adequate records are kept to show the progress made by each veteran or eligible person toward his or her job objective;
(8) The veteran or eligible person is not already qualified by training and experience for the job;
(9) The requirements of paragraphs (b)(6) and (7) of this section are met;
(10) A signed copy of the training agreement for each veteran or eligible person, including the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Department of Veterans Affairs and the State approving agency by the employer; and
(11) The course meets such other reasonable criteria as may be established by the State approving agency.

(Authority: 38 U.S.C. 3677)

(d) Promotion. As funding permits, Department of Veterans Affairs employees will promote the development of on-the-job training courses. They will:
(1) Visit employers,
(2) Coordinate their efforts with activities of any State approving agencies that may choose to promote the development of on-the-job training courses, and
(3) Avoid duplicating the efforts of others by coordinating their promotional efforts with similar activities of the Department of Labor and State employment security agencies as provided by written agreements covering these activities, including utilization of disabled veterans’ outreach program specialists.


(38 U.S.C. 3672(d))

§ 21.4263 Approval of flight training courses.
(a) A flight school or institution of higher learning are the only entities that can offer flight courses. A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it. The provisions of § 21.4150 shall determine the proper State approving agency for approving a flight course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b), 3671, 3672, 3676)
(b) Definition of flight school. A flight school is a school, other than an institution of higher learning, or is an entity, such as an aero club; is located in a State; and meets one of the following sets of requirements:

(1) The Federal Aviation Administration has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141;

(2) The entity is either a flight training center or an air carrier that does not have a pilot school certificate or provisional pilot school certificate issued by the Federal Aviation Administration under 14 CFR part 141, but pursuant to a grant of exemption letter issued by the Federal Aviation Administration under 14 CFR part 61 is permitted to offer pilot training by a flight simulator instead of an actual aircraft; or

(3) The Federal Aviation Administration has issued the school or entity a training center certificate under 14 CFR part 142.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452(c))

(c) Aero club courses. An aero club, established, formed, and operated under authority of service department regulations as a nonappropriated sundry fund activity, is an instrumentality of the Federal government. Consequently, VA has exclusive jurisdiction over approval of flight courses offered by such aero clubs.

(Authority: 38 U.S.C. 3671, 3672)

(d) Approval of flight training as part of a degree program. A State approving agency may approve a flight training course that is part of a program of education leading to a standard college degree provided the course and program meet the requirements of § 21.4253 or § 21.4254, as appropriate. The institution of higher learning offering the course need not be a flight school.

(Authority: 38 U.S.C. 3675, 3676)

(e) Approval of flight training courses that are not part of a degree program. A flight course is subject to the same approval requirements as any other course. In addition, the State approving agency must apply the following provisions to the approval of flight courses:

(1) The Federal Aviation Administration must approve the course; and

(2)(i) The course must meet the requirements of 14 CFR part 63 or 141, and a flight school described in paragraph (b)(1) or (b)(3) of this section must offer it; or

(ii) The course must meet the requirements of 14 CFR part 61, and either be offered --

(A) By a flight school described in paragraph (b)(3) of this section; or

(B) In whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the Federal Aviation Administration to the flight school offering the course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b), 3676, 3680A)

(f) Application of 38 U.S.C. 3680A(e)(2) to flight training. Notwithstanding the fact that the Federal Aviation Administration will permit flight schools to conduct training at a base other than the main base of operations if the requirements of either 14 CFR 141.91 or 14 CFR 142.17 are met, the satellite base is considered under 38 U.S.C. 3680A(e)(2) to be a branch of the principal school, and must meet the requirements of 38 U.S.C. 3680A(e)(2).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3680A)
(g) Providing a flight course under contract between schools or entities. When a school or entity offers all or part of a flight course under a contract with another school or entity, the State approving agency must apply § 21.4233 in the following manner:

1. The requirements of § 21.4233(c) must be met for all contracted flight instruction, instruction by flight training device, flight simulator instruction, and ground school training. Ground school training may be given through a ground school facility operated jointly by two or more flight schools in the same locality; and

2. The responsibility for providing the instruction lies with the flight school. The degree of affiliation between the flight school and the entity or other school that actually does the instructing must be such that all charges for instruction are made by, and paid to, one entity having jurisdiction and control over both the flight and ground portions of the program.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b))

(h) Nonaccredited courses. (1) Application of § 21.4254 to flight training. The provisions of § 21.4254 are applicable to approval of flight training courses.

2. Additional instruction requirements. The State approving agency will apply the following additional requirements to a flight course:

   (i) All flight instruction, instruction by flight training device, flight simulator instruction, preflight briefings and postflight critiques, and ground school training in a course must be given by the flight school or under suitable arrangements between the school and another school or entity such as a local community college.

   (ii) All ground school training connected with the course must be in residence under the direction and supervision of a qualified instructor providing an opportunity for interaction between the students and the instructor. Simply making provision for having an instructor available to answer questions does not satisfy this requirement.

3. A flight school must keep at a minimum the following records for each eligible veteran, servicemember, or reservist pursuing flight training:

   (i) A copy of his or her private pilot certificate;

   (ii) Evidence of completion of any prior training that may be a prerequisite for the course;

   (iii) A copy of the medical certificate required by paragraph (a)(2) of this section for the courses being pursued and copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction received at the current school;

   (iv) A daily flight log or copy thereof;

   (v) A permanent ground school record;

   (vi) A progress log;

   (vii) An invoice of flight changes for individual flights or flight lessons for training conducted on a flight simulator or advanced flight training device;

   (viii) Daily flight sheets identifying records upon which the 85-15 percent ratio may be computed;

   (ix) A continuous meter record for each aircraft;

   (x) An invoice or flight tickets signed by the student and instructor showing hour meter reading, type of aircraft, and aircraft identification number;

   (xi) An accounts receivable ledger;

   (xii) Individual instructor records;

   (xiii) Engine log books;
(xiv) A record for each student above the private pilot level stating the name of the course in which the student is currently enrolled and indicating whether the student is enrolled under 14 CFR part 61, part 63, part 141, or part 142;
(xv) Records of tuition and accounts which are evidence of tuition charged and received from all students; and
(xvi) If training is provided under 14 CFR part 141, the records required by that part, or if training is provided under 14 CFR part 142, the records required by that part.

(Authority: 38 U.S.C. 3671, 3672, 3676, 3690(c))

(i) Hourly limitations. A flight course approved pursuant to paragraph (e) of this section shall be approved only for those hours of instruction generally considered necessary for a student to obtain an identified vocational objective. This requirement is met only if the number of hours approved does not exceed the maximum set forth in paragraph (i)(1) through (3) of this section. Flight instruction may never be substituted for ground training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(1) Flight or flight simulator instruction. Except as provided in paragraph (i)(4) of this section, the maximum number of hours of flight instruction or flight simulator instruction which may be approved for a flight course shall not exceed the number determined by this paragraph.

(i) The maximum number of hours of solo flight instruction shall not exceed the minimum number of hours required for the course provided by FAA regulations.

(ii) The maximum number of hours of dual flight instruction shall not exceed the lesser of

(A) The number of hours of dual flight instruction in the course outline approved by the FAA, or
(B) 120% of the minimum number of hours of dual flight instruction required for the course by FAA regulations.

(iii) The maximum number of hours of instruction by flight simulator or flight training device that a State approving agency may approve is the maximum number of hours of instruction by flight simulator or flight training device permitted by 14 CFR part 61 for that course when:

(A) A course is offered in whole or in part by flight simulator or flight training device conducted by a training center certificated under 14 CFR part 142; and
(B) 14 CFR part 61 contains a maximum number of hours of instruction by flight simulator or flight training device that may be credited toward the requirements of the rating or certificate that is the objective of the course.

(iv) If a course is offered in whole or in part by flight simulator or flight training device, and the course is not described in paragraph (i)(1)(iii) of this section, either because the course is offered by a flight training center with a grant of exemption letter, or because 14 CFR part 61 does not contain a maximum number of hours of instruction by flight simulator or flight training device, the maximum number of hours of instruction by flight simulator or flight training device that may be approved may not exceed the number of hours in the Federal Aviation Administration-approved outline.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3032(f), 3231(f))

(2) Ground school. The ground training portion of a flight course may include two forms of ground training instruction, ground school and preflight briefings and postflight
critiques. The minimum hours for ground training, as specified in 14 CFR part 141, appendices C through J refer only to ground school and not to preflight briefings and postflight critiques. If the ground school training consists of units using kits containing audiovisual equipment, quizzes and examinations, the maximum number of units approved shall not exceed the number on the course outline approved by the FAA. For all other ground school training, the number of hours of training shall not exceed the number of hours on the course outline approved by the FAA.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(3) Preflight briefings and postflight critiques. Hours spent in preflight briefings and postflight critiques need not be approved by the FAA.

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques shall not exceed the number of hours on the outline exclusive of the preflight briefings and post-flight critiques which are attributable to solo flying hours that exceed the minimum number of solo flying hours for the course in 14 CFR part 141.

(ii) If these hours are not on the FAA-approved outline, they may not be approved unless the State approving agency finds that the briefings and critiques are an integral part of the course and do not precede or follow solo flying hours which exceed the minimum number of solo flying hours for the course in 14 CFR part 141. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not, when added together, exceed 25 percent of the approved hours of flight instruction.

(Authority: 10 U.S.C. 16131(f)(4); 16136(c), 38 U.S.C. 3002(3), 3032(f)(4), 3202(2), 3231(f)(4), 3452(b))

(4) Waiver of limitation in approvable course hours. (i) Flight schools that wish to have a greater number of hours of dual flight instruction approved than are permitted by paragraph (i)(1)(ii) of this section, may seek an administrative review of their approval by the Director, Education Service. Requests for such a review should be made in writing to the Director of the VA facility having jurisdiction over the flight school. The request should --

(A) State the reasons why the flight school believes that the approval should extend to a greater number of hours, and

(B) Include any evidence tending to show that the greater number of hours should be approved.

(ii) The Director, Education Service shall base her or his decision upon the evidence submitted, the recommendation of the Director of the VA facility, and, if appropriate, the recommendation of the State approving agency having jurisdiction over the flight school.

(iii) The limit on the number of hours of solo flight instruction found in paragraph (i)(1)(i) of this section may not be waived.


(j) Charges. The appropriate State approving agency shall approve charges for tuition and fees for each flight course exclusive of charges for tuition and fees for solo flying hours which exceed the maximum permitted under paragraph (i)(1)(i) of this section and for preflight briefings and postflight critiques which precede or follow the excess solo hours.

(Authority: 38 U.S.C. 3672)
(1) The approved charges for tuition and fees shall be based upon the charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. Charges for books, supplies and lodging may not be reimbursed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(2) For the ground school portion of ground training, the State approving agency should approve group charges or unit prices if audio-visual equipment is used. For the preflight briefings and postflight critiques, the State approving agency should approve individual instructor rates for individual training flights. An average charge per hour based upon total hours and cost of all training given on the ground may not be approved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(3) A veteran, servicemember or reservist or group (all or part of whom are veterans, servicemembers or reservists) owning an airplane may lease it to an approved flight school and have exclusive use of the aircraft for flight training. The aircraft should meet the requirements prescribed for all airplanes to be used in the course, and should be shown in the approval by the State approving agency. The leasing arrangement should not result in charges for flight instruction for those owning the airplane greater than charges made to others not leasing an aircraft to the school.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(4) If membership in a flight club entitles a veteran, servicemember or reservist to flight training at less than the standard rate, his or her educational allowance will be based on the reduced rate. No payments will be made for the cost of joining the flight club, since it is not a charge for the flight course.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(k) Substitute aircraft. Except for minor substitutions a veteran, servicemember or reservist enrolled in a flight course may train only in the aircraft approved for that course. If a particular aircraft is not available for some compelling reason, the veteran, servicemember or reservist may be permitted to train in an aircraft different from that approved for the particular course, provided the aircraft substituted will adequately meet the training requirements for this particular phase of the course. Substitutions should be explained on the monthly certifications of flight training. If this shows that the charge for the substituted aircraft is different from the charge approved for the regular aircraft, the reimbursement will be based on the lesser charge. When substitution becomes the practice rather than the exception, VA will suspend payments and notify the veterans, servicemembers, reservists and the school. VA will refer the matter to the State approving agency for appropriate action.

(Authority: 10 U.S.C. 16136(b), 16136(c); 38 U.S.C. 3034(d), 3672(a))

(l) Enrollment limitations. A flight course must meet the 85-15 percent ratio requirement set forth in § 21.4201 before VA may approve new enrollments in the course. The contracted portion of a flight course must meet all the requirements of § 21.4201 for each subcontractor.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0613)
§ 21.4264 Farm cooperative courses.

(a) Description of a farm cooperative course. A farm cooperative course is an institutional agricultural course. It provides training on a reduced basis to those engaged in farming, compared to other types of training. Part-time benefits are provided for students whose farming operation will not permit them to attend class at least 10 hours per week.

(b) Farm cooperative students must be farmers. In order to receive educational assistance allowance an eligible person must be engaged concurrently in agricultural employment for an average of at least 40 hours per week. This agricultural employment must be relevant to the farm cooperative course.

(c) Acceptable class schedules. (1) The institutional portion of a farm cooperative course: 
   (i) May be on a term, quarter or semester basis, or
   (ii) May consist of courses which:
       (A) Are offered during at least 44 weeks of the year, and
       (B) Require a minimum of 5 clock hours per week.

   (2) The time involved in field trips and individual and group instruction, sponsored and conducted by the educational institution offering farm cooperative courses may be counted toward meeting the clock-hour requirements. See § 21.4270(c) of this part for measurement of farm cooperative courses.

   (Authority: 38 U.S.C. 3482, 3532)

(d) Application. (1) Any school desiring to enroll spouses or children in farm cooperative courses:
   (i) Will submit to the appropriate State approving agency a written application for approval in accordance with § 21.4253 or § 21.4254 as appropriate; and
   (ii) Must submit statements of fact showing at least the following:
       (A) That the course is set up in the school catalog or other literature of the school;
       (B) That the agricultural course is offered concurrently with agricultural employment; and
       (C) That the school itself verifies on a continuing basis that students are engaged for an average of at least 40 hours per week in suitable agricultural employment which is relevant to the institutional agricultural course offered by the school and is in an area consistent with their institutional training program.

   (2) For the purposes of this paragraph suitable agricultural employment must include employment on a farm or other agricultural establishment where the basic activity is either:
       (i) The cultivation of the ground such as the raising and harvesting of crops including fruits, vegetables and pastures, or
       (ii) The feeding, breeding and managing of livestock, including poultry and other specialized farming.

   (3) The Department of Veterans Affairs does not consider employment in training establishments which are engaged primarily in the processing, distribution or sale of agricultural products or combinations thereof, such as dairy processing plants, grain
§ 21.4253 Accredited courses or programs.

(a) Accreditation of courses. (1) An affiliation agreement must be entered into by the educational institution and the appropriately accredited institution or agencies prior to the institution's approval for the training program. The agreement must describe the means by which the educational institution will meet the applicable requirements of paragraph (b) of this section.

(b) Requirements of programs.

(1) The criteria specified in § 21.4254 or § 21.4255, as appropriate; and

(2) The requirements of paragraph (d) of this section.


(38 U.S.C. 3482, 3532)

[EFFECTIVE DATE NOTE: 61 FR 26107, 26115, May 24, 1996, which substituted "an" for "a veteran or" in paragraph (b) and removed "veterans" from the introductory text of paragraph (d)(1), became effective May 24, 1996.]

§ 21.4265 Practical training approved as institutional training or on-job training.

(a) Medical-dental internships and residencies. (1) Medical residencies (other than residencies in podiatric medicine), dental residencies, and osteopathic internships and residencies may be approved and recognized as institutional courses only when an appropriate accrediting agency accredits and approves them as leading to certification for a recognized professional objective.

(2) The appropriate accrediting agencies are:

(i) The Accreditation Council for Graduate Medical Education, or where the Accreditation Council for Graduate Medical Education has delegated accrediting authority, the appropriate Residency Review Committee,

(ii) The American Osteopathic Association, and

(iii) The Commission on Dental Accreditation of the American Dental Association.

(3) These residency programs --

(i) Must lead to certification by an appropriate Specialty or Subspecialty Board, the American Osteopathic Association, or the American Dental Association; and

(ii) Will not be approved to include a period of practice following completion of the education requirements even though the accrediting agency requires the practice.

(4) Except as provided in paragraph (a)(5) of this section, no other medical or dental residency or osteopathic internship or residency will be approved or recognized as institutional training.

(5) A residency in podiatric medicine may be approved and recognized as institutional training only when it has been approved by the Council on Podiatry Education of the American Podiatry Association.

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

(b) Nursing courses. (1) Courses for the objective of registered nurse or registered professional nurse will be assessed as institutional training when they are provided in autonomous schools of nursing, hospital schools of nursing, or schools of nursing established in other schools or departments of colleges and universities, if they are accredited by a nationally recognized accrediting agency or if they meet the requirements of the licensing body of the State in which the school is located. The hospital or fieldwork phase of a nursing course, including a course leading to a degree in nursing,
will be assessed as an institutional course when the hospital or fieldwork phase is an integral part of the course, the completion thereof is a prerequisite to the successful completion of the course, the student remains enrolled in the school during the period, and the training is under the direction and supervision of the school.

(2) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be assessed as institutional training including both the academic subjects and the clinical training if the clinical training is offered by an affiliated or cooperating hospital and the student is enrolled in and supervised by the school during the period of such clinical training. Also they must be accredited by a nationally recognized accrediting agency or meet the requirements of the licensing body of the State in which the school is located.

(3) Except for enrollment in a nurse's aide course approved pursuant to § 21.4253(a)(5), VA shall not approve an enrollment in a nonaccredited nursing course which does not meet the licensing requirements of the State where the course is offered.

(Authority: 38 U.S.C. 3452, 3688)

c) Medical and dental specialty courses. (1) Required clinical training included in a school course given in an affiliated hospital, clinic, laboratory, or medical center as a part of a medical or dental specialty course whether accredited or nonaccredited offered by a school such as X-ray technician, medical technician, medical records administrator, physical therapist or dental technician shall be assessed as institutional training provided:
   (i) The student remains enrolled in the course during the clinical period;
   (ii) The clinical training is;
      (a) An integral part of the course;
      (b) A prerequisite to the successful completion of the course; and
      (c) Under the direction and supervision of the school; and
   (iii) The course includes substantial technical or professional training and does not consist of training preliminarily directed to clerical, administrative, secretarial, or receptionist duties.
(2) Medical and dental specialty courses offered in hospitals, clinics, laboratories, or medical centers which are accredited as institutional courses by a nationally recognized accrediting agency will be assessed as institutional training.

(3) Clinical training included in a school course given in a physician's office or a dentist's office, also called externship, will be recognized as part of the institutional training if the course is accredited by a nationally recognized accrediting agency and meets the other requirements of paragraph (c)(1) of this section. If the course is not so accredited such practical or on-the-job training or experience in a physician's office may not be included unless the program is approved as a cooperative course.

(4) Nonaccredited courses offered in hospitals, clinics, laboratories, or medical centers will be considered on-the-job training when the courses meet the requirements of § 21.4262.

d) Medical and dental assistants courses for the Department of Veterans Affairs. A course prescribed by the Secretary for full-time physicians' assistants or for full-time expanded-function auxiliaries (formerly referred to as dentists' assistants) may be approved as institutional training, if the course is conducted at Department of Veterans Affairs facilities or in facilities operated by hospitals, medical schools, or medical installations pursuant to a contract with the Department of Veterans Affairs.
(Authority: 38 U.S.C. 7407)

(e) Professional training courses. (1) Any non-medically related professional internship program, such as a clinical pastoral course, will be recognized as an institutional course when it is accredited as an institutional course by a nationally recognized accrediting agency, and

(2) The approved facility for such a course must be the institution or other facility where the training is given.

(f) Other practical training courses. (1) Other off-campus job experience included in a school course, variously described by schools as internship, residency, practicum, externship, et cetera, may be included as a part of a cooperative program when the course meets the requirements of § 21.4233(a).

(2) However, such off-campus courses may be considered as resident institutional training only if all of the following conditions are met. The course is:

(i) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting associations;

(ii) A part of the approved curriculum of the school;

(iii) Directly supervised by the school;

(iv) Measured in the same unit as other courses;

(v) Required for graduation; and

(vi) Has a planned program of activities described in the school's official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least:

(A) A unit subject description;

(B) A provision for an assigned instructor;

(C) A statement that the planned program of activities is controlled by the school, not by the officials of the job establishment;

(D) A requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student;

(E) A statement that appropriate assignments are required for completion of the course;

(F) A grading system similar to the system used for other resident subjects offered by the school; and

(G) A schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the school for its other resident courses.

(g) Nonaccredited courses. Any nonaccredited internship program not given in a school will be recognized as other on-the-job training when it meets the requirements of § 21.4262 and when the program is required for licensure by the State in which it is offered. (See § 21.4275 for measurement.)


[EFFECTIVE DATE NOTE: 61 FR 6780, 6783, Feb. 22, 1996, which revised paragraph (b)(3) and added added its authority citation, became effective Feb. 22, 1996.]

§ 21.4266 Courses offered at subsidiary branches or extensions.

(a) General. A State approving agency in approving a course offered at a subsidiary branch or extension of an educational institution may either approve the course separately
from the course approved for the educational institution's parent facility (either its main
campus or its principal teaching location in a State), or it may combine the approval for
courses offered at the branch or extension with that for the courses offered at the
educational institution's parent facility. The choice made by the State approving agency
shall be governed by the provisions of this section.
(b) Combined approval. If the approval for the courses offered at a branch or extension is
combined with the approval for the courses offered at the educational institution's parent
facility, the branch or extension does not need to have its own administrative capability.
In these cases the State approving agency will list the branches or extensions and the
courses approved at each on the notice of approval sent to the educational institution
pursuant to § 21.4258. The approval of courses offered at a branch or extension may be
combined with the approval of courses offered at a parent facility only when the branch
or extension is located in the same State as the parent facility and one of the following
conditions exist:
(1) The course offering at the branch or extension consists of a small number of unit
subjects which do not comprise a program of education or a set curriculum large enough
to allow pursuit on a continuing basis;
(2) The course offering at the branch or extension is being given on a temporary basis
(the educational institution is contemplating no more than a few cycles of training);
(3) The facilities at the branch or extension contain insufficient space for an
administrative capability to be developed.
(c) Separate approval. If the course offered at a subsidiary branch or extension cannot
qualify under paragraph (b) of this section for a combined approval with the courses
offered at the educational institution's parent facility, the State approving agency can only
approve the courses separately. Such a course may not be approved if the branch or
extension neither has administrative capability nor can qualify for an exception to having
administrative capability.
(1) A branch or extension is considered to have an administrative capability when:
(i) The branch or extension maintains all records and accounts required by § 21.4209;
(ii) The branch or extension designates a named certifying official;
(iii) The branch or extension is able to furnish to the Department of Veterans Affairs
without resort to the parent school all reports and certifications required by §§ 21.4203
and 21.4204;
(iv) The branch or extension maintains a local mailing address.
(2) Notwithstanding any other provisions of this paragraph courses may be approved
separately at a branch or extension without administrative capability if the parent facility
within the same State:
(i) Maintains a centralized recordkeeping system;
(ii) Can identify the records of students at each branch;
(iii) Specifies the branch location when certifying enrollments.
[43 FR 35303, Aug. 9, 1978, as amended at 44 FR 62503, Oct. 31, 1979; 61 FR 26107,
26115, May 24, 1996]
(38 U.S.C. 3672, 3689(c))
§ 21.4267 Approval of independent study.

(a) Overview. Except as provided in §§ 21.4252(g), 21.7120(c), and 21.7622(f), VA may not pay educational assistance for a nonaccredited course which is offered in whole or in part by independent study. Hence, it is necessary to differentiate independent study from similar courses.

(b) Definition of independent study. (1) VA considers a course to be offered entirely by independent study when --
   (i) It consists of a prescribed program of study with provision for interaction between the student and the regularly employed faculty of the institution of higher learning. The interaction may be personally or through use of communications technology, including mail, telephone, videoconferencing, computer technology (to include electronic mail), and other electronic means;
   (ii) It is offered without any regularly scheduled, conventional classroom or laboratory sessions; and
   (iii) It is not a course listed in paragraph (c), (d), or (e) of this section.

   (2) VA considers a course to be offered in part by independent study when --
       (i) It is an undergraduate course;
       (ii) It is not classified as one of the three types of courses listed in paragraph (c) of this section;
       (iii) It has some weeks when standard class sessions are scheduled; and
       (iv) It consists of independent study as defined in paragraph (b)(1) of this section during those weeks when there are no regularly scheduled class sessions.

(c) Scope of independent study. VA does not consider any of the following courses to be courses offered by independent study.

   (1) A cooperative course as defined in § 21.4233(a);
   (2) A farm cooperative course; or
   (3) A course approved as a correspondence course.

(d) Undergraduate resident training. VA considers the following undergraduate courses to be resident training.

   (1) A course which meets the requirements for resident institutional training found in § 21.4265(f);
   (2) A course which requires regularly scheduled, standard class sessions at least once every two weeks and which has a total number of class sessions equal to the number of credit hours awarded for the course, times the number of weeks in a standard quarter or semester, as applicable;
   (3) A course of student teaching; and
   (4) Flight training which is an integral part of a standard undergraduate college degree.

(e) Graduate resident training. VA considers a graduate course to be resident training if the course --
(1) Is offered through regularly scheduled, conventional classroom or laboratory sessions; or
(2) Consists of research (either on campus or in absentia) necessary for the preparation of the student's --
   (i) Master's thesis,
   (ii) Doctoral dissertation, or
   (iii) Similar treatise which is prerequisite to the degree being pursued; or
(3) Consists of a combination of training as described in paragraphs (e)(1) and (e)(2) of this section.
(Authority: 38 U.S.C. 3676(e), 3680A(a))
(f) Course approval. A State approving agency may approve a course offered by independent study or a combination of independent study and resident training only if --
   (1) The course is accredited and leads to a standard college degree; and
   (2) The course meets the requirements of § 21.4253.
(Authority: 38 U.S.C. 3672, 3675, 3680A(a)(4))

[EFFECTIVE DATE NOTE: 62 FR 40279, 40280, July 28, 1997, revised authority citations for paragraphs (a) and (b), revised paragraph (b)(1)(i), and added paragraph (f), effective July 28, 1997.]
ASSESSMENT AND PURSUIT OF COURSES

§ 21.4270 Measurement of courses.
§ 21.4271 [Reserved]
§ 21.4272 Collegiate course measurement.
§ 21.4273 Collegiate graduate.
§ 21.4274 Law courses.
§ 21.4275 Practical training courses; measurement.
§ 21.4277 Discontinuance: unsatisfactory progress, conduct and attendance.
§ 21.4278 Reentrance after discontinuance.
§ 21.4279 Combination correspondence-residence program.
§ 21.4280 [Reserved]

§ 21.4270 Measurement of courses.
(a) Measurement of trade, technical, and high school courses. Trade, technical, high school, and high school preparatory courses shall be measured as stated in this paragraph.
(1) Trade and technical courses. (i) Except as provided in paragraph (b) of this section, if shop practice is an integral part of a trade or technical course not leading to a standard college degree --
   (A) A full-time enrollment is 22 clock hours per week (exclusive of supervised study) with not more than 2 1/2 hours rest period allowance;
   (B) A three-quarter-time enrollment is 16 through 21 clock hours per week (exclusive of supervised study) with not more than 2 hours rest period allowance;
   (C) A one-half-time enrollment is 11 through 15 clock hours per week (exclusive of supervised study) with not more than 1 1/4 hours rest period allowance;
   (D) A less than one-half-time but more than one-quarter-time enrollment is 6 through 10 clock hours per week (exclusive of supervised study) with not more than 3/4 hour rest period allowance; and
   (E) A quarter-time enrollment is 1 through 5 clock hours per week (exclusive of supervised study).
   (ii) Except as provided in paragraph (b) of this section, if theory and class instruction constitute more than 50 percent of the required hours in a trade or technical course not leading to a standard college degree, enrollments will be measured as follows. In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in a school's shops and the time involved in field trips and group instruction may be included in computing the clock hour requirements.
   (A) A full-time enrollment is 18 clock hours net instruction per week (exclusive of supervised study);
   (B) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week (exclusive of supervised study);
   (C) A one-half-time enrollment is 9 through 12 clock hours net instruction per week (exclusive of supervised study);
   (D) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week (exclusive of supervised study); and
(E) A quarter-time enrollment is 1 through 4 clock hours net instruction per week (exclusive of supervised study).

(2) High school courses. If a student is pursuing high school courses at a rate which would result in an accredited high school diploma in four ordinary school years, VA considers him or her to be enrolled full time. Otherwise, for high school enrollments, training time will be determined as follows. (For the purpose of this paragraph, a unit is not less than one hundred and twenty 60-minute hours or the equivalent of study in any subject in one academic year.)

(i) A full-time enrollment is 18 clock hours net instruction per week or four units per year or the equivalent;
(ii) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week or three units per year or the equivalent;
(iii) A one-half-time enrollment is 9 through 12 clock hours net instruction per week or two units per year or the equivalent;
(iv) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week or one unit per year or the equivalent; and
(v) A one-quarter-time enrollment is 1 through 4 clock hours net instruction per week.

(3) Elementary school. For a high school preparatory course pursued at the elementary school level-

(i) A full-time enrollment is 18 clock hours net instruction per week;
(ii) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week;
(iii) A one-half-time enrollment is 9 through 12 clock hours net instruction per week;
(iv) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week; and
(v) A one-quarter-time enrollment is 1 through 4 clock hours per week.

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

(b) Measurement of non-college degree courses offered by institutions of higher learning.

(1) Notwithstanding the provisions of paragraph (a)(1) of this section, if a student is enrolled in a course which is not leading to a standard college degree and which is offered by an institution of higher learning, VA will measure his or her enrollment in the same manner as collegiate undergraduate courses are measured according to the provisions of paragraph (c) of this section.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a student is enrolled in a course not leading to a standard college degree which is offered on a standard quarter- or semester-hour basis by an educational institution which is not an institution of higher learning, VA shall measure his or her enrollment in the same manner as collegiate undergraduate courses are measured according to the provisions of paragraph (c) of this section, provided that the educational institution requires at least the same minimum number of hours of weekly attendance as are required by paragraph (a)(1) of this section for courses offered on a clock-hour basis. If the educational institution does not require at least the same minimum number of hours of weekly attendance as are required in paragraph (a)(1) of this section, VA will not apply the provisions of paragraph (c) of this section, but will measure the course according to the criteria in paragraph (a)(1) of this section.

(Authority: 38 U.S.C. 3688(a)(7))
(c) Undergraduate, graduate, professional, and on-the-job training courses. Collegiate graduate, professional and on-the-job training courses shall be measured as stated in this table. This shall be used for measurement of collegiate undergraduate courses subject to all the measurement criteria of § 21.4272. Clock hours and sessions mentioned in this table mean clock hours and class sessions per week.

<table>
<thead>
<tr>
<th>COURSES</th>
<th>Kind of school</th>
<th>Kind of course</th>
<th>Full time</th>
<th>3/4 time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collegiate undergraduate</td>
<td>Standard collegiate</td>
<td>14 semester hours</td>
<td>10 through 13 semester hours or equivalent fn2</td>
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<tr>
<td>Graduate courses including</td>
<td>or equivalent</td>
<td>or equivalent</td>
<td>or as certified</td>
<td>by a responsible</td>
</tr>
<tr>
<td>external degree programs fn1</td>
<td>or equivalent fn2</td>
<td>or equivalent</td>
<td>or as certified</td>
<td>by a responsible</td>
</tr>
<tr>
<td>School fn2 official of the</td>
<td>or as certified</td>
<td>or equivalent</td>
<td>or as certified</td>
<td>by a responsible</td>
</tr>
<tr>
<td>Professional nonaccredited</td>
<td>Law only fn3</td>
<td>12 class sessions</td>
<td>9 through 11 class sessions</td>
<td></td>
</tr>
<tr>
<td>per week</td>
<td>1/2 time</td>
<td>7 through 9 semester hours</td>
<td>4 through 6 semester hours</td>
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</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th></th>
<th>school</th>
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<tbody>
<tr>
<td>Professional</td>
<td>6 through 8</td>
<td>4 through 5</td>
<td>1 through 3</td>
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<tr>
<td>nonaccredited class sessions per week</td>
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<tr>
<td>Professional</td>
<td>As established</td>
<td>As established</td>
<td>As established</td>
</tr>
<tr>
<td>accredited and equivalent by accrediting association or entity offering the internship or residency</td>
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<tr>
<td>9 through 12 clock hours or 7 through 9 semester hours as appropriate</td>
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</tr>
<tr>
<td>Training</td>
<td>Full time only</td>
<td></td>
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</tr>
<tr>
<td>Agricultural</td>
<td>5 clock hours</td>
<td>No provision</td>
<td>net instruction</td>
</tr>
</tbody>
</table>

fn1 Cooperative courses may be measured on a full-time basis only.

fn2 When the institution certifies that all undergraduate students enrolled for a minimum of 12 or 13 semester hours or the equivalent are charged full-time tuition, or considered full time for other administrative purposes, such minimum hours will establish the criteria for full-time measurement. When 12 hours is properly certified as full time, VA will measure 9 through 11 hours as 3/4 time, 6 through 8 hours as 1/2 time, 4 through 5 hours as less than 1/2 time and more than 1/4 time, and 1 through 3 hours as 1/4 time or less. VA will measure all other undergraduate courses as indicated in the table for undergraduate or professional courses, as appropriate, but when 13 credit hours or the equivalent is certified as full time, 3/4 time will be 10 through 12 hours. When, in accordance with § 21.4273(a), a responsible official of a school certifies that a lesser number of hours constitute full time, 3/4 time, 1/2 time, less than 1/2 time and more than 1/4 time, or 1/4 time or less, VA will accept the certification for measurement purposes.

To meet criteria for full-time measurement in standard collegiate courses which include required noncredit deficiency courses, in the absence of a certification under § 21.4272(k), VA will convert the noncredit deficiency courses on the basis of the applicable measurement criteria, as follows: 18 or 22 clock hours, 4 "Carnegie Units," or 12, 13, or 14 (as appropriate) semester hours equal full time. The credit-hour equivalent of such noncredit courses may constitute any portion of the required hours for full-time measurement.

fn3 Class sessions measured on basis of not less than 50 minutes of classroom instruction. Supervised study periods, class breaks and rest periods are excluded.

fn4 Supervised study must be excluded.
fn5 Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.

fn6 In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in school's shops in farm cooperative programs and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

fn7 For full-time training the 440 clock hours a year may be prescheduled to provide not less than 80 clock hours in any 3-month period.


[EFFECTIVE DATE NOTE: 61 FR 6780, 6784, Feb. 22, 1996, revised paragraphs (a) and (b), and footnote 1 to the table in paragraph (c), effective Feb. 22, 1996; 62 FR 55759, 55760, Oct. 28, 1997, revised the heading to paragraph (c) and footnote 2, effective Oct. 28, 1997.]

§ 21.4271 [Reserved]

§ 21.4272 Collegiate course measurement.
VA will measure a college level course in an institution of higher learning on a credit-hour basis provided all the conditions under paragraph (a) or (b) of this section are met. See also § 21.4273. (Authority: 38 U.S.C. 3688)
(a) Degree courses -- accredited or candidate. VA will measure a degree course on a credit-hour basis when --
(1) An institution of higher learning offers the course; and
(2) A nationally recognized accrediting association either --
(i) Accredits the institution of higher learning, or
(ii) Recognizes the institution as a candidate for accreditation; and
(3) The credits earned in the course can be applied towards an associate, baccalaureate or higher degree which is --
(i) Appropriate to the level of the institution of higher learning's accreditation, or
(ii) Appropriate to the level of the institution of higher learning's candidacy for accreditation; and
(4) The course is offered on a semester-hour or quarter-hour basis, and
(5) The degree to which the course credits are applicable either --
(i) Is granted by the institution of higher learning offering the course,
(ii) Is a part of a concurrent enrollment as described in § 21.4233(b), or
(iii) Is being pursued by a nonmatriculated student as provided in § 21.4252 (1), (2) or (3).

(b) Degree courses -- nonaccredited. VA will measure on a credit-hour basis a degree course which does not meet the requirements of paragraph (a) of this section when --

(1) The course is offered on a semester- or quarter-hour basis, and
(2) The course leads to an associate, baccalaureate, or higher degree, which is granted by the school offering the degree under authority specifically conferred by a State education agency, and
(3) The school will furnish a letter from a State university or letters from three schools that are full members of a nationally recognized accrediting association. In each letter the State university or accredited school must certify either:
   (i) That credits have been accepted on transfer at full value without reservation, in partial fulfillment of the requirements for a baccalaureate or higher degree for at least three students within the last 5 years, and that at least 40 percent of the subjects within each curriculum, for which credit-hour measurement is sought, has been accepted without reservation by the certifying State university or accredited school, or
   (ii) That in the last 5 years at least three students, who have received a baccalaureate or higher degree as a result of having completed the nonaccredited course, have been admitted without reservation into a graduate or advanced professional program offered by the certifying State university or accredited school.

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

(c) [Reserved]

(d) Course measurement general. When an undergraduate course qualifies for credit-hour measurement, VA will measure it according to the table contained in § 21.4270(c) of this part.

(Authority: 38 U.S.C. 3688(a); Pub. L. 99-576)

(e) [Removed and reserved. See 61 FR 6780, 6784, Feb. 22, 1996.]

(f) [Removed and reserved. See 61 FR 6780, 6784, Feb. 22, 1996.]

(g) Course measurement; nonstandard terms. (1) When a term is not a standard semester or quarter as defined in § 21.4200(b), the Department of Veterans Affairs will determine the equivalent for full-time training by:
   (i) Multiplying the credits to be earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and
   (ii) Dividing the product by the number of whole weeks in the term.

(2) In determining whole weeks for this formula VA will --
   (i) Determine the number of days from the beginning to the end of the term as certified by the educational institution, subtracting any vacation period of 7 days or more;
   (ii) Divide the number of days in the term by 7;
   (iii) Disregard a remainder of 3 days or less, and
   (iv) Consider 4 days or more to be a whole week.

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

(3) The quotient resulting from the use of the formula is called equivalent credit hours. VA treats equivalent credit hours as credit hours for measurement purposes.

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

(h) [Removed and reserved. See 61 FR 6780, 6784, Feb. 22, 1996.]

(i) [Removed and reserved. See 61 FR 6780, 6784, Feb. 22, 1996.]
(j) Course measurement; credit course taken under special circumstances. If a course is acceptable for credit, but the educational institution does not award credit to the veteran or eligible person because he or she has not met college entrance requirements or for some other valid reason, the Department of Veterans Affairs will measure the course as though it were pursued for credit, provided the veteran or eligible person performs all of the work prescribed for other students who are enrolled for credit.

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

(k) Course measurement; noncredit courses. (1) Except for courses leading to a secondary school diploma or equivalent, the Department of Veterans Affairs will measure noncredit courses given by an institution of higher learning on a quarter- or semester-hour basis if the institution considers them to be the equivalent, for other administrative purposes, of undergraduate courses that lead to a standard college degree at the institution of higher learning.

(2) The Department of Veterans Affairs shall measure other noncredit courses under the appropriate criteria of §21.4270.

(3) Where a school requires a veteran or eligible person to pursue noncredit deficiency, remedial or refresher courses in order to meet scholastic or entrance requirements, the school will certify the credit-hour equivalent of the noncredit deficiency, remedial or refresher courses in addition to the credit hours for which the veteran or eligible person is enrolled. The Department of Veterans Affairs will measure the course on the total of the credit hours and credit-hour equivalency.


(38 U.S.C. 3688)

[EFFECTIVE DATE NOTE: 61 FR 6780, 6784, Feb. 22, 1996, which removed and reserved paragraphs (e), (f), (h) and (i), and revised the introductory text and paragraph (g)(3), became effective Feb. 22, 1996.]

§21.4273 Collegiate graduate.

(a) In residence. (1) The Department of Veterans Affairs will measure a nonaccredited graduate or advanced professional course (other than a law course) as provided in §21.4272. The Department of Veterans Affairs will measure a nonaccredited law course as stated in §21.4274.

(2) An accredited graduate or advanced professional course, including law as specified in §21.4274, pursued in residence at an institution of higher learning will be measured in accordance with §21.4272 unless it is the established policy of the school to consider less than 14 semester hours or the equivalent as full-time enrollment, or the course includes research, thesis preparation, or a comparable prescribed activity beyond that normally required for the preparation of ordinary classroom assignments. In either case a responsible official of the school will certify that the veteran or eligible person is pursuing the course full, three-quarter, one-half, less than one-half but more than one-quarter, or one quarter or less time.

(Authority: 38 U.S.C. 3688(b))
(b) In absentia. A responsible official of the school will certify a program of research pursued by a veteran or eligible person in absentia as full, three-fourths, one-half, less than one-half but more than one-quarter, or one-quarter or less time, and the activity will be assessed by the Department of Veterans Affairs accordingly when:

1. The research activity is defined and organized so as to enable the certifying official to evaluate the time required for its successful pursuit, and
2. The time certified for the research activity is independent of the time devoted to any employment situation in which the veteran or eligible person might be engaged.

(c) Undergraduate or combination. If a graduate student is enrolled in both graduate and undergraduate courses concurrently, or solely in undergraduate courses, VA will measure such an enrollment using the provisions of § 21.4272 or the graduate school's assessment of training time, whichever will result in a higher monthly rate for the veteran.

(Authority: 38 U.S.C. 3668(b); Pub. L. 102-568)


[EFFECTIVE DATE NOTE: 61 FR 28755, June 6, 1996, which substituted "measured" for "assessed" in paragraph (a)(2), revised paragraph (c) and added an authority citation, became effective June 6, 1996.]

§ 21.4274 Law courses.

(a) Accredited. A law course in an accredited law school leading to a standard professional law degree will be assessed as provided in § 21.4273(a).

(b) Nonaccredited. A law course leading to a professional law degree, completion of which will satisfy State educational requirements for admission to legal practice, pursued in a nonaccredited law school which requires for admission to the course at least 60 standard semester units of credit or the equivalent in quarter units of credit, will be assessed on the basis of 12 class sessions per week for full-time attendance. If the course does not meet these requirements it will be assessed on the basis of clock hours of attendance per week.


§ 21.4275 Practical training courses; measurement.

(a) Medical and dental residencies and osteopathic internships and residencies. VA will measure medical and dental residencies, and osteopathic internships and residencies as provided in § 21.4270(c) of this part if they are accredited and approved in accordance with § 21.4265(a) of this part.

(Authority: 38 U.S.C. 3688(b); Pub. L. 99-576)

(b) Nursing courses. (1) Courses for the objective of registered nurse or registered professional nurse will be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate. The clock hours of attendance may include academic class time, clinical training, and supervised study periods.

(2) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be measured on credit hours or clock hours of attendance per week whichever is appropriate.

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(c) Medical and dental specialty courses. (1) Medical and dental specialty courses offered by a school whether accredited or nonaccredited, shall be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate.
(2) Medical and dental specialty courses offered in hospitals, clinics, laboratories or medical centers which are accredited by a nationally recognized accrediting agency shall be measured on the basis of clock hours of attendance per week.
(d) Medical and dental assistants courses for the Department of Veterans Affairs. Programs approved in accordance with the provisions of §21.4265(d) will be measured on a clock-hour basis as appropriate in accordance with §21.4270, however, the program will be regarded as full-time instructional training: Provided, The combined total of the classroom and other formal instruction portion of the program and on-job-training portion of the program requires 30 or more clock hours of attendance per week.
(e) Professional training courses. Nonmedically related professional training courses, such as the clinical pastoral course, shall be measured in semester hours of attendance or clock hours of attendance per week, whichever is appropriate.
(f) Other practical training courses. These courses will be measured in semester hours of credit or clock hours of attendance per week, whichever is appropriate, if approved under §21.4265(f). (See §21.4265 for approval.)

§21.4277 Discontinuance: unsatisfactory progress, conduct and attendance.
(a) Satisfactory pursuit of program. Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory progress. If the veteran or eligible person does not maintain satisfactory progress, educational benefits will be discontinued by the Department of Veterans Affairs. Progress is unsatisfactory if the veteran or eligible person does not satisfactorily progress according to the regularly prescribed standards and practices of the institution he or she is attending.
(b) Satisfactory conduct. Entitlement to a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory conduct in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued, unless further development establishes that the action of the school is of a retaliatory nature. See §21.4253.
(c) Satisfactory attendance. Entitlement to benefits for a program of education is subject to the requirement that the veteran or eligible person, having commenced the pursuit of such program, continues to maintain satisfactory attendance in accordance with the regularly prescribed standards and practices of the institution in which he or she is enrolled. If the veteran or eligible person will no longer be retained as a student or will not be readmitted as a student by the institution in which he or she is enrolled, educational benefits will be discontinued.
§ 21.4278 Reentrance after discontinuance.
(a) Conditions permitting reentrance after discontinuance. A veteran or eligible person may be reentered following discontinuance because of unsatisfactory conduct, progress or attendance only when either of the following sets of conditions exist:
   (1) The veteran or eligible person is resuming enrollment at the same educational institution in the same program of education and the educational institution has--
      (i) Approved the veteran's or eligible person's reenrollment, and
      (ii) Certified it to the Department of Veterans Affairs; or
   (2) All of the following exist:
      (i) The cause of unsatisfactory conduct, progress or attendance has been removed,
      (ii) VA determines that the program which the veteran or eligible person now proposes to pursue is suitable to his or her aptitudes, interests and abilities, and
      (iii) If a proposed change of program is involved, the change meets the requirements for approval under §§ 21.4234, 21.5232, 21.7114 and 21.7614 of this part.

(b) Programs which may be reentered after discontinuance. Reentrance may be for the same program, for a revised program or for an entirely different program depending on the cause of the discontinuance and the removal of that cause.


§ 21.4279 Combination correspondence-residence program.
(a) Requirements for pursuit. A program of education may be pursued partly in residence and partly by correspondence for the attainment of a predetermined and identified objective under the following conditions:
   (1) The correspondence and residence portions are pursued sequentially; that is, not concurrently.
   (2) It is the practice of the institution to permit a student to pursue a part of his or her course by correspondence in partial fulfillment of the requirements for the attainment of the specified objective.
   (3) The total credit established by correspondence does not exceed the maximum for which the institution will grant credit toward the specified objective.
   (4) The educational institution offering the course is accredited by an agency recognized by the Secretary of Education; and
   (5) The State approving agency has approved the correspondence-residence course and has verified compliance with the requirement of 38 U.S.C. 3672(e) and § 21.4256(a) that at least 50 percent of those pursuing the correspondence-residence course require six months or more to complete it.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0575.)

(Authority: 38 U.S.C. 3672(e))
(b) Payment for pursuit of a correspondence-residence program. The rate of educational assistance payable to a spouse or surviving spouse under 38 U.S.C. Chapter 35 for the residence portion of a correspondence-residence course or program shall be computed as set forth in §§ 21.3131(a) and 21.4270.

(1) The charges for that portion of the course or program pursued exclusively by correspondence will be in accordance with § 21.3131(a) with 1 month entitlement charged for each $404 of cost reimbursed.

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

(2) The charges for the residence portion of the program must be separate from those for the correspondence portion.


[EFFECTIVE DATE NOTE: 61 FR 29293, 29296, June 10, 1996, revised the introductory text of paragraph (b) and paragraph (b)(1), effective June 10, 1996; 62 FR 63848, 63850, Dec. 3, 1997, revised the introductory text of paragraph (a) and paragraph (a)(4), and added paragraph (a)(5), effective Jan. 2, 1998.]

§ 21.4280 [Reserved]
SUBPART F -- EDUCATION LOANS

§ 21.4500 Definitions.
§ 21.4501 Eligibility.
§ 21.4502 Applications.
§ 21.4503 Determination of loan amount.
§ 21.4504 Promissory note.
§ 21.4505 Check delivery.
§ 21.4507 Advertising.

§ 21.4500 Definitions.
(a) General. These definitions shall be applicable for subpart F of part 21.
(b) Education loan. A loan made by the Department of Veterans Affairs to an eligible spouse or surviving spouse pursuant to 3512(f) and 3698.
(c) Academic year. The 9 month period usually from August or September to May or June, which includes generally two semesters or three quarters.
(d) Loan period. (1) The Department of Veterans Affairs will make loans normally for a quarter, semester, summer term or two consecutive quarters.
(2) The Department of Veterans Affairs may grant a loan to an eligible spouse or surviving spouse attending a course not organized on a term, quarter or semester basis if the course requires at least 6 months at the full-time rate to complete. A loan will be granted for not more than 6 months at a time.

Authority: 38 U.S.C. 3512(f), 3698
(i) The Director of the Department of Veterans Affairs facility of jurisdiction may waive the requirement that such a course must take at least 6 months to complete. Such a waiver of the length of the course shall be granted by the Director only if a school requests one for a course and the Director finds that:
(A) During the previous 2 years at least 75 percent of the students enrolled in the course completed it.
(B) During the previous 2 years at least 75 percent of the persons completing the course found employment in the occupational category for which the course is designed to provide training.
(C) The default rate on all Department of Veterans Affairs education loans ever made to students at the educational institution does not exceed 5 percent or 5 cases, whichever is greater.
(D) The default rate on all loans ever made to students pursuant to loan programs administered by the Department of Education does not exceed 5 percent or five cases, whichever is greater.
(E) The course is at least 3 months long.
(F) The course is approved for full-time attendance only.
(G) No more than 35 percent of the students attending the course are receiving educational assistance from the Department of Veterans Affairs.
(H) The Field Director for the region in which the Department of Veterans Affairs facility is located concurs in the waiver.
(ii) If a school disagrees with a decision of a Director of a Department of Veterans Affairs facility, it may, within 1 year from the date of the letter from the Director informing the school of the decision, request that the decision be reviewed by the Director, Education Service. The Director of the Department of Veterans Affairs facility shall forward all requests to the Director, Education Service, who shall consider all evidence submitted by the school. He or she has the authority to affirm or reverse a decision of a Department of Veterans Affairs facility, but shall not grant a waiver if the requirements of paragraph (d)(2)(i) of this section are not met. 

(iii) A waiver will remain in effect until the date on which the course fails to meet one of the requirements of paragraph (d)(2)(i) of this section. A school which has received a waiver for a course must notify the Director of the Department of Veterans Affairs facility of jurisdiction within 30 days of the date on which one of those requirements is not met.

(Authority: 38 U.S.C. 3512(f), 3698(c))

(e) Total amount of financial resources. This term means the total of the following:

(1) The annual adjusted effective income of the eligible spouse or surviving spouse, less Federal income taxes paid or payable by the veteran or other eligible person with respect to such income, as described in paragraph (h) of this section.

(2) The amount of cash assets of the eligible spouse or surviving spouse, as described in §21.4502(b)(2).

(3) The amount of financial assistance received by the eligible spouse or surviving spouse under the provisions of Title IV of the Higher Education Act of 1965, as amended.

(4) Educational assistance received or receivable for the loan period by the eligible spouse or surviving spouse under 38 U.S.C. chapter 35. This amount shall be exclusive of an education loan.

(5) Financial assistance received by the eligible spouse or surviving spouse under any scholarship or grant other than the one specified in paragraph (e)(3) of this section.

(6) Department of Veterans Affairs work-study allowance received or receivable by the eligible spouse or surviving spouse under 38 U.S.C. 3537.

(f) Actual cost of attendance. The term actual cost of attendance means:

(1) The actual charge per student for tuition, fees, and books;

(2) An allowance for commuting (this allowance will be based on 22.5 per mile for distances not exceeding normal commuting distance);

(3) An allowance for other expenses reasonably related to attendance at the institution at which the eligible spouse or surviving spouse is enrolled; and

(4) A room and board allowance that shall be determined as follows:

(i) If the educational institution actually provides the eligible spouse or surviving spouse with room and board, the allowance shall equal the actual charges to him or her for room and board;

(ii) If the educational institution provides some students with room and board, but does not provide room and board for the eligible spouse or surviving spouse, the room and board allowance shall equal either the actual expenses incurred by the eligible spouse or surviving spouse for room and board, or the amount for room and board that the educational institution would have charged the eligible spouse or surviving spouse, had the educational institution provided him or her with room and board, whichever is less; and
(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the eligible spouse or surviving spouse for room and board or the amount the eligible spouse or surviving spouse would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board, whichever is less.

(g) Loan fee. This shall be a fee collected by discounting the amount of any loan granted to an eligible spouse or surviving spouse by an appropriate amount. The fee shall be collected for each separate loan authorized. The amount of the fee shall be 3 percent of the total loan amount.

(h) Annual adjusted effective income. This income shall include:

(1) Nontaxable income for the student only for the current tax year in which the application for the education loan is received by the Department of Veterans Affairs. This includes income from sources such as Department of Veterans Affairs compensation and pension, disability retirement, unemployment compensation, welfare payments, social security benefits, etc.

(2) Adjusted gross income (wages, salary, dividends, interest, rental, business, etc.) for the student only for the current tax year in which the application for the education loan is received by the Department of Veterans Affairs, less:

(i) Authorized deductions for exemptions;

(ii) Itemized or standard deduction, whichever is greater;

(iii) Mandatory withholdings such as Federal and State income taxes, social security taxes, etc.

(Authority: 38 U.S.C. 3512(f), 3698(b))

(i) School term. This phrase means:

(1) In the case of an institution of higher learning operating on a quarter system, three consecutive quarters within an ordinary school year;

(2) In the case of an institution of higher learning operating on a semester system, two consecutive semesters within an ordinary school year; or

(3) In the case of an educational institution not an institution of higher learning or in the case of an institution of higher learning not operating on a quarter or semester system, a period of 9 to 11 months provided:

(i) The program of education is divided into segments, and

(ii) At least one segment is completed prior to or during the 9 to 11-month period.


(38 U.S.C. 1682A(e), (repealed, Pub. L. 100-689, section 124(a)))

[EFFECTIVE DATE NOTE; 61 FR 26107, 26115, May 24, 1996, which amended this section, became effective May 24, 1996.]

§ 21.4501 Eligibility.

(a) General. Any eligible spouse or surviving spouse shall be eligible to receive an education loan if he or she meets the criteria of this section.

(Authority: 38 U.S.C. 3512(f), 3698)

(b) Eligibility criteria. To qualify for an education loan --
(1) The eligible spouse's or surviving spouse's delimiting period as determined by § 21.3046 (a), (b), or (d) or § 21.3047 must have expired;

(2) The eligible spouse or surviving spouse must --

(i) Have financial resources that may reasonably be expected to be expended for education needs and which are insufficient to meet the actual costs of attendance;

(ii) Execute a promissory note payable to the Department of Veterans Affairs, as provided by § 21.4504;

(iii) Have unused entitlement provided under 38 U.S.C. 3511;

(iv) During the term, quarter, or semester for which the loan is granted, be enrolled on a full-time basis in pursuit of the approved program of education in which he or she was enrolled on the date his or her eligibility expired under § 21.3046 (a), (b), or (d), or § 21.3047; and

(v) Have been enrolled in a program of education on a full-time basis --

(A) On the date his or her period of eligibility expired under § 21.3046 (a), (b), or (d), or § 21.3047; or

(B) On the last date of the ordinary term, semester or quarter preceding the date his or her eligibility expired under § 21.3046 (a), (b), or (d), or § 21.3047, if the delimiting date fell during a school break or summer term.

(Authority: 38 U.S.C. 3512(f), 3698)

(c) Limitations. The period for which a loan may be granted shall not extend beyond the earliest of the following dates:

(1) Two years after the expiration of the period of eligibility as determined by § 21.3046(a), (b), or (d), or § 21.3047;

(2) The date on which the eligible spouse's or surviving spouse's entitlement is exhausted; or

(3) The date on which the eligible spouse or surviving spouse completes the approved program of education which he or she was pursuing on the date the delimiting period determined by § 21.3046 (a), (b), or (d), or § 21.3047 expired.

(Authority: 38 U.S.C. 3512(f), 3698)

(d) Exclusions. No eligible spouse or surviving spouse shall be authorized an education loan if he or she has defaulted on a previous education loan and there is a remaining unliquidated payment due VA.

(Authority: 38 U.S.C. 3512(f), 3698)


[EFFECTIVE DATE NOTE; 61 FR 26107, 26116, May 24, 1996, revised this section, effective May 24, 1996; 62 FR 51783, 51785, Oct. 3, 1997, amended paragraphs (b) and (c), effective Oct. 3, 1997.]

§ 21.4502 Applications.

(a) General. An eligible spouse or surviving spouse shall make an application for an education loan in the manner prescribed and upon the forms prescribed by the Department of Veterans Affairs. The Department of Veterans Affairs must receive the application no later than the last date of the term, quarter, semester, or 6-month period to which all or part of the loan will apply. The application shall be certified by the school as to the date required from the school by the Department of Veterans Affairs.
(Authority: 38 U.S.C. 3471)

(b) Information. The application shall provide the Department of Veterans Affairs with the following information and such other information as may be reasonable upon specific request:

(1) A statement of nontaxable income for the student for the current tax year in which the application is received by the Department of Veterans Affairs; as well as a statement of adjusted gross income for the student for the current tax year in which the application for an education loan is received by the Department of Veterans Affairs less authorized deductions for exemptions, itemized or standard deduction, whichever is greater, and mandatory withholdings such as Federal and State income taxes, social security taxes, etc.

(2) The amount of all funds of the eligible spouse or surviving spouse on hand on the date of the application including cash on hand, money in a bank or savings and loan association account, and certificates of deposit.

(3) The full amount of the tuition for the course to be paid by the eligible spouse or surviving spouse during the period for which the loan is sought.

(4) The amount of reasonably anticipated expenses for room and board to be expended by the eligible spouse or surviving spouse during the period for which the loan is sought, including a reasonable amount, not to exceed 22.5 cents per mile, for commuting normal distances to classes if the student does not reside on campus. Applications may also provide the Department of Veterans Affairs with a statement of the amount of charges for room and board which the school would have made had the school provided the veteran or eligible person with room and board. If the school does not provide room and board, the application may provide the Department of Veterans Affairs with a statement of charges for room and board which the eligible spouse or surviving spouse would have received had he or she been provided room and board at the nearest State college or State university which provides room and board.

(5) The anticipated reasonable cost of books and supplies required for the courses to be taken during the period for which the loan is sought.


[EFFECTIVE DATE NOTE; 61 FR 26107, 26116, May 24, 1996, which substituted "spouse or surviving spouse" for "veteran or other eligible person" in paragraph (a) and "eligible spouse or surviving spouse" for "veteran or other eligible person" in paragraphs (b)(2), (b)(3), and (b)(4), became effective May 24, 1996.]

§ 21.4503 Determination of loan amount.

(a) General. The amount of the education loan shall be computed by:

(1) Determining the total amount of financial resources of the eligible spouse or surviving spouse, as defined in § 21.4500(e), which may be reasonably expected to be expended for education needs in any academic year or other loan period.

(2) Subtracting the available resources determined in paragraph (a)(1) of this section from the actual cost of attendance, as defined in § 21.4500(f), to obtain the net amount by which costs exceed the resources available for education needs. If the available resources and the costs are equal, or if the resources exceed the costs, no loan will be authorized.
(b) Amount. A loan shall be authorized in the amount of the excess of cost over available resources as determined in paragraph (a) of this section subject to the following limitations:

(1) If the costs exceed the available resources by $ 50 or less no loan shall be granted.
(2) The aggregate of the amounts any eligible spouse or surviving spouse may borrow for an education loan may not exceed $ 2,500 in any one academic year. It also may not exceed an amount determined by multiplying the number of months of educational assistance to which the eligible spouse or surviving spouse would be entitled were it not for the expiration of his or her delimiting period under 38 U.S.C. 3511 times $ 376.
(Authority: 38 U.S.C. 3512(f), 3698)
(3) If a student is enrolled in a course organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than two consecutive quarters. If a student is enrolled in a course not organized on a term, quarter or semester basis, no single loan shall be authorized at one time for a period that is longer than 6 months.
(4) The Department of Veterans Affairs shall pay the following maximum amounts for these loan periods:
   (i) $ 1,250 for any semester.
   (ii) $ 830 for any term of 8 weeks or more leading to a standard college degree which is not part of the normal academic year or for a quarter.
   (iii) $ 1660 for two consecutive quarters.
   (iv) $ 270 per month for a course not leading to a standard college degree if less than 6 months long.
   (v) $ 1660 for a 6-month loan period based on a course not leading to a standard college degree which is 6 or more months long.
   (vi) $ 270 per month for a loan period of less than 6 months based on a course not leading to a standard college degree which is 6 or more months long.
(Authority: 38 U.S.C. 3512(f), 3698(b))
(5) No amount authorized will be paid by the Department of Veterans Affairs until the eligible spouse or surviving spouse is certified as being enrolled and actually pursuing the course.
(6) An eligible spouse or surviving spouse may receive more than one loan covering separate loan periods, subject to paragraphs (b)(3) and (b)(7) of this section.
(7) If the eligible spouse or surviving spouse has a material change in economic circumstances subsequent to the original application for a loan, he or she may reapply for an increase in an authorized loan or for a loan, if otherwise qualified, if no loan was originally granted. However, the Department of Veterans Affairs will not decrease or revoke a loan once granted, absent fraud in the application.
(8) [Redesignated as paragraph (b)(6). 61 FR 26107, 26116, May 24, 1996.]
(9) [Redesignated as paragraph (b)(7). 61 FR 26107, 26116, May 24, 1996.]
(10) [Removed. 61 FR 26107, 26116, May 24, 1996.]
(11) [Removed. 61 FR 26107, 26116, May 24, 1996.]

(38 U.S.C. 3698(a))
§ 21.4504 Promissory note.

(a) General. The agreement by VA to loan money pursuant to 38 U.S.C. 3512(f) and 3698 to any eligible spouse or surviving spouse shall be in the form of a promissory note which shall include:

(1) The full amount of the loan.
(2) Agreement to pay a fee not to exceed 3 percent for an insurance fund against defaults.
(3) A note or other written obligation providing for repayment of the principal amount, and interest on the loan in annual installments over a period beginning 9 months after the date on which the borrower first ceases to be at least a half-time student and ending:

(i) For loans of $600 or more, 10 years and 9 months after such date, or
(ii) For loans of less than $600, 1 year and 7 months after such date for the first $50 of the loan plus 1 additional month for each additional $5 of the loan.
(4) A provision for prepayment of all or part of the loan, without penalty, at the option of the borrower.

(b) Interest. The promissory note shall advise the student that the loan shall bear interest on the unpaid balance of the loan at a rate comparable to, but not in excess of, the rate of interest charged students at such time on loans insured by the Secretary of Education, Department of Education, under part B of Title IV of the Higher Education Act of 1965. The rate shall be determined as of the date the agreement is executed and shall be a fixed amount.

(c) Security. The loan shall be made without security and without endorsement.

(d) Default. Whenever VA determines that a default, in whole or in part, has occurred on any such loan the eligible spouse or surviving spouse shall be notified that the amount of the default shall be recovered from the eligible spouse or surviving spouse concerned in the same manner as other debt due the United States. Once a default has occurred, the eligible spouse's or surviving spouse's subsequent reentrance into training at the half-time or greater rate shall not be the basis for rescinding the default. A default may only be rescinded when VA has been led to create the default as a result of a mistake of fact or law.

(e) Death or disability. If the eligible spouse or surviving spouse dies or becomes permanently and totally disabled, even though he or she ceases to be permanently and totally disabled subsequent to the granting of the loan, the remaining liability of such person for an educational loan shall be discharged.

(f) Fraud. Material misrepresentation of fact by the eligible spouse or surviving spouse, including omissions of relevant information, shall render the loan agreement null and void. The deferred payment provisions of the agreement shall not apply in such a case and the full amount of any loan balance shall become due and payable immediately. The amount due shall be recovered from the eligible spouse or surviving spouse in the same manner as any other debt due the United States.

(g) Signature. An eligible spouse or surviving spouse may sign both the loan application and the promissory note required and payment of the amounts authorized will be made to
such person, notwithstanding his or her minority, unless the person has a legal guardian. In such cases the legal guardian must sign and will be paid the loan amounts.


[EFFECTIVE DATE NOTE; 61 FR 26107, 26116, May 24, 1996, which revised the introductory text of paragraph (a), and paragraph (a)(3)(ii), and amended paragraphs (d), (e), (f), and (g), became effective May 24, 1996.]

§ 21.4505 Check delivery.
(a) General. Education loans by the Department of Veterans Affairs shall be made by a check payable to the eligible spouse or surviving spouse and shall be mailed promptly to the educational institution in which the eligible spouse or surviving spouse is enrolled for delivery by the educational institution.
(b) Delivery and certification. (1) The educational institution, electing to participate in this program, shall deliver an education loan check to the eligible spouse or surviving spouse and shall certify the fact of delivery to the Department of Veterans Affairs immediately upon delivery. If the delivery is not made within 30 days after the institution receives the check, it shall return the check to the Department of Veterans Affairs.
(2) The Director of the Department of Veterans Affairs facility of jurisdiction may direct that education loan checks be sent directly to spouses or surviving spouses when:
   (i) The educational institution demonstrates an inability to comply with these requirements; or
   (ii) The educational institution fails to provide adequately for the safekeeping of the checks prior to the delivery to the student or return to the Department of Veterans Affairs; or
   (iii) The educational institution elects not to participate in this program; or
   (iv) There is compelling evidence that the institution is unable to discharge its responsibilities under this program.


(38 U.S.C. 3512(f), 3698)
[EFFECTIVE DATE NOTE; 61 FR 26107, 26116, May 24, 1996, which amended paragraphs (a), (b)(1) and the introductory text of paragraph (b)(2), became effective May 24, 1996.]

§ 21.4507 Advertising.
(a) General. No educational institution or training establishment shall include a statement in advertisements or brochures intended to solicit students as to the availability of education loans from the Department of Veterans Affairs for eligible spouses and surviving spouses, except as provided in paragraph (b) of this section.
(b) Form. The statement which is permitted shall be as follows: "Certain eligible spouses and surviving spouses may qualify for a maximum educational loan of $2,500 per academic year from the Department of Veterans Affairs depending upon need. Applications for such loans shall be made to the Department of Veterans Affairs on forms prescribed by it."
[44 FR 62510, Oct. 31, 1979]

(38 U.S.C. 3512(f), 3696, 3698(b))
[EFFECTIVE DATE NOTE; 61 FR 26107, 26116, May 24, 1996, which amended paragraphs (a) and (b), became effective May 24, 1996.]
SUBPART F-3 [Subpart F-3 was removed and reserved. See 66 FR 38938, July 26, 2001.]

§ 21.4800 [Reserved]
§ 21.4801 [Reserved]
§ 21.4802 [Reserved]
§ 21.4803 [Reserved]
§ 21.4804 [Reserved]
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§ 21.4851 [Reserved]
§ 21.4852 [Reserved]
§ 21.4853 [Reserved]
§ 21.4854 [Reserved]
§ 21.4855 [Reserved]
§ 21.4856 [Reserved]
SUBPART G – POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE UNDER 38 U.S.C. CHAPTER 32

ADMINISTRATIVE
GENERAL
CLAIMS AND APPLICATIONS
ELIGIBILITY
PARTICIPATION
ENTITLEMENT
COUNSELING
PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE
STATE APPROVING AGENCIES
SCHOOLS
PROGRAMS OF EDUCATION
COURSES
ASSESSMENT AND PURSUIT OF COURSE
EDUCATIONAL ASSISTANCE PILOT PROGRAM

(a) Delegation of authority. Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. Chapter 32 and the applicable regulations, precedents, and instructions, as to the program authorized by subpart G of this part.

(b) Administrative provisions. In administering benefits payable under 38 U.S.C. Chapter 32, VA will apply the following sections:

1. Section 21.4002 -- Finality of decisions;
2. Section 21.4003 (except paragraphs (d) and (e)) -- Revision of decisions;
3. Section 21.4005 -- Conflicting interests;
4. Section 21.4006 -- False or misleading statements;
5. Section 21.4007 -- Forfeiture;
6. Section 21.4008 -- Prevention of overpayments; and
7. Section 21.4009 -- Overpayments; waiver or recovery.

[Authority: 38 U.S.C. 3241(a), 3680, 3683, 3685, 3690, 6103]

[EFFECTIVE DATE NOTE: 61 FR 29028, 29029, June 7, 1996, which revised this section, became effective June 7, 1996.]
GENERAL

§ 21.5020 Post-Vietnam era veterans' educational assistance.
§ 21.5021 Definitions.
§ 21.5022 Eligibility under more than one program.
§ 21.5023 Nonduplication; Federal programs.

§ 21.5020 Post-Vietnam era veterans' educational assistance.
Title 38 U.S.C. Chapter 32 provides for a participatory program for educational assistance benefits to eligible veterans and servicepersons. The intent of the Congress for this program is stated in 38 U.S.C. 3201.


(38 U.S.C. 3201)
[EFFECTIVE DATE NOTE: 61 FR 29098, 29029, June 7, 1996, which revised this section, became effective June 7, 1996.]

§ 21.5021 Definitions.
For the purpose of subpart G and payment of Chapter 32 benefits the following definitions apply:

(Authority: 38 U.S.C. 3202(l))

(a) Veteran -- means anyone whose service meets the requirements of § 21.5040.
(b) Active duty -- means full-time duty in the Armed Forces or as a commissioned officer of the regular or Reserve Corps of the Public Health Service or of the National Oceanic and Atmospheric Administration. It does not include any period during which an individual:
(1) Was assigned full-time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,
(2) Served as a cadet or midshipman at one of the service academies,
(3) Served under the provisions of section 511(d) of Title 10, United States Code, pursuant to an enlistment in the military reserve or national guard,
(4) Served in an excess leave without pay status, or
(5) Served in a status specified in § 3.15 of this chapter.

(Authority: 38 U.S.C. 3202)
(c) State -- means each of the several States, territories and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Canal Zone.

(Authority: 38 U.S.C. 101(20))
(d) School, educational institution, institution. The terms, school, educational institution, and institution mean --
(1) Any vocational school, business school, correspondence school, junior college, teacher's college, college, normal school, professional school, university or scientific or technical institution;
(2) Any public or private elementary school or secondary school which offers courses for adults; and
(3) An entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.
(Authority: 38 U.S.C. 3202(2), 3452(c))

(e) Participant -- means a person who is participating in the educational benefits program established under Chapter 32. This includes:

(1) A person who has enrolled in and is making contributions by monthly payroll deduction to the fund.

(2) Those individuals who have contributed to the fund and have not disenrolled (i.e., users or potential users of benefits).

(Authority: 38 U.S.C. 3202)

(3) A person who has enrolled in and is having monthly contributions to the fund made for him or her by the Secretary of Defense.

(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

(4) A person who has made a lump-sum contribution to the fund in lieu of or in addition to monthly contributions deducted from his or her military pay.

(Authority: 38 U.S.C. 3222)

(5) Those individuals who have contributed to the fund and --

(i) Have been automatically disenrolled as provided in § 21.5060(b)(3) of this part,

(ii) Whose funds have been transferred to the Treasury Department as provided in § 21.5064(b)(4)(iii) of this part, and

(iii) Who are found to have qualified for an extended period of eligibility as provided in § 21.5042 of this part.


(f) Fund -- means that trust fund account established to maintain dollar contributions of the participant (and contributions, if any, from the Department of Defense).

(Authority: 38 U.S.C. 3222)

(g) Suspends -- means a participant stops contributing to the fund (temporarily or permanently).

(h) Disenrolls -- means a participant terminates participation and forfeits any entitlement to benefits except for a refund of his or her contributions previously made.

(Authority: 38 U.S.C. 3221)

(i) Hardship or other good reasons -- means circumstances considered to be such by the Department of Defense and the Department of Veterans Affairs when referring to suspension or disenrollments, such as illness of the participant or a member of his or her immediate family, unexpected personal expense, etc.

(Authority: 38 U.S.C. 3221(b))

(j) Benefit period means:

(1) For a course leading to a standard college degree:

(i) The entire enrollment period certified by the school; or

(ii) That period of time from the beginning of an enrollment period until the end of the individual's delimiting period; or

(iii) That period of time from the beginning of an enrollment period to the date on which the individual's contributions in the fund are exhausted, whichever is the shortest.

(2) For a residence course not leading to a standard college degree or for a correspondence course that period of time from the beginning of the enrollment period as certified by the school or the date the school last certified on the quarterly certification of attendance, whichever is later, to:

(i) The end of the enrollment period;
(ii) The end of the quarter to be certified;
(iii) The last date of the individual's delimiting period; or
(iv) The date on which the individual's contributions to the fund are exhausted, whichever occurs first.
(3) [Reserved]
(4) For apprenticeship and other on-job training that period of time from the beginning date of training or the date last certified on the monthly certification of training to --
(i) The end of the month to be certified;
(ii) The last date of the veteran's delimiting period;
(iii) The date on which the veteran's entitlement is exhausted, whichever occurs first.
(k) Benefit payment -- means all educational assistance allowance paid to a veteran for pursuit of a program of education during a benefit period.
(Authority: 38 U.S.C. 3231)
(l) Spouse -- means a person of the opposite sex who is the wife or husband of the participant, and whose marriage to the participant meets the requirements of § 3.1(j) of this chapter.
(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)
(m) Surviving spouse -- means a person of the opposite sex who is a widow or widower of the participant, and whose marriage to the participant meets the requirements of § 3.1(j) or § 3.52 of this chapter.
(n) Child -- (1) for the purposes of § 21.5067(a) this term means a natural child, step-child or adopted child of the participant regardless of age or marital status.
(2) For all other purposes this term means a person whose relationship to the participant meets the requirements of § 3.57 or § 3.58 of this chapter.
(o) Parent -- means a person whose relationship to the participant meets the requirements of § 3.59 of this chapter.
(Authority: 38 U.S.C. 3224)
(p) Training establishment -- means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.
(Authority: 38 U.S.C. 3202(5), 3452(e); Pub. L. 99-576)
(q) Program of education -- means --
(1) Any curriculum or combination of subjects or unit courses pursued at a school which is generally accepted as necessary to meet requirements for a predetermined and identified educational, professional or vocational objective;
(2) Subjects or unit courses which fulfill requirements for more than one predetermined and identified objective if all objectives pursued are generally recognized as being related to a single career field;
(3) Any unit course or subject or combination of courses or subjects, pursued by an individual at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or
(4) A full-time program of apprenticeship or other on-job training approved as provided in §§ 21.4261 or 21.4262 of this part as appropriate.
(Authority: 38 U.S.C. 3202(2), 3452(b); Pub. L. 99-576)

(r) Educational objective -- An educational objective is one that leads to the awarding of a diploma, degree or certificate which is generally recognized as reflecting educational attainment.
(Authority: 38 U.S.C. 3202(2), 3452(b))

(s) Professional or vocational objective -- A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program of education consists of a series of courses not leading to an educational objective, these courses must be generally accepted as necessary for attainment of a designated professional or vocational objective.
(Authority: 38 U.S.C. 3202(2))

(t) Deficiency course -- The term deficiency course means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.
(Authority: 38 U.S.C. 3241; Pub. L. 100-689)

(u) Refresher course -- The term refresher course means --
(1) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or
(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the individual's active military service and which is necessary to enable the individual to pursue an approved program of education.
(Authority: 38 U.S.C. 3241(a); Pub. L. 100-689, Pub. L. 101-237)

(v) Disabling effects of chronic alcoholism. (1) The term disabling effects of chronic alcoholism means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case --
(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and
(ii) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.
(2) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.
(3) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.
(Authority: 38 U.S.C. 105, 3232, 3462; Pub. L. 100-689)

(w) Continuous service means --
(1) Active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.
(2) Time lost while on active duty will not interrupt the continuity of service. Time lost includes, but is not limited to, excess leave, noncreditable time and not-on-duty time.
(Authority: 38 U.S.C. 3232(a); Pub. L. 101-237)
(x) Persian Gulf War. The term "Persian Gulf War" means the period beginning on
August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation
or by law.
(Authority: 38 U.S.C. 101(33))
(y) Alternative teacher certification program. The term alternative teacher certification
program for the purposes of determining whether an entity offering such a program is a
school, educational institution or institution, as defined in paragraph (d)(3) of this section,
means a program leading to a teacher certificate that allows individuals with a bachelor's
degree or graduate degree to obtain teacher certification without enrolling in an
institution of higher learning.
(Authority: 38 U.S.C. 3202(2), 3452(c))
[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51743, Nov. 17, 1982; 52 FR 3429, Feb. 4,
1992; 58 FR 34369, June 25, 1993; 61 FR 1525, 1526, Jan. 22, 1996; 61 FR 29028,
29029, June 7, 1996; 65 FR 5785, 5786, Feb. 7, 2000]

(38 U.S.C. 101(33))
[EFFECTIVE DATE NOTE: 65 FR 5785, 5786, Feb. 7, 2000, amended paragraph (d)(3),
effective Feb. 7, 2000.]

§ 21.5022 Eligibility under more than one program.
(a) Concurrent benefits under more than one program. An individual may not receive
educational assistance under 38 U.S.C. Chapter 32 concurrently with benefits under any
of the following provisions of law:
(1) 38 U.S.C. Chapter 31;
(2) 38 U.S.C. Chapter 35;
(3) 10 U.S.C. Chapter 107;
(4) 10 U.S.C. Chapter 1606;
note); or
(Authority: 38 U.S.C. 3681(b))
(b) Total eligibility under more than one program. (1) No one may receive a combination
of educational assistance benefits under 38 U.S.C. Chapter 32 and any of the following
provisions of law for more than 48 months (or part-time equivalent):
(i) 38 U.S.C. Chapter 30;
(ii) 38 U.S.C. Chapter 35;
(iii) 10 U.S.C. Chapter 107;
(iv) 10 U.S.C. Chapter 1606;
(v) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141,
note);
(vi) The Hostage Relief Act of 1980 (5 U.S.C. 5561 note); or
(2) No one may receive assistance under 38 U.S.C. Chapter 31 in combination with
assistance under 38 U.S.C. Chapter 32 in excess of 48 months (or the part-time
equivalent) unless VA determines that additional months of benefits under 38 U.S.C.
Chapter 31 are necessary to accomplish the purposes of a rehabilitation program.
§ 21.5023 Nonduplication; Federal programs.
An individual may not receive educational assistance allowance under 38 U.S.C. Chapter 32, if the individual is:
(a) On active duty and is pursuing a course of education which is being paid for, in whole or in part, by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service), or
(Authority: 38 U.S.C. 3241, 2681)
(b) Attending a course of education or training paid for, in whole or in part, under the Government Employees' Training Act.

(38 U.S.C. 3241, 3681)
[EFFECTIVE DATE NOTE: 61 FR 7217, Feb. 27, 1996, which amended paragraph (b), became effective Oct. 29, 1992.]
CLAIMS AND APPLICATIONS

§ 21.5030 Applications, claims, and time limits.

§ 21.5030 Applications, claims, and time limits.
(a) To become a participant an individual must apply to his or her Service Department on forms prescribed by the Service Department and/or the Secretary of Defense.
(b) Rules and regulations of the applicable Service Department and/or the Department of Defense shall determine if the application is timely.
(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:
   (1) Section 21.1029 -- Definitions.
   (2) Section 21.1030 -- Claims.
   (3) Section 21.1031 -- VA responsibilities when a claim is filed.
   (4) Section 21.1032 -- Time Limits

   [EFFECTIVE DATE NOTE: 64 FR 23769, 23772, May 4, 1999, revised the section heading and amended paragraph (c), effective June 3, 1999.]
ELIGIBILITY

§ 21.5040 Basic eligibility.
§ 21.5041 Periods of entitlement.
§ 21.5042 Extended period of eligibility.

§ 21.5040 Basic eligibility.

(a) Individuals not on active duty. Whether an individual has basic eligibility under 38 U.S.C. Chapter 32 for educational assistance depends upon when he or she entered the military service, the length of that service, and the character of that service.

(b) Service requirements for all individuals not on active duty. (1) An individual not on active duty:

(i) Must have entered the military service after December 31, 1976, and before July 1, 1985;

(ii) Must not have had basic eligibility under 38 U.S.C. Chapter 34;

(iii) Must have received an unconditional discharge or release from any period of service upon which eligibility is based;

(iv) Must either have:

(A) Served on active duty for at least 181 continuous days, or

(B) Been discharged or released from active duty for a service-connected disability.

(2) The Department of Veterans Affairs will consider that the veteran has an unconditional discharge or release if:

(i) The individual was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met.

(3) The provisions of § 3.12 of this chapter as to character of discharge and § 3.13 of this chapter as to conditional discharges are applicable.

(c) Additional active duty service requirements for some individuals not on active duty--Chapter 32. (1) Unless exempted by paragraph (d) of this section, persons who originally enlist in a regular component of the Armed Forces after September 7, 1980, or who enter on active duty after October 16, 1981 (either as an enlisted member or an officer) to be eligible under 38 U.S.C. Chapter 32, must first complete the shorter of:

(i) 24 continuous months of active duty, or

(ii) The full period for which the individual was called or ordered to active duty.

(2) For the purpose of paragraph (c)(1) of this section the Department of Veterans Affairs considers that an enlisted person originally enlisted in a regular component of the Armed Forces on the date he or she entered on active duty even through he or she may have signed a delayed-entry contract on an earlier date.

(3) In computing time served for the purpose of this paragraph, the Department of Veterans Affairs will exclude any period during which the individual is not entitled to...
(d) Individuals exempt from additional active duty requirements. (1) An individual who originally enlists in a regular component of the Armed Forces after September 7, 1980, or who enters on active duty after October 16, 1981 (either as an enlisted member or officer), will be eligible to receive benefits under 38 U.S.C. Chapter 32 based upon the ensuing period of active duty, and is exempt from the provisions of paragraph (c) of this section if he or she subsequently:

(i) Is discharged or released from active duty:
(A) Under 10 U.S.C. 1173 (hardship discharge), or
(B) Under 10 U.S.C. 1171 (early-out discharge), or
(C) For a disability incurred in or aggravated in line of duty; or

(ii) Is found by Department of Veterans Affairs to have a service-connected disability which gives the individual basic entitlement to disability compensation as described in § 3.4(b) of this chapter. Once the Department of Veterans Affairs makes this finding, the exemption will continue to apply even if the disability subsequently improves and becomes noncompensable.

(2) An individual who enters on a period of active duty after October 16, 1981, is also exempt from the provisions of paragraph (c) of this section if he or she:

(i) Previously completed a continuous period of active duty of at least 24 months, or

(ii) Was discharged or released from a previous period of active duty under 10 U.S.C. 1171 (early-out discharge).

(3) In computing time served for the purpose of this paragraph, the Department of Veterans Affairs will exclude any period during which the individual is not entitled to credit for service as specified in § 3.15 of this chapter. However, those periods will be included in determining if the service was continuous.

(e) Savings provision. An individual may become a participant and establish basic eligibility under the provisions of this section based upon a period of active duty service which began before October 16, 1981. He or she would not lose the basic eligibility based upon that period of service if, following a release from active duty, the individual reenters on active duty after October 16, 1981, and fails to meet the requirements of paragraph (c) of this section or qualify for an exemption under paragraph (d) of this section. He or she will receive a refund of any contributions he or she may make to the fund during the second period of active duty. See § 21.5065.

(Authority: 38 U.S.C. 3202, 5303A)

(f) Individuals on active duty. To establish basic eligibility under 38 U.S.C. Chapter 32 for educational assistance an individual on active duty:

(1) Must have entered into military service after December 31, 1976, and before July 1, 1985.


(2) Must have served on active duty for a period of 181 or more continuous days after December 31, 1976, and

(3) If not enrolled in a course, courses or a program of education leading to a secondary school diploma or equivalency certificate, must have completed the lesser of the following two periods of active duty:

(Authority: 38 U.S.C. 3231(b))
(i) The individual's first obligated period of active duty which began after December 31, 1976, or
(ii) The individual's period of active duty which began after December 31, 1976, and which is 6 years in length,
(4) If enrolled in a course, courses or a program of education leading to a secondary school diploma or equivalency certificate, the individual:
(i) Must be an enlisted member of the Armed Forces,
(ii) Must be a participant
(iii) Must be training during the last 6 months of his or her first period of active duty, or any time thereafter, and
(5) If he or she originally enlisted after September 7, 1980, must have completed at least 24 months of his or her original enlistment
(Authority: 38 U.S.C. 3231(b), 10 U.S.C. 977)
(g) Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 10 U.S.C. chapter 1606. An individual who serves in the Selected Reserves may not receive credit for that service under both 38 U.S.C. Chapter 32 and 10 U.S.C. Chapter 1606. If he or she wishes to receive educational assistance based upon this service, the veteran must elect the chapter under which he or she will receive benefits.
(1) This election must be in writing and submitted to VA.
(2) If a veteran elects to receive educational assistance under 38 U.S.C. Chapter 32, and negotiates an educational assistance check which is based upon the period of service for which the election was made, the election is irrevocable. Negotiation of an educational assistance check provided under either 38 U.S.C. chapter 32 or 10 U.S.C. chapter 1606, but based upon a period of service which preceded the period for which an election was made, will not serve to make the election irrevocable.
(h) [Redesignated as paragraph (g). See 61 FR 29028, 29029, June 7, 1996.]
(Authority: 38 U.S.C. 3221(f); Pub. L. 101-237)

[EFFECTIVE DATE NOTE: 61 FR 20727, 20728, May 8, 1996, which substituted "1606" for "106" in the heading of paragraph (h), the introductory text of paragraph (h) and paragraph (h)(2), became effective May 8, 1996; 61 FR 29028, 29029, June 7, 1996, which removed paragraph (g) and redesignated paragraph (h) as paragraph (g), became effective June 7, 1996.]

§ 21.5041 Periods of entitlement.
(a) Ten-year delimiting period. Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after the later of the following:
(1) His or her last discharge or release from a period of active duty of 90 days or more of continuous service; or
(2) His or her last discharge or release from a period of active duty of any length when the eligible individual is discharged or released--
(i) For a service-connected disability;
(ii) For a medical condition which preexisted such service and which VA determines is not service-connected;
(iii) For hardship; or
(iv) Involuntarily for convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(b) Use of entitlement. The individual--
(1) May use his or her entitlement at anytime during the 10-year period after the last discharge or release from active duty or other period as provided pursuant to § 21.5042 of this part;
(2) Is not required to use his or her entitlement in consecutive months.


§ 21.5042 Extended period of eligibility.
(a) General. A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by § 21.5041 of this part provided--
(1) The veteran applies for an extension.
(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. See § 21.5021(v).

(b) Application. The veteran must apply for the extended period of eligibility in time for VA to receive the application by the later of the following dates:
(1) One year from the last date of the delimiting period otherwise applicable to the veteran under § 21.5401 of this part, or
(2) One year from the termination date of the period of the veteran's mental or physical disability.

(c) Qualifying period of disability. (1) A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education.
(2) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct provided the last date of the time limit for filing a claim for the extension determined under § 21.5030(c)(3) of this part occurs after November 17, 1988.
(Authority: 38 U.S.C. 105; Pub. L. 100-689)

(3) Evidence must be presented which clearly establishes that the veteran's disability made pursuit of his or her program medically infeasible during the veteran's original period of eligibility as determined by § 21.5041 of this part. A period of disability following the end of the original disability period will not be a basis for extension.
(4) VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

d) Commencing date. The veteran shall elect the commencing date of an extended period of eligibility. The date chosen--
(1) Must be on or after the original date of expiration of eligibility as determined by § 21.5041 of this part, and
(2) Must be on or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or
(3) Must be on or before the first day of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(4) For a veteran whose entitlement to an extended period of eligibility is dependent upon the disabling effects of chronic alcoholism, may not begin before November 18, 1988.
(Authority: 38 U.S.C. 105, 3232; Pub. 99-576; Pub. L. 100-689)

e) Determining the length of extended periods of eligibility. A veteran's extended period of eligibility shall be based upon the qualifying period of disability, and determined as follows:
(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:
   (i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,
   (ii) The veteran's delimiting date as determined by § 21.5041 of this part, or
   (iii) The date the veteran resumed training.
(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:
   (i) The date the veteran's training became medically feasible, or
   (ii) The veteran's delimiting date as determined by § 21.5041 of this part.

(f) Discontinuance. If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), VA will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility.

(38 U.S.C. 3232; Pub. L. 99-576)
PARTICIPATION

§ 21.5050 Application requirements for participation.
§ 21.5052 Contribution requirements.
§ 21.5053 Restoration of contributions (Persian Gulf War).
§ 21.5054 Dates of participation.
§ 21.5058 Resumption of participation.
§ 21.5060 Disenrollment.
§ 21.5062 Date of disenrollment.
§ 21.5064 Refund upon disenrollment.
§ 21.5065 Refunds without disenrollment.
§ 21.5066 Suspension of participation.
§ 21.5067 Death of participant.

§ 21.5050 Application requirements for participation.
(a) An individual, who is otherwise eligible to become a participant, must apply to the Service Department under which he or she serves upon forms prescribed by the Service Department and/or Secretary of Defense.
(b) No application to participate may be made before entry upon active duty.
(c) Each application must be submitted in time to permit the Service Department to make the required deduction from the individual's military pay for at least 1 month before the applicant's discharge or release from active duty.

(38 U.S.C. 3221)

§ 21.5052 Contribution requirements.
(a) Minimum period of participation. Each individual who agrees to participate must do so for a minimum period of 12 consecutive months, unless the participant:
(1) Is allowed to disenroll for hardship reasons;
(2) Is permitted to suspend participation for hardship reasons;
(3) Is discharged or released from active duty;
(4) Otherwise ceases to be legally eligible to participate; or
(5) Elects to make a lump-sum contribution which, when taken together with his or her other contributions, equals the equivalent of at least 12 months' participation.
(Authority: 38 U.S.C. 3221, 3222)
(b) Amount of monthly contribution. The individual shall specify the amount of his or her contribution to the fund.
(1) The contribution shall be at least $ 25 per month but not more than $ 100 per month.
(2) The contribution shall be evenly divided by five. See § 21.5292 for contributions made during the 1-year pilot program.
(c) Amount of total contribution. An individual may contribute for the number of months required to reach a total contribution of $ 2,700.
(d) Changing the monthly contribution. An individual may increase or decrease the amount of the monthly contribution, but may not do so more than once a month.
(e) Prohibition against contributing. An individual may not make contributions to the fund after the date of his or her discharge. The VA does not consider the return of an unnegotiated refund check to be a contribution. A person who returns a refund check remains continuously eligible for benefits.
(Authority: 38 U.S.C. 3222)

(f) Lump-sum contribution. After September 30, 1980 an individual may make a lump-sum contribution or contributions in place of or in addition to monthly contributions.
(1) A lump-sum contribution:
   (i) Must be evenly divisible by five,
   (ii) Must, when taken together with any monthly contributions the participant may have made or may agree to make, equal or exceed 12 months' participation, and
   (iii) Must not exceed $2,700 when taken together with any monthly contributions the participant may have made or may agree to make.
(2) The Department of Veterans Affairs will consider the lump-sum contributions to have been made by monthly deductions from the participant's military pay at the rate of $100 per month unless the participant specifies a different rate which must be
   (i) No lower than $25 per month,
   (ii) No higher than $100 per month, and
   (iii) Evenly divisible by five.
(3) If otherwise eligible to make contributions, a participant:
   (i) May make a lump-sum contribution to cover any period of his or her active duty. This may entail a retroactive period, including one which--
      (A) Begins after December 31, 1976, and before October 1, 1980, or
      (B) Although made after October 27, 1986, includes all or part of the period beginning on July 1, 1985, and ending on October 27, 1986.
      (Authority: Pub. L. 99-576, sec. 309(c))
   (ii) May make a lump-sum contribution which has the effect of increasing the amount of a monthly contribution the participant made previously, but the payment cannot have the effect of increasing the monthly contribution to an amount greater than $100;
   (iii) May make a lump-sum payment to cover a period for which he or she previously obtained a refund;
   (iv) May not make a lump-sum payment to cover a period during which the participant was not on active duty or will not be on active duty.
(4) A participant may make as many lump-sum contributions as he or she desires, but he or she may not make more than one lump-sum contribution per month.

(38 U.S.C. 3222(d))

§ 21.5053 Restoration of contributions (Persian Gulf War).
(a) Restoration of contributions when no entitlement is charged. If the provisions of § 21.5072(i) require that a veteran's entitlement not be charged for a payment or payments he or she received, the amount of the veteran's contributions which were included in the payment or payments will be restored to the fund by the Department of Defense.
(b) Restored contributions are treated like other contributions. VA will treat contributions which have been restored under paragraph (a) of this section as though the veterans had contributed them for all purposes including--
(1) Computing the veteran's monthly rates and benefit payments under § 21.5138, and
(2) Determining any refund which may become due the veteran under §§ 21.5064 and 21.5065.
[58 FR 34369, June 25, 1993]

§ 21.5054 Dates of participation.
(a) General. An individual may participate after December 31, 1976. An individual was not eligible for benefits before July 1, 1977, unless discharged after January 1, 1977, for a service-connected condition. The first date on which an individual on active duty enrolled in a course, courses or a program of education leading to a secondary school diploma or equivalency certificate may receive benefits is subject to the eligibility requirements of § 21.5040(f)(4) and (5).
(Authority: 38 U.S.C. 3231(a) and (b))
(b) Termination of right to begin participation. (1) Except as provided in paragraph (b)(3) of this section, no individual on active duty in the Armed Forces may initially enroll after June 30, 1985.
(2) An initial enrollment occurs when a serviceperson who has never contributed to the fund--
(i) First makes a lump-sum payment to the fund, or
(ii) First authorizes an allotment to VA for deposit in the fund. See 32 CFR 59.3(b)(10).
(3) Notwithstanding the provisions of paragraph (b)(1) of this section, any individual on active duty in the Armed Forces who was eligible to enroll on June 30, 1985, may enroll at any time during the period beginning on October 28, 1986, and ending on March 31, 1987.

§ 21.5058 Resumption of participation.
(a) General. An eligible individual, who remains otherwise eligible, may resume active contribution to the fund, if he or she has:
(1) Voluntarily elected to suspend following completion of minimum participation;
(2) Suspended at any time for reasons of hardship; or
(3) Received a discharge or release from active duty after participation and reenlisted.
(Authority: 38 U.S.C. 3221)
(b) Disenrollment in order to participate in other educational programs. A person who elects to disenroll in order to receive educational assistance allowance under 38 U.S.C. chapter 34 or to receive an officer adjustment benefit payable under sec. 207 Pub. L. 101-366, 104 Stat. 442, may not reenroll if he or she has negotiated a check under the provisions of law governing the program elected in lieu of the Post-Vietnam Era Veterans' Educational Assistance Program. A person who elects to disenroll in order to
receive educational assistance under the Montgomery GI Bill-Active Duty, as provided in § 21.7045, may not reenroll.  
(Authority: 38 U.S.C. 3018A, 3018B, 3018C, 3202(l), 3222)  
(c) Reenrollment permitted following some disenrollments. (1) Except as provided in paragraph (b) of this section, a person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).  
(2) If a person does reenroll, he or she may "repurchase" entitlement by tendering previously refunded contributions which he or she received upon disenrollment, subject to the conditions of § 21.5052(f).  
(Authority: 38 U.S.C. 3221, 3222)  

[EFFECTIVE DATE NOTE: 65 FR 5785, 5786, Feb. 7, 2000, revised the authority citation for paragraph (b), effective Feb. 7, 2000.]  

§ 21.5060 Disenrollment.  
(a) Voluntary disenrollment. (1) An individual may disenroll at anytime after the initial 12 months of participation.  
(2) At any time within the initial 12 months of participation, an individual may elect to disenroll for reasons of personal hardship only.  
(Authority: 38 U.S.C. 3221(a), (b))  
(b) Nonvoluntary disenrollment. The Department of Veterans Affairs shall disenroll automatically an individual who meets any of the following sets of conditions:  
(1) The individual is discharged or released from his or her initial obligated period of active service and:  
(i) The discharge or release is under dishonorable conditions, or  
(ii) A statutory bar to benefits administered by the Department of Veterans Affairs exists for the individual;  
(2) The individual participated only after completion of the initial or subsequent period of active service; is discharged or released and:  
(i) The discharge or release is under dishonorable conditions, or  
(ii) A statutory bar to benefits exists for the individual; or  
(3) The individual has not utilized all of his or her entitlement to benefits within the 10-year period stated in § 21.5041, and at the end of one year thereafter has not filed a claim for educational assistance allowance as provided in § 21.5030(c).  
(Authority: 38 U.S.C. 101, 3225, 3232)  

[EFFECTIVE DATE NOTE: 61 FR 29028, 29030, June 7, 1996, which revised paragraph (a)(2), became effective June 7, 1996.]  
CROSS REFERENCE: Refunds without disenrollment. See § 21.5065.  

§ 21.5062 Date of disenrollment.

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An individual will be disenrolled effective:
(a) The date the Department of Veterans Affairs or the Service Department determines he or she has ceased to be legally entitled to participate; or
(b) The date the individual negotiates the check which represents a refund of his or her remaining contributions to the fund, whichever is earlier.

(38 U.S.C. 3221(d))

§ 21.5064 Refund upon disenrollment.
(a) General. A disenrolled individual will be refunded all contributions made by him or her to the fund. He or she will be ineligible to receive benefits under §§ 21.5130 and 21.5138, unless the individual reenrolls as a participant and agrees to participate in a new period of 12 consecutive months as provided in § 21.5058. The amount of the contributions refunded upon disenrollment shall be limited to the amount of his or her contributions not utilized to receive benefits as of the date of disenrollment, less any outstanding debts resulting from overpayments of educational assistance allowance.
(Authority: 38 U.S.C. 3223)
(b) Effective date of refund. The date upon which the refund of contributions, if any, will be made shall be determined as follows:
(1) If an individual voluntarily disenrolls from the program before discharge or release from active duty, VA will refund the individual's unused contributions:
(i) On the date of the participant's discharge or release from active duty; or
(ii) Within 60 days of VA's receipt of notice of the individual's discharge or disenrollment; or
(iii) As soon as possible after VA's receipt of notice indicating that an earlier refund is needed due to hardship or for other good reasons.
(Authority: 38 U.S.C. 3223(b), 3232)
(2) If an individual voluntarily disenrolls from the program after discharge or release from active duty under other than dishonorable conditions, his or her contributions shall be refunded within 60 days of receipt by VA of an application for a refund from the individual.
(Authority: 38 U.S.C. 3202(1)(A), 3223(c), 3232(b))
(3) If an individual is disenrolled because he or she is discharged or released from active duty under dishonorable conditions, the individual's contributions remaining in the fund shall be refunded:
(i) On the date of the individual's discharge or release from active duty; or
(ii) Within 60 days of receipt of notice by the Department of Veterans Affairs of the individual's discharge or release, whichever is the later.
(4) If an individual is disenrolled because he or she has not utilized all of his or her entitlement to benefits within the 10-year delimiting period, the individual's contributions remaining in the fund shall be refunded.
(i) The Department of Veterans Affairs shall notify the individual that the delimiting period has expired and shall state the amount of unused contributions.
(ii) The Department of Veterans Affairs shall make the refund only if the individual requests it.
(iii) If VA does not receive a request within 1 year from the date that the individual is notified of his or her entitlement to a refund, VA will presume that the individual's whereabouts is unknown. The funds on deposit for that individual will be transferred in accordance with the provisions of section 1322(a), Title 31, United States Code. (Authority: 38 U.S.C. 101, 3223, 3232; Pub. L. 94-502, Pub. L. 99-576) [45 FR 31, Jan. 2, 1980, as amended at 51 FR 46655, Dec. 24, 1986; 53 FR 617, Jan. 11, 1988; 53 FR 34497, Sept. 7, 1988; 58 FR 38058, July 15, 1993; 61 FR 29028, 29030, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29028, 29030, June 7, 1996, which revised paragraphs (b)(1) and (b)(2), became effective June 7, 1996.]

§ 21.5065 Refunds without disenrollment.
(a) Refunds made without disenrollment following a discharge or release under dishonorable conditions -- (1) A discharge or release under dishonorable conditions may result in a partial refund of contributions. If an individual who would have been eligible, but for the fact of his or her reenlistment, for the award of a discharge or release under conditions other than dishonorable at the time he or she completed an obligated period of service, later receives a discharge or release under dishonorable conditions, the Department of Veterans Affairs may refund a portion of his or her contribution. (Authority: 38 U.S.C. 101, 3223)

(2) Amount of refund. The Department of Veterans Affairs shall refund to the individual all of his or her remaining contributions made to the fund after the individual completed the obligated period of service. (Authority: 38 U.S.C. 101, 3223)

(3) Date of refund. The Department of Veterans Affairs shall refund all monies due the individual:
   (i) On the date of the individual's discharge or release from active duty; or
   (ii) Within 60 days of receipt by the Department of Veterans Affairs of notice of the individual's discharge or release, whichever is later. (Authority: 38 U.S.C. 101, 3223, 3232)

(b) Refunds made without disenrollment following a short period of active duty. (1) An individual who has contributed to the fund during more than one period of active duty may be required to receive a refund of those contributions made during the most recent period of active duty. When an individual who meets all the criteria in paragraph (b)(2) of this section is discharged, the Department of Veterans Affairs will refund all contributions he or she made during the most recent period of active duty unless the individual meets one or more of the criteria stated in either paragraph (b)(4) or (5) of this section. If he or she meets one of those criteria, the contributions will not be refunded unless the individual voluntarily disenrolls.

(2) Unless a compulsory refund is prohibited by paragraph (b)(4) or (5) of this section, the Department of Veterans Affairs will refund all contributions made by an individual during the most recent period of active duty when the individual:
   (i) Completed at least one period of active duty before the most recent one during which he or she established entitlement to Post-Vietnam Era Veterans' Educational Assistance;
   (ii) Reentered on his or her most recent period of active duty after October 16, 1981;
   (iii) Contributed to the fund during his or her most recent period of active duty; and
(iv) Is discharged.
(3) The circumstances which prohibit an automatic refund of monies contributed during the individual's most recent period of active duty do not relate only to the most recent period of active duty which began after October 16, 1981, but also the individual's prior periods of active duty regardless of whether they began before, after or on October 16, 1981.
(4) Meeting one or more of the following criteria concerning periods of active duty before the most recent one will be sufficient to prohibit a compulsory refund of contributions made during the most recent period of active duty. The individual:
   (i) Before the most recent period of active duty began, completed at least one continuous period of active duty of at least 24 months, or
   (ii) Was discharged or released under 10 U.S.C. 1171 (early-out discharge) from any period of active duty before the most recent one.
(5) Meeting one or more of the following criteria concerning the most recent period of active duty will be sufficient to prohibit a compulsory refund of contributions made during the most recent period of active duty. The individual:
   (i) For the most recent period of active duty completes 24 months of continuous active duty, or the full period for which the individual was called or ordered to active duty, whichever is shorter; or
   (ii) Is discharged or released from the most recent period of active duty under 10 U.S.C. 1171 (early-out discharge) or 1173 (hardship discharge); or
   (iii) Is discharged or released from the most recent period of active duty for a disability incurred or aggravated in line of duty; or
   (iv) Has a service-connected disability which give him or her basic entitlement to disability compensation as described in § 3.4(b) of this chapter.
(6) In computing time served for the purpose of this paragraph, the individual is not entitled for credit for service as specified in § 3.15 of this chapter. However, those periods will be included in determining if the service was continuous.
(7) The Department of Veterans Affairs shall refund all monies due the individual:
   (i) On the date of the individual's discharge or release from active duty; or
   (ii) Within 60 days of receipt of notice by the Department of Veterans Affairs of the individual's discharge or release, whichever is later.
(Authority: 38 U.S.C. 3202, 3223, 3232, 5303(A)
(c) Refunds following an election under § 21.5040(b). If a veteran described in § 21.5040(h) makes an election to have a period of service credited toward his or her eligibility and entitlement under 10 U.S.C. Chapter 1606, he or she will be required to receive a refund of any contributions he or she made to the fund during that period of service.
(38 U.S.C. 3221(f); Pub. L. 101-237)
[EFFECTIVE DATE NOTE: 61 FR 20727, 20728, May 8, 1996, which substituted "1606" for "106" in paragraph (c), became effective May 8, 1996.]

§ 21.5066 Suspension of participation.
An individual may suspend participation in the program without disenrolling. If the individual suspends participation, he or she may resume participation at any time thereafter while on active duty.
(a) An individual may suspend participation any time after 12 months of participation.
(b) An individual who has participated for less than 12 consecutive months may not suspend unless the Secretary of Defense determines that the reason for the suspension is due to a personal hardship.

(38 U.S.C. 3221)

§ 21.5067 Death of participant.
(a) Disposition of unused contributions. If an individual dies, the Department of Veterans Affairs shall pay the amount of his or her unused contributions to the fund to the living person or persons in the order listed in this paragraph.
(1) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance policy;
(2) The surviving spouse of the individual;
(3) The surviving child or children of the individual, in equal shares;
(4) The surviving parent or parents of the individual in equal shares.
(b) Payments to the individual's estate. If none of the persons listed in paragraph (a) of this section is living, the Department of Veterans Affairs shall pay the amount of the individual's unused contributions to the fund to the individual's estate.
(Authority: 38 U.S.C. 3224)
(c) Payments of accrued benefits. Educational assistance remaining due and unpaid at the date of the veteran's death is payable under the provisions of § 3.1000 of this chapter. For this purpose accrued benefits include the portion of the benefit represented by the individual's contribution as well as the portion included by the Department of Veterans Affairs and the Department of Defense.
[47 FR 51745, Nov. 17, 1982]

(38 U.S.C. 5121)
ENTITLEMENT

§ 21.5070 Entitlement.
§ 21.5071 Months of entitlement allowed.
§ 21.5072 Entitlement charge.
§ 21.5076 Entitlement charge -- overpayment cases.
§ 21.5078 Interruption to conserve entitlement.

§ 21.5070 Entitlement.
A participant is entitled to a monthly benefit for periods of time during which the individual is enrolled in, and satisfactorily pursuing, an approved program of education. The amount of the benefit will vary from individual to individual and, in some instances, from month to month as provided in § 21.5138.

(38 U.S.C. 3231)

§ 21.5071 Months of entitlement allowed.
(a) Entitlement based on monthly contributions. The Department of Veterans Affairs will credit an individual with 1 month of entitlement for each month he or she contributes to the fund up to a maximum of 36 months or its equivalent in part-time training.
(Authority: 38 U.S.C. 3231)
(b) Entitlement based on lump-sum contributions. If an individual elects to make a lump-sum contribution, the Department of Veterans Affairs will credit an individual with 1 month of entitlement for:
(1) Every $100 included in the lump sum, or
(2) Every amount included in the lump sum which:
(i) Is at least $25 but no more than $100,
(ii) Is evenly divisible by five, and
(iii) Is specifically designated by the individual at the time he or she makes the contribution.
(Authority: 38 U.S.C. 3222(D))
(c) Entitlement based on both monthly and lump-sum contributions. (1) If the individual makes both monthly and lump-sum contributions, the Department of Veterans Affairs will:
(i) Compute the entitlement due to each type of contribution separately under paragraphs (a) and (b) of this section, and
(ii) Will combine the results of the computations to determine the individual's total entitlement.
(2) In no event will an individual's entitlement exceed 36 months or its equivalent in part-time training.

(38 U.S.C. 3222(d), 3231)

§ 21.5072 Entitlement charge.
The Department of Veterans Affairs shall determine the entitlement charge for each payment in the same manner for all individuals regardless of whether they are on active duty. Unless the circumstances described in paragraph (i) of this section apply to a servicemember or veteran, VA will use paragraphs (a) through (h) of this section to determine an entitlement charge.

(a) General. Except as provided in paragraphs (b) through (i) of this section, VA will make a charge against entitlement as follows:

(i) The Department of Veterans Affairs will charge an individual who is a full-time student 1 month's entitlement for each monthly benefit paid to him or her.

(ii) The Department of Veterans Affairs will charge an individual who is other than a full-time student 1 month's entitlement for each sum of money paid equivalent to what the individual would have been paid had he or she been a full-time student for 1 month.

(2) When the computation results in a period of time other than a full month, the entitlement charge will be prorated.

(b) Secondary school program. (1) The Department of Veterans Affairs will make no charge against the entitlement of an individual:

(i) Who is pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate, and

(ii) Whose educational assistance allowance is the monthly rate of the tuition and fees being charged to him or her for the course.

(2) The Department of Veterans Affairs will make a charge (in the same manner as for any other residence training) against the entitlement of an individual who:

(i) Is pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate, and

(ii) Elects to receive educational assistance allowance calculated according to § 21.5136.

(c) Correspondence training courses. (1) A charge against the period of entitlement for a program consisting exclusively of correspondence training will be made on the basis of 1 month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(2)(viii), which is paid to the individual as an educational assistance allowance for this training. When computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at by applying the formula is determined to be $150 at the time a benefit program for correspondence training is computed, the individual will be charged 1 month of entitlement for each $150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.

(d) Apprenticeship or other on-job training. (1) The VA will determine the entitlement charge for a veteran in apprenticeship or other on-job training as stated in this paragraph.

(2) The entitlement charge will be--

(i) 75 percent of a month for those months for which the veteran's monthly payment is based upon 75 percent of the monthly benefit otherwise payable to him or her;

(ii) 55 percent of a month for those months for which the veteran's monthly payment is based upon 55 percent of the monthly benefit otherwise payable to him or her; and
(iii) 35 percent of a month for those months for which the veteran's monthly payment is based upon 35 percent of the monthly benefit otherwise payable to him or her.

(3) The charge against the veteran's entitlement will be prorated if
(i) The veteran enrollment period ends in the middle of a month,
(ii) The veteran's monthly rate is reduced in the middle of a month, or
(iii) The veteran's monthly payment is reduced because he or she worked less than 120 hours during the month. In this instance the number of hours worked will be rounded to the nearest multiple of eight, and the entitlement charge will be reduced proportionately.

(e) Cooperative training. VA will make a charge against entitlement of 80 percent of a month for each month for which a veteran is paid educational assistance allowance at the cooperative training rate as provided in § 21.5138(a). If the veteran is paid for a partial month of training, the entitlement charge will be prorated.

(f) Training while the veteran is incarcerated. If the veteran must be paid educational assistance allowance at a reduced rate because he or she is incarcerated as provided in § 21.5139 of this part, VA will make a charge against entitlement of one month for each amount of educational assistance allowance paid to the veteran which is the equivalent of one month's benefits as provided in § 21.5138 of this part for the appropriate type of training pursued.

(g) Tutorial assistance. If an individual is paid tutorial assistance as provided in § 21.5141 of this part, the following provisions will apply.
(1) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual.
(2) VA will make a charge against the period of entitlement for each amount of tutorial assistance paid to the individual in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in § 21.5138(c) of this part. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(h) Flight training courses. (1) A charge against the period of entitlement for pursuit of a flight training course will be one month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(5)(viii). When this computation results in a period of time other than a full month, the charge will be prorated.
(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at under § 21.5138(a)(5)(viii) is $150 at the time educational assistance allowance is paid for a period of flight training, the individual will be charged one month of entitlement for each $150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment.
(i) Entitlement charge may be omitted for course discontinuance (Persian Gulf War). VA will make no charge against the entitlement of a servicemember or veteran for a payment of educational assistance allowance when--
(1) A veteran not serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b, or 688 of title 10; or (2) A servicemember serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War, to a new duty location or assignment or to perform an increased amount of work; and (3) The veteran or servicemember failed to receive credit or lost training time toward completion of his or her educational, professional or vocational objective as a result of having to discontinue course pursuit, as described in paragraphs (i)(1) or (i)(2) of this section.


§ 21.5076 Entitlement charge -- overpayment cases.

(a) Overpayment cases. VA will make a charge against an individual's entitlement of an overpayment of educational assistance allowance only if: (1) The overpayment is discharged in bankruptcy; or (2) VA waives the overpayment and does not recover it; or (3) The overpayment is compromised. (Authority: 38 U.S.C. 3231)

(b) Debt discharged in bankruptcy or is waived. If the overpayment is discharged in bankruptcy or is waived and is not recovered, the entitlement charge will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees). (Authority: 38 U.S.C. 3231; Pub. L. 94-502)

(c) Overpayment is compromised. (1) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees). (2) If the overpayment is compromised and compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by-- (i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees. (ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (c)(2)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees), (iii) Dividing the result obtained in paragraph (c)(2)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and
(iv) Multiplying the percentage obtained in paragraph (c)(2)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(38 U.S.C. 3231)

§ 21.5078 Interruption to conserve entitlement.

(a) Interruption to conserve entitlement generally prohibited. No one may interrupt a certified period of enrollment for the purpose of conserving entitlement. A school may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the individual actually is enrolled and is pursuing his or her program of education for the entire term, quarter or semester.

(b) Exceptions. The Department of Veterans Affairs will charge entitlement for the entire period of enrollment certified if the individual otherwise is eligible for benefits, except when benefits are interrupted under any of the following conditions:

(1) Enrollment actually is terminated.

(2) Enrollment is canceled and the individual has not negotiated an educational benefits check for any part of the certified period of enrollment.

(3) The individual:

(i) Interrupts his or her enrollment at the scheduled end of any term, quarter, semester or school year within the certified period of enrollment; and

(ii) Has not negotiated any check for educational benefits for the succeeding term, quarter, semester or school year.

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment and payments were continued under an established policy based upon an Executive order of the President or due to an emergency situation. This exception applies whether or not the individual has negotiated a check for educational benefits for the certified period.


(38 U.S.C. 3241, 3680)
COUNSELING

§ 21.5100 Counseling.
§ 21.5103 Travel expenses.

§ 21.5100 Counseling.
(a) Purpose. The purpose of counseling is:
(1) To assist in selecting an objective:
(2) To develop a suitable program of education or training; and
(3) To resolve any personal problems which are likely to interfere with the successful pursuit of a program.
(b) Availability of counseling. Counseling assistance is available for --
(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or
(2) In considering changes in career plans, and making sound decisions about the changes.
(Authority: 38 U.S.C. 3697A(a))
(c) Optional counseling. VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon request of the individual. VA shall take appropriate steps (including individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.
(Authority: 38 U.S.C. 3241, 3697A(a) and (b))
(d) Required counseling. (1) In any case in which VA has rated the veteran as being incompetent, VA must provide counseling as described in 38 U.S.C. 3697A prior to selection of a program of education or training. The counseling will follow the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. This requirement that counseling be provided is met when --
   (i) The veteran has had one or more personal interviews with the counselor;
   (ii) The counselor has jointly developed with the veteran recommendations for selecting a program;
   (iii) These recommendations have been reviewed with the veteran.
   (2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.
   (3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. chapter 32 unless he or she --
   (i) Reports for counseling;
   (ii) Cooperates in the counseling process; and
   (iii) Completes counseling to the extent required under paragraph (d)(1) of this section.
(Authority: 38 U.S.C. 3241, 3697A(c))

§ 21.5103 Travel expenses.
(a) General. VA shall determine and pay the necessary expense of travel to and from the place of counseling for a veteran who is required to receive counseling as provided under 38 U.S.C. 111 (a), (d), (e), and (g).
(Authority: 38 U.S.C. 111(a), (d), (e), and (g))

(b) Restriction. VA will not pay the necessary cost of travel to and from the place of counseling when counseling is not required, but is provided as a result of a voluntary request by the veteran.
(Authority: 38 U.S.C. 111)

[53 FR 34497, Sept. 7, 1988; 61 FR 29028, 29030, June 7, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29028, 29030, June 7, 1996, which revised this section, became effective June 7, 1996.]
PAYMENTS; EDUCATIONAL ASSISTANCE ALLOWANCE

§ 21.5130 Payments; educational assistance allowance.
§ 21.5131 Educational assistance allowance.
§ 21.5132 Criteria used in determining benefit payments.
§ 21.5133 Certifications and release of payments.
§ 21.5134 Restrictions on paying benefits to servicepersons.
§ 21.5135 Advance payments.
§ 21.5136 Benefit payments -- secondary school program.
§ 21.5138 Computation of benefit payments and monthly rates.
§ 21.5139 Computation of benefit payments for incarcerated individuals.
§ 21.5141 Tutorial assistance.

§ 21.5130 Payments; educational assistance allowance.
VA will apply the following sections in administering benefits payable under 38 U.S.C. Chapter 32:
(a) Section 21.4131 -- Commencing dates (except paragraph (d)).
(b) Section 21.4135 -- Discontinuance dates.
(c) Section 21.4138 (except paragraph (b)) -- Certifications and release payments.
(d) Section 21.4146 -- Assignments of benefits prohibited.
(Authority: 38 U.S.C. 3241(a))
(e) Section 21.4136(k) (except paragraph (k)(3)) -- Mitigating circumstances.
(Authority: 38 U.S.C. 3241(a), 3680(a))

[EFFECTIVE DATE NOTE: 64 FR 23769, 23772, May 4, 1999, substituted "dates (except paragraph (d))" for "dates" in paragraph (a), effective June 3, 1999; 65 FR 5785, 5786, Feb. 7, 2000, amended paragraph (b), effective Feb. 7, 2000.]

§ 21.5131 Educational assistance allowance.
VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold a payment until it receives verification or certification of the individual's continued enrollment and adjusts the individual's account. See § 21.5133.

§ 21.5132 Criteria used in determining benefit payments.
(a) Training time. The amount of benefit payment to an individual in all types of training except cooperative training, correspondence training and apprenticeship and other on-job training depends on whether VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student.
(b) Contributions. The amount of benefit payment to an individual also depends on:
(1) The amount the individual has contributed to the fund.
(2) The amount the Secretary of Defense has contributed to the fund for the individual.
(Authority: 38 U.S.C. 3231)
(3) [Redesignated as paragraph (b)(2). See 61 FR 29028, 29030, June 7, 1996.]

[EFFECTIVE DATE NOTE: 61 FR 29028, 29030, June 7, 1996, which removed paragraph (b)(2), redesignated paragraph (b)(3) as paragraph (b)(2), and revised newly designated paragraph (b)(2), became effective June 7, 1996.]

§ 21.5133 Certifications and release of payments.
An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case, the provisions of this paragraph must be met.
(a) General. VA will pay educational assistance to a veteran or servicemember (other than one who qualifies for an advance payment, or one pursuing a program of apprenticeship, other on-job training, or a correspondence course) only after --
(1) The educational institution has certified his or her enrollment as provided in § 21.5200(d) of this part; and
(2) VA has received from the individual a verification of the enrollment. Generally, this verification will be required monthly, resulting in monthly payments.
(b) Apprenticeship and other on-job training. VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after --
(1) The training establishment has certified his or her enrollment in the training program as provided in § 21.5200(d); and
(2) VA has received from the veteran and the training establishment a certification of hours worked. Generally, this certification will be required monthly, resulting in monthly payments.
(c) Correspondence training. VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a combined correspondence-residence course only after --
(1) The educational institution has certified his or her enrollment;
(2) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and
(3) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution. Generally, this certification will be required quarterly, resulting in quarterly payments.
(Approved by the Office of Management and Budget under control number 2900-0465)
§ 21.5134 Restrictions on paying benefits to servicepersons.
The Department of Veterans Affairs may not pay benefits to a serviceperson (other than one enrolled in a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate) unless he or she:
(a) Has completed 3 months of contributions to the fund or has made a lump-sum payment which is the equivalent of at least 3 months of contributions to the fund;
(b) Has agreed either to have a monthly deduction from his or her military pay, or has made a lump-sum contribution to the fund, or both, so that the 12 months participation requirement of § 21.5052(a) of this part will be met; and
(c) Is serving on active duty in an enlistment period subsequent to the initial period of active duty defined in § 21.5040(b)(3) of this part.

§ 21.5135 Advance payments.
VA will apply the provisions of § 21.4138(a) in making advance payments to veterans and servicemembers.

§ 21.5136 Benefit payments -- secondary school program.
(a) Restrictions on payments. (1) The Department of Veterans Affairs may authorize benefits to qualified enlisted servicepersons for a course, courses or program of education leading to a secondary school diploma or an equivalency certificate without charge to entitlement. Payments may be made only if:
(i) The individual has contributed to the fund for at least 1 month, and
(ii) The training is received while the individual is serving:
(A) The last 6 months of his or her first enlistment after December 31, 1976; or
(B) At any time after completing his or her first enlistment.
(2) An individual who is not on active duty must have been an enlisted serviceperson while he or she was on active duty in order to receive benefits while enrolled in a course, courses or program of education leading to a secondary school diploma or an equivalency certificate.
Authority: 38 U.S.C. 3231(b)
(b) Monthly rate. An individual pursuing a course, courses or a program of education leading to a secondary school diploma or an equivalency certificate will receive one of two monthly rates.
(1) Unless the individual notifies the Department of Veterans Affairs to the contrary, the monthly rate of his or her educational assistance allowance will be based upon his or her tuition and fees. The Department of Veterans Affairs will make no charge against the entitlement of the individual who is receiving benefits at this monthly rate. The monthly rate will be the rate of tuition and fees being charged to the individual for the course, not to exceed:
   (i) $ 376 for full-time training.
   (ii) $ 283 for three-quarter time training.
   (iii) $ 188 for half-time training.
   (iv) $ 94 for quarter-time training.
(2) The individual may elect to receive educational assistance allowance at the monthly rate provided in § 21.5138. The Department of Veterans Affairs will make an appropriate charge against the individual's entitlement if such an election is made.
   (Authority: 38 U.S.C. 3241, 3491)
(c) Method of payment. (1) If the individual's educational assistance allowance is based upon the rate as determined in paragraph (b)(1) of this section, payment shall be made in a lump sum for the term, quarter or semester at the beginning of the month in which training begins.
   (2) If the individual elects to have his or her educational assistance allowance computed as provided in § 21.5138, payment will be made in the same manner as for any other residence training.

(38 U.S.C. 3241)

§ 21.5138 Computation of benefit payments and monthly rates.
The Department of Veterans Affairs will compute all monthly rates and benefit payments as stated in this section except for those individuals to whom § 21.5136(b)(1) applies.
(a) Computation of entitlement factor. In computing monthly rates and benefit payments the Department of Veterans Affairs will compute an entitlement factor in all cases except for individuals in a secondary school program whose benefits are computed as provided in § 21.5136(b)(1).
   (1) For residence training the entitlement factor will be computed as follows:

   (i) Enter the number of full months in the applicable benefit period   (1)
   (ii) Enter the number of full days in excess of the number of full months   (a)
   (iii) Divide line a by 30. Enter the quotient   (2)
   (iv) Total (lines 1 and 2)   (3)
   (v) Multiply line 3 by 1 for a full-time student; by .75 for a three-quarter time student; by .5 for a half-time student; or by .25 for a one-quarter time student. Enter the result
   (This is the entitlement factor.)
(2) For correspondence training the entitlement factor will be computed as follows:

(i) Enter the amount of the individual's contributions remaining in the fund (b)
(ii) Enter the individual's remaining months of entitlement (c)
(iii) Divide line b by line c. Enter the quotient (5)
(iv) Enter two times the amount in line 5 (6)
(v) Enter the amount of the contributions, if any, remaining in the fund which the Secretary of Defense contributed for the individual (d)
(vi) Enter the individual's remaining months of entitlement (e)
(vii) Divide line d by line e. Enter the quotient (7)
(viii) Total (lines 5, 6 and 7) (8)
(ix) Enter the correspondence charges certified by the school (9)
(x) Divide line 9 by line 8. Enter the quotient (10)
(This is the entitlement factor.)

(3) For apprenticeship and other on-job training VA will compute the entitlement factor as follows:

(i) Enter the number of full days in the applicable benefit period. (1)
(Enter 30 if the benefit period is a full month.)
(ii) Divide line 1 by 30. Enter the quotient: (2)
(iii) Multiply line 2 by .75 if the veteran is in the first six months of training; by .55 if the veteran is in the second six months of training; by .35 if the veteran is in a subsequent month of training; and by a pro-rated fraction if one of the veteran's first two six-month periods of training ends during the benefit period. Enter the result (This is the entitlement factor.)

(4) For cooperative training VA will compute the entitlement factor as follows:

(i) Enter the number of full months in the applicable benefit period (1) ___
(ii) Enter the number of full days in excess of the number of full months (a) ___
(iii) Divide line a by 30. Enter the quotient: (2) ___
(iv) Total lines 1 and 2 (3) ___
(v) Multiply line 3 by .80. Enter the result (4) ___
(This is the entitlement factor.)
(Authority: 38 U.S.C. 3231; Pub. L. 100-698)

(5) For flight training the entitlement factor will be computed as follows:

(i) Enter the amount of the individual's contributions remaining in the fund (a) ___
(ii) Enter the individual's remaining months of entitlement (b) ____

(iii) Divide line a by line b. Enter the quotient (1)
(iv) Enter two times the amount in line 1 (2)

(v) Enter the amount of the contributions, if any, remaining in the (c) ____ fund which the Secretary of Defense contributed for the individual
(vi) Enter the individual's remaining months of entitlement (d) ____

(vii) Divide line c by line d. Enter the quotient (3)
(viii) Total (lines 1, 2 and 3) (4)

(ix) Enter the charges for flight training certified by the school (e) ____

(x) Multiply line e by .60 (5)
(xi) Divide line 5 by line 4. Enter the quotient. (This is the (6) entitlement factor.)

(Authority: 38 U.S.C. 3231(f))
(b) Computation of benefit payment. The Department of Veterans Affairs will compute benefit payments as follows: for all training except for those individuals to whom § 21.5136(b)(1) applies:

(1) Enter the entitlement factor (f)
(2) Enter the amount of the individual's contributions remaining in the fund (g)
(3) Multiply line f by line g. Enter the result (h)
(4) Enter the remaining months of the individual's entitlement (i)
(5) Divide line h by line i. Enter the quotient (11)
(This is the individual's portion.)
(6) Enter two times the amount in line 11 (12)
(This is the Department of Veterans Affairs's portion of benefit payments for training completed before January 1, 1982. The Secretary of Defense will contribute this portion of the benefit payment for training that occurs after December 31, 1981.)
(7) Enter the amount of the additional contributions, if any, remaining in the fund which the Secretary of Defense contributed for
the individual
(8) Multiply line f by line j. Enter the result (k)
(9) Enter the individual's remaining months of entitlement (l)
(10) Divide line k by line l. Enter the quotient (13)
(This is the Department of Defense's portion for training completed before January 1, 1982. For training completed after December 31, 1981, this is the second part of the Department of Defense's portion.) (38 U.S.C. 3231)
(11) Total (add lines 11, 12 and 13) (14)
(12) If the veteran is in an apprenticeship or other on-job training (15) and fails to complete 120 hours of training in a month, reduce the amount on line 14 proportionately. In this computation round the number of hours worked to the nearest multiple of eight. Enter the result.
(13) If the veteran is pursuing certain courses which do not lead to a standard college degree, has excessive absences, and incurred those absences before December 18, 1989, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result.
(14) The benefit payment is either --

(i) The amount shown on line 14 unless the veteran is in apprenticeship or other on-job training and has failed to complete 120 hours of training in a month during the benefit period in which case the benefit payment is the amount shown on line 15, or the veteran is pursuing certain courses which do not lead to a standard college degree in which case the benefit payment is the amount shown on line 16, or
(ii) The total amount of the remaining contributions in the fund made by the individual and the VA and the Secretary of Defense on behalf of the individual, whichever is less.

(c) Monthly rates. The Department of Veterans Affairs will compute the monthly rates of payment for individuals in residence training by repeating the calculations in paragraphs (b)(1) through (11) of this section except that instead of entering the entitlement factor on line f, paragraph (b)(1), the Department of Veterans Affairs will enter 1 for a full-time student, .75 for a three-quarter time student, .5 for a half-time student, or .25 for a one-quarter time student.
(38 U.S.C. 3231)

§ 21.5139 Computation of benefit payments for incarcerated individuals.
Notwithstanding the provisions of § 21.5138, some incarcerated individuals may have their educational assistance allowance terminated or reduced. The provisions of this section shall not apply in the case of any individual who is pursuing a program of education while residing in a halfway house or participating in a work-release program in connection with that individual's conviction of a felony.
(a) No educational assistance allowance payable to some incarcerated individuals. VA will pay no educational assistance allowance to an individual who--
(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and
(2) Is enrolled in a course where his or her tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and
(3) Has incurred no expenses for supplies, books or equipment.
(Authority: 38 U.S.C. 3231(e))

(b) Reduced educational assistance allowance for some incarcerated individuals. (1) VA will pay a reduced educational assistance allowance to a veteran who--
(i) Is incarcerated in a Federal, State or local penal institution of conviction of a felony, and
(ii) Is enrolled in a course--
(A) For which the individual pays some (but not all) of the charges for tuition and fees, or
(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the individual to pay for books, supplies and equipment.
(2) The monthly rate of educational assistance allowance payable to such an individual shall be the lesser of the following:
(i) The monthly rate determined by adding the tuition and fees that the veteran must pay and the charge to the veteran for the cost of necessary supplies, books and equipment and prorating the total on a monthly basis, or
(ii) The monthly rate for the individual as determined by § 21.5138(c) of this part.
[55 FR 31583, Aug. 3, 1990]

(38 U.S.C. 3231(e))

§ 21.5141 Tutorial assistance.
An individual who is otherwise eligible to receive benefits under the Post-Vietnam Era Veterans’ Educational Assistance Program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(38 U.S.C. 3234, 3492)
[EFFECTIVE DATE NOTE: 61 FR 29028, 29030, June 7, 1996, which revised this section, became effective June 7, 1996.]
STATE APPROVING AGENCIES

§ 21.5150 State approving agencies.

§ 21.5150 State approving agencies.
In administering chapter 32, title 38, United States Code, VA will apply the provisions of the following sections:
(a) Section 21.4150 (except par. (e)) -- Designation;
(b) Section 21.4151 -- Cooperation;
(c) Section 21.4152 -- Control by agencies of the United States;
(d) Section 21.4153 -- Reimbursement of expenses;
(e) Section 21.4154 -- Report of activities;
(f) Section 21.4155 -- Evaluations of State approving agency performance.
[55 FR 12483, Apr. 4, 1990; 61 FR 1525, 1526, Jan. 22, 1996]

[EFFECTIVE DATE NOTE: 61 FR 1525, 1526, Jan. 22, 1996, which revised the introductory text, became effective Jan. 22, 1996.]
SCHOOLS

§ 21.5200 Schools.

§ 21.5200 Schools.
In the administration of benefits payable under the provisions of chapter 32, title 38, U.S.C., the Department of Veterans Affairs will apply the following sections:
(a) Section 21.4200 -- Definitions (with the exception of paragraph (a)).
(b) Section 21.4201 -- Restrictions on enrollment; percentage of students receiving financial support.
   (Authority: 38 U.S.C. 3241; 3473(d))
(c) Section 21.4202 -- Overcharges; restrictions on enrollments.
   (Authority: 38 U.S.C. 3241, 3690)
(d) Section 21.4203 -- Reports by schools -- Requirements.
(e) Section 21.4204 (except paragraphs (a) and (e)) -- Periodic certifications.
   (Authority: 38 U.S.C. 3241, 3684)
(f) [Reserved]
(g) Section 21.4206 -- Reporting fee.
(h) Section 21.4209 -- Examination of records.
(i) Section 21.4210 -- Suspension and discontinuance of educational assistance payments and of enrollments or reenrollments for pursuit of approved courses.
(j) Section 21.4211 -- Composition, jurisdiction and duties of Committee on Educational Allowances.
(k) Section 21.4212 -- Referral to Committee on Educational Allowances.
(l) Section 21.4213 -- Notice of hearing by Committee on Educational Allowances.
(m) Section 21.4214 -- Hearing rules and procedures for Committee on Educational Allowances.
(n) Section 21.4215 -- Decision of Director of VA facility of jurisdiction.
(o) Section 21.4216 -- Review of decision of Director of VA facility of jurisdiction.
   (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3690)
   (Approved by Office of Management and Budget under control number 2900-0178)
§ 21.5230 Programs of education.
§ 21.5231 Combination.
§ 21.5232 Change of program.

§ 21.5230 Programs of education.
(a) Approving the selected program of education. Except as provided in paragraphs (b) and (c) of this section, VA will approve a program of education under chapter 32, title 38 U.S.C, only if it--
(1) Meets the definition of a program of education stated in § 21.5021(q) of this part;
(2) Has an objective as described in § 21.5021 (r) or (s) of this part;
(3) The courses or subjects in the program are approved for VA training; and
(4) The veteran or serviceperson is not already qualified for the objective of the program.
(Authority: 38 U.S.C. 3202(2))
(b) Programs which include secondary school training. VA may approve the enrollment of a veteran or serviceperson in a refresher, remedial, deficiency or other preparatory or special educational assistance course when the veteran or eligible serviceperson needs the course in order to pursue an approved program of education.
(Authority: 38 U.S.C. 3241(a)(2))
(c) Refresher training for those already qualified. The refresher training referred to in paragraph (b) of this section includes training in a course or courses for which the veteran is already qualified provided the course or courses permit the veteran to update knowledge and skills or to be instructed in the technological advances which have occurred in the veteran's field of employment. The relevant field of employment may have been pursued either before, during or after the veteran's active duty.
[55 FR 31583, Aug. 3, 1990]
(38 U.S.C. 3241(a)(2); Pub. L. 100-689)

§ 21.5231 Combination.
In the administration of benefits payable under chapter 32, title 38, U.S.C., the Department of Veterans Affairs will apply § 21.4233(b), (c), and (e).
(38 U.S.C. 3241)
[EFFECTIVE DATE NOTE: 61 FR 7217, 7218, Feb. 27, 1996, which amended this section, became effective Oct. 29, 1992.]

§ 21.5232 Change of program.
In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.
[49 FR 37383, Sept. 24, 1984; 58 FR 46866; Sept. 3, 1993]
§ 21.5250 Courses.

§ 21.5250 Courses.
(a) In administering benefits payable under 38 U.S.C. chapter 32, VA and, where appropriate, the State approving agencies shall apply the following sections.
(1) Section 21.4250 (except paragraph (c)(1)) -- Approval of courses.
(2) Section 21.4251 -- Period of operation of course.
(3) Section 21.4252 -- Courses precluded.
(4) Section 21.4253 -- Accredited courses.
(5) Section 21.4254 -- Nonaccredited courses.
(6) Section 21.4255 -- Refund policy; nonaccredited courses.
(7) Section 21.4256 -- Correspondence courses.
(8) Section 21.4257 -- Cooperative courses.
(9) Section 21.4258 -- Notice of approval.
(10) Section 21.4259 -- Suspension or disapproval.
(11) Section 21.4260 -- Courses in foreign countries.
(12) Section 21.4261 -- Apprentice courses.
(13) Section 21.4262 -- Other training on-the-job courses.
(14) Section 21.4265 -- Practical training approved as institutional training.
(15) Section 21.4266 -- Courses offered at subsidiary branches or extensions.
(16) Section 21.4267 -- Approval of independent study.
(b) Flight courses. In administering benefits payable for flight training under chapter 32, title 38, U.S.C., VA and the State approving agencies will apply the provisions of § 21.4263 of this part. Educational assistance allowance is payable only for flight training undertaken by a veteran or serviceperson after March 31, 1991.
[58 FR 31911, June 7, 1993; 61 FR 1525, 1526, Jan. 22, 1996; 61 FR 7217, 7218, Feb. 27, 1996]

(38 U.S.C. 3241; Pub. L. 102-16)
[EFFECTIVE DATE NOTE: 61 FR 1525, 1526, Jan. 22, 1996, which revised the introductory text of paragraph (a) and paragraph (b), became effective Jan. 22, 1996; 61 FR 7217, 7218, Feb. 27, 1996, which revised the introductory text of paragraph (a), paragraph (a)(3), and added paragraph (a)(16), became effective Oct. 29, 1992.]
§ 21.5270 Assessment and pursuit of course.

§ 21.5270 Assessment and pursuit of course.

In the administration of benefits payable under 38 U.S.C. chapter 32, VA shall apply the following sections.

(a) Section 21.4270 (except those portions of the paragraph and footnotes dealing with farm cooperative training) -- Measurement of courses. For the purpose of benefits payable under 38 U.S.C. chapter 32 that training identified in § 21.4270 as less than one-half and more than one-quarter time will be treated as one-quarter-time training.

(B) [Reserved]

(c) Section 21.4272 -- Collegiate course measurement.

(d) Section 21.4273 -- Collegiate graduate.

(e) Section 21.4274 -- Law courses.

(f) Section 21.4275 -- Practical training courses; measurement.

(g) Section 21.4277 -- Discontinuance; unsatisfactory progress, conduct, and attendance.

(h) Section 21.4278 -- Reentrance after discontinuance.

(i) Section 21.4279 -- Combination correspondence -- residence program.

[j Reserved]


[EFFECTIVE DATE NOTE: 61 FR 7217, 7218, Feb. 27, 1996, removed and reserved paragraphs (b) and (j) and revised the introductory text and paragraph (c), effective July 1, 1993; 62 FR 55759, 55760, Oct. 28, 1997, amended this section, effective Oct. 28, 1997.]
EDUCATIONAL ASSISTANCE PILOT PROGRAM

§ 21.5290 Educational Assistance Pilot Program.
§ 21.5292 Reduced monthly contribution for certain individuals.
§ 21.5294 Transfer of entitlement.
§ 21.5296 Extended period of eligibility.

§ 21.5290 Educational Assistance Pilot Program.
(a) Purpose. The Educational Assistance Pilot Program is designed to encourage enlistments and reenlistments in the Army, Navy, Air Force and Marine Corps.
(Authority: Sec. 903, Pub. L. 96-342; 94 Stat. 1115)
(b) Outline of program. This program allows some individuals:
(1) To participate while making contributions at a rate less than that prescribed in § 21.5052(b), and/or
(2) To transfer entitlement allowed in § 21.5071 to a spouse or child.
[47 FR 51747, Nov. 17, 1982]

(Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

§ 21.5292 Reduced monthly contribution for certain individuals.
(a) Qualifying for reduced monthly contributions. Some individuals can become participants while making no contributions. To qualify for this portion of the pilot program the individual must:
(1) Enlist or reenlist in the Army, Navy, Air Force or Marine Corps after November 30, 1980, and before October 1, 1981;
(2) Elect or have elected to participate in the Post-Vietnam Era Educational Assistance Program; and
(3) Be chosen for the pilot program by the Secretary of Defense or his or her designee.
(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)
(b) Monthly contributions made by the Secretary of Defense. (1) The Secretary of Defense may pay $75 per month as the monthly contribution otherwise required under § 21.5052(b) for an individual described in paragraph (a) of this section.
(2) The individual will not be required to make a contribution for any month to the extent that the contribution otherwise required by § 21.5052(b) for that month is paid by the Secretary of Defense.
(3) The amount paid by the Secretary of Defense shall be deposited in the fund.
(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)
(c) Restrictions on monthly contributions. The Secretary of Defense may not make a payment under the pilot program on behalf of any person for any month:
(1) Before the month in which the person enlisted or reenlisted in the Army, Navy, Air Force or Marine Corps, or
(2) Before December 1980.
(Authority: Sec. 903, Pub. L. 96-342, 94 Stat. 1115)
(d) Refunds. If an individual participating in the pilot program disenrolls, any monthly contributions made by the Secretary of Defense will be returned to the Secretary of Defense rather than refunded to the individual.

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(Authority: Sec. 903, Pub. L. 96-342; 94 Stat. 1115)
(e) Application of sections to this portion of the pilot program. (1) The following sections apply to this portion of the pilot program with amendments as noted:
   (i) In § 21.5021(e) a participant includes someone whose contributions are being made by the Secretary of Defense.
   (ii) In § 21.5052(b) the Secretary of Defense may make contributions to the fund and may designate the amount of the contribution.
   (iii) In § 21.5052(d) the Secretary of Defense may increase or decrease the amount of the contribution.
   (iv) In §§ 21.5064 and 21.5065 monthly contributions made by the Secretary of Defense will be returned to him or her instead of being refunded to the veteran.
   (v) In § 21.5071 the Department of Veterans Affairs will also credit the individual with 1 month of entitlement for each month the Secretary of Defense contributes to the fund on his or her behalf.
   (vi) In § 21.5138 the references to the individual's contributions include those contributions made on the individual's behalf by the Secretary of Defense.
(2) Except as amended in paragraph (e)(1) of this section §§ 21.5001 through 21.5041 and §§ 21.5050 through 21.5270 apply without change to this portion of the pilot program. See § 21.5296.

§ 21.5294 Transfer of entitlement.
(a) Qualifying for a transfer of entitlement. Some participants may transfer their entitlement to their spouse or child. To qualify for this portion of the pilot program the individual must:
   (1) After June 30, 1981 and before October 1, 1981, reenlist in the Army;
   (2) Be a participant;
   (3) Possess a critical military specialty as determined by the Secretary of Defense; and
   (4) Be chosen for his portion of the pilot program by the Secretary of Defense or his or her designee.
   (Authority: Sec. 903, Pub. L. 96-342; 94 Stat. 1115)
(b) Persons who may receive transferred entitlement. An individual meeting the requirements of paragraph (a) of this section may transfer entitlement earned under § 21.5071 for the purpose of allowing another person to receive educational assistance allowance. Entitlement may be transferred only:
   (1) To a spouse or child of the participant,
   (2) To one person at a time,
   (3) If the participant is not receiving educational assistance allowance, and
   (4) When the participant states in writing to the Department of Veterans Affairs that the entitlement should be transferred.
   (Authority: Sec. 903(c), Pub. L. 96-342, 94 Stat. 1115)
(c) Educational assistance allowance. (1) The individual must specify in writing to the Department of Veterans Affairs the period of time he or she wishes the spouse or child to receive educational assistance allowance on the basis of the transfer of entitlement. The Department of Veterans Affairs will not pay educational assistance allowance to a spouse or child for training completed either before or after the period specified by the participant.

(2) The commencing date of an award of educational assistance allowance to a spouse or child will be the earlier of the following dates:

(i) The date of the spouse's or child's entrance or reentrance under § 21.4131;
(ii) The first day of the period authorized by the participant for the transfer of entitlement.

(3) The ending date of an award of educational assistance allowance to a spouse or child will be the earliest of the following dates:

(i) The ending date of the spouse's or child's course or period of enrollment as certified by the school or training establishment;
(ii) The ending date of the participant's eligibility as determined under § 21.5041;
(iii) The ending date specified in § 21.4135;
(iv) The date of the death of the participant on whom the spouse's or child's entitlement is based;
(v) The last day of the period authorized by the participant for the transfer of entitlement.

(d) Application of VA regulations to this portion of the pilot program.

(1) Sections 21.5030 (a) and (b), 21.5040, 21.5041 and 21.5050 through 21.5067 and § 21.5145 apply to the individual who is participating in this portion of the pilot program, but they do not apply to the individual's spouse or child, per se.

(2) The following sections apply to this portion of the pilot program with amendments as noted:

(i) In § 21.5022 the entitlement used by the spouse or child counts toward the 48-month limitation on receiving benefits under more than one program which is imposed on the individual.
(ii) In § 21.5072 the charge against the individual's entitlement will be made on the basis of payments made to the individual's spouse or child.
(iii) In § 21.5100 the individual's spouse or child may request counseling, but an incompetent spouse or child is not required to be counseled before selecting a program of education.

(3) Except as amended in paragraph (d)(2) of this section the following sections apply without change to this portion of the pilot program:

(i) Sections 21.5001 through 21.5023,
(ii) Section 21.5030(c),
(iii) Sections 21.5070 through 21.5130,
(iv) The introductory portion of § 21.5131,
(Authority: 38 U.S.C. 3698(a)(2))
(4) Section 21.5131 (a) and (b) does not apply to this portion of the pilot program.

(Sec. 903, Pub. L. 96-342, 94 Stat. 1115)

§ 21.5296 Extended period of eligibility.

(a) General. A veteran shall be granted an extension of the applicable delimiting period, as otherwise determined by §21.5041 provided--

(1) The veteran applies for an extension.

(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable delimiting period because of a physical or mental disability that did not result from the willful misconduct of the veteran. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(b) Application. (1) Only the veteran may apply for an extended period of eligibility pursuant to this section. A spouse or child to whom entitlement may be or has been transferred may not apply for, nor receive, an extension based upon disability of either the veteran or the spouse or child.

(2) The veteran must apply for the extended period of eligibility in time for VA to receive the application by the later of the following dates:

(i) One year from the last date of the delimiting period otherwise applicable to the veteran under §21.5041, or

(ii) One year from the termination date of the period of the veteran's mental or physical disability.

(3) No application for an extended period of eligibility should be submitted and none will be processed during any period when the veteran has transferred entitlement to a spouse or child, since eligibility cannot be fully determined as provided in paragraph (c)(4)(ii) of this section.

(c) Qualifying period of disability. A veteran's extended period of eligibility shall be based on the period of time that the veteran himself or herself was prevented by reason of physical or mental disability, not the result of the veteran's willful misconduct, from initiating or completing his or her chosen program of education. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct.

(1) Evidence must be presented which clearly establishes that the veteran's disability made pursuant of his or her program medically infeasible during the veteran's original period of eligibility as determined by §21.5041. A period of disability following the end of the original disability period will not be a basis for extension.

(2) VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from enrolling or reenrolling in the chosen program of education or was forced to discontinue attendance, because of the short disability.

(3) Except as provided in paragraph (c)(4) of this section, a veteran's transfer of entitlement to a spouse or child during a period for which the veteran's disability
prevented his or her pursuit of a program of education will not affect the veteran's entitlement to an extension of eligibility under this section.

(4) Since the act of entitlement transfer to a spouse or child indicates that the veteran did not intend to personally use his or her educational assistance during the specified transfer period, a veteran who becomes disabled after transferring entitlement will not be entitled to an extended period of eligibility based on any period of the disability which coincides with the specified transfer period unless--

(i) The transferee or transferees did not use any entitlement during this period, and

(ii) The veteran can clearly demonstrate that, notwithstanding his or her decision to transfer entitlement, the veteran would have used the entitlement during all or part of the transfer period and was prevented from doing so solely by reason of his or her disability.


(d) Commencing date. The veteran shall elect the commencing date of an extended period of eligibility. The date chosen--

(1) Must be on or after the original date of expiration of eligibility as determined by §21.5041 of this part, and

(2) Must be on or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(3) Must be on or before the first day of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.


(e) Determining the length of extended periods of eligibility. A veteran's extended period of eligibility shall be based on the qualifying period of disability, and determined as follows:

(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically feasible,

(ii) The veteran's delimiting date as determined by § 21.5041 of this part, or

(iii) The date the veteran resumed training.

(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earliest of the following dates:

(i) The date the veteran's training became medically feasible, or

(ii) The veteran's delimiting date as determined by §21.5041 of this part.


(f) Discontinuance. If the veteran is pursuing a course on the date an extended period of eligibility expires (as determined under this section), VA will discontinue the educational assistance allowance effective the day before the end of the extended period of eligibility.
(g) No transfer of entitlement for use during the extended period of eligibility. (1) The veteran may only transfer entitlement to a spouse or child for use during the original period of eligibility as determined by § 21.5041 of this part.
(2) If the veteran has established an extended period of eligibility with VA, only the veteran may use remaining entitlement during that period.
(3) If the veteran transfers his or her entitlement after having received an extension of eligibility, but before the last day of the delimiting period as determined by § 21.5041 of this part, the eligibility of the spouse or child to use entitlement ends on the veteran's otherwise applicable delimiting date as determined by § 21.5041 of this part.

(38 U.S.C. 3232; Pub. L. 99-576)
SUBPART H -- EDUCATIONAL ASSISTANCE TEST PROGRAM

§ 21.5701 Establishment of educational assistance test program.
§ 21.5703 Overview.
§ 21.5705 Transfer of authority.

GENERAL
CLAIMS AND APPLICATIONS
ELIGIBILITY AND ENTITLEMENT
COURSES
CERTIFICATIONS
PAYMENTS -- EDUCATIONAL ASSISTANCE AND SUBSISTENCE ALLOWANCE
MEASUREMENT OF COURSES
ADMINISTRATIVE


§ 21.5701 Establishment of educational assistance test program.
(a) Establishment. The Departments of Army, Navy and Air Force have established an educational assistance test program.
(Authority: 10 U.S.C. 2141(a))
(b) Purpose. The purpose of this program is to encourage enlistments and reenlistments for service on active duty in the Armed Forces of the United States during the period from October 1, 1980, through September 30, 1981.
(Authority: 10 U.S.C. 2141(a))
(c) Funding. The Department of Defense is bearing the costs of this program. Participants in the program do not bear any of the costs.

(10 U.S.C. 2141(a))

§ 21.5703 Overview.
This program provides subsistence allowance and educational assistance to selected veterans and servicemembers and, in some cases, to dependents of these veterans and servicemembers.

(10 U.S.C. 2141(b))

§ 21.5705 Transfer of authority.
The Secretary of Defense delegates the authority to administer the benefit payment portion of this program to the Secretary of Veterans Affairs and his or her designees. See § 21.5901.

(10 U.S.C. 2141(b))

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GENERAL

§ 21.5720 Definitions.
§ 21.5725 Obtaining benefits.

§ 21.5720 Definitions.
For the purpose of regulations in the §§ 21.5700, 21.5800 and 21.5900 series and payment of benefits under the educational assistance and subsistence allowance program, the following definitions apply:
(a) Veteran. This term means a person who --
(1) Is not on active duty.
(2) Served as a member of the Air Force, Army, Navy or Marine Corps.
(3) Enlisted or reenlisted after November 30, 1980, and before October 1, 1981, specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149; Pub. L. 96-342; and
(4) Meets the eligibility requirements for the program as stated in § 21.5740.
(Authority: 10 U.S.C. 2141(a))
(b) Accredited institution. This term means a civilian college or university or a trade, technical or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands) that --
(1) Provides education on a postsecondary level (including accredited programs conducted at overseas locations) and
(2) Is accredited by --
(i) A nationally recognized accrediting agency or association, or
(ii) An accrediting agency or association recognized by the Secretary of Education.
(Authority: 10 U.S.C. 2143(c))
(c) Dependent child. This means an unmarried legitimate child (including an adopted child or a stepchild) who either --
(1) Has not passed his or her 21st birthday; or
(2) Is incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and is, or was at the time of the veteran's or servicemember's death, in fact, dependent on him or her for over one-half of his or her support; or
(3) Has not passed his or her 23rd birthday; is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be; and is, or was at the time of the veteran's or servicemember's death, in fact, dependent upon him or her for over one half of his or her support.
(Authority: 10 U.S.C. 1072(2)(D), 2147(d)(1))
(d) Surviving spouse. The term means a widow or widower who is not remarried.
(Authority: 10 U.S.C. 2147(d)(2))
(e) Servicemember. This term means anyone who--
(1) Meets the eligibility requirements for the program, and
(2) Is on active duty in the Air Force, Army, Navy or Marine Corps.
(Authority: 10 U.S.C. 2142)
(f) Spouse. This term means a person of the opposite sex who is the husband or wife of the veteran or servicemember.  
(Authority: 10 U.S.C. 2147)

(g) Divisions of the school year. (1) Standard academic year is a period of 2 standard semesters or 3 standard quarters. It is 9 months long.  
(2) Standard quarter is a division of the standard academic year. It is from 10 to 13 weeks long.  
(3) Standard semester is a division of the standard academic year. It is 15 to 19 weeks long.  
(4) Term is either  
(i) Any regularly established division of the standard academic year, or  
(ii) The period of instruction which takes place between standard academic years.  
(Authority: 10 U.S.C. 2142)

(h) Full-time training. This term means training at the rate of 12 or more semester hours per semester, or the equivalent.  
(Authority: 10 U.S.C. 2144)

(i) Part-time training. The term means training at the rate of less than 12 semester hours per semester or the equivalent.  
(Authority: 10 U.S.C. 2144)

(j) Enrollment period. This term means an interval of time during which an eligible individual--  
(1) Is enrolled in an accredited educational institution; and  
(2) Is pursuing his or her program of education.  

(10 U.S.C. 2142)

§ 21.5725 Obtaining benefits.
(a) Actions required of the individual. In order to obtain benefits under the educational assistance and subsistence allowance program, an individual must--  
(1) File a claim for benefits with VA, and  
(2) Ensure that the accredited institution certifies his or her enrollment to VA.  
(Authority: 10 U.S.C. 2149)

(b) VA action upon receipt of a claim. Upon receipt of a claim from an individual VA shall--  
(1) Determine if the individual, or the veteran upon whose service the claim is based, has or had basic eligibility;  
(2) Determine that the eligibility period has not expired;  
(3) Determine that the individual has remaining entitlement;  
(4) Verify that the individual is attending an accredited institution;  
(5) Determine whether payments may be made for the course, and  
(6) Make appropriate payments of educational assistance and subsistence allowance.  

(10 U.S.C. 2142-2149)
CLAIMS AND APPLICATIONS

§ 21.5730 Applications, claims, and time limits.

§ 21.5730 Applications, claims, and time limits.
The provisions of subpart B of this part apply with respect to claims for educational assistance under the educational program described in § 21.5701, VA actions upon receiving a claim, and time limits connected with claims.
(Authority: 10 U.S.C. 2141, 2149; 38 U.S.C. 5101, 5102, 5103)
[51 FR 27026, July 29, 1986; 64 FR 23769, 23772, May 4, 1999]

(10 U.S.C. 2141)
[EFFECTIVE DATE NOTE: 64 FR 23769, 23772, May 4, 1999, revised this section, effective June 3, 1999.]
ELIGIBILITY AND ENTITLEMENT

§ 21.5740 Eligibility.
§ 21.5741 Eligibility under more than one program.
§ 21.5742 Entitlement.
§ 21.5743 Transfer of entitlement.
§ 21.5744 Charges against entitlement.
§ 21.5745 Period of entitlement.

§ 21.5740 Eligibility.
(a) Establishing eligibility. To establish eligibility to educational assistance under 10 U.S.C. Chapter 107 an individual must--
   (1) Enlist or reenlist for service on active duty as a member of the Army, Navy, Air Force or Marine Corps after September 30, 1980 and before October 1, 1981 specifically for benefits under the provisions of 10 U.S.C. 2141 through 2149, Pub. L. 96-342,
   (2) Have graduated from a secondary school,
   (3) Meet other requirements as the Secretary of Defense may consider appropriate for the purpose of this chapter and the needs of the Armed Forces,
   (4) Meet the service requirements stated in paragraph (b) of this section, and
   (5) If a veteran, have been discharged under honorable conditions.
   (Authority: 10 U.S.C. 2142(b), 38 U.S.C. 5303A)
   (b) Service Requirements. (1) The individual must complete 24 continuous months of active duty of the enlistment or reenlistment described in paragraph (a)(1) of this section; or
       (2) If the enlistment described in paragraph (a) of this section is the individual's initial enlistment for service on active duty, the individual must--
           (i) Complete 24 continuous months of active duty, or
           (ii) Be discharged or released from active duty--
               (A) Under 10 U.S.C. 1173 (hardship discharge), or
               (B) Under 10 U.S.C. 1171 (early-out discharge), or
               (C) For a disability incurred in or aggravated in line of duty; or
           (iii) Be found by the VA to have a service-connected disability which gives the individual basic entitlement to disability compensation as described in § 3.4(b) of this title. Once the VA makes this finding, the individual's eligibility will continue notwithstanding that the disability becomes noncompensable.
   (3) In computing time served for the purpose of this paragraph, VA will exclude any period during which the individual is not entitled to credit for service as specified in § 3.15 of this title. However, those periods will not interrupt the individual's continuity of service.

   (10 U.S.C. 2142; 38 U.S.C. 5303A)

§ 21.5741 Eligibility under more than one program.
(a) Veterans and servicemembers. A veteran or servicemember who is eligible for educational assistance under either 38 U.S.C. chapter 31 or 34, or subsistence allowance
under 38 U.S.C. chapter 31 may also be eligible for the Educational Assistance Test Program. (See § 21.5824 for restrictions on duplication of benefits.)

(b) Spouse, surviving spouse or dependent child. A spouse, surviving spouse or dependent child who is eligible to receive educational assistance under 38 U.S.C. Chapters 31, 32, 34 and 35 may also be eligible for the Educational Assistance Test Program. (See § 21.5824 for restrictions on duplication of benefits.)

(c) Limitation on benefits. (1) Before March 2, 1984 the 48 month limitation on benefits under two or more programs found in 38 U.S.C. 3695 does not apply to the Educational Assistance Test Program when taken in combination with any program authorized under title 38 U.S.C.

(2) After March 1, 1984 the aggregate period for which any person may receive assistance under the Educational Assistance Test Program and the provisions of any of the laws listed below may not exceed 48 months (or the part-time equivalent thereof):

(i) Part VII or VIII, Veterans Regulations numbered 1(a) as amended,
(ii) Title II of the Veterans' Readjustment Assistance Act of 1952,
(iii) The War Orphans' Educational Assistance Act of 1956,
(iv) Chapters 32, 34, 35 and 36 of title 38 U.S.C. and the former chapter 33,

(3) After October 19, 1984 the aggregate period for which any person may receive assistance under the Educational Assistance Test Program and any of the laws listed in paragraph (c)(2) of this section, may not exceed 48 months (or the part-time equivalent thereof):

(i) Chapter 30 of title 38, U.S.C., and
(ii) Chapter 1606 of title 10, U.S.C.


(38 U.S.C. 3695)

§ 21.5742 Entitlement.

(a) Educational assistance. A veteran or servicemember shall be entitled to one standard academic year (or the equivalent) of educational assistance for each year of service following the first enlistment beginning after November 30, 1980 (up to a maximum of four years). If the veteran or servicemember completes two years of active duty in the term of enlistment, but fails to complete the enlistment or fails to complete four years of active duty in an enlistment of more than four years, his or her entitlement to educational assistance shall be calculated as follows:

(1) VA shall determine the number of years, months and days in the veteran's qualifying period of service by subtracting the entry on duty date from the release from active duty date. Any deductible time under § 3.15 of this chapter (during the period of service on which eligibility is based) will be excluded from the calculation.

(2) VA shall convert the number of years determined in paragraph (a)(1) of this section to months by multiplying them by 12.

(3) VA shall convert the number of days determined in paragraph (a)(1) of this section to 0 months if there are 14 days or less, and to 1 month if there are more than 14 days.
(4) VA shall determine the number of total months by adding the number of months
determined in paragraph (a)(1) of this section (exclusive of years and days) to the number
of months determined in paragraph (a)(2) of this section, and the number of months in
paragraph (a)(3).
(5) VA shall multiply the number of total months in paragraph (a)(4) of this section
by .75.
(Authority: 10 U.S.C. 2142(a)(2))

(b) Subsistence allowance. A veteran or servicemember shall be entitled to nine months
of subsistence allowance for each standard academic year of entitlement to educational
assistance. For each period of entitlement to educational assistance which is shorter than
a standard academic year, a veteran or servicemember will be entitled to one month of
subsistence allowance for each month of entitlement to educational assistance. This
entitlement shall not exceed nine months.
[51 FR 27026, July 29, 1986, as amended at 51 FR 29471, Aug. 18, 1986]

(10 U.S.C. 2144)

§ 21.5743 Transfer of entitlement.
(a) Entitlement may be transferred. (1) A veteran or servicemember may transfer all or
part of his or her entitlement to educational assistance and subsistence allowance to a
spouse or dependent child. He or she may not transfer entitlement to more than one
person at a time.
(2) The Secretary of the Navy may authorize a member or veteran of the Navy or Marine
Corps to make a transfer described in paragraph (a)(1) of this section provided:
(i) The servicemember or veteran has entitlement to educational assistance as provided in
§ 21.5742;
(ii) The enlistment that established the servicemember's or veteran's entitlement was his
or her second reenlistment as a member of the Armed Forces;
(iii) The servicemember or veteran has completed at least four years of active service of
that second reenlistment; and
(iv) The servicemember's or veteran's second reenlistment was for a period of at least six
years.
(3) No transfer, other than one described in paragraph (a)(2) of this section, may be made
until the veteran or servicemember--
(i) Has completed the enlistment upon which his or her entitlement is based or has been
discharged for reasons described in § 21.5740(b)(2), and
(ii) Has thereafter reenlisted.
(4) The servicemember or veteran may revoke at any time a transfer described in either
paragraph (a)(2) or (3) of this section.
(5) If a veteran attempts to transfer entitlement after 10 years have elapsed from the date
he or she has retired, has been discharged or has otherwise been separated from active
duty, the transfer shall be null and void.
(Authority: 10 U.S.C. 2147(a), 2148; Pub. L. 99-145)

(b) Transfer of entitlement upon death of veteran or servicemember. (1) A veteran's or
servicemember's entitlement to educational assistance and subsistence allowance shall be
transferred automatically subject to provisions of paragraph (b)(2) of this section,
provided he or she--
(i) Completed the enlistment upon which the entitlement is based;
(ii) Thereafter reenlisted;
(iii) Never elected not to transfer entitlement; and
(iv) Dies while on active duty or within 10 years from the date he or she retired, was discharged, or was otherwise separated from active duty.

(2) The veteran's or servicemember's entitlement will be transferred to--
(i) The veteran's or servicemember's surviving spouse, or
(ii) If the veteran or servicemember has no surviving spouse, the veteran's or servicemember's dependent children.

(3) A surviving spouse who receives entitlement under paragraph (b)(2) of this section may elect to transfer that entitlement to the veteran's or servicemember's dependent children.

(4) If a servicemember transfers entitlement and then dies, and the effective date of the transfer is more than 10 years from the date of his or her death, the transfer shall be void. The entitlement will be transferred automatically as provided in paragraph (b)(2) of this section.

(Authority: 10 U.S.C. 2147(a))

(c) Effect of transfer upon educational assistance and subsistence allowance: veteran or servicemember living. (1) A person to whom a veteran or servicemember transfers entitlement is entitled to educational assistance and subsistence allowance in the same manner and at the same rate as the person from whom entitlement was transferred.

(2) The total entitlement transferred to the veteran's or servicemember's spouse and children shall not exceed the veteran's or servicemember's remaining entitlement. The veteran or servicemember may transfer entitlement to only one person at a time.

(Authority: 10 U.S.C. 2147)

(d) Effect of transfer upon educational assistance and subsistence allowance: Veteran or servicemember deceased. (1) A person to whom entitlement is transferred after the death of a veteran or servicemember is entitled to payment of educational assistance and subsistence allowance in the manner as the veteran or servicemember. The rate of educational assistance and subsistence allowance will be as stated in §§ 21.5820 and 21.5822.

(2) If entitlement is transferred to more than one person following the death of a veteran or servicemember, the total remaining entitlement to educational assistance and subsistence allowance of all is equal to the total entitlement of the person on whose service entitlement is based.

(Authority: 10 U.S.C. 2147)

(e) Revocation of a transfer of entitlement. A surviving spouse who has transferred entitlement to a dependent child may revoke the transfer by notifying VA in writing. A veteran or servicemember who has transferred entitlement may revoke that transfer by notifying VA in writing. The veteran, servicemember or surviving spouse may choose the effective date of the revocation subject to the following conditions:

(1) If the person to whom entitlement is transferred never enters training, the effective date of the revocation may be any date chosen by the veteran, servicemember or surviving spouse who transferred the entitlement.

(2) If the person to whom entitlement is transferred is not in training on the date the VA processes the revocation, but he or she has trained before that date, the effective date of
the revocation may be no earlier than the last date that person was in training for which educational assistance and subsistence allowance were payable.

(3) If the person to whom entitlement is transferred is in training (for which educational assistance and subsistence allowance are payable) on the date the VA processes revocation, the effective date of the revocation may be no earlier than--

(i) The last date of the term, quarter, or semester at the accredited institution where that person is enrolled, or

(ii) If the accredited institution is not organized on a term, quarter or semester basis, the last date of the course or the last date of the school year, whichever is earlier.


(10 U.S.C. 2147)

§ 21.5744 Charges against entitlement.

(a) Charges against entitlement to educational assistance. (1) Except as provided in paragraph (a)(2) of this section VA will make a charge against an individual's entitlement to educational assistance of--

(i) One month for each month of a term, quarter or semester--

(A) For which the servicemember receives educational assistance, and

(B) During which the servicemember is a full-time student; and

(ii) One-half month for each month of a term, quarter or semester--

(A) For which the individual receives educational assistance, and

(B) During which the servicemember is a part-time student.

(2) VA will prorate the entitlement charge if the individual--

(i) Is a student for only part of a month, or

(ii) The individual is a full-time student for part of a month and a part-time student for part of the same month.

(3) The charge against entitlement to educational assistance should always equal the charge against entitlement to subsistence allowance for the same enrollment period.

(b) Charges against entitlement to subsistence allowance. (1) For each individual, except servicemembers, VA will make a charge against an individual's entitlement to subsistence allowance of--

(i) One month for each month the individual is a full-time student receiving subsistence allowance; and

(ii) One-half for each month the individual is a part-time student receiving subsistence allowance.

(2) Even though a servicemember may not receive subsistence allowance, VA will make a charge against a servicemember's entitlement to subsistence allowance of--

(i) One month for each month of a term, quarter or semester--

(A) For which the servicemember received educational assistance and

(B) During which the servicemember is a full-time student; and

(ii) One-half month for each month of a term, quarter or semester--

(A) For which the servicemember received educational assistance, and

(B) During which the individual is a part-time student.

(3) VA will prorate the entitlement charge as stated in paragraph (b) (1) or (2) of this section during any month for which a servicemember receives educational assistance or for which the individual receives subsistence allowance--
(i) For less than a full month, or
(ii) At the full-time rate for part of a month and at the part-time rate for part of the same month.

(10 U.S.C. 2142)

§ 21.5745 Period of entitlement.
(a) Veterans. The period of entitlement of a veteran expires on the first day following ten years from the date the veteran retires or is discharged or otherwise separated from active duty.
(Authority: 10 U.S.C. 2148; Pub. L. 96-342)
(b) Spouses, surviving spouses, and dependent children. If the veteran's or servicemember's entitlement is transferred, the period of entitlement of the spouse, surviving spouse, or dependent child expires 10 years from--
(1) The date the veteran retires, is discharged or otherwise separated from active duty, or
(2) If the servicemember dies on active duty, the date of the servicemember's death.

(10 U.S.C. 2148)
COURSES

§ 21.5800 Courses.

§ 21.5800 Courses.
(a) Courses permitted. An individual may receive educational assistance and subsistence allowance only while receiving instruction in a postsecondary course offered at any institution in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands) that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Secretary of Education.

(Authority: 10 U.S.C. 2142)
(b) Courses precluded. An individual shall receive neither educational assistance nor subsistence allowance while pursuing any of the following courses:
(1) A course offered at the secondary level or below;
(2) A course offered by an institution located outside the United States (except in Guam, the Commonwealth of Puerto Rico and the U.S. Virgin Islands);
(3) A course offered by a nonaccredited institution; and
(4) Courses which do not require the student to receive instruction at the institution.

These include--
(i) Correspondence courses,
(ii) Combination correspondence--residence courses, and
(iii) Courses offered through independent study.


(10 U.S.C. 2143)
CERTIFICATIONS

§ 21.5810 Certifications of enrollment.
§ 21.5812 Reports of withdrawals, and terminations of attendance and changes in training time.
§ 21.5816 False or fraudulent claims.

§ 21.5810 Certifications of enrollment.
(a) Enrollment certifications. An individual who wishes to receive educational assistance and subsistence allowance shall ensure that the accredited institution he or she is attending certifies the individual's enrollment to VA.
(Authority: 10 U.S.C. 2141)
(b) Content of certification. The certification should include--
(1) The number of credit hours or clock hours in which the individual is enrolled;
(2) The amount of the cost of tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or laboratory instruction which the individual will incur during the period of enrollment; and
(3) The beginning and ending dates of the period of enrollment.
(Authority: 10 U.S.C. 2142)
(c) Length of certification. A school should not certify more than one term, quarter or semester at a time.
(Approved by the Office of Management and Budget under control number 2900-0073)
(10 U.S.C. 2141)

§ 21.5812 Reports of withdrawals, and terminations of attendance and changes in training time.
(a) Reports of withdrawals and terminations of attendance. (1) An individual shall report to VA facility of jurisdiction whenever he or she withdraws from school or terminates his or her attendance. He or she shall report the last day of attendance. The individual may request that the school verify this information.
(2) The report shall include--
(i) The date of withdrawal or last date of attendance, as appropriate; and
(ii) The amount of educational expenses actually incurred by the individual during the period of enrollment before the date of withdrawal, or if the individual does not formally withdraw when he or she stops attending the amount of educational expenses actually incurred by the individual during the period of enrollment before the last date of attendance.
(Authority: 10 U.S.C. 2141)
(b) Reports of changes in training. (1) An individual shall report to the VA field station of jurisdiction each time the individual increases or decreases the number of credit hours or clock hours of training in which he or she is enrolled or otherwise alters the duration of the enrollment.
(2) The report shall include--
(i) The new number of credit hours or clock hours in which the individual is enrolled;
(ii) The amount of educational expenses, enumerated in § 21.5810(b)(2), which the individual will incur during the revised period of enrollment; and
(iii) The effective date of the change in the number of credit hours or clock hours, including any revision in the term of the enrollment.

(3) The individual or VA may ask the school to verify the individual's reports of changes in training.

(Approved by the Office of Management and Budget under control number 2900-0156)

(10 U.S.C. 2141)

§ 21.5816 False or fraudulent claims.
Each individual, or school officer or official shall be subject to civil penalties or criminal penalties, or both, under applicable Federal law for submitting a false or fraudulent report, revision to a report, or verification of accuracy of a report used to support an individual's claim, even though the report or verification is provided gratuitously or voluntarily to VA.

§ 21.5820 Educational assistance.
§ 21.5822 Subsistence allowance.
§ 21.5828 False or misleading statements.
§ 21.5830 Payment of educational assistance.
§ 21.5831 Commencing date of subsistence allowance.
§ 21.5835 Specific discontinuance dates.
§ 21.5838 Overpayments.

§ 21.5820 Educational assistance.
(a) Educational assistance. Educational assistance will be paid to cover the educational expenses incurred by an eligible servicemember, veteran, spouse, surviving spouse or dependent child while attending an accredited institution. Educational assistance payments will be made to the eligible individual.
(1) The educational expenses are limited to --
(i) Tuition,
(ii) Fees,
(iii) Cost of books,
(iv) Laboratory fees, and
(v) Shop fees for consumable materials used as part of classroom or laboratory instruction.
(2) Educational expenses may not exceed those normally incurred by students at the same educational institution who are not eligible for benefits from the educational assistance test program.
(Authority: 10 U.S.C. 2143(a))
(b) Amount of educational assistance. (1) The amount of educational assistance will be adjusted annually by regulation. For the 2003-04 standard academic year the amount of this assistance may not exceed $ 4,219.
(2) The amount of educational assistance payable to a servicemember, veteran, spouse or dependent child of a living servicemember or veteran for an enrollment period will be the lesser of the following:
(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or
(ii) For the 2003-04 standard academic year an amount determined by:
(A) Multiplying the number of whole months in the enrollment period by $ 468.78 for a full-time student or by $ 234.39 for a part-time student;
(B) Multiplying any additional days in the enrollment period by $ 15.63 for a full-time student or by $ 7.81 for a part-time student; and
(C) Adding the two results. If the enrollment period is as long as or longer than the standard academic year, this amount will be decreased by 2 cents for a full-time student and decreased by 1 cent for a part-time student.
(3) The amount of educational assistance payable to each surviving spouse or dependent child of a deceased servicemember or veteran for an enrollment period will be the lesser of the following:
   (i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or
   (ii) For the 2003-04 standard academic year an amount determined by:
       (A) Multiplying the number of whole months in the enrollment period by $468.78 for a full-time student or by $234.39 for a part-time student;
       (B) Multiplying any additional days in the enrollment period by $15.63 for a full-time student or by $7.81 for a part-time student; and
       (C) Adding the two results. If the enrollment period is as long as or longer than a standard academic year, this amount will be decreased by 2 cents for a full-time student and decreased by 1 cent for a part-time student; and
       (D) Dividing the amount determined in paragraph (b)(3)(ii)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(ii)(C) will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.
   (Authority: 10 U.S.C. 2143, 2145)

(c) Time of educational assistance payments. VA will make payments of educational assistance at the end of the first month of each semester, quarter or term in which the individual is entitled to such a payment, provided VA receives a timely enrollment certification. If VA receives the enrollment certification so late that payment cannot be made at the end of the month in which the individual is enrolled, VA will make payment as soon as practicable.
   (Authority: 10 U.S.C. 2143)


§ 21.5822 Subsistence allowance.
(a) Subsistence allowance. Except as provided in paragraph (a)(2) of this section, VA will pay subsistence allowance to a veteran, spouse, surviving spouse or dependent child during any period for which he or she is entitled to educational assistance. No subsistence allowance is payable to:
(1) A servicemember, even if he or she is entitled to educational assistance, or
(2) A spouse or dependent child of a servicemember, even if the spouse or dependent
child is entitled to educational assistance.
(Authority: 10 U.S.C. 2144(a))

(b) Amount of subsistence allowance. (1) The following rules govern the amount of
subsistence allowance payable to veterans and to spouses and dependent children of
veterans who are alive during the period for which subsistence allowance is payable. As
stated in paragraph (a) of this section, these amounts are payable only for periods during
which the veterans, spouses or dependent children are entitled to educational assistance.
(i) If a person is pursuing a course of instruction on a full-time basis, his or her
subsistence allowance is $1,051 per month for training pursued during the 2003-04
academic year.
(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or
her subsistence allowance is $525.50 per month for training pursued during the 2003-04
academic year.
(iii) If a person does not pursue a course of instruction for a complete month VA will
prorate the subsistence allowance for that month on the basis of 1/30th of the monthly
rate for each day the person is pursuing the course.
(2) The following rules govern the amount of subsistence allowance payable to surviving
spouses and dependent children of deceased veterans and servicemembers.
(i) VA will determine the monthly rate of subsistence allowance payable to a person for a
day during which he or she is pursuing a course of instruction full-time during the
2003-04 academic year by dividing $1,051 per month by the number of the deceased
veteran's dependents pursuing a course of instruction on that day.
(ii) VA will determine the monthly rate of subsistence allowance payable to a person for a
day during which he or she is pursuing a course of instruction on other than a full-time
basis during the 2003-04 academic year by dividing $525.50 per month by the number of
the deceased veteran's dependents pursuing a course of instruction on that day.
(Authority: 10 U.S.C. 2144, 2145)
(iii) The total amount of subsistence allowance payable to a person for a month is the sum
of the person's daily rates for the month.
(c) Time of subsistence allowance payments. VA will make payments of subsistence
allowance on the first day of the month following the month for which subsistence
allowance is due, provided that VA receives a timely enrollment certification. If VA
receives the enrollment certification so late that payment cannot be made on the first day
of the month following the month for which subsistence allowance is due, VA will make
payment as soon as practicable.
(Authority: 10 U.S.C. 2144.)
[51 FR 27026, July 29, 1986, as amended at 52 FR 35241, Sept. 18, 1987; 53 FR 50521,
Dec. 16, 1988; 55 FR 31181, Aug. 1, 1990; 56 FR 44008, Sept. 6, 1991; 58 FR 50845,
Sept. 29, 1993; 60 FR 46533, 46535, Sept. 7, 1995; 61 FR 28753, 28754, June 6, 1996;
62 FR 10454, 10455, March 7, 1997; 62 FR 63847, 63848, Dec. 3, 1997; 64 FR 44660,
44661, Aug. 17, 1999, as corrected at 64 FR 46974, Aug. 27, 1999; 65 FR 13693, 13694,
68 FR 65399, 65401, Nov. 20, 2003; 69 FR 62209, October 25, 2004]
(a) Duplication of some benefits prohibited. An individual who is receiving educational assistance under programs authorized by 38 U.S.C. Chapters 30, 31, 32, 34, 35 or 36 may not receive concurrently either educational assistance or subsistence allowance under the §§ 21.5700, 21.5800 and 21.5900 series of regulations for the same program of education, but may receive them sequentially.
(b) Debts may result from duplication. (1) If an individual receives benefits under 38 U.S.C. Chapters 30, 31, 32, 34, 35 or 36 for training, and he or she has previously received educational assistance or subsistence allowance (or both) under §§ 21.5700, 21.5800, 21.5900 series of regulations the amount of the benefits received under 38 U.S.C. Chapters 30, 31, 32, 34 or 35 shall not constitute a debt due the United States.
(2) If an individual receives benefits under 38 U.S.C. Chapter 34, and had signed an agreement with the Department of Defense to waive those benefits in return for receiving benefits under the educational assistance test program:
(i) Any benefits already paid under the educational assistance test program will constitute a debt due the United States, and
(ii) No further benefits under the educational assistance test program will be paid to the individual or to anyone to whom entitlement may be transferred.

§ 21.5828 False or misleading statements.
(a) False statements. An individual who attempts to obtain educational assistance or subsistence allowance or both through submission of false or misleading statements is subject to civil penalties or criminal penalties or both under applicable Federal law.
(b) Effect of false statements on subsequent payments. A determination that false or misleading statements have been made will not constitute a bar to payments based on training to which the false or misleading statements do not apply.

§ 21.5830 Payment of educational assistance.
(a) Timing and release of payments. VA will pay educational assistance to the individual on the last day of the calendar month during which the individual enters or reenters training.
(Authority: 10 U.S.C. 2143)
(b) Period covered by payments. The payments cover those expenses, listed in § 21.5820(a) incurred for the period beginning on the commencing date of the individual's subsistence allowance and ending on the ending date of the individual's subsistence allowance. See § 21.5831.
§ 21.5831 Commencing date of subsistence allowance.
The commencing date of an award or increased award of subsistence allowance will be determined by this section
(a) Entrance or reentrance. Latest of the following dates:
(1) Date certified by school or establishment under paragraph (b) or (c) of this section.
(2) Date 1 year before the date of receipt of the application or enrollment certification.
(3) Date of reopened application under paragraph (d) of this section.
(4) In the case of a spouse, surviving spouse, or dependent child, the date that transfer of eligibility and entitlement to the individual was effective.
(Authority: 10 U.S.C. 2144)
(b) Certification by the school-course leads to a standard college degree. The date of registration or the date of reporting where the student is required by the school's published standard to report in advance of registration, but not later than the date the individual first reports for classes.
(Authority: 10 U.S.C. 2144)
(c) Certification by school or establishment-course does not lead to a standard college degree. First date of class attendance.
(Authority: 10 U.S.C. 2144(a))
(d) Reopened application after abandonment. Date of receipt in VA of application or enrollment certification, whichever is later.
(e) Increase due to increased training time. The date the school certifies the individual became a full-time student.
(f) Liberalizing laws and administrative issues. In accordance with facts found, but not earlier than the effective date of the act or administrative issue.
(Authority: 10 U.S.C. 2144)
(g) Correction of military records. When a veteran becomes eligible following correction or modification of military records under 10 U.S.C. 1552 or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553; or other competent military authority, the commencing date of subsistence allowance will be in accordance with the facts found, but not earlier than the date the change, correction or modification was made by the service department.

(a) Educational assistance. Although educational assistance is paid only once in a term, quarter, or semester, VA may discontinue it under the circumstances stated in § 21.5835. The discontinuance may cause an overpayment. (See also § 21.5838.) If the individual dies during an enrollment period, the provisions of § 21.5835(a) will apply, even if other types of discontinuances are involved. In all other cases where more than one type of reduction or discontinuance is involved, the earliest date found in § 21.5835 will control.
(Authority: 10 U.S.C. 2143)
(b) Subsistence allowance. The effective date of a reduction or discontinuance of subsistence allowance will be as specified in § 21.5835. If more than one type of discontinuance is involved, the earliest date will control.

(10 U.S.C. 2144)

§ 21.5835 Specific discontinuance dates.
The following rules will govern reduction and discontinuance dates for educational assistance and subsistence allowance.

(a) Death of individual. If an individual dies --
(1) VA will discontinue educational assistance effective the last day of the most recent term, quarter, semester or enrollment period of which the individual received educational assistance.
(2) VA will discontinue subsistence allowance effective the individual's last date of attendance.

(Authority: 10 U.S.C. 2144)

(b) Lump-sum payment. When a servicemember accepts a lump-sum payment in lieu of educational assistance, VA will discontinue educational assistance effective the date on which he or she elects to receive the lump-sum payment.

(Authority: 10 U.S.C. 2146)

(c) Reduction due to decreased training time. (1) If a decrease in an individual's training time requires a decrease in educational assistance, the decrease is effective the end of the month in which the individual become a part-time student or the end of the term, whichever is earlier.
(2) When an individual decreases his or her training time from full-time to part-time, VA will decrease his or her subsistence allowance effective the end of the month in which the individual became a part-time student, or the end of the term, whichever is earlier.

(Authority: 10 U.S.C. 2143, 2144)

(d) Course discontinued, interrupted, terminated or withdrawn from. If an individual withdraws, discontinues, ceases to attend, interrupts or terminates all courses, VA will discontinue educational assistance and subsistence allowance effective the last date of attendance.

(Authority: 10 U.S.C. 2143)

(e) False claim. VA will discontinue educational assistance and subsistence allowance effective the first day of the term for which the false claim is submitted.

(Authority: 10 U.S.C. 2141)

(f) Withdrawal of accreditation. If an accrediting agency withdraws accreditation from a course in which an individual is enrolled, VA will discontinue educational assistance and subsistence allowance effective the end of the month in which the accrediting agency withdrew accreditation, or the end of the term, whichever is earlier.

(Authority: 10 U.S.C. 2143(c), 2144)

(g) Remarriage of surviving spouse. VA will discontinue educational assistance and subsistence allowance effective the last date of attendance before the date on which the surviving spouse remarries.

(Authority: 10 U.S.C. 2147(d))
(h) Divorce. If entitlement has been transferred to the veteran's or servicemember's spouse, and the spouse is subsequently divorced from the veteran or servicemember, the spouse's award of educational assistance and subsistence allowance will end on the last date of attendance before the divorce decree becomes final. (Authority: 10 U.S.C. 2147(d))

(i) Revocation of transfer. If a veteran or servicemember revokes a transfer of entitlement, the spouse's or dependent child's award of educational assistance will end on the effective date of the revocation. See § 21.5743(e). (Authority: 10 U.S.C. 2147)

(j) Dependent child ceases to be dependent: veteran or servicemember living. If a veteran or servicemember is living and has transferred entitlement to his or her dependent child who is not incapable of self support due to physical or mental incapacity, VA will discontinue the dependent child's award of educational assistance and subsistence allowance whenever the child does not meet the definition of a dependent child found in § 21.5720(c). The effective date of discontinuance is the earliest of the following:

(1) The child's 21st birthday, if on that date --
   (i) The veteran or servicemember is not providing over one-half the child's support, or
   (ii) The child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date, following the child's 21st birthday, on which the veteran or servicemember stops providing over one-half the child's support;

(3) The date, following the child's 21st birthday, on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(4) The child's 23rd birthday;

(5) the date the child marries. (Authority: 10 U.S.C. 2147(d))

(k) Dependent child ceases to be dependent: veteran or servicemember deceased. If a veteran or servicemember is deceased and his or her dependent child is not incapable of self support due to physical or mental incapacity, VA will discontinue the dependent child's award of educational assistance whenever the child does not meet the definition of a dependent child found in § 21.5720(c). The effective date of discontinuance is the earliest of the following:

(1) The day after the child's 21st birthday, if on that date the child is not enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(2) The date following the child's 21st birthday on which he or she is no longer enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense or the Secretary of Education, as the case may be;

(3) The child's 21st birthday; or

(4) The date the child marries. [51 FR 27026, July 29, 1986; 61 FR 20727, 20729, May 8, 1996]

(10 U.S.C. 2147(d))

§ 21.5838 Overpayments.

© 2006 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(a) Educational assistance. If an individual receives educational assistance but the educational assistance must be discontinued according to § 21.5835, the amount of educational assistance attributable to the portion of the term, quarter or semester following the effective date of discontinuance shall constitute a debt due the United States.

(1) The amount of the debt is equal to the product of--
(i) The number of days the individual was entitled to receive subsistence allowance during the enrollment period for which educational assistance was paid, divided by the total number of days in that enrollment period, and
(ii) The amount of educational assistance provided for that enrollment period.
(2) Nothing in this method of calculation shall change the fact that the number of months of educational assistance to which the individual remains entitled shall always be the same as the number of months of subsistence allowance to which the individual is entitled.
(Authority: 10 U.S.C. 2143)

(b) Subsistence allowance. If an individual receives subsistence allowance under any of the following conditions, the amount of that subsistence allowance shall constitute a debt due the United States unless the debt is waived as provided by §§ 1.955 through 1.970 of this chapter.

(1) Subsistence allowance received for courses pursued while on active duty;
(2) Subsistence allowance received for courses which are precluded under § 21.5800(b);
(3) Subsistence allowance received by a person who is not eligible for educational assistance under § 21.5740;
(4) Subsistence allowance received by an individual who has exhausted all entitlement provided under § 21.5742;
(5) Subsistence allowance received by an individual for a period before the commencing date determined by § 21.5831.
(6) Subsistence allowance received by an individual for a period following a discontinuance date determined by § 21.5835.
(7) Subsistence allowance received by an individual in excess of the part-time rate for a period following a reduction date determined by § 21.5835.


(10 U.S.C. 2144)
MEASUREMENT OF COURSES

§ 21.5870 Measurement of courses.

(a) Credit hour measurement: undergraduate, standard term. An individual who enrolls in a standard quarter or semester for 12 undergraduate credit hours is a full-time student. An individual who enrolls in a standard quarter or semester for less than 12 undergraduate credit hours is a part-time student.
(Authority: 10 U.S.C. 2144(c))

(b) Credit hour measurement: Undergraduate, nonstandard term. (1) If an individual enrolls in a nonstandard term, quarter or semester, and the school measures the course on a credit-hour basis, VA will determine whether that individual is a full-time student by--
   (i) Multiplying the credits earned in the term by 18 if credit is granted in semester hours, or by 12 if credit is granted in quarter hours, and
   (ii) Dividing the product by the number of whole weeks in the term.
   (2) In determining whole weeks VA will--
      (i) Divide the number of days in the term by 7;
      (ii) Disregard a remainder of 3 days or less, and
      (iii) Consider 4 days or more to be a whole week.
   (3) If the number obtained by using the formula in paragraphs (b)(1) and (2) of this section is 12 or more, the individual is a full-time student. If that number is less than 12, the individual is a part-time student.
   (c) Credit hour measurement: graduate. (1) If it is the established policy of a school to consider less than 12 credit hours to be full-time for graduate students, VA will accept the statement of a responsible school official as to whether the student is a full-time or part-time student. If the school does not have such a policy, VA will measure the student's enrollment according to the provisions of paragraphs (a) and (b) of this section.
   (2) VA will measure undergraduate courses required by the school according to the provisions of paragraphs (a) and (b) of this section, even though the individual is enrolled as a graduate student. If the individual is taking both graduate and undergraduate courses, the school will report the credit-hour equivalent of the graduate work. VA will first measure the undergraduate courses according to the provisions of paragraphs (a) and (b) of this section and combine the result with the credit-hour equivalent of the graduate work in order to determine the extent of training.
   (d) Clock hour measurement. (1) If an individual enrolls in a course measured in clock hours and shop practice is an integral part of the course, he or she is a full-time student when enrolled in 22 clock hours or more per week with not more than a 2 1/2 hour rest period allowance per week. For all other enrollments the individual is a part-time student. VA will exclude supervised study in determining the number of clock hours in which the individual is enrolled.
   (2) If an individual enrolls in a course measured in clock hours and theory and class instruction predominate in the course, he or she is a full-time student enrolled in 18 clock hours or more per week. He or she is a part-time student when enrolled in less than 18 clock hours per week. Customary intervals not to exceed 10 minutes between classes will be included in measuring net instruction. Shop practice, rest periods, and supervised
study are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group instruction may be included in computing the clock hour requirements.

(10 U.S.C. 2144(c))
ADMINISTRATIVE

§ 21.5900 Administration of benefits program -- chapter 107, title 10 U.S.C.
§ 21.5901 Delegations of authority.

§ 21.5900 Administration of benefits program -- chapter 107, title 10 U.S.C.
In administering benefits payable under Chapter 107, Title 10 U.S.C, VA will be bound by the provisions of the §§ 21.5700, 21.5800 and 21.5900 series of regulations.

(10 U.S.C. 2144(c))

§ 21.5901 Delegations of authority.
(a) General delegation of authority. Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA, designated by him or her to make findings and decisions under 10 U.S.C. chapter 107 and the applicable regulations, precedents and instructions concerning the program authorized by these regulations.
(Authority: 10 U.S.C. 2144(c))

(b) Delegation of authority concerning the Civil Rights Act of 1984. The Under Secretary for Benefits is delegated the responsibility to obtain evidence of voluntary compliance with title VI of the Civil Rights Act of 1964 from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See part 18 of this title.
(Authority: 42 U.S.C. 2000)
SUBPART I – TEMPORARY PROGRAM OF VOCATIONAL TRAINING FOR CERTAIN NEW PENSION RECIPIENTS

GENERAL
BASIC ELIGIBILITY REQUIREMENTS
EVALUATION
SERVICES AND ASSISTANCE TO PROGRAM PARTICIPANTS
DURATION OF TRAINING
INDIVIDUALIZED WRITTEN REHABILITATION PLAN
COUNSELING
EDUCATIONAL AND VOCATIONAL TRAINING SERVICES
EVALUATION AND IMPROVEMENT OF REHABILITATION POTENTIAL
INDEPENDENT LIVING SERVICES
CASE STATUS SYSTEM
SUPPLIES
MEDICAL AND RELATED SERVICES
FINANCIAL ASSISTANCE
ENTERING VOCATIONAL TRAINING
RATE OF PURSUIT
AUTHORIZATION OF SERVICES
LEAVES OF ABSENCE
SATISFACTORY CONDUCT AND COOPERATION
TRANSPORTATION SERVICES
ADDITIONAL APPLICABLE REGULATIONS
DELEGATION OF AUTHORITY
COORDINATION WITH THE VETERANS SERVICE CENTER

NOTE: This subpart includes regulations governing the determination of eligibility, and the services which may be provided to veterans under this program. The numbering of the regulations follows the numbering of regulations under 38 U.S.C. chapter 31 to the extent possible. Additional regulations affecting this program are found in part 3 and part 17, Title 38 Code of Federal Regulations.
§ 21.6001 Temporary vocational training program for certain pension recipients.

§ 21.6005 Definitions.


§ 21.6015 Claims and elections.


§ 21.6001 Temporary vocational training program for certain pension recipients.

This program provides certain veterans awarded pension with an evaluation and, if feasible, with vocational training, employment assistance and other services to enable them to achieve a vocational goal.

[55 FR 17271, Apr. 24, 1990]


§ 21.6005 Definitions.

(a) Temporary program. The term temporary program means the program of vocational training for certain pension recipients authorized by section 1524, chapter 15, title 38 U.S.C.

(b) Program period. The term program period means the period beginning on February 1, 1985, and ending on December 31, 1992.

(c) Qualified veteran. The term qualified veteran means--

(1) A veteran awarded disability pension during the program period; or

(2) A veteran who was awarded disability pension prior to the beginning of the program period on February 1, 1985, has been continuously in receipt of pension since that time, and is in receipt of pension on the date his or her claim for assistance under the vocational training program is received by VA.

(d) Program participant. The term program participant means a qualified veteran as defined in paragraph (c) of this section who, following an evaluation in which VA finds achievement of a vocational goal is reasonably feasible for the veteran, elects to participate in a vocational training program.

(e) Vocational training program. The term vocational training program means vocationally oriented services and assistance of the kind provided under chapter 31 of the title 38 U.S.C. and such other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for, and participate in, vocational training or employment.

(f) Employment assistance. The term employment assistance means employment counseling and placement and postplacement services, and personal and work adjustment training.
(Authority: 38 U.S.C. 1524(b)(3))
(g) Program of employment services. The term program of employment services is used when the veteran's entire program is limited to employment assistance as that term is defined in paragraph (f) of this section.
(Authority: 38 U.S.C. 1524(b)(4))
(h) Job development. The term job development means comprehensive professional services to assist the individual veteran to actually obtain a suitable job, and not simply the solicitation of jobs on behalf of the veteran.
(Authority: 38 U.S.C. 1524(b)(3))
(i) Institution of higher learning. The term institution of higher learning shall have the same definition as is provided in § 21.4200(a) of this part.
(Authority: 38 U.S.C. 1524(b)(2))
(j) Other terms. The following terms shall have the same meaning or explanation provided in § 21.35 of this part.
(1) Vocational goal.
(2) Program of education.
(3) Rehabilitation to the point of employability.
(4) Counseling psychologist.
(5) Vocational rehabilitation specialist.
(6) School, educational institution or institution.
(7) Training establishment.
(8) Rehabilitation facility.
(9) Workshop.
(38 U.S.C. 1524)

(a) General. Title 38 U.S.C., section 1524(b)(2)(A) provides, in part, that a vocational training program shall consist of vocationally oriented services and assistance of the kind provided service-disabled veterans under chapter 31, Title 38 U.S.C., and other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for and participate in vocational training or employment.
(Authority: 38 U.S.C. 1524(B)(2)(A))
(b) Applicable chapter 31 rules--general. The rules and procedures in force for administration of the chapter 31 program (§ 21.1-§ 21.430) are deemed to be applicable to administration of this program in so far as their use shall not conflict with 38 U.S.C. 1524 or the rules under this subpart. Where a particular grouping of chapter 31 rules are generally applicable, without modification, the rules under this subpart will be deemed to incorporate the chapter 31 rules. The chapter 31 rules may be read as written, but terms such as chapter 31 and service-connected disability shall be understood to read chapter 15 and disabilities whenever used. References in the chapter 31 rules to benefits (subsistence allowances, loans) or eligibility (dependents, service-connection, serious employment handicap) are to be considered inapplicable to this program and do not confer benefits or rights not provided by 38 U.S.C. 1524.
§ 21.6015 Claims and elections.
(a) Claims by veterans under age 45 for whom participation in an evaluation is required. A veteran under age 45 who is awarded pension during the program period will be scheduled for an evaluation to determine whether achievement of a vocational goal is reasonably feasible, unless it is determined that the veteran is unable to participate in an evaluation for reasons beyond his or her control. If VA, as a result of the evaluation, determines that achievement of a vocational goal is reasonably feasible, the veteran may elect to pursue a vocational training program. To make this election, the veteran must file a claim, in a form prescribed by VA, for services under this temporary program. (Authority: 38 U.S.C. 1524(b); Pub. L. 100-687, Pub. L. 100-687, Pub. L. 101-237)
(b) Claims by qualified veterans for whom participation in an evaluation is not required. Qualified veterans in the following categories will be provided an evaluation if they request assistance under the temporary program, and are found to have good employment potential. These veterans include:
(1) Veterans age 45 and more who are awarded pension during the program period;
(2) Veterans awarded pension prior to the beginning of the program period on February 1, 1985, who meet the conditions contained in § 21.6005(c) of this part. (Authority: 38 U.S.C. 1524(b), Pub. L. 100-687, Pub. L. 101-237).
(c) Filing a claim. A veteran in one of the categories identified in paragraph (b) of this section must file a claim in the form prescribed by VA in order to be considered for an evaluation of his or her ability to achieve a vocational goal through participation in this temporary program. The veteran's claim is considered a request for both the evaluation, and if achievement of a vocational goal is found reasonably feasible, for participation in the vocational training program. (Authority: 38 U.S.C. 1524, Pub. L. 100-687)
(d) Claims following failure to timely pursue a vocational training program. (1) If a veteran for whom achievement of a vocational goal is found reasonably feasible does not undertake a vocational training program within the time limits specified in § 21.32, he or she must file an original or reopened claim, as appropriate, in a form prescribed by VA in order to be considered for such services to determine if achievement of the previous vocational goal or a new vocational goal is reasonably feasible.
(2) If a veteran has been placed in discontinued case status by the VA, he or she must file a new claim in a form prescribed by the VA to reopen the case. (Authority: 38 U.S.C. 1524(b))
(e) Informal claims. Informal claims shall be governed by § 21.31 of this part. (Authority: 38 U.S.C. 1524(a))
(f) Time limit. The time limit for making a claim to pursue a vocational training program shall be governed by § 21.32 of this part. [53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17271, Apr. 24, 1990; 56 FR 21448, May 9, 1991]

(38 U.S.C. 1524(a))

(a) Election between this temporary program and chapter 31 required. A service-disabled veteran awarded VA pension who is offered a vocational training program under 38 U.S.C. chapter 15 and is also eligible for such assistance under chapter 31, must elect which benefit he or she will receive. The veteran may reelect at any time if he or she is still eligible for the benefit desired.

(Authority: 38 U.S.C. 1524(b)(2); Pub. L. 100-687).

(b) VA educational assistance programs. A veteran who is eligible under this program may receive an educational assistance allowance under chapter 30, 32, 34 or 35 if he or she is otherwise eligible under one of these programs.

(Authority: 38 U.S.C. 1524(b)(2))

(c) Prior training under VA programs. If a veteran has pursued an educational or training program under chapter 30, 32, 34 or 35, or a vocational rehabilitation program under chapter 31, the training received in the earlier program shall be considered, to the extent feasible, in determining the character and duration of the services to be furnished under this program.

(Authority: 38 U.S.C. 1524(b)(1))

(d) Other prior training. If a veteran has pursued other significant training under non-VA programs or on his or her own, such training will be considered in determining the character and duration of services to be furnished.

(Authority: 38 U.S.C. 1524(b)(1))

(e) Not limited by use of other entitlement. The number of months of services provided under this program are not subject to the provisions of § 21.4020 of this part which limit the aggregate months of VA benefits to be provided.


(38 U.S.C. 1524(b)(2))
§ 21.6040 Eligibility for vocational training and employment assistance.
§ 21.6042 Entry, reentry and completion.

§ 21.6040 Eligibility for vocational training and employment assistance.

(a) Basic eligibility requirements. A veteran may be provided vocational training, employment assistance and related services to achieve a vocational goal under this program, if the following basic requirements are met:

(1) The veteran is a qualified veteran as described in § 21.6005(c) of this part;
(2) The veteran participates in a VA evaluation of his or her rehabilitation potential to determine whether achievement of a vocational goal is reasonably feasible;
(3) Achievement of a vocational goal is found reasonably feasible, following evaluation by VA;
(4) The veteran elects to pursue a vocational training program;
(5) The veteran and VA develop and agree to an Individualized Written Rehabilitation Plan (IWRP) identifying the vocational goal and the means through which this goal will be achieved.

(Authority: 38 U.S.C. 1524(a)(1))

(b) Eligibility for employment assistance. (1) As provided in this paragraph, a veteran who is a participant in this program shall be eligible to receive counseling, placement, postplacement, work and personal adjustment services furnished under § 21.6060(a)(2) of this part for a period not to exceed 18 months. These services are further described in §§ 21.140(d)(2), 21.250(a), (b)(2), (c)(3), and (4), and 21.252, 21.254, 21.256, 21.257, and 21.258 of this part.

(2) The participants who qualify for the services described in paragraph (a) of this section include a veteran who:

(i) Has completed a vocational rehabilitation training program;

(Authority: 38 U.S.C. 1524(b)(3))

(ii) Undertakes a vocational training program, but voluntarily terminates training. If VA determines the veteran to be employable at the time participation in training ends, the veteran shall be deemed to have completed the vocational training program and may be provided the employment services described in paragraph (b)(1) of this section if he or she requests such assistance;

(Authority: 38 U.S.C. 1524(b)(3))

(iii) Does not require a vocational training program because VA determines as a result of an evaluation that he or she already possesses the training necessary for suitable employment and is able to achieve a vocational goal without further training; and

(Authority: 38 U.S.C. 1524(b)(2))

(iv) Has been a prior participant in a vocational training program, is currently employable, but needs employment assistance to obtain employment in a suitable occupation.

(Authority: 38 U.S.C. 1524(b)(2))

(3) The 18-month period of employment services allowed under this section shall begin upon the date that a veteran under paragraph (b)(2)(i) of this section completes the vocational training program or in the case of a veteran under paragraphs (b)(2)(ii), (iii),
and (iv) of this section is found to be employable. If a veteran has been provided such services and obtains suitable employment, but is later found to require additional services of this kind, the veteran may be provided such additional services during any portion of the original 18-month period remaining.

(Authority: 38 U.S.C. 1524(b); Pub. L. 100-687).

(c) Eligibility if pension is terminated. A qualified veteran for whom a program of vocational training has been found reasonably feasible shall remain eligible for the temporary program, subject to the rules of this subpart and section 1524 of 38 U.S.C. ch. 15, even if his or her pension award is subsequently terminated, except when the veteran's award of VA pension was the result of fraud or administrative error.


(38 U.S.C. 1524(a); Pub. L. 100-687).

§ 21.6042 Entry, reentry and completion.

(a) Dates of entry. A veteran found eligible under the provisions of § 21.6040 of this part may not begin pursuit of a vocational training program before February 1, 1985, or later than December 31, 1992, except under the following circumstances:

(1) The veteran receives a pension award less than 120 days before December 31, 1992;

(2) Illness or other circumstance beyond the veteran's control prevent earlier entry.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102-291)

(b) Entry precluded. In no event may a veteran begin a vocational training program after August 1, 1993.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100-687; Pub. L. 102-291)

(c) Reentry. The provisions of paragraphs (a) and (b) of this section are also applicable to veterans reentering a vocational training program following a redetermination of eligibility.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102-291)

(d) Final termination of services. No veteran may receive assistance under this temporary program after January 31, 1998.

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100-687; Pub. L. 102-291)

(e) Provision of vocational training and services during the period beginning February 1, 1992 and ending May 20, 1992. The provision of a vocational training program (including related evaluations and other related services) to a veteran under the provisions of subpart I of this part, and related determinations during the period beginning February 1, 1992, and ending May 20, 1992, is ratified.

(Authority: Pub. L. 102-291)

EVALUATION

§ 21.6050 Participation of eligible veterans in an evaluation.
§ 21.6052 Evaluations.
§ 21.6054 Criteria for determining good employment potential.
§ 21.6056 Cooperation of the veteran in an evaluation.
§ 21.6058 Consequences of evaluation.
§ 21.6059 Limitations on the number of evaluations.

§ 21.6050 Participation of eligible veterans in an evaluation.
(a) Veterans under age 45. A veteran under age 45 awarded pension during the program period shall be provided an evaluation of his or her rehabilitation potential to determine whether achievement of a vocational goal is reasonably feasible. The veteran must report for and participate in the evaluation unless the failure to do so is for reasons beyond the veteran's control. Failure to report for and participate in the evaluation, for reasons other than those beyond the veteran's control, will result in suspension of the veteran's pension under § 3.342 of this chapter. See § 21.6056.
(b) Evaluating other qualified veterans. An evaluation shall be accorded each qualified veteran as described in § 21.6005(c) of this part who seeks to become a program participant provided VA first determines the veteran has good potential for achieving employment. Failure to choose to participate in an evaluation shall have no adverse effect upon the veteran's continued receipt of pension under § 3.342 of this chapter.
(Authority: 38 U.S.C. 1524(a)(2); Pub. L. 100-687)
(c) Notice to eligible veteran. (1) A qualified veteran under age 45 awarded pension during the program period for whom participation in an evaluation is not clearly precluded by reasons beyond the veteran's control shall be sent a notice at the time he or she is awarded pension. The notice will inform the veteran of the provisions of this temporary program, the conditions under which participation in an evaluation is required, and the consequences of nonparticipation.
(2) A qualified veteran age 45 or older awarded pension during the program period will be informed of the provisions of this temporary program and the procedure for requesting an evaluation.
(Authority: 38 U.S.C. 1524(a); Pub. L. 100-687, Pub. L. 101-237)
(d) Scheduling the evaluation. (1) An evaluation will be arranged as promptly as practicable for each qualified veteran:
(i) Under age 50 who is sent the notice required under paragraph (c)(1) of this secton; and
(2) Other qualified veterans identified in § 21.6005(c) who are found to have good employment potential under § 21.6054.
(Authority: 38 U.S.C. 1524(a); Pub. L. 100-687)
(e) Followup of qualified veterans who do not complete an evaluation. The case of each qualified veteran under age 45 awarded pension during the program period for whom an evaluation was not scheduled or who does not complete an evaluation shall be reviewed for followup action by Vocational Rehabilitation and Employment (VR&E) staff as provided in §§ 21.197(c)(4) and 21.198(d).
(Authority: 38 U.S.C. 1524(a); Pub. L. 100-687, Pub. L. 202-237)
(f) Limitation on the number of evaluations. Notwithstanding the provisions of paragraphs (a) through (e) of this section, the number of evaluations which may be provided under this temporary program is subject to the limitations contained in § 21.6059 of this part.


(38 U.S.C. 1524(a)(3))

§ 21.6052 Evaluations.

(a) Scope and nature of evaluation. The scope and nature of the evaluation under this program shall be the same as for an evaluation of the reasonable feasibility of achieving a vocational goal under the procedures described for chapter 31 benefits. See § 21.50(b)(5) and § 21.53 (d) and (f).

(Authority: 38 U.S.C. 1524(a)(1)(2))

(b) Specific services which may be provided in the course of evaluation in determining the reasonable feasibility of achieving a vocational goal. The following specific services may be provided as a part of the evaluation of reasonable feasibility of achieving a vocational goal, as appropriate:

(1) Assessment of feasibility by a counseling psychologist;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical and other diagnostic services;

(4) Evaluation of employability, for a period not to exceed 30 days, by professional staff of an educational or rehabilitation facility.

(Authority: 38 U.S.C. 1524(b))

(c) Responsibility for evaluation. All determinations as to the reasonable feasibility of vocational training and entitlement to assistance under 38 U.S.C. 1524 shall be made by a counseling psychologist in the Vocational Rehabilitation and Employment Division.

[53 FR 4397, Feb. 16, 1988]

(38 U.S.C. 1524(b))

§ 21.6054 Criteria for determining good employment potential.

(a) Determining good employment potential. Before scheduling an evaluation of feasibility to pursue a vocational goal for a qualified veteran under § 21.6005(c)(2), VA will first determine whether the veteran has good potential for achieving employment if provided a vocational training or employment program. This determination shall be made on the basis of the information of record, including information submitted by the veteran at the time of the veteran's request to participate in this temporary program.

(Authority: 38 U.S.C. 1524(a)(2); Pub. L. 100-687).

(b) Criteria. The criteria contained in paragraphs (c) and (d) of this section are to be applied by Vocational Rehabilitation and Employment professional staff members to determine whether information of record supports a determination that a veteran age 50 or older has good potential for employment. Any reasonable doubt shall be resolved in the veteran's favor.

(Authority: 38 U.S.C. 1524(a)(2)

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(c) Indicators of good potential for employment. Indicators of good potential for employment include one or more of the following:
(1) A period of stable employment prior to the onset of disability.
(2) Strong motivation to return to the work force.
(3) Successful pursuit of education or training.
(4) Cooperation in treatment of disabling conditions.
(5) Stabilization of medical conditions or substance abuse problems.
(6) Participation in therapeutic work programs.
(7) Evidence of recent sustained job-seeking.
(Authority: 38 U.S.C. 1524(b)(1))

(d) Contraindications of good potential for employment. Contraindications of good potential for employment include one or more of the following:
(1) A lifelong history of unstable employment with long periods of employment before the onset of disability.
(2) Being out of the labor market for five years or more preceding the evaluation.
(3) Unsuccessful pursuit of education or training.
(4) Noncooperation in the treatment of disability.
(5) Need for an additional period of medical care or treatment before training would be feasible.
(6) Nonparticipation in prescribed or recommended therapeutic work programs.
(7) Failure of previous vocational rehabilitation programs to achieve employability.
(Authority: 38 U.S.C. 1524(a)(2))

(e) Negative determinations. If VA does not find good employment potential, VA will notify the veteran that he or she is not eligible to receive an evaluation. Since this finding will preclude program participation, the veteran will be informed of his or her appellate rights as described in § 21.59 of this part.
(1) If the determination cannot be made on the evidence of record, VA shall advise the veteran and may provide him or her with an opportunity to submit additional information within a reasonable time.
(2) A veteran's disagreement with a negative finding shall be considered evidence of motivation for employment, and may, when considered in relation to other information, provide a basis for finding that good employment potential exists;
(3) If the final VA determination, following a review of a contested negative finding, is that good potential for achieving employment does not exist, a personal interview will be scheduled, and the reasons for VA's determination shall be discussed with the veteran.

(38 U.S.C. 1524(a)(2))

§ 21.6056 Cooperation of the veteran in an evaluation.
(a) Cooperation of the veteran. The cooperation of the veteran is essential to a successful evaluation. The purpose of the evaluation and the steps in the process shall be explained to the veteran, and the importance of his or her cooperation shall be stressed. If the veteran does not cooperate in the initiation or completion of the evaluation, the counseling psychologist shall make a reasonable effort through counseling to secure the veteran's cooperation.
(Authority: 38 U.S.C. 1524(a)(3))
(b) Consequences of noncooperation when evaluation is required. If the veteran fails to report for or cooperate in a required evaluation and the counseling psychologist has made a reasonable effort to secure his or her participation, VA shall take appropriate action, including discontinuance of the evaluation under the provisions of § 21.364 of this part. If the veteran's case is discontinued under § 21.364 of this part, the Veterans Service Center will be notified. The Veterans Service Center also will be informed if the reason for discontinuance is subsequently removed and the evaluation process is resumed.  
(Authority: 38 U.S.C. 1524(a)(1))

(c) Consequences of noncooperation when evaluation is not required. If the veteran fails to report for or cooperate in an optional evaluation and the counseling psychologist has made a reasonable effort to secure the veteran's participation, VA shall take appropriate action, including discontinuance of the evaluation under the provisions of § 21.364 of this part. The evaluation may be resumed if the reason for the discontinuance is removed and the veteran is otherwise eligible.  

§ 21.6058 Consequences of evaluation.
(a) Eligible veteran may choose to participate. If VA finds, based on the evaluation, that achievement of a vocational goal by the veteran is reasonably feasible, the veteran shall be offered and may elect to pursue a vocational training program. If the veteran elects to pursue such a program, the program shall be designed in consultation with the veteran in order to meet the veteran's individual needs, and shall be set forth in an Individualized Written Rehabilitation Plan (IWRP) under the provisions of § 21.84 of this part or an Individualized Employment Assistance Plan (IEAP) under § 21.88 of this part.  
(Authority: 38 U.S.C. 1524(b)(1))

(b) Veteran ineligible to participate. A veteran for whom achievement of a vocational goal is not found reasonably feasible shall be notified of this finding and be informed of his or her appellate rights as described in § 21.59 of this part. The veteran shall be provided the assistance described in § 21.50(b)(9) of this part.  

§ 21.6059 Limitations on the number of evaluations.
(a) Number of evaluations. No more than 3,500 evaluations of the reasonable feasibility of achieving a vocational goal may be given during any 12-month period, beginning on February 1, 1985, and each subsequent February 1 during the program period.  
(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100-227)

(b) Cases counted as evaluation. An evaluation is deemed to be countable against the 3,500 limit permitted during each 12-month period when the following conditions are met:
(1) The veteran is provided one or more personal interviews by a counseling psychologist; and
(2) A determination of the reasonable feasibility of achieving a vocational goal is made by the counseling psychologist.
(Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100-227)
(c) Cases not counted as evaluations. Computation of the number of evaluations which may be provided in a 12-month period shall exclude cases in which:
(1) The veteran under age 45 awarded pension during the program period is unable to participate for reasons beyond his or her control;
(2) Review of available information does not indicate a good potential for employment of other qualified veterans.
(3) The veteran either fails to keep a scheduled appointment to complete the evaluation or withdraws the claim for an evaluation, or
(4) The veteran who has completed an evaluation requires or requests a reevaluation.
(d) Priority. If a veteran below age 45 for whom an evaluation is required cannot be provided an evaluation during a particular 12-month period because of the limitation on the number of evaluations, the veteran will be given first priority for evaluation during the following 12-month period, or first available subsequent 12-month period, if otherwise eligible.

SERVICES AND ASSISTANCE TO PROGRAM PARTICIPANTS

§ 21.6060 Services and assistance.

§ 21.6060 Services and assistance.
(a) General. VA may provide to program participants:
(1) Vocationally oriented services and assistance of the kind provided veterans under chapter 31, title 38 U.S.C.;
(2) Employment assistance during the 18 month period following completion of a vocational training program, including:
(i) Educational, vocational, psychological, employment and personal adjustment counseling;
(ii) Placement services to effect suitable placement in employment, and post-placement services to attempt to insure satisfactory adjustment in employment; and
(iii) Personal adjustment and work adjustment training.
(Authority: 38 U.S.C. 1524(b))
(3) Such other services and assistance of the kind provided veterans under chapter 31, except as provided in paragraph (b) of this section, as are necessary to enable the veteran to prepare for, and participate in, vocational training or employment.
(b) Services and assistance not provided. VA will not provide to a participant under this program any:
(1) Loan;
(2) Subsistence allowance;
(3) Automobile adaptive equipment of the kind provided eligible veterans under 38 U.S.C., chapter 39 or chapter 31;
(4) Training at an institution of higher learning in a program of education that is not predominantly vocational in content;
(5) Employment adjustment allowance;
(6) Room and board in a special rehabilitation facility for a period in excess of 30 days;
(7) Independent living services, except those which are indispensable to the pursuit of the vocational training program during the period of rehabilitation to the point of employability under § 21.6160 of this part; or
(8) Period of extended evaluation under 38 U.S.C. 3106(e).

(38 U.S.C. 1524(b))
DURATION OF TRAINING

§ 21.6070 Basic duration of a vocational training program.
§ 21.6072 Extending the duration of a vocational training program.
§ 21.6074 Computing the period of vocational training program participation.

§ 21.6070 Basic duration of a vocational training program.
(a) Basic duration of a vocational training program. The duration of a vocational training program may not exceed 24 calendar months of full-time training except as provided in § 21.6072 of this part.
(Authority: 38 U.S.C. 1524(b)(2))
(b) Responsibility for estimating the duration of a vocational training program. The counseling psychologist is responsible for estimating the time needed by the veteran to complete a vocational training program. The estimate is made in consultation with the veteran and the vocational rehabilitation specialist during the preparation of the IWRP.
(Authority: 38 U.S.C. 1524(b)(1))
(c) Duration of training prescribed must meet general requirements for entry into the occupation selected. The veterans will be provided training for a period sufficient for the veteran to reach the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma or certificate is generally necessary for entry into employment, the veteran may be trained to that level.
(Authority: 38 U.S.C. 1524(b))
(d) When duration of the training period may be expanded beyond the entry level. If the amount of training the particular veteran needs in order to qualify for employment in a particular occupation will exceed the amount generally needed for employment in that occupation, VA may provide the necessary additional training under one or more of the following conditions:
(1) Training requirements for employment in the area in which the veteran lives or will seek employment exceed those generally needed for employment;
(2) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for a job or business, and the additional training will offset the competitive disadvantage;
(3) The choice of a feasible occupation is limited and additional training will enhance the veteran's employability in one of the feasible occupations; or
(4) The number of employment opportunities within a feasible occupation is restricted.
(Authority: 38 U.S.C. 1524(b)(2))
(e) Estimating the duration of the training period needed. The counseling psychologist, in estimating duration of the training period needed, must determine that:
(1) The proposed vocational training program must be one which, when pursued full-time by a nondisabled person, would not normally require more than 24 calendar months of pursuit for successful completion;
(2) The program of training and other services needed by the veteran, based upon VA's evaluation, will not exceed 24 calendar months, if training is pursued on a full-time basis, or 36 calendar months if pursued on a less than full-time basis. In making this determination the following criteria will be applied:
(i) The number of actual months and days of the period during which the veteran will pursue the training program will be counted;
(ii) Days of authorized leave and other periods during which the veteran will not be pursuing training, such as periods between terms will also be counted;
(iii) The period of evaluation prior to determination of reasonable feasibility will be excluded but the actual number of months and days needed to evaluate and improve rehabilitation potential during the training program will be included;
(iv) The time required, as determined in months and days under paragraph (e)(2)(i) through (iii) of this section, will be the total period that would be required for the veteran to accomplish the vocational program under consideration;
(v) If the total period the veteran requires exceeds 24 calendar months, when pursued on a full-time basis, and an extension of the basic training period may not be approved under § 21.6072 of this part, another suitable vocational goal must be selected for which training can be completed within that period.
(3) If the veteran's vocational training program would require more than 36 calendar months when pursued on a less than full-time basis, the program must be reevaluated to select a vocational goal for which a suitable vocational training program can be completed within that period.
(Authority: 38 U.S.C. 1524(b)(2))

(f) Effect of change in the vocational goal on duration of training period. The veteran's vocational goal may be changed during the program in accordance with § 21.94 (a) through (d) of this part. The extent to which such changes may be made is limited by the following considerations:
(1) A change of the vocational goal from one field or occupational family to another field or occupational family may only be approved before the end of the first 24 months of training, whether training is pursued on a full-time or a less than full-time basis; and
(2) A change from one occupational objective to another within the same field or occupational family shall not be considered a change in the vocational goal identified in the veteran's IWRP.


(38 U.S.C. 1524(b)(2))

§ 21.6072 Extending the duration of a vocational training program.
(a) Extension of the duration of a vocational training program. An extension of a vocational training program as formulated in the IWRP may only be approved to enable the veteran to achieve a vocational goal identified before the end of the first 24 calendar months of the program.
(Authority: 38 U.S.C. 1524(b)(2))

(b) Maximum number of months for which a program for new participants may be approved. If a veteran had never participated in this temporary program of vocational training, the originally planned period of training may be extended to a total period consisting of the number of months necessary to attain the vocational goal, but in no case will a program be extended for:
(1) More than 24 calendar months beyond the originally planned period; or
(2) A period which, when added to the originally planned period, totals more than 48 months, as provided in § 21.6074(c) of this part.
(Authority: 38 U.S.C. 1524(b))

(c) Maximum number of months by which a program may be extended for prior participants in the temporary program. (1) A veteran who has previously participated in this program, but who was not rehabilitated to the point of employability, may be provided additional training under this program to complete the prior vocational goal or a different vocational goal, subject to the same provisions as apply to new participants; (2) If a finding of prior rehabilitation to the point of employability is set aside to enable a veteran to pursue a program of on-job training or work experience, including the provision of employer incentives under § 21.256 of this part, the number of months for which assistance may be authorized under this program shall be established as provided in § 21.256 of this part to the extent consistent with the rules of this section; (3) If the determination of rehabilitation to the point of employability has been set aside under § 21.6284 (a) or (b) of this part, additional training may be provided subject to the same provisions as apply to new participants.

(Authority: 38 U.S.C. 1524(b))

(d) Who may authorize an extension to a vocational training program. (1) The Vocational Rehabilitation Specialist (VRS) may authorize an extension of up to 3 calendar months of full-time or up to 6 calendar months of less than full-time training to the period of an existing vocational training program, if the VRS determines that the additional time is needed to successfully complete training and the following conditions are met: (i) The veteran is in rehabilitation to the point of employability status under § 21.190 of this part; (ii) The veteran has completed more than half of the prescribed training; (iii) The veteran is making satisfactory progress; (iv) The extension is necessary to complete training; (v) Training can be completed with 3 months of full-time training or not more than 6 calendar months of less than full-time training; and (vi) The extension plus the original program period will not result in a program of vocational training greater than 36 total calendar months; (2) The counseling psychologist may approve any other extensions of the vocational training program, except as provided in paragraph (d)(3) of this section, if it is determined that the additional time is needed and the conditions for extension under paragraphs (a) and (b) of this section are met; (3) The VR&E Officer must also concur in an extension of the vocational training program beyond 24 months when paragraphs (a) through (c) of this section are met. [53 FR 4397, Feb. 16, 1988]

(38 U.S.C. 1524(b)(2))

§ 21.6074 Computing the period of vocational training program participation.
(a) Computing the participation period. The number of months and days used in a vocational training program shall be computed on the basis of calendar months and days during which the program participant is receiving services under the plan developed in accordance with § 21.6080 of this part, whether training is pursued on a full-time or less than full-time basis. Leaves of absence during a period of instruction and periods in which the veteran does not pursue actual training, such as breaks between periods of instruction, are included.

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(Authority: 38 U.S.C. 1524(b))

(b) Period of employment services separate. The period during which employment services may be provided pursuant to §21.6040(b) of this part is not included in computing the period used for vocational training under this program.

(Authority: 38 U.S.C. 1524(b))

(c) Limitations. (1) A program participant may receive the services necessary to carry out the vocational training program during a maximum period of 48 months. The 48-month period begins to run on the day the veteran begins to receive the services needed to carry out the vocational training program as specified in the IWRP, and ends 48 months from that date.

(2) Employment services which begin before the end of the 48-month period may be continued for the period specified in the IEAP, or may be provided after the end of the 48 month period if so specified in the IWRP or IEAP, subject to the provisions of §21.6040(b) of this part.


(38 U.S.C. 1524(b)(2), (3))
§ 21.6080 Requirement for an individualized written rehabilitation or employment assistance plan.
§ 21.6082 Completing the plan.

§ 21.6080 Requirement for an individualized written rehabilitation or employment assistance plan.

(a) General. An Individualized Written Rehabilitation Plan (IWRP) and/or Individualized Employment Assistance Plan (IEAP) will be developed for each program participant for services under 38 U.S.C. 1524. These plans shall be developed in the same manner as for chapter 31 purposes. See §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), 21.96 and 21.98.

(Authority: 38 U.S.C. 1524(b)(2))

(b) Selecting the type of training to include in the plan. The use of on-job training, including non-pay training, a combination of on-job and institutional training, or institutional training to accomplish the goals of the program should be explored in each case. On-job training, or a combination of on-job and institutional training, should generally be used:

(1) When these options are available;
(2) When these options are as suitable as institutional training for accomplishing the goals of the program; and
(3) The veteran agrees that such training will meet his or her needs.

(Authority: 38 U.S.C. 1524(b))

(c) Changes in the plan. Any change amending the duration of a veteran's plan is subject to provisions governing duration of a vocational training program described in § 21.6070 and § 21.6072 of this part.

(Authority: 38 U.S.C. 1524(b)(1))

(d) Change in the vocational goal after 24 months of training. If a veteran seeks to change the vocational goal after receipt of 24 months of training and the change is not permitted under § 21.6070(f) of this part, the counseling psychologist shall inform the veteran that:

(1) No change of goal may be authorized but training for the vocational goal previously established may be continued, if it is still reasonably feasible for the veteran to pursue the training under appropriate extensions of the program pursuant to § 21.6072 of this part;
(2) If the veteran elects to terminate the planned vocational training program, he or she shall be provided assistance, to the extent provided under § 21.80(d) of this part, in identifying other resources through which the training desired may be secured;
(3) If the veteran disagrees with the decision, the veteran's case shall be considered under the provisions of § 21.98 of this part.


(38 U.S.C. 1524(b)(2))

§ 21.6082 Completing the plan.

(a) Completing the plan. If the VA determines that the veteran is unable to complete the program within the time limits of the plan after training has begun and the conditions for
extension are not met, the long-range vocational goal of the veteran must be reevaluated, and another vocational goal selected which can be completed within the limits prescribed in § 21.6054 and § 21.6072 of this part.

(Authority: 38 U.S.C. 1524(b)(1))

(b) Employment assistance when training is not completed under 38 U.S.C. chapter 15. A plan for employment assistance may be implemented under § 21.6040(b) of this part even though the veteran's vocational training program has not been, or will not be, completed under this temporary program, provided the other requirements for participation in the program are met.


(38 U.S.C. 1524(b)(3))
§ 21.6100 Counseling.

§ 21.6100 Counseling.
General. A veteran requesting or being furnished assistance under this temporary program shall be provided professional counseling services by the Vocational Rehabilitation and Employment (VR&E) Division and other qualified staff as necessary, and in the same manner as such services are provided veterans participating in a chapter 31 program. See §§ 21.100, 21.380.
[53 FR 4397, Feb. 16, 1988]

(38 U.S.C. 1524(a)(1), (2) and (b)(2))

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EDUCATIONAL AND VOCATIONAL TRAINING SERVICES

§ 21.6120 Educational and vocational training services.

§ 21.6120 Educational and vocational training services.

(a) Purposes. Educational and vocational training services are to be provided to a veteran eligible for services and assistance under this temporary program to enable the veteran to:
(1) Become employable in the occupational objective established in an IWRP; and
(2) Receive incidental training necessary to achieve the employment objective established in an IEAP.

(Authority: 38 U.S.C. 1524(b)(1))

(b) Selection of courses. VA and the veteran will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or employment. The educational and training services to be provided include:
(1) Remedial, deficiency and refresher training; and
(2) Training which leads to a vocational objective. All of the forms of program pursuit presented in § 21.122 through § 21.132 of this part may be authorized. Education and training programs in institutions of higher learning are authorized provided the courses are part of a program which is predominantly vocational in content. The program of education and training shall be considered to be predominantly vocational in content if the majority of the instruction offered provides the technical skills and knowledge generally regarded as specific to, and required for, entry into the vocational goal approved for the veteran. Such education and training may generally be authorized at an undergraduate or advanced degree level. However the following are excluded:
(i) An associate degree program in which the content of the majority of the instruction provided is not vocationally oriented;
(ii) The first two years of a 4-year baccalaureate degree program;
(iii) The last two or more years of a 4-year baccalaureate degree program except in degree programs with majors in engineering, teaching, or other similar degree programs with vocational content which ordinarily lead directly to employment in an occupation that is usually available to persons holding such a degree; or
(iv) An advanced degree program, except for a degree program required for entry into the veteran's employment objective, such as a master's degree in social work.

(Authority: 38 U.S.C. 1524(b))

(c) Charges for education and training services. The cost of education and training services will be considered in selecting a facility when:
(1) There is more than one facility in the area in which the veteran resides which:
(i) Meets the requirements for approval under § 21.290 through § 21.299 of this part;
(ii) Can provide the education and training services and other supportive services specified in the veteran's plan; and
(iii) Is within reasonable commuting distance; or
(2) The veteran wishes to train at a suitable facility in another area, even though training can be provided at a suitable facility in the area in which the veteran resides. See §§ 21.120, 21.370, 21.372.

(Authority: 38 U.S.C. 1524(b)(2))
(d) Courses not available. If suitable educational and training courses are not available in the area in which the veteran resides, or if they are available but not accessible to the veteran, other arrangements may be made. Such arrangements may include, but are not limited to:
(1) Relocation of the veteran to another area in which necessary services are available, or
(2) Use of an individual instructor to provide necessary training as provided under §21.146 of this part.

(38 U.S.C. 1524(b))
EVALUATION AND IMPROVEMENT OF REHABILITATION POTENTIAL

§ 21.6140 Evaluation and improvement of rehabilitation potential.

§ 21.6140 Evaluation and improvement of rehabilitation potential.
(a) General. The services described in paragraph (d) of this section may be used to:
(1) Evaluate rehabilitation potential;
(2) Provide a basis for planning:
   (i) A program of services and assistance to improve the veteran's potential for vocational rehabilitation; or
   (ii) A vocational training program; and
(3) Reevaluate the vocational training potential of a veteran participating in a rehabilitation program.
   (Authority: 38 U.S.C. 1524(a))
(b) Periods during which evaluation and improvement services may be provided. Services described in paragraph (d) of this section may be provided during:
(1) An evaluation or reevaluation;
(2) Rehabilitation to the point of employability;
(3) Employment services.
   (Authority: 38 U.S.C. 1524(b))
(c) Duration of services. The duration of services needed to improve rehabilitation potential, furnished on a full-time basis either as a preliminary part of the period of rehabilitation to the point of employability or as the total program, may not exceed 9 months. If these services are furnished on a less than full-time basis the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training. See § 21.6310.
   (Authority: 38 U.S.C. 1524(b)(2))
(d) Scope of services. Evaluation and improvement services include:
(1) Diagnostic services;
(2) Personal and work adjustment training;
(3) Medical care and treatment;
(4) Independent living services indispensable to pursuing a vocational training program;
(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;
(6) Orientation, adjustment, mobility and related services; and
(7) Other appropriate services.
   (Authority: 38 U.S.C. 1524(b)(2))
(e) Applicability of chapter 31 rules. the provisions of § 21.140 of this part are not applicable to this temporary program. The provisions of § 21.142 through § 21.156 of this part are applicable, subject to provisions of this section.

(38 U.S.C. 1524(b)(2))

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§ 21.6160 Independent living services.

§ 21.6160 Independent living services.
(a) Services must be part of a vocational training program. Independent living services may be provided as part of a veteran's IWRP when such services are indispensable to the achievement of the vocational goal, but may not be provided as the sole program of rehabilitation for the veteran, since a vocational training program for the veteran must be found reasonably feasible before the IWRP is prepared.

(b) Independent living services which may be furnished under this program. The independent living services which may be furnished include:
(1) Training in independent living skills;
(2) Health management programs;
(3) Identification of appropriate housing accommodations; and
(4) Personal care service for a transitional period not to exceed two months.

(c) Coordination with other VA elements and other Federal, State, and local programs. Provision of independent living services and assistance will generally require extensive coordination with other VA and non-VA programs. The resources of VA medical centers shall be utilized as prescribed in § 21.6242 of this part. If appropriate arrangements cannot be made to provide these services through VA medical centers, other governmental and private nonprofit programs may be used to secure necessary services if the facility or individual providing services meets the requirements of § 21.294 of this part.

(d) Applicability of chapter 31 rules. Neither § 21.160 nor § 21.162 of this part are applicable to provision of independent living services under this program.


(38 U.S.C. 1524(b))
CASE STATUS SYSTEM

§ 21.6180 Case status system.

§ 21.6180 Case status system.
(a) General. The case status system used in administering benefits under the chapter 31 program, as provided in § 21.180 through § 21.198 of this part, will be utilized in a similar manner in this program subject to the provisions of paragraph (b) of this section. (Authority: 38 U.S.C. 1524(b)(2))
(b) Limitations of applicability of chapter 31 rules. (1) The provisions of § 21.180(e)(2) and (3), § 21.188, and § 21.192 of this part are not applicable to this temporary program;
(2) Other incidental references to service-connected disability Chapter 31, extended evaluation status, or independent living status or other services precluded under § 21.6060(b) of this part, found in § 21.180 to § 21.198 of this part, are not for application to this temporary program.
[53 FR 4397, Feb. 16, 1988, as amended at 54 FR 8189, Feb. 27, 1989]

(38 U.S.C. 1524(b)(2))
§ 21.6210 Supplies.

§ 21.6210 Supplies.
(a) Purpose of furnishing supplies. Supplies are furnished to enable a veteran to pursue training, obtain and maintain employment and achieve the goals of his or her program.
(Authority: 38 U.S.C. 1524(b)(2))
(b) Definition. The term supplies includes books, tools and other supplies and equipment which VA determines are necessary for the veteran's vocational training program.
(Authority: 38 U.S.C. 3104(a))
(c) Periods during which supplies may be furnished. Supplies may be furnished to a veteran receiving:
(1) An evaluation or reevaluation;
(2) Rehabilitation to the point of employability; or
(3) Employment services.
(Authority: 38 U.S.C. 1524(b)(2))
(d) Applicability of 38 U.S.C. chapter 31 regulations. The provisions of § 21.210 of this part are not applicable to veterans in this temporary program. The provisions of § 21.212 through § 21.224 of this part are applicable to veterans pursuing vocational training and employment under this program in a similar manner as under chapter 31, except the portions thereof noted as follows:
(1) Section 21.216(a)(3) of this part pertaining to special modifications, including automobile adaptive equipment;
(2) Section 21.220(a)(1) of this part pertaining to advancements from the revolving fund loan;
(3) Section 21.222(b)(x) of this part pertaining to a veteran discontinued from an independent living services program.

(38 U.S.C. 1524(b)(2))
MEDICAL AND RELATED SERVICES

§ 21.6240 Medical treatment, care and services.
§ 21.6242 Resources for provision of medical treatment, care and services.

§ 21.6240 Medical treatment, care and services.
(a) General. A participant in a vocational training program or receiving employment assistance shall be furnished medical treatment, care and services which VA determines are necessary to develop, carry out and complete the veteran's plan.
(Authority: 38 U.S.C. 1524(b)(2))
(b) Scope of services. The services which may be furnished include the medical treatment, care and dental services described in part 17 of this chapter. In addition, the following services may be authorized even if not included or described in part 17:
(1) Prosthetic appliances, eyeglasses, and other corrective or assistive devices;
(2) Services to a veteran's family as necessary for the effective rehabilitation of the veteran;
(3) Special services (including services related to blindness and deafness) including:
   (i) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;
   (ii) Orientation, adjustment, mobility and related services; and
   (iii) Telecommunications, sensory and other technical aids and devices.
(Authority: 38 U.S.C. 1524(b)(2))
(c) Periods of eligibility. A veteran is eligible for the services described in paragraph (b) of this section during:
(1) Evaluation;
(2) Rehabilitation to the point employability;
(3) Employment services; and
(4) Other periods, to the extent that services are needed to begin or continue in any of the periods described in paragraphs (c)(1) through (3) of this section. Such periods include, but are not limited to, those when services are needed to facilitate reentry into training following:
   (i) Interruption; or
   (ii) Discontinuance because of illness or injury.

(38 U.S.C. 1524(b)(2))

§ 21.6242 Resources for provision of medical treatment, care and services.
(a) General. VA medical centers are the primary resources for the provision of medical treatment, care and services for program participants which may be authorized under the provisions of § 21.6240 of this part. The availability of necessary services in VA facilities shall be ascertained in each case.
(Authority: 38 U.S.C. 1524(b)(2))
(b) Hospital care and medical services. Hospital care and medical services provided to program participants shall only be furnished in facilities over which VA has direct
jurisdiction, except as authorized on a contract or fee basis under the provisions of part 17 of this chapter.
(Authority: 38 U.S.C. 1524(b)(2))
CROSS REFERENCES: See § 17.30(1) Hospital care. § 17.30(m) Medical services.
(c) Provisions of § 21.240 and § 21.242. The provisions of §§ 21.240 and 21.242 of this part are not applicable to this temporary program.

(38 U.S.C. 1524(b))

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FINANCIAL ASSISTANCE

§ 21.6260 Financial assistance.

§ 21.6260 Financial assistance.

(a) Direct financial assistance prohibited. The provisions of § 21.260 and § 21.264 through § 21.276 of this part are not applicable to veterans pursuing training and employment under this temporary program, except as indicated in paragraph (b) of this section.


(b) Training costs. The provisions of § 21.262 of this part pertaining to reimbursement for training costs will be followed to reimburse vendors for services provided under this temporary program.


(38 U.S.C. 1524(d))
§ 21.6282 Effective dates of induction into and termination of vocational training.
§ 21.6284 Reentrance into a training program.
§ 21.6290 Training resources

§ 21.6282 Effective dates of induction into and termination of vocational training.
(a) Induction. Subject to the limitations set forth in § 21.6042 of this part, the date a veteran is inducted into vocational training shall be the earlier of:
(1) The date of the facility requires the veteran to report for prescribed activities; or
(2) The date the program begins at the facility providing services.
(Authority: 38 U.S.C. 1524(b)(2))
(b) Termination. A veteran's training program shall be terminated under the provisions of § 21.6180. of this part.

(38 U.S.C. 1524(b)(2))

§ 21.6284 Reentrance into a training program.
(a) Reentrance into rehabilitation to the point of employability following a determination of rehabilitation. A veteran in a vocational training program under this temporary program who has been found rehabilitated under provisions of § 21.196 of this part may be provided an additional period of training or services only if the following conditions are met and the veteran is otherwise eligible:
(1) Current facts, including any relevant medical findings, establish that the veteran's disability has worsened to the extent that he or she is precluded from performing the duties of the occupation for which the veteran previously was found rehabilitated; or
(2) The occupation for which the veteran previously was found rehabilitated under this temporary program is found to be unsuitable.
(Authority: 38 U.S.C. 1524(b)(1))
(b) Reentrance into rehabilitation to the point of employability during a period of employment services. A finding of rehabilitation to the point of employability by VA may be set aside during a period of employment services and an additional period of training and related services provided if any of the conditions in paragraph (a) of this section or one of the following conditions are met and the veteran is otherwise eligible:
(1) The services originally given to the veteran are now inadequate to make the veteran employable in the occupation for which he or she pursued training;
(2) Experience during the period of employment services has demonstrated that employment in the objective or field for which the veteran was rehabilitated to the point of employability should not reasonably have been expected at the time the program was originally developed; or
(3) The veteran, because of technological change which occurred subsequent to the declaration of rehabilitation to the point of employability, is no longer able:
(i) To perform the duties of the occupation for which he or she trained, or in a related occupation; or
(ii) To secure employment in the occupation for which he or she trained, or in a related occupation.

(38 U.S.C. 1524(b)(3))

§ 21.6290 Training resources
(a) Applicable 38 U.S.C. chapter 31 provisions. The provisions of § 21.290 through §
21.299 are applicable to veterans pursuing vocational training and employment under this
program in the same manner as under 38 U.S.C. chapter 31, except as specified in
paragraph (b).
(Authority: 38 U.S.C. 1524(b)(2))
(b) Limitations. The provisions of § 21.294(b)(1)(i) and (ii) of this part pertaining to
independent living services are not applicable to this temporary program. The provisions
of § 21.294(b)(1)(iii) of this part pertaining to authorization of independent living
services as a part of an Individualized Written Rehabilitation Plan (IWRP) are applicable
to this temporary program to the extent provided under § 21.6160 of this part.

(38 U.S.C. 1524(b)(2))
RATE OF PURSUIT

§ 21.6310 Rate of pursuit.

§ 21.6310 Rate of pursuit.
(a) General requirements. A veteran should pursue a vocational training program at a rate which is consistent with his or her ability to successfully pursue training, considering:
(1) Effects of his or her disability;
(2) Family responsibilities;
(3) Travel;
(4) Reasonable adjustment to training; and
(5) Other circumstances which affect the veteran's ability to pursue training.
(Authority: 38 U.S.C. 1524(b)(1))
(b) Continuous pursuit. A veteran should pursue a program of vocational training with as little interruption as necessary, considering the factors described in paragraph (a) of this section.
(Authority: 38 U.S.C. 1524(b)(1))
(c) Responsibility for determining the rate of pursuit. VR&E staff, in consultation with the veteran, will determine the rate and continuity of pursuit of training. Consultation with the medical consultant and the Vocational Rehabilitation Panel should be utilized as necessary. This determination will be made in the course of developing the plan, but may be changed later, as necessary to enable the veteran to complete his or her training.
(Authority: 38 U.S.C. 1524(b)(1))
(d) Measurement of training time used. The rate of pursuit shall be measured on the basis of the provisions of § 21.310 of this part. A veteran may not pursue training on a less than half-time basis as measured under § 21.310 of this part, except for brief periods, after which training must be resumed on a half-time or greater basis. Brief periods are limited to all or part of a semester, term or quarter, or up to 90 days in a course not conducted on a semester, term, or quarter basis.
(Authority: 38 U.S.C. 1524(b)(1))
(e) Reduced work tolerance. The provisions of § 21.312 of this part are not applicable to this temporary program.
(Authority: 38 U.S.C. 1524(b))
(f) Pursuit of training under special circumstances. The provisions of § 21.314 of this part are not applicable to this temporary program.
[53 FR 4397, Feb. 16, 1988]

(38 U.S.C. 1524(b)(2))
§ 21.6320 Authorization of services under chapter 31 rules.

§ 21.6320 Authorization of services under chapter 31 rules.

(a) General. Sections 21.320 through 21.334 of this part are not applicable to a veteran pursuing a vocational training program except as specified in paragraph (b) of this section.

(Authority: 38 U.S.C. 1524(b)(2))

(b) Applicable rule. Section 21.326 of this part pertaining to the beginning and ending dates of a period of employment services is applicable to veterans under this temporary program.


(38 U.S.C. 1524(b)(2))
§ 21.6340 Leaves of absence.

§ 21.6340 Leaves of absence.
(a) General. VA may approve leaves of absence under certain conditions. During approved leaves of absence, a veteran shall be considered to be pursuing training for purposes of computing the duration of a vocational training program under §§ 21.6070 through 21.6074. Leave may only be authorized for a veteran during a period of rehabilitation to the point of employability.
(Authority: 38 U.S.C. 1524(b))
(b) Purpose. The purpose of the leave system is to enable the veteran to maintain his or her status as an active participant and avoid interruption or discontinuance of training.
(Authority: 38 U.S.C. 1524(b)(2))
(c) Applicability of chapter 31 rules. The provisions of § 21.340 of this part are not applicable to this temporary program. The provisions of § 21.342 through § 21.350 of this part are applicable except for § 21.346 of this part.

(38 U.S.C. 1524(b))

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SATISFACTORY CONDUCT AND COOPERATION

§ 21.6362 Satisfactory conduct and cooperation.

§ 21.6362 Satisfactory conduct and cooperation.
The provisions of § 21.362 and § 21.364 of this part are applicable to veterans pursuing vocational training under this program in the same manner as under 38 U.S.C. chapter 31. 53 FR 4397, Feb. 16, 1988.

(38 U.S.C. 1524)

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TRANSPORTATION SERVICES

§ 21.6370 Authorization of transportation services.

(a) General. VA shall authorize transportation services necessary for a veteran to pursue a vocational training program under this temporary program. Transportation services include:
(1) Transportation for evaluation, reevaluation or counseling authorized under § 21.376 of this part;
(2) Inter- and intraregional travel which may be authorized under § 21.370 (except for (b)(2)(iii)(B)) and § 21.372 of this part;
(3) Special transportation allowance authorized under § 21.154 of this part;
(4) Commuting to and from training and seeking employment as authorized under paragraphs (c) and (d) of this section.
(Authority: 38 U.S.C. 1524(b))

(b) Reimbursement. Payment of transportation services authorized by VA shall normally be made in arrears and in the same manner as tuition, fees and other services authorized under this program.
(Authority: 38 U.S.C. 1524(b))

(c) Transportation payment. A veteran may be reimbursed for the costs of commuting to
and from training and seeking employment if he or she requests such assistance and VA determines after careful examination of the veteran's situation, and subject to the limitation contained in paragraph (d) of this section, that the veteran would be unable to pursue training without such assistance. VA may:
(1) Reimburse the facility at which the veteran is training if the facility provides transportation or related services;
(2) Reimburse the veteran for his or her actual commuting expense.
(Authority: 38 U.S.C. 1524(b))

(d) Limitations. Payment of commuting expenses may not be made for any period:
(1) Except during the period of training and the first three months of employment services;
(2) When a program participant is employed;
(3) In which a program participant is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs;
(4) In which it becomes feasible for the veteran to commute to school with family, friends or fellow students.
(Authority: 38 U.S.C. 1524(b))

(e) Amount which may be paid. VA will reimburse the veteran for his or her actual cost, not to exceed $70 per month. Necessary supportive documentation must be submitted with each request for reimbursement. Payment will be made monthly or at longer intervals as may be agreed to in the IWRP.
(Authority: 38 U.S.C. 1524(b))

(f) Nonduplication. A veteran eligible for reimbursement of transportation services under this section and § 21.154 of this part may only receive the benefit provided under § 21.154 of this part.

(38 U.S.C. 1524(b))
ADDITIONAL APPLICABLE REGULATIONS

§ 21.6380 Additional applicable chapter 31 regulations.

§ 21.6380 Additional applicable chapter 31 regulations.
The following regulations are applicable to veterans pursuing the vocational training under this program in the same manner as they apply to 38 U.S.C. chapter 31: § 21.380, § 21.390, § 21.400, § 21.402, § 21.412, § 21.414 (except (d) and (e)), § 21.420, and § 21.430 (except (a)) of this part.

(38 U.S.C. 1524)
DELEGATION OF AUTHORITY

§ 21.6410 Delegation of authority.

§ 21.6410 Delegation of authority.
(a) General. Authority is delegated to the Under Secretary for Benefits and to supervisory or non-supervisory personnel within the jurisdiction of the Vocational Rehabilitation and Employment Service, to make findings and decisions under 38 U.S.C. 1524 and the applicable regulations, precedents and instructions pertaining to this program. See § 2.6(b).
(Authority: 38 U.S.C. 512(a))
(b) Applicability of §§ 21.412 and 21.414. The provisions of §§ 21.412 and 21.414 (except for (d) and (e)) are applicable to this temporary program.

(38 U.S.C. 512(a))
§ 21.6420 Coordination with the Veterans Service Center.

It is the responsibility of the VR&E Division to inform the Veterans Service Center in writing of the following changes in the veteran's circumstances contained in the following paragraphs.


(a) Evaluation. (1) The date an evaluation being provided a veteran under age 45, who is required to participate in such evaluation, is suspended because of unsatisfactory conduct or cooperation; and
(2) The date the evaluation is resumed.


(b) Income information. Any information relating to income from work or training which may affect the veteran's continued entitlement to pension, including participation in:
(1) A work adjustment program, incentive or therapeutic work program, vocational training in a rehabilitation facility, or employment in a rehabilitation facility or sheltered workshop;
(2) On-job training;
(3) The work portion of a cooperative or combination program;
(4) Internships; and
(5) Full- or part-time employment.

(Authority: 38 U.S.C. 1524)

(c) Dependency changes. Information regarding dependency changes if the case manager learns of such changes in the normal course of performing his or her duties.

(Authority: 38 U.S.C. 1524)

(d) Information to determine if the veteran's permanent and total disability rating is protected under § 3.343. The information provided by the case manager includes:
(1) The employment was within the scope of the vocational goal identified in the veteran's individualized written plan of vocational rehabilitation, or in a related field, and the employment secured by the veteran requires the use of the training or services furnished under the rehabilitation plan.
(2) Employment was secured not later than one year after the date the veteran's eligibility for counseling expired. A veteran's eligibility for counseling expires on the date employment services are terminated by VA or the veteran completes rehabilitation to the point of employability and terminates program participation, whichever is later; and
(3) The veteran maintained his or her employment for 12 consecutive months.


SUBPART J – TEMPORARY PROGRAM OF VOCATIONAL TRAINING AND REHABILITATION

§ 21.6501 Overview.
§ 21.6503 Definitions.
§ 21.6505 Participation in the temporary program.
§ 21.6507 Special benefits for qualified veterans under test program.
§ 21.6509 Notice to qualified veterans.
§ 21.6511 [Reserved]
§ 21.6512 [Reserved]
§ 21.6513 [Reserved]
§ 21.6515 Formulation of rehabilitation plan.
§ 21.6517 [Reserved]
§ 21.6519 Eligibility of qualified veterans for employment and counseling services.
§ 21.6521 Employment of qualified veterans.
§ 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 3104(a)(2) and (5).
§ 21.6525 [Reserved]


§ 21.6501 Overview.
(a) Purpose. The temporary program for trial work periods and vocational rehabilitation is intended to test the extent to which a veteran, who has been awarded a VA compensation rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of service-connected disability, may benefit from vocational rehabilitation services which may be authorized under 33 U.S.C. chapter 31, and 38 U.S.C. 1163. See §§ 3.340 and 3.341 of this title.
(b) Chapter 31 evaluations. All veterans participating in this temporary program are to be evaluated to determine whether:
(1) They are eligible for and entitled to receive assistance under chapter 31; and
(2) Achievement of a vocational goal is reasonably feasible.

(Authority: 38 U.S.C. 1163; Pub. L. 200-687)

(c) Applicability of chapter 31 provisions. The provisions of §§ 21.1 through 21.430, generally applicable to veterans eligible for benefits under chapter 31, apply except as added to or modified by the provisions of the following sections. Participants not found eligible for chapter 31 benefits may nevertheless receive counseling services under 38 U.S.C. 3104(a)(2) and placement and postplacement services under 38 U.S.C. 3104(a)(5).


(38 U.S.C. 1163)

§ 21.6503 Definitions.
(a) Program period. The term program period means the period beginning on February 1, 1985, and ending December 31, 1992.

(b) Qualified veteran. The term qualified veteran means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total, but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities. Such a rating is referred to as an IU (individual unemployability) rating. See §§ 3.340, 3.341, and 4.16 of this title.

(c) Receives an IU rating. The phrase receives an IU rating refers to the date of the rating decision authorizing total disability compensation based upon individual unemployability.

(38 U.S.C. 1163(a)(2)(A))


§ 21.6505 Participation in the temporary program.
Participation in this temporary program of trial work periods and vocational rehabilitation is limited to qualified veterans.
[55 FR 17272, Apr. 24, 1990]

(38 U.S.C. 1163(a)(2)(A)).

§ 21.6507 Special benefits for qualified veterans under test program.
(a) Protection of IU rating under 38 CFR 3.343(c)(2). The total disability rating of any qualified veteran who begins to engage in a substantially gainful occupation during the program period is protected from reduction by VA on the basis of the veteran's having secured and followed a substantially gainful occupation under the provisions of § 3.343(c)(2) of this title.

(Authority: 38 U.S.C. 1163(a))

(b) Counseling and employment services for qualified veterans. During the program period, VA will make the counseling services described in 38 U.S.C. 3104(a)(2), and the placement and postplacement services described in 38 U.S.C. 3104(a)(5), available to each qualified veteran for whom achievement of a vocational goal is reasonably feasible. These services will be made available regardless of the veteran's entitlement to or desire to participate in a vocational rehabilitation program under chapter 31. See § 21.6519.


(38 U.S.C. 1163(b))

§ 21.6509 Notice to qualified veterans.
(a) At the time notice is provided to a qualified veteran of an award of an IU rating, VA shall provide the veteran with an additional statement. These statements shall contain the following information:

(1) Notice of the provisions of 38 U.S.C. 1163;

(2) Information explaining the purposes and availability of, as well as eligibility requirements and procedures for pursuing a vocational rehabilitation program under Chapter 31; and

(3) A summary description of the scope of services and assistance available under that chapter.
(Authority: 38 U.S.C. 1163(c)(1)).

(b) Opportunity for evaluation. After providing the notice required under paragraph (a) of this section, VA shall offer the veteran the opportunity for an evaluation under § 21.50 of this part.

(Authority: 38 U.S.C. 1163(c); Pub. L. 100-687)

(c) Evaluation. The term evaluation hereinafter shall be understood to mean the same evaluation accorded in an initial evaluation and an extended evaluation as those terms are described in §§ 21.50 and 21.57 of this part.

(d) Responsible staff member. The evaluation or reevaluation will be provided by a counseling psychologist in the Vocational Rehabilitation and Employment (VR&E) Division.

[55 FR 17273, Apr. 24, 1990]

(38 U.S.C. 1163(c))

§ 21.6511 [Reserved]

§ 21.6512 [Reserved]

§ 21.6513 [Reserved]

§ 21.6515 Formulation of rehabilitation plan.

(a) Formulation of plan. Following an evaluation, the counseling psychologist will formulate an IWRP (individualized written rehabilitation plan) or an IEAP (individualized employment assistance plan) for each participating qualified veteran for whom achievement of a vocational goal is reasonably feasible. These plans shall be prepared in accordance with § 21.84 (IWRP) or § 21.88 (IEAP).

(b) Existing plan. If the veteran already has undertaken a rehabilitation program under Chapter 31, a new plan shall not be developed unless circumstances indicate that the existing plan should be modified or replaced.


(38 U.S.C. 1163(c); Pub. L. 100-687).

§ 21.6517 [Reserved]

§ 21.6519 Eligibility of qualified veterans for employment and counseling services.

(a) General. A qualified veteran for whom vocational rehabilitation and achievement of a vocational goal are reasonably feasible may be provided the employment and counseling services to which he or she may be entitled under chapter 31. If the qualified veteran is not eligible for such assistance under chapter 31, he or she may be provided, nevertheless, the counseling, placement and postplacement services provided under 38 U.S.C. 3104(a)(2) and (5). The specific services which may be authorized are discussed in §§ 21.100, 21.252 and 21.254(a).

(b) Services under other VA and non-VA programs. Veterans being provided counseling, placement and postplacement services under §§ 21.100, 21.252, and 21.254(a) will also be aided in identifying services of other VA and non-VA programs which may be of
assistance in securing employment. All elements of a program of these services shall be incorporated in the IEAP.

c) Veteran elects counseling, placement and postplacement services. If a qualified veteran elects not to undertake the IWRP and is otherwise eligible for counseling, placement and postplacement services under 38 U.S.C. 3104(a)(2) and (5), he or she may be provided those services.

(Authority: 38 U.S.C. 1163(b))

d) Duration of services under 38 U.S.C. 3104(a) (2) and (5). The services provided under 38 U.S.C. 3104(a)(2) and (5), are limited to an 18-month period of employment assistance as described in § 21.73.


§ 21.6521 Employment of qualified veterans.

(a) Provisions of the IEAP (Individualized Employment Assistance Plan). Each IEAP of a qualified veteran shall require that the:

1) Case manager maintain close contact with qualified veterans who become employed to help assure adjustment to employment;

2) Veteran discuss any plan to leave employment during the trial work period with the case manager.

(Authority: 38 U.S.C. 1163(c))

(b) Coordination with the Veterans Service Center. The VR&E Division will inform the Veterans Service Center in writing upon employment of the participating qualified veteran during a program of either vocational rehabilitation services or counseling and employment services and when such employment has continued for 12 consecutive months. See § 3.343(c)(2) of this title.


(38 U.S.C. 1163(a))

§ 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 3104(a)(2) and (5).

(a) Dates of entry. A qualified veteran, not eligible to receive Chapter 31 benefits, may not enter or pursue a program of counseling and employment services under 38 U.S.C. 3104(a) (2) and (5), before February 1, 1985, or later than December 31, 1992.

(Authority: 38 U.S.C. 1163; Pub. L. 100-687; Pub. L. 102-291)

(b) Reentry. The provisions of paragraph (a) of this section are also applicable to veterans being provided additional counseling and employment services following a redetermination of eligibility and entitlement to such services.

(Authority: 38 U.S.C. 1163; Pub. L. 100-687; Pub. L. 102-291)


§ 21.6525 [Reserved]
§ 21.7000 Establishment of educational assistance program.

(a) Establishment. An educational assistance program for certain veterans and servicemembers is established.

(b) Purpose. The purpose of the program is as stated in 38 U.S.C. 3001.


[EFFECTIVE DATE NOTE: 61 FR 26107, 26116, May 24, 1996, which revised paragraph (b), became effective May 24, 1996.]
§ 21.7020 Definitions.

§ 21.7020 Definitions.

For the purposes of regulations from § 21.7000 through § 21.7499 and the payment of basic educational assistance and supplemental educational assistance under 38 U.S.C. chapter 30, the following definitions apply. (See also additional definitions in § 21.1029).

(a) Definitions of participants -- (1) Servicemember. The term servicemember means anyone who:
   (i) Meets the eligibility requirements of § 21.7042 or § 21.7044, and
   (ii) Is on active duty with the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service or National Oceanographic and Atmospheric Administration.
   (Authority: 38 U.S.C. 3016; Pub. L. 98-525)

(2) Veteran. The term veteran means anyone who --
   (i) Meets the eligibility requirements of § 21.7042, § 21.7044, or § 21.7045, and
   (ii) Is not on active duty. The term veteran includes an individual who is actively participating in the Selected Reserve.
   (Authority: 38 U.S.C. 3016; Pub. L. 98-525)

(b) Other definitions -- (1) Active duty.
   (i) The term active duty means --
   (A) Full-time duty in the Armed Forces, other than active duty for training,
   (B) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service,
   (C) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration, and
   (D) Authorized travel to or from such duty or service.
   (ii) The term active duty does not include any period during which an individual:
   (A) Was assigned full time by the Armed Forces to a civilian institution for a course of education which was substantially the same as established courses offered to civilians,
   (B) Served as a cadet or midshipman at one of the service academies, or
   (C) Served under the provisions of 10 U.S.C. 511(d) pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.
   (Authority: 38 U.S.C. 101(21), 3002(6); Pub. L. 98-525)
   (iii) When referring to individuals who, before November 30, 1989, had never served on active duty (as that term is defined by § 3.6b of this title), the term "active duty" when used in this subpart includes full-time National Guard duty first performed after November 29, 1989, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the servicemember's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing or training the National Guard.
   (Authority: 38 U.S.C. 3002(7); Pub. L. 101-510, sec. 563(b)) (Nov. 5, 1990)
When referring to individuals who, before June 30, 1985, had never served on active duty (as that term is defined by § 3.6(b) of this chapter) and who made the election described in § 21.7042(a)(7) or (b)(10), the term active duty when used in this subpart includes full-time National Guard duty under title 32, U.S. Code first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104-275, 110 Stat. 3329-3330

(2) Attendance The term attendance means the presence of a veteran or servicemember --

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

(ii) At a training establishment, or

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

Authority: 38 U.S.C. 3034, 3680(g)

(3) Audited course. The term audited course has the same meaning as provided in § 21.4200(i) of this part.

Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525

(4) Basic educational assistance. The term basic educational assistance means a monetary benefit payable to all individuals who meet basic requirements for eligibility under chapter 30, title 38 U.S.C., for pursuit of a program of education.

Authority: 38 U.S.C. 3002(1); Pub. L. 98-525

(5) Break in service. (i) Except as provided in paragraph (b)(5)(ii) of this section, the term break in service means a period of more than 90 days between the date when an individual is released from active duty or otherwise receives a complete separation from active duty service and the date he or she reenters on active duty.

(ii) A period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians is not a break in service.

Authority: 38 U.S.C. 3011, 3021

(6) Continuous active duty. (i) The term continuous active duty means active duty served without interruption. An interruption in service will only be found when the individual receives a complete separation from active duty.

(ii) A period during which an individual on active duty is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians will not interrupt the continuity of the individual's active duty.

(iii) If an individual, during an obligated period of active-duty service, is separated from active duty to pursue a course of education at a service academy or a post-secondary school preparatory to enrollment at a service academy, no interruption in service will be found and the individual's service will be considered continuous active-duty service, provided he or she --

(A) Commences pursuit of a course of education at a service academy or post-secondary school,

(B) Fails to complete the course of education, and
(C) Immediately reenters on a period of active duty.
(iv) An individual who is discharged or released from active duty for a reason stated in paragraph (b)(6)(iv) of this section after serving not more than 12 months of an obligated period of active duty, and who subsequently reenlists or reenters on a period of active duty, will not be considered to have an interruption in service. Except as provided in paragraph (b)(6)(vi) of this section, the individual's service during the two periods will be considered continuous active-duty service for the aggregate length of the two service periods. However, the individual's discharge or release from the earlier obligated period of service must have been:
(A) For a service-connected disability;
(B) For hardship;
(C) For a medical condition which preexisted such active-duty service and is not service connected;
(D) For a physical or mental condition not characterized as a disability and not resulting from the individual's own willful misconduct which interfered with the individual's performance of duty as determined by the Secretary concerned; or
(E) Involuntary, for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned.
(v) VA will not consider an individual to have an interruption of service when he or she:
(A) Serves a period of active duty without interruption (without a complete separation from active duty), as an enlisted member or warrant officer;
(B) While serving on such active duty is assigned to officer training school; and
(C) Following successful completion of the officer training school is discharged to accept, without a break in service, a commission as an officer in the Armed Forces for a period of active duty.
(vi) If the second period of active-duty service referred to in paragraph (b)(6)(iv) or (b)(6)(v) of this section is of such nature or character that, when aggregated with the earlier period of service referred to in that paragraph, it would cause the individual to be divested of entitlement to educational assistance otherwise established by the earlier period of active duty, the two periods of service will not be aggregated and will not be considered a single period of continuous active duty.
(vii) Time lost will not be considered to interrupt the continuity of service. For the purpose of this section, "time lost" includes excess leave, noncreditable time and not-on-duty time.
(Authority: 38 U.S.C. 3011, 3012)
(7) Cost of course. The term cost of course means the total cost for tuition and fees for a course which an educational institution charges to nonveterans whose circumstances are similar to veterans enrolled in the same course. Cost of course does not include the cost of supplies which the student is required to purchase at his or her own expense.
(Authority: 38 U.S.C. 3032; Pub. L. 98-525)
(8) Deficiency course. The term deficiency course means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a postsecondary program of education.
(Authority: 38 U.S.C. 3034; Pub. L. 98-525)
(9) Dependent. The term dependent means:
(i) A spouse as defined in § 3.50(c) of this chapter,
(ii) A child who meets the requirements of § 3.57 of this chapter, or
(iii) A parent who meets the requirements of § 3.59 of this chapter.

(10) Divisions of the school year. The term divisions of the school year has the same
meaning as provided in § 21.4200(b) of this part.

(11) Drop-add period. The term drop-add period has the same meaning as provided in §
21.4200(1) of this part.

(12) Educational assistance. The term educational assistance means basic educational
assistance, supplemental educational assistance, and all additional amounts payable,
commonly called kickers.

(13) Educational objective. An educational objective is one that leads to the awarding of
a diploma, degree or certificate which reflects educational attainment.

(14) Enrollment. The term enrollment has the same meaning as provided in § 21.4200(n)
of this part.

(15) Enrollment period. The term enrollment period has the same meaning as provided §
21.4200(p) of this part.

(16) Holiday vacation. The term holiday vacation means a customary, reasonable
vacation period connected with a Federal or State legal holiday which is identified as a
holiday vacation in the educational institution's approved literature. Generally, VA will
interpret a reasonable period as not more than one calendar week at Christmas and one
calendar week at New Year's and shorter periods of time in connection with other legal
holidays.

(17) In residence on a standard quarter- or semester-hour basis. The term in residence on
a standard quarter- or semester-hour basis has the same meaning as provided in §
21.4200(r) of this part.

(18) Institution of higher learning. The term institution of higher learning has the same
meaning as provided in § 21.4200(h) of this part.

(19) Mitigating circumstances. (i) The term mitigating circumstances means
circumstances beyond the veteran's or servicemember's control which prevent him or her
from continuously pursuing a program of education. The following circumstances are
representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the veteran or servicemember,
(B) An illness or death in the veteran's or servicemember's family,
(C) An unavoidable change in the veteran's conditions of employment,
(D) An unavoidable geographical transfer resulting from the veteran's employment,
(E) Immediate family or financial obligations beyond the control of the veteran which
require him or her to suspend pursuit of the program of education to obtain employment.
(F) Discontinuance of the course by the educational institution,
(G) Unanticipated active duty for training,
(H) Unanticipated difficulties in caring for the veteran's or eligible person's child or
children.
(ii) In the first instance of a withdrawal after May 31, 1989, from a course or courses for
which the veteran received educational assistance under title 38, U.S. Code, VA will
consider that mitigating circumstances exist with respect to courses totaling not more
than six semester hours or the equivalent.
(Authority: 38 U.S.C. 3034, 3680(a)(1); Pub. L. 100-689)(June 1, 1989)
(20) Nonpunitive grade. The term nonpunitive grade has the same meaning as provided in
§ 21.4200(j) of this part.
(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525)
(21) Normal commuting distance. The term normal commuting distance has the same
meaning as provided in § 21.4200(m) of this part.
(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98-525)
(22) Professional or vocational objective. A professional or vocational objective is one
that leads to an occupation. It may include educational objectives essential to prepare for
the chosen occupation. When a program consists of a series of courses not leading to an
educational objective, these courses must be directed toward attainment of a designated
professional or vocational objective.
(Authority: 38 U.S.C. 3002(3); Pub. L. 98-525)
(23) Program of education. A program of education --
(i) Is any unit course or subject or combination of courses or subjects which is pursued by
a veteran or servicemember at an educational institution, and which is required by the
Secretary of the Small Business Administration as a condition to obtaining financial
assistance under the provisions of 15 U.S.C. 636; or
(ii) Is a combination of subjects or unit courses pursued at an educational institution. The
combination generally is accepted as necessary to meet requirements for a predetermined
educational, professional or vocational objective. It may consist of subjects or courses
which fulfill requirements for more than one objective if all objectives pursued are
generally recognized as being related to a single career field;
(iii) Includes an approved full-time program of apprenticeship or of other on-job training;
and
(iv) Effective November 30, 1999, includes a preparatory course for a test that is required
or used for admission to --
(A) An institution of higher education; or
(B) A graduate school.
(Authority: 38 U.S.C. 3002(3), 3452(b)).
(24) Punitive grade. The term punitive grade has the same meaning as provided in §
21.4200(k) of this part.
(Authority: 38 U.S.C. 3034, 3680(a); Pub. L. 98-525)
(25) Pursuit. (i) The term pursuit means to work, while enrolled, towards the objective of
a program of education. This work must be in accordance with approved institutional
policy and regulations, and applicable criteria of title 38 U.S.C.; must be necessary to
reach the program's objective; and must be accomplished through --
(A) Resident courses (including teacher training courses and similar courses which VA considers to be resident training),
(B) Independent study courses,
(C) Correspondence courses,
(D) An apprenticeship or other on-job training program,
(E) A graduate program of research in absentia,
(F) Medical-dental internships and residencies, nursing courses and other medical-dental specialty courses, or
(G) A flight training course beginning on or after September 30, 1990.

(ii) VA will consider a veteran who qualifies for payment during an interval between terms or school closing, or who qualifies for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(Authority: 38 U.S.C. 3034, 3680(g); Pub. L. 98-525)

(26) Refresher course. The term "refresher course" means --
(i) Either a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed, or
(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the period of the individual's active military service.

(Authority: 38 U.S.C. 3034(a))

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


(28) Secretary. The term Secretary means the Secretary of Defense with respect to members of the Armed Forces under the jurisdiction of the Secretary of a military department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3002(5); Pub. L. 98-525)

(29) School, educational institution, institution. The terms school, educational institution, and institution mean --
(i) Any vocational school, correspondence school, business school, junior college, teachers' college, college, normal school, professional school, university or scientific or technical institution;
(ii) Any public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma or their equivalents; and
(iii) An entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 38 U.S.C. 3002(8), 3452(c))

(30) School year. The term school year means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 38 U.S.C. 3034; Pub. L. 98-525)

(31) Selected Reserve. The term Selected Reserve means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of
the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b), 10 U.S.C.
(Authority: 38 U.S.C. 3002(4); Pub. L. 98-525)
(32) Standard class session. The term standard class session has the same meaning as provided in § 21.4200(g) of this part.
(Authority: 38 U.S.C. 3034; 3688(c); Pub. L. 98-525)
(33) Standard college degree. The term standard college degree has the same meaning as provided in § 21.4200(e) of this part.
(Authority: 38 U.S.C. 3034, 3688; Pub. L. 98-525)
(34) Supplemental educational assistance. The term supplemental educational assistance means a benefit payable to a veteran or servicemember as a supplement to his or her basic educational assistance for pursuit of a program of education under 38 U.S.C. ch. 30.
(Authority: 38 U.S.C. 3002(2); Pub. L. 98-525)
(35) Established charge. The term established charge means the lesser of --
(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency, or
(ii) The actual cost to the servicemember or veteran.
(Authority: 38 U.S.C. 3034, 3686(a)(1))
(36) Date of affirmance. The term date of affirmance means the date (after the expiration of ten days after a veteran or servicemember signs an enrollment agreement for a correspondence course), on which the veteran or servicemember signs and submits to VA a written agreement affirming the enrollment agreement.
(Authority: 38 U.S.C. 3034, 3686)
(37) Training establishment. The term training establishment means any establishment providing apprentice or other on-job training, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.
(Authority: 38 U.S.C. 1434, 3687)
(38) Disabling effects of chronic alcoholism. (i) The term disabling effects of chronic alcoholism means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case --
(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and
(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.
(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.
(iii) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.
(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 100-689) (Nov. 18, 1988)
(39) Cooperative course. The term cooperative course means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business of industrial establishment being strictly supplemental to the institutional portion.

(40) Open period. The term "open period" means a period of time beginning on December 1, 1988, and ending on June 30, 1989.

(41) Persian Gulf War. The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(42) Continuously enrolled. The term continuously enrolled means being in an enrolled status at an educational institution for each day during the school year, and for consecutive school years. Continuity of enrollment is not broken by holiday vacations; vacation periods; periods during the school year between terms, quarters, or semesters; or by nonenrollment during periods of enrollment outside the school year (e.g., summer sessions).

(43) Alternative teacher certification program. The term alternative teacher certification program, for the purposes of determining whether an entity offering such a program is a school, educational institution or institution as defined in paragraph (b)(29)(iii) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(44) Date of election. The term date of election means:
(i) For an election that must be made in the form and manner determined by the Secretary of Defense, the date determined by the Secretary of Defense; and
(ii) For an election that must be submitted to VA, the date VA receives the written election.

(45) Institution of higher education. The term institution of higher education means either:
(i) An educational institution, located in a State, that --
(A) Admits as regular students only persons who have a high school diploma, or its recognized equivalent, or persons who are beyond the age of compulsory school attendance in the State in which the educational institution is located;
(B) Offers postsecondary level academic instruction that leads to an associate or baccalaureate degree; and
(C) Is empowered by the appropriate State education authority under State law to grant an associate or baccalaureate degree, or where there is no State law to authorize the granting of a degree, is accredited for associate or baccalaureate degree programs by a recognized accrediting agency; or
(ii) An educational institution, not located in a State, that --
(A) Offers a course leading to an undergraduate standard college degree or the equivalent; and
(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.
(Authority: 38 U.S.C. 3002(3)).
(46) Graduate school. The term graduate school means either:
(i) An educational institution, located in a State, that --
(A) Admits as regular students only persons who have a baccalaureate degree or the equivalent in work experience;
(B) Offers postsecondary level academic instruction that leads to a master's degree, doctorate, or professional degree; and
(C) Is empowered by the appropriate State education authority under State law to grant a master's degree, doctorate, or professional degree, or, where there is no State law to authorize the granting of a degree, is accredited for master's degree, doctorate, or professional degree programs by a recognized accrediting agency; or
(ii) An educational institution, not located in a State, that --
(A) Offers a course leading to a master's degree, doctorate, or professional degree; and
(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.
(Authority: 38 U.S.C. 3002(3)).
(47) High technology industry. The term high technology industry has the same meaning as provided in § 21.4200(aa).
(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))
(48) Employment in a high technology industry. Employment in a high technology industry has the same meaning as provided in § 21.4200(bb).
(Authority: 38 U.S.C. 3014A)
(49) High technology occupation. The term high technology occupation has the same meaning as provided in § 21.4200(cc).
(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))
(50) Computer specialist. The term computer specialist has the same meaning as provided in § 21.4200(dd).
(Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))
(51) Accelerated payment. An accelerated payment is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for an individual's enrollment for a term, quarter, or semester in an approved program of education leading to employment in a high technology industry. In the case of a program of education not offered on a term, quarter, or semester basis, the accelerated payment is a lump sum payment of a maximum of 60 percent of the charged tuition and fees for the entire such program.
(Authority: 38 U.S.C. 3014A)
(52)-(55) [Reserved]
(56) Fugitive felon. The term fugitive felon has the same meaning as provided in Sec. 21.4200(kk).
(Authority: 38 U.S.C. 5313B)
(57) Felony. The term felony has the same meaning as provided in Sec. 21.4200(II).
(Authority: 38 U.S.C. 5313B)

[EFFECTIVE DATE NOTE: 68 FR 34326, 34328, June 9, 2003, amended paragraph (b)(6), effective June 9, 2003; 68 FR 35177, 35179, June 12, 2003, added paragraphs (b)(47) through (b)(51), effective June 12, 2003.]
§ 21.7030 Applications, claims and informal claims.

§ 21.7032 Time limits for making elections.

§ 21.7030 Applications, claims and informal claims.
The provisions of subpart B of this part apply with respect to claims for educational assistance under 38 U.S.C. chapter 30, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471, 5101, 5102, 5103)

[53 FR 1757, Jan. 22, 1988; 64 FR 23769, 23773, May 4, 1999]

[EFFECTIVE DATE NOTE: 64 FR 23769, 23773, May 4, 1999, revised this section, effective June 3, 1999.]

§ 21.7032 Time limits for making elections.

(a) Scope of this section. The provisions of this section are applicable to certain elections to receive educational assistance under 38 U.S.C. ch. 30. For time limits governing formal and informal claims for educational assistance under 38 U.S.C. ch. 30, see § 21.1032.

(Authority: 38 U.S.C. 3018B)

(b) Time limit for completing certain elections. An individual who seeks to establish eligibility to receive educational assistance under § 21.7045 must --

(1) Within one year of the date of the VA letter or other written notice to the individual indicating that additional evidence is needed in order to complete the claim, submit that evidence to VA. This time limit may be extended if the individual is able to show good cause for an extension of the period to the date on which he or she actually submits the additional evidence; and

(2) Submit the $1,200 VA is required pursuant to § 21.7045(c)(2) to collect before educational assistance can be awarded. A delay in submitting the $1,200 may result in a later effective date for the award to the individual, and in no event will VA accept payment of the $1,200 from the individual after the last date of eligibility as determined by § 21.7050 or § 21.7051. See § 21.7131(k).

(Authority: 38 U.S.C. 3018B)


[EFFECTIVE DATE NOTE: 64 FR 23769, 23773, May 4, 1999, amended this section, effective June 3, 1999.]
ELIGIBILITY

§ 21.7040 Categories of basic eligibility.
§ 21.7042 Basic eligibility requirements.
§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.
§ 21.7046 Eligibility for supplemental educational assistance.
§ 21.7050 Ending dates of eligibility.
§ 21.7051 Extended period of eligibility.

§ 21.7040 Categories of basic eligibility.
Eligibility for basic educational assistance can be established by:
(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces after June 30, 1985, and
(b) Some individuals who are eligible for educational assistance allowance under 38 U.S.C. chapter 34.

[Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525]

[EFFECTIVE DATE NOTE: 64 FR 52650, 52652, Sept. 30, 1999, revised the section heading, effective Sept. 30, 1999.]

§ 21.7042 Basic eligibility requirements.

Eligibility for basic educational assistance can be established by:
(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces after June 30, 1985, and
(b) Some individuals who are eligible for educational assistance allowance under 38 U.S.C. chapter 34.

[Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525]

[EFFECTIVE DATE NOTE: 64 FR 52650, 52652, Sept. 30, 1999, revised the section heading, effective Sept. 30, 1999.]

§ 21.7042 Basic eligibility requirements.

An individual must meet the requirements of this section, § 21.7044, or § 21.7045 in order to be eligible for basic educational assistance. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

[Authority: 38 U.S.C. 3011, 3012, 3018(b), 3018A]

(a) Eligibility based solely on active duty. An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions and requirements.
(1) The individual must after June 30, 1985, either --
(ii) First enter on active duty as a member of the Armed Forces;
(2) Except as provided in paragraph (a)(5) of this section, the individual must --
(i) If his or her obligated period of active duty is three years or more, serve at least three years of continuous active duty in the Armed Forces; or

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(ii) If his or her obligated period of active duty is less than three years, serve at least two years of continuous active duty in the Armed Forces;
(3) The individual, before applying for educational assistance, must either --
   (i) Complete the requirements of a secondary school diploma (or an equivalency certificate), or
   (ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree; and
   (Authority: 38 U.S.C. 3011, 3016)
(4) After completing the service requirements of this paragraph the individual must --
   (i) Continue on active duty, or
   (ii) Be discharged from service with an honorable discharge, or
   (iii) Be released after service on active duty characterized by the Secretary concerned as honorable service, and
   (A) Be placed on the retired list, or
   (B) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or
   (C) Be placed on the temporary disability retired list, or
   (iv) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.
(5) An individual who does not meet the requirements of paragraph (a)(2) of this section is eligible for basic educational assistance when he or she is discharged or released from active duty --
   (i) For a service-connected disability, or
   (ii) For a medical condition which preexisted service on active duty and which VA determines is not service connected, or
   (iii) Under 10 U.S.C. 1173 (hardship discharge), or
   (iv) For convenience of the government --
      (A) After completing at least 20 continuous months of active duty of an obligated period of active duty that is less than three years, or
      (B) After completing 30 continuous months of active duty of an obligated period of active duty that is at least three years, or
      (v) Involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or
      (vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.
      (Authority: 38 U.S.C. 3011)
(6) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of
Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104-275, 110 Stat. 3329-3330)

(b) Eligibility based on active duty service and service in the Selected Reserve. An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.

(1) The individual must, after June 30, 1985, either --
   (i) First become a member of the Armed Forces, or
   (ii) First enter on active duty as a member of the Armed Forces;

(2) The individual, before applying for educational assistance, must either --
   (i) Complete the requirements of a high school diploma (or an equivalency certificate),
   (ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(Authority: 38 U.S.C. 3011, 3012, 3016)

(3) Except as provided in paragraph (b)(6) of this section, the individual must serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service.

(4) Except as provided in paragraph (b)(7) of this section, after completion of active duty service, the individual must serve at least four continuous years of service in the Selected Reserve. An individual whose release from active duty service occurs after December 17, 1989, must begin this service in the Selected Reserve within one year from the date of his or her release from active duty. During this period of service in the Selected Reserve the individual must satisfactorily participate in training as prescribed by the Secretary concerned.


(5) The individual must, after completion of all service described in this paragraph
   (i) Be discharged from service with an honorable discharge, or
   (ii) Be placed on the retired list, or
   (iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or
   (iv) Continue on active duty, or
   (v) Continue in the Selected Reserve.

(6) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when the individual is discharged or released from the Armed Forces during those two years --
   (i) For a service-connected disability, or
   (ii) For a medical condition which preexisted such service on active duty and which VA determines is not service connected, or
   (iii) Under 10 U.S.C. 1173 (hardship discharge), or
   (iv) In the case of an individual discharged or released after 20 months of such service, for the convenience of the Government, or
   (v) Involuntarily, for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with
regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or (vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.


(7) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(4) of this section when --

(i) After completion of the active duty service required by this paragraph the individual serves a continuous period of service in the Selected Reserve and is discharged or released from service in the Selected Reserve --

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or

(C) Under 10 U.S.C. 1173 (hardship discharge), or

(D) After a minimum of 30 months of such service for the convenience of the Government, or

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.


(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in subparagraph (b)(4) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces --

(A) For a service-connected disability;

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected; or

(C) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by
the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.  
(Authority: 38 U.S.C. 3012(b)(1)(B)(i)) 
(iii) Before completing four years service in the Selected Reserve, the individual ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the individual's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 268(b). However, this exemption from the four-year service requirement does not apply to a reservist who ceases to be a member of the Selected Reserve under adverse conditions as characterized by the Secretary of the military department concerned, or to a reservist who after having involuntarily ceased to be a member of the Selected Reserve is involuntarily separated from the Armed Forces under adverse conditions as characterized by the Secretary of the military department concerned.  
(Authority: 10 U.S.C. 16133(b)(1); 38 U.S.C. 3012(b)(1)(B); sec. 4421(b) and (c), Pub. L. 102-484, 106 Stat. 2718) 
(8) For purposes of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she --  
(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or  
(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in paragraph (b)(8)(i) of this section.  
(9) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b)(8) of this section shall be binding upon VA.  
(10) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individualelecting while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.  
(Authority: Sec. 107(b), Pub. L. 104-275, 110 Stat. 3329-3330) 
(c) Eligibility based on withdrawal of election not to enroll. As stated in paragraph (f) of this section, a veteran or servicemember who elects not to enroll in this educational assistance program is generally not eligible for educational assistance. However, such a person may establish eligibility by meeting the requirements of this paragraph.  
(1) The individual must withdraw an election not to enroll. Only someone who meets the provisions of this subparagraph may make this withdrawal. Such a withdrawal is irrevocable. The withdrawal may only be made during the period beginning on December 1, 1988, and ending on June 30, 1989, by a servicemember who --
(i) Must have first become a member of the Armed Forces or first entered on active duty as a member of the Armed Forces during the period beginning July 1, 1985, and ending June 30, 1988;
(ii) As of the day of withdrawal of the election must have served continuously on active duty without a break in service since the date the individual first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces;
(iii) Must be serving on active duty on the day he or she withdraws the election;
(iv) Withdraws the election in the form prescribed by the Secretary of Defense or in the case of the Coast Guard by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.
(2) The individual must continue to serve the period of service that the individual was obligated to serve on December 1, 1988.
(3) The individual must:
(i) Complete the period of service that he or she was obligated to serve on December 1, 1988, which will include completion of a period of extension or reenlistment if an individual's initial obligated period of service was scheduled to end after November 30, 1988, but he or she extended an enlistment or reenlisted before December 1, 1988; or
(ii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been discharged or released from active duty for --
(A) A service-connected disability, or
(B) A medical condition which preexisted that period of service and which the Secretary determines is not service connected, or
(C) Hardship (10 U.S.C. 1173); or
(iii) Before completing the period of service he or she was obligated to serve on December 1, 1988, have been --
(A) Discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service if such period was less than three years, or 30 months, if that period was at least three years;
(B) Involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense; or
(C) Discharged or released from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense (or by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service of the Navy).
(4) Before applying for educational assistance, the individual --
(i) Must complete the requirements of a secondary school diploma (or an equivalency certificate) or
(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.
(5) Upon completion of the period of service he or she was obligated to serve on December 1, 1988, the individual must --
(i) Be discharged from service with an honorable discharge, be placed on the retired list, be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or be placed on the temporary disability retired list; or
(ii) Continue on active duty; or
(iii) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.


(d) Dual eligibility. (1) An individual who has established eligibility under paragraph (a) of this section through serving at least two years of continuous active duty of an obligated period of active duty of less than three years, as provided in paragraph (a)(2) of this section, may attempt to establish eligibility under paragraph (b) of this section through service in the Selected Reserve. If this veteran fails to establish eligibility under paragraph (b) of this section, he or she will retain eligibility established under paragraph (a) of this section.

(2) An individual must elect, in writing, whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:

(i) The individual:

(A) Is a veteran who has established eligibility for basic educational assistance through meeting the provisions of paragraph (b) of this section; and

(B) Also is a reservist who has established eligibility for benefits under 10 U.S.C. chapter 1606 through meeting the requirements of § 21.7540; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505.

(3) An election under this paragraph (d) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the veteran either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.

(4) If a veteran is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (d)(1) through (d)(3) of this section.

(Authority: 10 U.S.C. 16132, 38 U.S.C. 3033(c))

(e) Eligibility to receive educational assistance while serving a qualifying period of active duty.

(1) An individual on active duty who does not have sufficient active duty service to establish eligibility under paragraph (a) of this section, nevertheless is eligible to receive basic educational assistance when he or she

(i) After June 30, 1985, either --

(A) First becomes a member of the Armed Forces, or

(B) First enters on active duty as a member of the Armed Forces;
(ii) Has completed the requirements of a secondary school diploma (or an equivalency certificate) before beginning training;
(iii) Serves at least two years of continuous active duty in the Armed Forces; and
(iv) Remains on active duty.

(2) Subject to paragraph (e)(3) of this section, VA will consider an individual to have met the requirements of paragraph (b) of this section when he or she --

(i) Has met the active duty requirements of paragraph (b) of this section;
(ii) Is committed to serve 4 years in the Selected Reserve; and

(iii) Before beginning the training for which he or she wishes to receive educational assistance --

(A) Has completed the requirements of a high school diploma (or equivalency certificate), or

(B) Has successfully completed the equivalent of 12 semester hours or the equivalent in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3011, 3012, 3016)

(3) An individual who establishes basic eligibility under this paragraph shall lose that eligibility if, upon discharge or release from active duty, he or she is unable to establish eligibility under any of the other paragraphs of this section. The effective date for that loss of eligibility is the date the veteran was discharged or released from active duty.

(Authority: 38 U.S.C. 3011, 3012, 3016; Pub. L. 98-525)

(f) Restrictions on establishing eligibility. (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as provided in paragraph (c) of this section or in § 21.704(b) or (c) of this part.


(2) Except as provided in paragraph (f)(4) of this section, an individual is not eligible for educational assistance under 38 U.S.C. chapter 30 if after December 31, 1976, he or she

(i) The United States Military Academy;
(ii) The United States Naval Academy;
(iii) The United States Air Force Academy; or
(iv) The United States Coast Guard Academy.

(3) Except as provided in paragraph (f)(4) of this section, an individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under 10 U.S.C. 2107 is not eligible for educational assistance under 38 U.S.C. chapter 30, if the individual enters on active duty --

(i) Before October 1, 1996; or
(ii) After September 30, 1996, and while participating in that program received more than $2,000 for each year of participation.

(Authority: 38 U.S.C. 3011(c), 3012(d))

(4) Paragraphs (f)(2) and (f)(3) of this section do not apply to a veteran who has met the requirements for educational assistance under paragraph (a), (b) or (c) of this section.
before receiving a commission in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the United States Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Senior Reserve Officers Training Corps Scholarship Program).

(Authority: 38 U.S.C. 3011, 3012, 3018)

(g) Reduction in basic pay. (1) Except as elsewhere provided in this paragraph, the basic pay of any individual described in paragraph (a), (b), or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

(2) The basic pay of an individual who withdraws an election not to receive educational assistance under 38 U.S.C. ch. 30 as described in paragraph (c) of this section shall be reduced by

(i) $1,200, or
(ii) In the case of an individual whose discharge or release from active duty prevents the reduction of the individual's basic pay by $1,200, an amount less than $1,200.

(3) The basic pay of any individual who makes the election described in paragraph (e)(1) of this section and who does not withdraw that election will not be subject to the reduction described in either paragraph (g)(1) or paragraph (g)(2) of this section.

(4) The individual who makes the election described in either paragraph (a)(7) or (b)(10) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions described in this paragraph. If the basic pay of an individual is not reduced and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions, that individual is ineligible for educational assistance.

(Authority: Sec. 107(b)(3), Pub. L. 104-275, 110 Stat. 3329-3330)

(5) If through administrative error, or other reason --

(i) The basic pay of an individual described in paragraph (a)(1) through (a)(6), (b)(1) through (b)(9), (c), or (d) of this section is not reduced as provided in paragraph (g)(1) or (g)(2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but will negate or reduce the individual's entitlement to educational assistance under 38 U.S.C. chapter 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section;

(ii) The basic pay of an individual, described in paragraph (a)(7) or (b)(10) of this section, is not reduced as described in paragraph (g)(4) of this section and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions described in paragraph (g)(4) of this section, that individual is ineligible for educational assistance. If the failure to reduce the individual's basic pay and/or the failure to collect from the individual was due to administrative error on the part of the Federal government or any of its employees, the individual may be considered for equitable relief depending on the facts and circumstances of the case. See § 2.7 of this chapter.

Certain individuals with 38 U.S.C. chapter 34 eligibility may establish eligibility for educational assistance under 38 U.S.C. chapter 30. This section requires an individual to complete certain academic requirements before applying for educational assistance. If the individual applies before completing those requirements, VA will disallow the application. However, the individual's premature application will not prevent the individual from establishing eligibility at a later time by applying for educational assistance again after having completed those academic requirements. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for periods of time specified in § 3.15.

(a) Eligibility based solely on active duty. An individual may establish eligibility for basic educational assistance based on service on active duty under the following terms, conditions, and requirements --

(1) The individual must have met the requirements of 38 U.S.C. chapter 34, as in effect on December 31, 1989, establishing eligibility for educational assistance allowance under that chapter;

(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. chapter 34;

(3) The individual, before applying for educational assistance, must:

(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(4) After June 30, 1985 --

(i) The individual must serve at least three years continuous active duty in the Armed Forces, or

(ii) The individual must be discharged or released from active duty --

(A) For a service-connected disability, or

(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected, or

(C) Under 10 U.S.C. 1173 (Hardship discharge), or
(D) For the convenience of the Government provided the individual completes at least 30 months of active duty, or
(E) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or
(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy;
(5) Upon completion of the requisite active duty service the individual must either --
(i) Continue on active duty, or
(ii) Be discharged from active duty with an honorable discharge, or
(iii) Be released after service on active duty characterized by the Secretary concerned as honorable service and
(A) Be placed on the retired list, or
(B) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or
(C) Be placed on the temporary disability retired list, or
(iv) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service; and
(6) The individual must have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service.
(Authority: 38 U.S.C. 3011)
(b) Eligibility based on combined active duty service and service in the Selected Reserve.
An individual may establish eligibility for basic educational assistance based on a combination of service on active duty and service in the Selected Reserve under the following terms, conditions and requirements.
(1) The individual must have met the requirements of 38 U.S.C. chapter 34, as in effect on December 31, 1989, establishing eligibility for educational assistance allowance under that chapter;
(2) As of December 31, 1989, the individual must have entitlement remaining for educational assistance allowance under 38 U.S.C. chapter 34;
(3) The individual, before applying for educational assistance, must:
(i) Complete the requirements for a secondary school diploma or an equivalency certificate; or
(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.
(Authority: 38 U.S.C. 3012 (a), (b))
(4) The individual must have been on active duty on October 19, 1984, and have served without a break in service from October 19, 1984 through June 30, 1985.
(5) After June 30, 1985, the individual must --
(i) Except as provided in paragraph (b)(6) of this section, serve at least two years of continuous active duty in the Armed Forces characterized by the Secretary concerned as honorable service, and
(ii) Except as provided in paragraph (b)(7) of this section, after completion of this active duty service, the individual must serve at least four continuous years service in the Selected Reserve, during which the individual must participate satisfactorily in training as prescribed by the Secretary concerned.

(Authority: 38 U.S.C. 3012(b))

(6) The individual also must --

(i) Be discharged from service with an honorable discharge, or
(ii) Be placed on the retired list, or
(iii) Be transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or
(iv) Continue on active duty, or
(v) Continue in the Selected Reserve.

(7) An individual is exempt from serving two years on active duty as provided in paragraph (b)(3) of this section when he or she is discharged or released during those two years --

(i) For a service-connected disability, or
(ii) For a medical condition which preexisted such service on active duty and which VA determines is not service-connected, or
(iii) Under 10 U.S.C. 1173 (hardship discharge), or
(iv) For convenience of the government provided the individual completes at least 20 months of active duty, or
(v) Involuntarily, for the convenience of the government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or
(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.


(8) An individual is exempt from serving four years in the Selected Reserve as provided in paragraph (b)(5) of this section when --

(i) After completion of the active duty required by this paragraph he or she serves a continuous period of service in the Selected Reserve, and
(A) Is discharged for a service-connected disability, or
(B) Is discharged for a medical condition which preexisted the individual's becoming a member of the Selected Reserve and which VA determines is not service connected, or
(C) Is discharged for hardship, or
(D) Is discharged or released after a minimum of 30 months service in the Selected Reserve for convenience of the Government, or

(E) Is discharged involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) Is discharged for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or


(ii) The individual is obligated at the beginning of the two years active duty described in paragraph (b)(3) of this section to serve the four years in the Selected Reserve as described in paragraph (b)(5) of this section, and during the two years of active duty service he or she is discharged or released from active duty in the Armed Forces --

(A) For a service-connected disability, or

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected, or

(iii) Before completing four years service in the Selected Reserve the individual ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the individual's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 268(b). However, this exemption from the four years service requirement does not apply to a reservist who ceases to be a member of the Selected Reserve under adverse conditions as characterized by the Secretary of the military department concerned, or to a reservist who after having involuntarily ceased to be a member of the Selected Reserve is involuntarily separated from the Armed Forces under adverse conditions as characterized by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16133(b)(1); sec. 4421(b) and (c), Pub. L. 102-484, 106 Stat. 2718)

(9) A veteran who has completed the active duty service required by this paragraph and has made a commitment (as determined by the Secretary concerned) to serve four continuous years in the Selected Reserve may pursue a program of education with basic educational assistance while performing the required Selected Reserve service.

(10) For the purpose of determining continuity of Selected Reserve service, the Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even through he or she --

(i) Is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy, or
(ii) Is not attached to a unit of the Selected Reserve for any reason prescribed by the Secretary concerned by regulation other than those stated in subdivision (i) of this subparagraph.

(11) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b) (9) or (10) of this section shall be binding upon VA.

(12) The individual must have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service.

(c) Restrictions on establishing eligibility. Except as provided in paragraph (d) of this section, an individual, who would otherwise be eligible for educational assistance under paragraphs (a) or (b) of this section, is not eligible for educational assistance under 38 U.S.C. ch. 30, if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces --

(1) Upon graduation from --

(i) The United States Military Academy, or
(ii) The United States Naval Academy, or
(iii) The United States Air Force Academy, or
(iv) The Coast Guard Academy; or

(2) Upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

(d) Exception to restrictions on establishing eligibility. Paragraph (c) of this section does not apply to a veteran who has met the requirements for educational assistance under paragraph (a) or (b) of this section before receiving a commission as an officer in the Armed Forces upon graduation from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy; or upon completion of a program of educational assistance under 10 U.S.C. 2107 (the Reserve Officers Training Corps Scholarship Program).

§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans’ Educational Assistance Program.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance as provided in this section.
subpart if he or she meets the requirements of paragraphs (a) and (b) of this section; paragraphs (a) and (c) of this section; or paragraph (d) or (e) of this section.

(a) Service requirements. The individual must meet one of the following sets of service requirements.

(1) The individual --
(i) If not a member of the Coast Guard, must be on active duty or full-time National Guard duty either on September 30, 1990, or after November 29, 1993, or if a member of the Coast Guard, must be on active duty after September 30, 1994, and
(ii) After February 2, 1991, must be involuntarily separated, as that term is defined in 10 U.S.C. 1141, with an honorable discharge; or

(2) The individual must --
(i) Be separated from active military, naval, or air service with an honorable discharge, and
(ii) Receive voluntary separation incentives under 10 U.S.C. 1174a or 1175.

(Authority: 10 U.S.C. 1141; 38 U.S.C. 3018A)

(b) Additional requirements for those individuals voluntarily separated after October 23, 1992, or involuntarily separated. An individual who meets the requirements of paragraph (a)(1) of this section; or an individual who meets the requirements of paragraph (a)(2) of this section and who either was not a member of the Coast Guard and was separated after October 22, 1992, or who was a member of the Coast Guard and was separated after September 30, 1994, must meet the following additional requirements in order to establish eligibility for educational assistance:

(1) Required election. (i) If, under § 21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the election must be made:
(A) Before the involuntary or voluntary separation as the case may be, and
(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; and

(ii) If the individual is a participant (as defined in § 21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:
(A) Before the individual is involuntarily or voluntarily separated as the case may be, and
(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; or

(iii) If the individual is not described in either paragraph (b)(1)(i) or (b)(1)(ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:
(A) Before the individual is involuntarily or voluntarily separated as the case may be, and
(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which
the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) Reduction in basic pay. The basic pay of anyone who makes one of the irrevocable elections described in paragraph (b)(1) of this section is required by 38 U.S.C. 3018B to be reduced by $1,200.

(i) If for any reason the basic pay of an individual who received an involuntary separation is not so reduced by $1,200, the failure to make the reduction will not affect the individual's eligibility for educational assistance under 38 U.S.C. ch. 30.

(ii) If the individual is voluntarily separated, such reduction of the individual's basic pay by $1,200 is a precondition to establishing eligibility. Hence, educational assistance under 38 U.S.C. ch. 30 may not be paid to such an individual when the reduction does not occur.

(3) Educational requirement. (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have:

(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or

(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(ii) If a veteran's application for educational assistance is denied due to failure to meet the requirements of paragraph (b)(3)(i) of this section at the time of his or her application for educational assistance, the veteran may reapply if the requirements are subsequently met.

(Authority: 38 U.S.C. 3018B)

(c) Additional requirements for individuals who are voluntarily discharged before October 23, 1992. If an individual meets the requirements of paragraph (a)(2) of this section and is voluntarily discharged before October 23, 1992, he or she must also meet the following requirements in order to establish eligibility for educational assistance.

(1) Required election. (i) If, under §21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the new election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs; and

(ii) If the individual is a participant (as defined in §21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs.

(iii) If the individual is not described in either paragraph (c)(1)(i) or (ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:

(A) Before October 23, 1993, and

(B) In the form and manner prescribed by the Secretary of Veterans Affairs.
(2) $1,200 collection. VA must collect $1,200 from the individual before awarding educational assistance under 38 U.S.C. ch. 30. Collection of $1,200 is a precondition to establishing eligibility.

(3) Educational requirement. (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have:
(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or
(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.
(ii) If a veteran's application for educational assistance under subpart K of this part is denied due to failure to meet the requirements of paragraph (c)(3)(i) of this section at the time of his or her application for educational assistance, the veteran will be permitted to apply at a later date.

(Authority: 38 U.S.C. 3018B)

(d) Alternate eligibility requirements for participants in the Post-Vietnam Era Veterans' Educational Assistance Program. -- (1) Making an election. To receive educational assistance under the authority of paragraph (d) of this section, a veteran or servicemember must --
(i) Have elected to do so before October 9, 1997;
(ii) Have been a participant (as that term is defined in §21.5021(e)) in the Post-Vietnam Era Veterans' Educational Assistance Program on October 9, 1996;
(iii) Have been on active duty on October 9, 1996; and
(iv) Receive an honorable discharge.

(2) Election. The election to receive educational assistance payable under this subpart in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before October 9, 1997, pursuant to procedures provided by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or provided by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) $1,200 collection. An individual who has made the election described in paragraph (d)(2) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions. Reduction in basic pay by $1,200 or collection of $1,200 is a precondition to establishing eligibility.

(4) Educational requirement. Before applying for benefits that may be payable as the result of making a valid election, an individual must have --
(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or
(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C)
(e) Alternate eligibility requirements for former participants in the Post-Vietnam Era Veterans' Educational Assistance Program. (1) Definition. For the purpose of this paragraph a participant is a veteran or servicemember who:

(i) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, contributed to the fund described in § 21.5021(f), and either --

(A) Is making contributions by monthly payroll deduction to that fund;
(B) Has some or all of the contributions remaining in that fund;
(C) Has disenrolled, and received a refund of contributions; or
(D) Has used all of his or her entitlement to benefits under the Post-Vietnam Era Veterans' Educational Assistance Program; or

(ii) Had enrolled in the Post-Vietnam Era Veterans' Educational Assistance Program, and has had the Secretary of Defense make contributions to the fund described in § 21.5021(f) for him or her.

(2) Making an election. To receive educational assistance under authority of this paragraph, a veteran or servicemember must:

(i) Have elected before November 1, 2001, to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program;
(ii) Have been a participant in the Post-Vietnam Era Veterans' Educational Assistance Program on or before October 9, 1996;
(iii) Have served continuously on active duty since October 9, 1996, through at least April 1, 2000;
(iv) Receive an honorable discharge when discharged or released from the period of active duty during which the servicemember made the election described in paragraph (e)(3) of this section.

(3) Election. The election to receive educational assistance payable under 38 U.S.C. chapter 30 in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before November 1, 2001, pursuant to procedures provided by the Secretary of the military department concerned.

(4) $2,700 collection. (i) An individual who has made the election described in paragraph (e)(3) of this section must have his or her basic pay reduced by $2,700 in a manner prescribed by the Secretary of the military department concerned. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, the Secretary of the military department concerned will collect from the individual an amount equal to the difference between $2,700 and the amount that the individual's basic pay has been reduced. The individual may choose how the $2,700 is to be collected. The Secretary of the military department concerned, according to the choice the individual makes, will collect this amount --

(A) From the individual; or
(B) By reducing the individual's retired or retainer pay.

(ii) The individual must pay $2,700 to the Secretary of the military department concerned, as provided for by that Secretary, during an 18-month period beginning on the date the individual made the election described in paragraph (e)(3) of this section.

(iii) Educational assistance under authority of paragraph (e) of this section to an individual who was discharged or released from active duty before the Secretary of the
military department concerned had collected the full $2,700 described in paragraph (e)(4) of this section is not payable until that Secretary either --

(A) Collects in full the $2,700; or
(B) Has made the first reduction in retired or retainer pay for the purpose of the $2,700 payment described in paragraph (e)(4) of this section. Thus, a veteran who is making the $2,700 payment through having retired or retainer pay reduced may be eligible before the Secretary of the military department concerned collects the full $2,700.

(5) Educational requirement. Before applying for benefits that may be payable as the result of making a valid election, an individual must have --

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or
(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C(e))


[EFFECTIVE DATE NOTE: 68 FR 34326, 34329, June 9, 2003, amended the introductory text, and added paragraph (e), effective June 9, 2003.]

§ 21.7046 Eligibility for supplemental educational assistance.
The Secretary concerned, pursuant to regulations prescribed by that Secretary, has the discretion to provide for the payment of supplemental educational assistance to certain veterans and servicemembers eligible for basic educational assistance.

(a) Service requirements: eligibility based only on active duty service. The Secretary concerned may authorize supplemental educational assistance to an individual who is eligible for basic educational assistance under §21.7042 or §21.7044 of this part based solely on active duty service only if the individual meets the provisions of this paragraph.

(1) An individual may establish eligibility for supplemental educational assistance by serving five or more consecutive years of active duty in the Armed Forces in addition to the years counted to qualify the individual for basic educational assistance without a break in any such service.

(2) After completion of the service described in paragraph (a)(1) of this section the individual must either --

(i) Continue on active duty without a break,
(ii) Be discharged from service with an honorable discharge,
(iii) Be placed on the retired list,
(iv) Be transferred to the Fleet Reserve or the Fleet Marine Corps Reserve,
(v) Be placed on the temporary disability retired list, or
(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 3012(a); Pub. L. 98-525)

(b) Service requirements: eligibility based on service in the Selected Reserve. The Secretary concerned (pursuant to regulations which he or she may prescribe) has the discretion to authorize supplemental educational assistance to an individual who is
eligible for basic educational assistance under § 21.7042 or § 21.7044 of this part through consideration of additional active duty service and additional service in the Selected Reserve only if the individual meets the provisions of this paragraph.

1. The individual must serve --
   (i) Two or more consecutive years of active duty in the Armed Forces in addition to the years on active duty counted to qualify the individual for basic educational assistance, and
   (ii) Four or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for basic educational assistance.

2. The individual after completion of the service described in paragraph (b)(1) must --
   (i) Be discharged from service with an honorable discharge, or
   (ii) Be placed on the retired list, or
   (iii) Be transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or
   (iv) Be placed on the temporary disability retired list, or
   (v) Continue on active duty, or
   (vi) Continue in the Selected Reserve.

3. The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is unable to locate a unit of the Selected Reserve of the individual's Armed Force that the individual is eligible to join or that has a vacancy.

4. The Secretary concerned may prescribe by regulation a maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though he or she is not attached to a unit of the Selected Reserve for any reason (also to be prescribed by the Secretary concerned by regulation) other than those stated in paragraph (b)(3) of this section.

5. Any decision as to the continuity of an individual's service in the Selected Reserve made by the Department of Defense or the Department of Transportation under regulations described in paragraph (b)(3) or (4) of this section shall be binding upon VA.

(Authority: 38 U.S.C. 3021(a); Pub. L. 98-525)

§ 21.7050 Ending dates of eligibility.
The ending date of eligibility will be determined as follows:
(a) Ten-year time limitation. (1) Except as provided in paragraphs (c), (d), and (e) of this section and in § 21.7051, VA will not provide basic educational assistance or supplemental educational assistance to a veteran or service member beyond 10 years from the later of --
   (i) The date of the veteran's last discharge or release from a period of active duty of 90 days or more of continuous service;
   (ii) The date of the veteran's last discharge or release from a shorter period of active duty if the discharge or release is --
      (A) For a service-connected disability, or
      (B) For a medical condition which preexisted such service and which VA determines is not service-connected, or
      (C) For hardship, or

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(D) Involuntary, for the convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned, in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or

(iii) The date on which the veteran meets the requirement for four years service in the Selected Reserve found in § 21.7042(b) and § 21.7044(b).

(2) In determining whether a veteran was discharged or released from active duty for a medical condition which preexisted that active duty, VA will be bound by a decision made by a competent military authority.

(Authority: 38 U.S.C. 3031(a), 3031(g))

(b) Reduction of ten-year eligibility period. (1) Except as provided in paragraph (b)(2) of this section, a veteran who had eligibility for educational assistance under 38 U.S.C. ch. 34 and who is eligible for educational assistance under 38 U.S.C. ch. 30 as provided in § 21.7044 of this part shall have his or her ten-year period of eligibility reduced by the number of days he or she was not on active duty during the period beginning on January 1, 1977, and ending on June 30, 1985.

(2) A veteran's ten-year period of eligibility shall not be reduced by any period in 1977 before the veteran began serving on active duty when the veteran qualified for educational assistance under 38 U.S.C. ch. 34 through service on active duty which --

(i) Commenced within 12 months of January 1, 1977, and

(ii) Resulted from a contract with the Armed Forces in a program such as the DEP (Delayed Enlistment Program) or an ROTC (Reserve Officers' Training Corps) program for which a person enlisted in, or was assigned to, a reserve component before January 1, 1977.

(Authority: 38 U.S.C. 3031(e))

(c) Time limit for some members of the Army and Air National Guard. (1) If a veteran or servicemember establishes eligibility for the educational assistance payable under this subpart by making the election described in § 21.7042(a)(7) or (b)(10), VA will not provide basic educational assistance or supplemental educational assistance to that veteran or servicemember beyond 10 years from the later of:

(i) The date determined by paragraph (a) or (b) of this section, as appropriate; or

(ii) The effective date of the election described in § 21.7042(a)(7) or (b)(10), as appropriate.

(2) The effective date of election is the date on which the election is made pursuant to the procedures described in § 21.7045(d)(2).

(Authority: Sec. 107(b)(3), Pub. L. 104-275, 110 Stat. 3329-3330)

(d) Individual is eligible due to combining active duty as an enlisted member or warrant officer with active duty as a commissioned officer. If a veteran would not be eligible but for the provisions of § 21.7020(b)(6)(v), VA will not pay basic educational assistance or supplemental educational assistance to that veteran beyond 10 years after the veteran's last discharge or release from a period of active duty of 90 days or more of continuous service, or November 30, 2009, whichever is later.

(Authority: 38 U.S.C. 3011(f), 3031(a)).

(e) Some veterans have a later ending date. (1) The ending date of the eligibility period of a veteran described in paragraph (e)(2) of this section is the later of:
(i) November 1, 2010; or
(ii) 10 years after the date of the veteran's last discharge from a period of active duty of 90 days or more.

(2) The ending date of a veteran's eligibility period will be the date described in paragraph (e)(1) of this section if the veteran would have been prevented from establishing eligibility by one or more of the former requirements described in paragraphs (e)(2)(i) through (e)(2)(iv) of this section and the veteran is enabled to establish eligibility by the removal of the statutory bases for those requirements. (For the purposes of this paragraph, the applicable provisions of those former requirements appear in the July 1, 2002 revision of the Code of Federal Regulations, title 38.)

(i) A period of active duty other than the initial period was used to establish eligibility. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and 21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial period of active duty to establish eligibility for educational assistance;
(ii) High school education eligibility criterion met after the qualifying period of active duty. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(3), 21.7042(b)(2), and 21.7042(c)(4), revised as of July 1, 2002, that before completing the period of active duty used to establish eligibility for educational assistance, a veteran had to complete the requirements for a secondary school diploma (or an equivalency certificate) or successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;
(iii) High school education eligibility criterion met after October 29, 1994. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002, that certain veterans meet the requirements for a secondary school diploma (or an equivalency certificate) before October 29, 1994, in order to establish eligibility for educational assistance;
(iv) High school education eligibility criterion for veterans formerly eligible under 38 U.S.C. chapter 34 met after January 1, 1990. The veteran was enabled to establish eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3) and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain veterans could meet the educational criteria for establishing eligibility for educational assistance, the veteran must before January 1, 1990, meet the requirements for a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3031 note; secs. 102(e), 103(e), Pub. L. 106-419, 114 Stat. 1825; 1826-27)

(f) Correction of military records. A veteran may become eligible for educational assistance as the result of a correction of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by competent military authority. When this occurs, the VA will not provide educational assistance later than 10 years from the date his or her dismissal or discharge was changed, corrected or modified (except as provided in § 21.7051 of this part).

(Authority: 38 U.S.C. 3031(b); Pub. L. 98-525)
(g) Periods excluded. VA will not include in computing the 10-year period of eligibility for educational assistance under this section, any period during which the veteran after his or her last discharge or release from active duty --
(1) Was captured and held as a prisoner of war by a foreign government or power, or
(2) Immediately following the veteran's release from this detention during which he or she was hospitalized at a military, civilian or VA medical facility.
(Authority: 38 U.S.C. 3031(c); Pub. L. 98-525)

[EFFECTIVE DATE NOTE: 68 FR 34326, 34330, June 9, 2003, amended this section, effective June 9, 2003.]

§ 21.7051 Extended period of eligibility.
(a) Period of eligibility may be extended. VA shall grant an extension of the applicable delimiting period, as otherwise determined by § 21.7050 of this part provided:
(1) The veteran applies for an extension within the time specified in § 21.1032(c).
(2) The veteran was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period because of a physical or mental disability that did not result from the veteran's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7020(b)(38)) It must be clearly established by medical evidence that such a program of education was medically infeasible. VA will not consider a veteran who is disabled for a period of 30 days or less as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the veteran was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance, because of the short disability.
(b) Commencing date. The veteran shall elect the commencing date of an extended period of eligibility. The date chosen --
(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7050 of this part, and
(2) Must either be --
(i) On or before the 90th day following the date on which the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or
(ii) On or before the commencing date of the first ordinary term, quarter or semester following the 90th day after the veteran's application for an extension was approved by VA, if the veteran is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.
(Authority: 38 U.S.C. 3031(d); Pub. L. 98-525)
(c) Length of extended periods of eligibility. A veteran's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:
(1) If the veteran is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original eligibility period that his or her training became medically infeasible to the earliest of the following date:
   (i) The commencing date of the ordinary term, quarter or semester following the day the veteran's training became medically infeasible,
   (ii) The last date of the veteran's delimiting date as determined by § 21.7050 of this part, or
   (iii) The date the veteran resumed training.
(2) If the veteran is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the veteran's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:
   (i) The date the veteran's training became medically feasible, or
   (ii) The veteran's delimiting date as determined by § 21.7050 of this part.
   (Authority: 38 U.S.C. 3031(d); Pub. L. 98-525)

   [EFFECTIVE DATE NOTE: 64 FR 23769, 23773, May 4, 1999, substituted "§ 21.1032(c)" for "§ 21.7032(e) of this part" in paragraph (a)(1), effective June 3, 1999.]
§ 21.7070 Entitlement.
§ 21.7072 Entitlement to basic educational assistance.
§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.
§ 21.7074 Entitlement to supplemental educational assistance.
§ 21.7076 Entitlement charges.

§ 21.7070 Entitlement.
An eligible servicemember or veteran is entitled to a monthly benefit for periods of time during which he or she is enrolled in, and satisfactorily pursuing, an approved program of education.
(Authority: 38 U.S.C. 3014; Pub. L. 98-525)

§ 21.7072 Entitlement to basic educational assistance.
The provisions of this section apply to all veterans and servicemembers except to those to whom § 21.7073 applies.
(a) Most individuals are entitled to 36 months of assistance. Except as provided in paragraphs (b), (c), and (d) of this section and in § 21.7073, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance).
(b) Entitlement: individual discharged for service-connected disability, a medical condition which preexisted service, hardship, or involuntarily for the convenience of the Government as a result of a reduction in force. (1) Except as provided in § 21.7073, when the provisions of paragraph (b) of this section are met, an eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's continuous active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is part of the individual's qualifying obligated period of active duty. In the case of a veteran to whom the definition of continuous active duty found in either § 21.7020(b)(6)(iii) or § 21.7020(b)(6)(iv) applies, the length of the continuous active duty will be the aggregate length of the periods of active duty referred to in those paragraphs. Except as provided in § 21.7073, VA will apply paragraph (b) of this section when the individual:
(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044,
(ii) Serves less than 36 months of continuous active duty service after June 30, 1985 (or less than 24 continuous months of a qualifying obligated period of active duty service after June 30, 1985, if his or her qualifying obligated period of active duty is less than 3 years), and
(iii) Is discharged or released from active duty either --
(A) For a service-connected disability, or
(B) For a medical condition which preexisted the individual's service on active duty and which VA determines is not service connected,
(C) Under 10 U.S.C. 1173 (hardship discharge), or
(D) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;
(E) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011(f), 3013(a))

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:
(i) Excess leave,
(ii) Noncreditable time, and
(iii) Not-on-duty time.

(Authority: 38 U.S.C. 3011(f), 3013(a))

(c) Entitlement based on service in the Selected Reserve. (1) Except as provided in § 21.7073, when the provisions of paragraph (c) of this section are met, an individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each month of the individual's active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C. chapter 34, is part of the individual's qualifying obligated period of active duty. An individual is entitled to one month of basic educational assistance (or the equivalent thereof in part-time basic educational assistance) for each four months served by the individual in the Selected Reserve after June 30, 1985 (other than a month in which the individual serves on active duty). Except as provided in § 21.7073, VA will apply the provisions of paragraph (c) of this section when the individual --
(i) Establishes eligibility through meeting the eligibility requirements of § 21.7042 or § 21.7044, and
(ii) Bases his or her eligibility upon a combination of service on active duty and service in the Selected Reserve as described in § 21.7042(b) and § 21.7044(b).

(Authority: 38 U.S.C. 3013(b))

(2) Entitlement will be calculated in whole months.

(3) The following types of time lost are not countable in determining the extent of a veteran's or servicemember's entitlement:
(i) Excess leave,
(ii) Noncreditable time, and
(iii) Not-on-duty time.
(4) A veteran described in this paragraph is not entitled to any basic educational assistance for service in the Selected Reserve in excess of the number of months of service in the Selected Reserve which is evenly divisible by four.

(5) VA will consider a veteran to be entitled to 36 months of basic educational assistance when he or she --
   (i) Initially enters on active duty after June 30, 1985;
   (ii) Is attempting to establish eligibility through service in the Selected Reserve;
   (iii) Has completed the active duty service required in § 21.7042 of this part; and
   (iv) Is participating in the Selected Reserve, but has not participated for the length of time required in § 21.7042 of this part.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525)

(d) Entitlement affected by failure to complete required Selected Reserve service. If a veteran attempts to establish eligibility through a combination of active duty service and service in the Selected Reserves, but fails to do so, his or her entitlement shall be the number of months to which he or she is entitled on the basis of his or her active duty service.

(Authority: 38 U.S.C. 3011, 3012; Pub. L. 98-525)

(e) Repayment of an education loan affects entitlement. A period of service counted for the purpose of repayment under section 902 of the Department of Defense Authorization Act, 1981, of an education loan may not also be counted for the purposes of determining the number of months of the veteran's or servicemember's entitlement to basic educational assistance. Therefore, in determining a veteran's or servicemember's entitlement, VA will --
   (1) Determine his or her entitlement as provided in paragraph (a), (b), (c) or (d) of this section, as appropriate, and
   (2) Subtract from the figure determined in paragraph (e)(1) of this section the number of months of service counted for the purposes of repayment of an educational loan under section 902 of the Department of Defense Authorization Act, 1981.

(Authority: 38 U.S.C. 3033(b); Pub. L. 98-525)

(f) Limitation on entitlement. Except as provided in § 21.7076(e) and § 21.7135(s) of this part no one is entitled to more than 36 months of full-time basic educational assistance (or its equivalent in part-time educational assistance).


[EFFECTIVE DATE NOTE: 68 FR 34326, 34330, June 9, 2003, amended this section, effective June 9, 2003.]

§ 21.7073 Entitlement for some individuals who establish eligibility during the open period or who establish eligibility before involuntary separation.

(a) Individuals who establish eligibility during the open period. (1) The provisions of this paragraph apply to a veteran or servicemember who:
   (i) Establishes eligibility by withdrawing an election not to enroll as provided in § 21.7042(c);
   (ii) Has less than $ 1,200 deducted from his or her military pay; and
(iii) Before completing the period of service which the individual was obligated to serve on December 1, 1988, the individual:

(A) Is discharged or released from active duty for a service-connected disability, a medical condition which preexisted that service, or hardship; or

(B) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(C) Is discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service, if that period was less than three years, or 30 months, if that period was at least three years; or

(D) Is involuntarily discharged or released from active duty for convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3018(b)(3))

(2) A veteran described in paragraph (a)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of:

(i) A number of months determined by multiplying 36 by a fraction the numerator of which is the amount by which the basic pay of the individual has been reduced as provided in § 21.7042(e)(2) and the denominator of which is $1,200, or

(ii) The number of months the veteran has served on continuous active duty after June 30, 1985.

(Authority: 38 U.S.C. 3013(c))

(b) Individuals who establish eligibility following involuntary separation. (1) The provisions of this paragraph apply to a veteran who establishes eligibility by meeting the provisions of § 21.7045 of this part.

(Authority: 38 U.S.C. 3018A)

(2) A veteran described in paragraph (b)(1) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of --

(i) 36 months, or

(ii) The number of months the veteran served on active duty.

(Authority: 38 U.S.C. 3013)

[56 FR 20134, May 2, 1991; 59 FR 24053, May 10, 1994; 65 FR 67265, 67266, Nov. 9, 2000]

[EFFECTIVE DATE NOTE: 65 FR 67265, 67266, Nov. 9, 2000, amended paragraph (a), effective Nov. 9, 2000.]

§ 21.7074 Entitlement to supplemental educational assistance.

In determining the entitlement of a veteran or servicemember who is eligible for supplemental educational assistance VA shall --
(a) Calculate the veteran's or servicemember's entitlement to basic educational assistance on the day he or she establishes eligibility for supplemental educational assistance, and
(b) Credit the veteran or servicemember with the same number of months and days entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023; Pub. L. 98-525)

§ 21.7076 Entitlement charges.

(a) Overview. VA will make charges against entitlement as stated in this section.
(1) Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. chapter 30 as the assistance is paid.
(2) There will be a charge (for record purposes only) against the remaining entitlement, under 38 U.S.C. chapter 34, of an individual who is receiving the educational assistance under § 21.7137 of this part. The record-purpose charges against entitlement under 38 U.S.C. chapter 34 will not count against the 48 months of total entitlement under both 38 U.S.C. chapters 30 and 34 to which the veteran or service member may be entitled. (See § 21.4020(a) of this part).
(3) Generally, VA will base those entitlement charges on the principle that a veteran or service member who trains full time for one day should be charged one day of entitlement. However, this general principle does not apply to a veteran or servicemember who:
   (i) Is pursuing correspondence training;
   (ii) Is pursuing flight training;
   (iii) Is pursuing an apprenticeship or other on-job training; or
   (iv) Is paid an accelerated payment.
(4) The provisions of this section apply to:
   (i) Veterans and service members training under 38 U.S.C. chapter 30; and
   (ii) Veterans training under 38 U.S.C. chapter 31 who make a valid election under § 21.21 of this part to receive educational assistance equivalent to that paid to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3013, 3014(A), 3014(b))

(b) Determining entitlement charge. This paragraph states how VA generally will determine the charge against the entitlement of a servicemember or veteran who is receiving educational assistance. However, when the circumstances described in paragraph (e) apply to a servicemember or veteran, VA will use that paragraph to determine an entitlement charge instead of this paragraph.
(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-the-job training, those who are receiving tutorial assistance, and those who receive an accelerated payment, VA will make a charge against entitlement:
   (i) On the basis of total elapsed time (one day for each day of pursuit) if the servicemember or veteran is pursuing the program of education on a full-time basis,
   (ii) On the basis of a proportionate rate of elapsed time, if the veteran or servicemember is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half,
but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) VA will compute elapsed time from the commencing date of the award to date of discontinuance. If the veteran or servicemember changes his or her training time after the commencing date of the award, VA will --

(i) Divide the enrollment period into separate periods of time during which the veteran's or servicemember's training time remains constant, and.

(ii) Compute the elapsed time separately for each time period.

(Authority: 38 U.S.C. 3013; Pub. L. 98-525)

(3) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a charge against chapter 30 entitlement of --

(i) .75 of a month in the case of payments made during the first six months of the veteran's pursuit of the program of apprenticeship or other on-job training,

(ii) .55 of a month in the case of payments made during the second six months of the veteran's pursuit of the program of apprenticeship or other on-job training, and

(iii) .35 of a month in the case of payments made following the first twelve months of the veteran's pursuit of apprenticeship or other on-job training.

(4) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a record purpose charge against chapter 34 entitlement, if any, of one month for each month of benefits paid to him or her.

(5) When a veteran or servicemember is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge --

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of educational assistance otherwise applicable to him or her for full-time training (disregarding in the case of a servicemember the cost of course comparison).

(6) When a veteran or servicemember is pursuing a program of education partly in residence and partly by correspondence, VA will make a charge against entitlement --

(i) For the residence portion of the program as provided in paragraphs (b) (1) and (2) of this section, and

(ii) For the correspondence portion of the program as provided in paragraph (b)(5) of this section.

(Authority: 38 U.S.C. 3032(c), 3034(c); Pub. L. 99-576)

(7) When a veteran or servicemember is paid an accelerated payment, VA will make a charge against entitlement for each accelerated payment made to him or her. The charge --

(i) Will be made in months and decimal fractions of a month; and

(ii) Will be determined by dividing the amount of the accelerated payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training. If the rate of basic educational assistance increases during the enrollment period, VA will charge entitlement for the periods covered by the initial rate and the increased rate, respectively.

(Authority: 38 U.S.C. 3014A)
(8) If an individual is paid tutorial assistance as provided in § 21.7141, the following provisions will apply.
(i) There will be no charge to entitlement for the first $600 of tutorial assistance paid to an individual under 38 U.S.C. ch. 30.
(ii) VA will make a charge against the period of entitlement of one month for each amount of tutorial assistance paid under 38 U.S.C. ch. 30, to the individual in excess of $600 that is equal to the amount of monthly educational assistance the individual is otherwise eligible to receive for full-time pursuit of a residence course as provided in §§ 21.7136, 21.7137 and 21.7138, as appropriate. When the amount of tutorial assistance paid to the individual in excess of $600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated.

(Authority: 38 U.S.C. 3019; Pub. L. 100-689) (Nov. 18, 1988)

(9) When a veteran or servicemember is pursuing a program of education through flight training, VA will make a charge against entitlement for each payment made to him or her. The charge --
(i) Will be made in months and decimal fractions of a month, and
(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training.

(Authority: 38 U.S.C. 3031(f))

(c) Overpayment cases. VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived, and is not recovered; or is compromised.
(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).
(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).
(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by --
(i) Subtracting the portion of the debt attributable to interest, administrative costs of collection, court costs and marshal fees from the compromise offer,
(ii) Subtracting the amount determined in paragraph (c)(3)(i) of this section from the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees),
(iii) Dividing the result obtained in paragraph (c)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and
(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement which represents the whole overpaid period.
(Authority: 38 U.S.C. 3013; Pub. L. 98-525)

(d) Interruption to conserve entitlement. A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the veteran or servicemember is enrolled for the entire term, quarter or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the veteran or servicemember is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;
(2) The veteran or servicemember cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;
(3) The veteran or servicemember interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester;
(4) The veteran or servicemember requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. Whether the veteran or servicemember negotiated a check for educational assistance for the certified period is immaterial.

(Authority: 38 U.S.C. 3013; Pub. L. 98-525)

(e) No entitlement charge for some individuals. When the criteria described in this paragraph are met, VA will make no charges against entitlement as described in paragraph (b) of this section.

(1) VA will make no charge against an individual's entitlement when the individual --
   (i) Either --
      (A) While not serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b, or 688 of title 10, U.S. Code; or
      (B) While serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to a new duty location or assignment or to perform an increased amount of work.
   (ii) Failed to receive credit or lost training time toward completion of the individual's approved educational, professional or vocational objective as a result of having to discontinue his or her course pursuit.
(2) The period for which receipt of educational assistance allowance is not charged against the entitlement of an individual described in paragraph (e)(1) of this section shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time.


[EFFECTIVE DATE NOTE: 68 FR 35177, 35179, June 12, 2003, revised paragraph (a), the introductory text of paragraph (b)(1), and paragraph (b)(7), effective June 12, 2003.]
§ 21.7100 Counseling.

A veteran or servicemember may receive counseling from VA before beginning training and during training.

(a) Purpose. The purpose of counseling is

(1) To assist in selecting an objective;
(2) To develop a suitable program of education;
(3) To select an educational institution appropriate for the attainment of the educational objective;
(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and
(5) To select an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances.

(b) Required counseling. (1) In any case in which VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when --

(i) The veteran has had one or more personal interviews with the counselor;
(ii) The counselor has jointly developed with the veteran recommendations for selecting a program; and
(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. chapter 30 when he or she --

(i) Fails to report;
(ii) Fails to cooperate in the counseling process; or
(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

(4) Counseling is not required for any other individual eligible for educational assistance established under 38 U.S.C. chapter 30.

(c) Availability of counseling. Counseling is available for --

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or
(2) In considering changes in career plans and making sound decisions about the changes.

(d) Provision of counseling. VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the individual. In addition, VA shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the veteran's request for counseling, the veteran's initial
application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. VA shall take appropriate steps (including individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services. 

§ 21.7103 Travel expenses.
(a) Travel for veterans and servicemembers.
(1) Except as provided in paragraph (a)(2) of this section, VA shall determine and pay the necessary cost of travel to and from the place of counseling for individuals who are required to receive counseling if --
   (i) VA determines that the individual is unable to defray the cost based upon his or her annual declaration and certification; or
   (ii) The individual has a compensable service-connected disability.
(2) VA shall not pay for the travel expenses for a veteran who is not residing in a State.
   (Authority: 38 U.S.C. 111)
(b) Travel for attendants.
   (1) VA will authorize payment of travel expenses for an attendant while the individual is traveling when --
      (i) The individual, because of a severe disability requires the services of an attendant when traveling, and
      (ii) VA is paying the necessary cost of the individual's travel on the basis of the criteria stated in paragraph (a) of this section.
(2) VA will not pay the attendant a fee for travel expenses if he or she is a relative as defined in § 21.374 of this part.
   (Authority: 38 U.S.C. 111)
(c) Payment of travel expenses prohibited for most veterans. VA shall not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 38 U.S.C. Chapter 30.
   (Authority: 38 U.S.C. 111)
[55 FR 28385, July 11, 1990]

§ 21.7110 Selection of a program of education.
§ 21.7112 Programs of education combining two or more types of courses.
§ 21.7114 Change of program.

§ 21.7110 Selection of a program of education.
(a) General requirement. In order to receive educational assistance an individual must either be pursuing an approved program of education or be pursuing refresher or deficiency courses, or other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education.

(b) Approval of a program of education. VA will approve a program of education under 38 U.S.C. chapter 30 selected by an eligible veteran or servicemember if --
(1) It meets the definition of a program of education found in § 21.7020(b)(23) of this part,
(2) It has an objective as described in § 21.7020(b) (13) or (22) of this part,
(3) The courses and subjects in the program are approved for VA training, and
(4) The veteran or servicemember is not already qualified for the objective of the program.

§ 21.7112 Programs of education combining two or more types of courses.
(a) Concurrent enrollment. (1) When a veteran or servicemember cannot successfully schedule his or her complete program at one educational institution, VA may approve a program of concurrent enrollment. When requesting such a program, the veteran or servicemember must show that his or her complete program of education is not available at the educational institution in which he or she will pursue the major portion of his or her program (the primary educational institution), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program. When the standards for measurement of the courses pursued concurrently in the two educational institutions are different, the concurrent enrollment shall be measured by converting the measurement of courses being pursued at the second educational institution under the standard applicable to such institution to its equivalent measurement under the standard required for full-time courses applicable to the primary educational institution. For a complete discussion of measurement of concurrent enrollments see § 21.7172 of this part.

(2) The veteran or servicemember must submit the monthly certification of attendance and pursuit. Each educational institution where concurrent enrollment is approved must either endorse that certification, or submit a separate certification showing the veteran's or servicemember's enrollment and pursuit.

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(b) Courses offered under contract. In administering benefits payable under 38 U.S.C. chapter 30, the VA will apply the provisions of § 21.4233(e) of this part in the same manner as they are applied under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3034(a); Pub. L. 98-525)

(c) Television. In determining whether a veteran or servicemember may pursue all or part of a program of education under 38 U.S.C. chapter 30 by television, VA will apply the provisions of § 21.4233(c).

(Authority: 38 U.S.C. 3034(a))


§ 21.7114 Change of program.
In determining whether a veteran or servicemember may change his or her program of education under 38 U.S.C. ch. 30, VA will apply the provisions of § 21.4234 of this part. VA will not consider programs of education a veteran or servicemember may have pursued under 38 U.S.C. ch. 34 or 36 before January 1, 1990, if he or she wishes to change programs of education under 38 U.S.C. ch. 30.


[57 FR 29027, June 30, 1992]
COURSES

§ 21.7120 Courses included in programs of education.
§ 21.7122 Courses precluded.
§ 21.7124 Overcharges.

§ 21.7120 Courses included in programs of education.
(a) General. Generally, VA will approve, and will authorize payment of educational assistance, for the individual's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7220 of this part and which forms a part of a program of education as defined in § 21.7020(b)(23) of this part. Restrictions on this general rule are stated in § 21.7222(b) of this part, however.
(Authority: 38 U.S.C. 3002(3), 3452; Pub. L. 98-525)
(b) Avocational and recreational courses are restricted.
(1) VA will not pay educational assistance for an enrollment in any course --
(i) Which is avocational or recreational in character, or
(ii) The advertising for which contains significant avocational or recreational themes.
(2) VA presumes that the following courses are avocational or recreational in character unless the veteran or servicemember justifies their pursuit to VA as provided in paragraph (b)(3) of this section. The courses are:
(i) Any photography course or entertainment course, or
(ii) Any music course, instrumental or vocal, public speaking course or courses in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or
(iii) Any other type of course which VA determines to be avocational or recreational.
(3) To overcome the presumption that a course is avocational or recreational in character, the veteran or servicemember must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.
(Authority: 38 U.S.C. 3034, 3473; Pub. L. 98-525)
(c) Flight training. (1) VA may pay educational assistance for an enrollment in a flight training course --
(i) When an institution of higher learning offers the course for credit toward the standard college degree the veteran or servicemember is pursuing; or
(ii) When --
(A) A flight school is offering the course,
(B) The State approving agency and the Federal Aviation Administration have approved the course,
(C) The course of flight training is generally accepted as necessary to attain a recognized vocational objective in the field of aviation which the veteran or servicemember is pursuing, and
(D) The training for which payment is made occurred after September 29, 1990.
(2) VA will not pay educational assistance for an enrollment in a flight training course which the veteran or servicemember is pursuing as ancillary training for a vocation other than aviation.

(d) Independent study. (1) Except as provided in paragraph (d)(2) of this section, effective October 29, 1992, VA may pay educational assistance to a veteran or servicemember who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if --
   (i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran or servicemember to complete his or her program of education,
   (ii) On October 29, 1992, the veteran or servicemember was receiving educational assistance for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and
   (iii) The veteran or servicemember has remained continuously enrolled in the program of education of which the nonaccredited independent study course or unit subject forms a part from October 29, 1992, to the date of enrollment by the veteran or servicemember in the nonaccredited independent study course or unit subject.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, VA may pay educational assistance to a veteran or servicemember for enrollment in a course or unit subject offered by independent study which, though part of an approved program of education, is not required in order for the veteran or servicemember to complete the program of education (i.e., an elective) when --
   (i) The veteran or servicemember was enrolled in and receiving educational assistance for the course or unit subject on October 29, 1992, and
   (ii) The veteran or servicemember remains continuously enrolled in the course or unit subject.

(3) Whether or not the veteran or servicemember is enrolled will be determined by the regularly prescribed standards and practices of the educational institution offering the course or unit subject.

(Authority: 38 U.S.C. 3014, 3034, 3076, 3680A(a); sec. 313(b), Pub. L. 102-568, 106 Stat. 4333)

(b) Courses outside a program of education. VA will not pay educational assistance for an enrollment in any course which is not part of a veteran's or servicemember's program of education unless the veteran or servicemember is enrolled in refresher courses (including courses which will permit the veteran or servicemember to update knowledge and skills or be instructed in the technological advances which have occurred in the veteran's or servicemember's field of employment), deficiency courses, or other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education.


(c) Erroneous, deceptive, misleading practices. VA will not pay educational assistance for an enrollment in any course offered by an educational institution which uses advertising, sales or enrollment practices which are erroneous, deceptive or misleading by actual statement, omission or intimation. VA will apply the provisions of § 21.4252(h) of this part in making these decisions with regard to enrollments under 38 U.S.C. chapter 30 as it does in making similar decisions with regard to enrollments under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3034, 3696; Pub. L. 98-525)

(d) Restrictions on enrollment: percentage of students receiving financial support. Except as otherwise provided VA shall not approve an enrollment in any course for a veteran or servicemember, not already enrolled for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by VA pursuant to title 38, United States Code. This restriction may be waived in whole or in part. In determining which courses to apply this restriction to and whether to waive this restriction, VA will apply the provisions of § 21.4201 of this part to enrollments under 38 U.S.C. chapter 30 in the same manner as it does to enrollments under 38 U.S.C. chapter 34.

(Authority: 38 U.S.C. 3034, 3473(d); Pub. L. 98-525)

(e) Other courses. VA shall not pay educational assistance for --

(1) An enrollment in an audited course (see § 21.4252(i));

(2) An enrollment in a course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (see § 21.4252(j));

(3) New enrollments in a course where approval has been suspended by a State approving agency;

(4) An enrollment in certain courses being pursued by nonmatriculated students as provided in § 21.4252(l);

(5) Except as provided in § 21.4252(j), an enrollment in a course from which the veteran or servicemember withdrew without mitigating circumstances;

(6) An enrollment in a course offered by a proprietary school when the veteran or servicemember is an official of the school authorized to sign certificates of enrollment or monthly certificates of attendance or monthly certifications of pursuit, an owner of the school, or an operator of the school;

(7) Except as provided in § 21.7120(d), an enrollment in a nonaccredited independent study course; or

(8) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680A(g))
§ 21.7124 Overcharges.
VA may disapprove an educational institution for further enrollments, when the educational institution charges or receives from a veteran or servicemember tuition and fees that exceed the established charges which the educational institution requires from similarly circumstanced nonveterans enrolled in the same course.
(Authority: 38 U.S.C. 3034, 3690; Pub. L. 98-525)
PAYMENTS-EDUCATIONAL ASSISTANCE

§ 21.7130 Educational assistance.
§ 21.7131 Commencing dates.
§ 21.7133 Suspension or discontinuance of payments.
§ 21.7135 Discontinuance dates.
§ 21.7136 Rates of payment of basic educational assistance.
§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. chapter 34.
§ 21.7138 Rates of supplemental educational assistance.
§ 21.7139 Conditions which result in reduced rates or no payment.
§ 21.7140 Certifications and release of payments.
§ 21.7141 Tutorial assistance.
§ 21.7142 Accelerated payments.
§ 21.7143 Nonduplication of educational assistance.
§ 21.7144 Overpayments.

§ 21.7130 Educational assistance.
VA will pay educational assistance to an eligible veteran or servicemember while he or she is pursuing approved courses in a program of education at the rates specified in §§ 21.7136, 21.7137 and 21.7139 of this part.
(Authority: 38 U.S.C. 3015, 3022, 3032; Pub. L. 98-525)

§ 21.7131 Commencing dates.
VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.
(a) Entrance or reentrance including change of program or educational institution. When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:
(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:
(i) The date the educational institution certifies under paragraph (b) or (c) of this section;
(ii) One year before the date of claim as determined by § 21.1029(b);
(iii) The effective date of the approval of the course;
(iv) One year before the date VA receives approval notice for the course; or
(v) November 1, 2000, if paragraph (p) of this section applies to the individual.
(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of --
(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or
or
(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.
(Authority: 38 U.S.C. 3014, 3023, 3034, 3672)
(b) Certification by school -- the course or subject leads to a standard college degree. (1) When the student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.
(2) When a student enrolls in a resident course or subject, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter or semester in which the student is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.
(3) When the student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course or subject.
(4) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that --
(i) The published standards of the school require the student to register before reporting, and
(ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered.
(5) When the student enrolls in a resident course or subject and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.
(Authority: 38 U.S.C. 3014, 3023; Pub. L. 98-525)
(c) Certification by educational institution or training establishment -- course does not lead to a standard college degree. (1) When a veteran or servicemember enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.
(2) When a veteran or servicemember enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of --
(i) The date the first lesson was sent, or
(ii) The date of affirmance.
(3) When a veteran enrolls in a program of apprenticeship or other on-the-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.
(d) Individual is eligible due to combining active duty as an enlisted member or warrant officer with active duty as a commissioned officer. If a veteran served in the Armed Forces both as an enlisted member or warrant officer and as a commissioned officer, and that service was such that he or she is eligible only through application of §
21.7020(b)(6)(v), the commencing date of the award of educational assistance will be no earlier than November 30, 1999.
(Authority: Sec. 702(c), Pub. L. 106-117, 113 Stat. 1583).
(e) Increase for a dependent. A veteran who was eligible for educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989, is entitled to additional educational assistance for dependents. No other veteran or servicemember is eligible for additional educational assistance. The effective date for the additional educational assistance is determined as follows.
(1) The veteran may acquire one or more dependents before he or she enters or reenters a program of education. When this occurs, the following rules apply.
   (i) The effective date of the increase will be the date of entrance or reentrance if --
      (A) VA receives the claim for the increase within 1 year of the date of entrance or reentrance, and
      (B) VA receives necessary evidence within 1 year of its request, or the veteran shows that good cause exists for VA's not receiving the necessary evidence within 1 year of its request. See § 21.7032.
   (ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if --
      (A) VA receives the claim for the increase more than 1 year after the date of entrance or reentrance, and
      (B) VA receives notice of the dependent's existence if evidence is received either within 1 year of VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.
   (iii) The effective date will be the date VA receives all necessary evidence, if that evidence is received more than 1 year from the date VA requests it, unless the veteran is able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.
(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:
   (i) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.
   (ii) Date notice is received of the dependent's existence if evidence is received either within 1 year of the VA request, or the veteran shows that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.
   (iii) The date VA receives evidence if this date is more than 1 year after the VA request, and the veteran is not able to show that there is good cause to extend the one-year time limit to the date on which VA received notice of the dependent's existence.
(Authority: 38 U.S.C. 5110(n))
(See § 3.667 of this chapter as to effective dates with regard to children age 18 and older who are attending school)
(f) Liberalizing laws and VA issues. When a liberalizing law or VA issue affects the commencing date of a veteran's or servicemember's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.
(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)

(g) Correction of military records (§ 21.7050(b)). The eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases the commencing date of educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 3031(b); Pub. L. 98-525)

(h) Individuals in a penal institution. If a veteran or servicemember is paid a reduced rate of educational assistance under § 21.7139 (c), (d), (e), (f) and (g) of this part, the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or
(2) The date of the release from the prison or jail.

(Authority: 38 U.S.C. 3034, 3482(g); Pub. L. 98-525)

(i) Commitment to service in the Selected Reserve. If a veteran has established eligibility to educational assistance through two years' active duty service, and he or she establishes entitlement to an increased monthly rate through commitment to serve four years in the Selected Reserve, the effective date of the increase is the date on which he or she --

(1) Is committed to serve four years in the Selective Reserve, and
(2) Is attached to a unit of the Selected Reserve.

(Authority: 38 U.S.C. 3012; Pub. L. 98-525)

(j) Increase due a servicemember due to monetary contributions. (1) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the term, quarter, or semester following the term, quarter, or semester in which the servicemember made the contribution(s).

(2) If a servicemember is contributing additional amounts as provided in § 21.7136(h), and is enrolled in an educational institution not operated on a term, quarter, or semester basis, the monthly rate payable to the servicemember will increase on the first day of the enrollment period following the enrollment period in which the servicemember made the contribution.

(Authority: 38 U.S.C. 3011(e), 3012(f))

(k) Increase ("kicker") due to service in the Selected Reserve. If a veteran is entitled to an increase ("kicker") in the monthly rate of basic educational assistance because he or she has met the requirements of § 21.7136(g) or § 21.7137(e), the effective date of that increase ("kicker") will be the latest of the following dates:

(1) The commencing date of the veteran's award as determined by paragraphs (a) through (j) of this section;
(2) The first date on which the veteran is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned; or
(3) February 10, 1996.

(Authority: 10 U.S.C. 16131)

(l) Eligibility established under § 21.7042 (a)(7) or (b)(10). This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under either § 21.7042 (a)(7) or (b)(10). The
commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:
(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;
(2) The date of election provided that --
   (i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7042(g)(4) and the full $1,200 was collected through that pay reduction;
   (ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7042(g)(4), and received from the veteran any other evidence necessary to establish a valid election; or
   (iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.
(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met; or
(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met.
(m) Eligibility established under 21.7045(d). This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(d). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:
(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;
(2) The date of election provided that --
   (i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7045(d)(3) and the full $1,200 was collected through that pay reduction;
   (ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7045(d)(3), and received from the veteran any other evidence necessary to establish a valid election; or
   (iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.
(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met; or
(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met.
(Authority: 38 U.S.C. 3018C(a), (b), 5113)
(n) Eligibility established under § 21.7045(c). The effective date of an award of
educational assistance when the veteran has established eligibility under § 21.7045(c) is
as follows:
(1) If the veteran is not entitled to receive educational assistance under 38 U.S.C. ch. 32
on the date he or she made a valid election to receive educational assistance under 38
U.S.C. ch. 30, the effective date of the award of educational assistance will be the latest
of the following:
   (i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j)
of this section; or
   (ii) October 23, 1992, provided that VA received the $1,200 required to be collected
       pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that the
       election is valid before the later of:
       (A) October 23, 1993; or
       (B) One year from the date VA requested the $1,200 or the evidence necessary to
           establish a valid election; or
   (iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2)
       and all other evidence needed to establish that the election is valid, if the provisions of
       paragraph (n)(1)(ii) of this section are not met.
(2) If the veteran is entitled to receive educational assistance under 38 U.S.C. ch. 32 on
the date he or she made a valid election to receive educational assistance under 38 U.S.C.
ch. 30, the effective date of the award of educational assistance will be the latest of the
following:
   (i) The commencing date as determined by paragraphs (a) through (c) and (f) through (j)
of this section; or
   (ii) The date on which the veteran made a valid election to receive educational assistance
       under 38 U.S.C. chapter 30 provided that VA received the $1,200 required to be
       collected pursuant to § 21.7045(c)(2) and any other evidence necessary to establish that
       the election is valid before the later of:
       (A) One year from the date VA received the valid election; or
       (B) One year from the date VA requested the $1,200 or the evidence necessary to
           establish a valid election; or
   (iii) The date VA received the $1,200 required to be collected pursuant to § 21.7045(c)(2)
       and all other evidence needed to establish that the election is valid, if the provisions of
       paragraph (n)(2)(ii) of this section are not met.
(Authority: 38 U.S.C. 3018B)
(o) Eligibility established under § 21.7045(e). This paragraph must be used to establish
the effective date of an award of educational assistance when the veteran or
servicemember has established eligibility under § 21.7045(e). The commencing date of
an award of educational assistance for such a veteran or servicemember is the later of the
following:
(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (k)
of this section; or
(2) The date on which --
   (i) The servicemember's basic pay is reduced by $2,700;
   (ii) The Secretary of the military department concerned collected the difference between
       $2,700 and the amount by which the military department concerned reduced the
veteran's basic pay following the veteran's election under § 21.7045(e), provided that this
collection was accomplished through a method other than reducing the veteran's retired
or retainer pay; or
(iii) The Secretary of the military department concerned first reduced the veteran's retired
or retainer pay in order to collect the difference between $2,700 and the amount by
which the military department concerned reduced the veteran's basic pay following the
election under § 21.7045(e).
(Authority: 38 U.S.C. 3018C(e))
(p) Eligibility established due to changes to §§ 21.7042 and 21.7044. The commencing
date of educational assistance will be no earlier than November 1, 2000, if a veteran
would have been prevented from establishing eligibility by one or more of the former
requirements described in paragraphs (p)(1) through (p)(4) of this section and the veteran
is enabled to establish eligibility due to the removal of the statutory bases for those
requirements. (For the purposes of this paragraph, the applicable provisions of those
former requirements appear in the July 1, 2002 revision of the Code of Federal
Regulations, title 38.)
(1) A period of active duty other than the initial period was used to establish eligibility.
The veteran was enabled to establish eligibility by the removal of the former eligibility
requirement in 38 CFR 21.7042(a)(2)(ii), 21.7042(a)(5)(iv)(A), and
21.7042(a)(5)(iv)(B), revised as of July 1, 2002, that a veteran had to use his or her initial
period of active duty to establish eligibility for educational assistance.
(Authority: Sec. 102(e), Pub. L. 106-419, 114 Stat. 1825)
(2) High school education eligibility criterion met after the qualifying period of active
duty. The veteran was enabled to establish eligibility by the removal of the former
revised as of July 1, 2002, that before completing the period of active duty used to
establish eligibility for educational assistance, a veteran had to complete the requirements
for a secondary school diploma (or an equivalency certificate) or successfully complete
(or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a
program of education leading to a standard college degree.
(Authority: Sec. 103(e), Pub. L. 106-419, 114 Stat. 1826-27)
(3) High school education eligibility criterion met after October 29, 1994. The veteran
was enabled to establish eligibility by the removal of the former eligibility requirement in
38 CFR 21.7042(a)(6), 21.7042(b)(11), and 21.7044(b)(13), revised as of July 1, 2002,
that certain veterans meet the requirements for a secondary school diploma (or an
equivalency certificate) before October 29, 1994, in order to establish eligibility for
educational assistance.
(Authority: Sec. 103(e), Pub. L. 106-419, 114 Stat. 1826-27)
(4) High school education eligibility criterion for veterans formerly eligible under 38
U.S.C. chapter 34 met after January 1, 1990. The veteran was enabled to establish
eligibility by the removal of the former eligibility requirement in 38 CFR 21.7044(a)(3)
and 21.7044(b)(3), revised as of July 1, 2002, that, as one of the two ways that certain
veterans could meet the educational criteria for establishing eligibility, the veteran must
before January 1, 1990, meet the requirements for a secondary school diploma (or
equivalency certificate).
(Authority: Sec. 103(e), Pub. L. 106-419, 114 Stat. 1826-27)
(The Office of Management and Budget has approved information collection requirements in this section under control number 2900-0607.)

(q) Fugitive felons. (1) An award of educational assistance allowance to an otherwise eligible veteran may begin effective the date the warrant for the arrest of the felon is cleared by--
   (i) Arrest;
   (ii) Surrendering to the issuing authority;
   (iii) Dismissal; or
   (iv) Court documents (dated after the warrant) showing the veteran is no longer a fugitive.

   (2) An award of educational assistance allowance to a dependent who is otherwise eligible to transferred entitlement may begin effective the date the warrant is cleared by--
   (i) Arrest;
   (ii) Surrendering to the issuing authority;
   (iii) Dismissal; or
   (iv) Court documents (dated after the warrant) showing the individual is no longer a fugitive.

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


   [EFFECTIVE DATE NOTE: 68 FR 34326, 34331, June 9, 2003, amended this section, effective June 9, 2003.]

   § 21.7133 Suspension or discontinuance of payments.
   VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.
   (Authority: 38 U.S.C. 3034, 3690)

   [53 FR 1757, Jan. 22, 1988; 63 FR 35830, 35837, July 1, 1998]

   [EFFECTIVE DATE NOTE: 63 FR 35830, 35837, July 1, 1998, revised this section, effective July 31, 1998.]

   § 21.7135 Discontinuance dates.
   The effective date of reduction or discontinuance of educational assistance will be as stated in this section. Reference to reduction of educational assistance due to the loss of a dependent only applies to veterans who were eligible to receive educational assistance allowance under 38 U.S.C. chapter 34 on December 31, 1989. No other veteran or servicemember will have his or her educational assistance reduced due to a loss of a dependent. If more than one type of reduction or discontinuance is involved, the earliest date will control.
(a) Death of veteran or servicemember. (1) If the veteran or servicemember receives an
advance payment pursuant to 38 U.S.C. 3680(d) and dies before the period covered by
the advance payment ends, the discontinuance date of educational assistance shall be the
last date of the period covered by the advance payment.
(2) In all other cases if the veteran or servicemember dies while pursuing a program of
education, the discontinuance date of educational assistance shall be the last date of
attendance.
(Authority: 38 U.S.C. 3014, 3023, 3680)
(b) Death of dependent. When a veteran's dependent dies, and the veteran has been
receiving additional educational assistance based on the dependent, the effective date of
reduction of the veteran's educational assistance shall be the last day of the month in
which the death occurs.
(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)
(c) Divorce. If the veteran becomes divorced, the effective date of reduction of his or her
educational assistance is the last day of the month in which the divorce occurs.
(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)
(d) Dependent child. If the veteran's award of educational assistance must be reduced
because his or her dependent child ceases to be dependent, the effective date of reduction
will be as follows.
(1) If the veteran's child marries, the effective date of reduction will be the last day of the
month in which the marriage occurs.
(2) If the veteran's child reaches age 18, the effective date of reduction will be the day
preceding the dependent child's 18th birthday.
(3) If the veteran is receiving additional educational assistance based on a child's school
attendance between the child's 18th and 23rd birthdays, the effective date of reduction of
the veteran's educational assistance will be the last day of the month in which the
dependent child stops attending school, or the day before the dependent child's 23rd
birthday, whichever is earlier.
(4) If the veteran is receiving additional educational assistance because his or her child is
helpless, the effective date of reduction will be the last day of the month following 60
days after VA notifies the veteran that his dependent child's helplessness has ceased.
(Authority: 38 U.S.C. 5112(b) 5113; Pub. L. 98-525)
(e) Course discontinued; course interrupted; course terminated; course not satisfactorily
completed or withdrawn from. (1) If the veteran or servicemember, for reasons other than
being called or ordered to active duty, withdraws from all courses or receives all
nonpunitive grades, and in either case there are no mitigating circumstances, VA will
terminate or reduce educational assistance effective the first date of the term in which the
withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.
(2) If the veteran or servicemember withdraws from all courses with mitigating
circumstances or withdraws from all courses such that a punitive grade is or will be
assigned for those courses or the veteran withdraws from all courses because he or she is
ordered to active duty, VA will terminate educational assistance for --
(i) Residence training: last date of attendance; and
(ii) Independent study: official date of change in status under the practices of the
educational institution.
(3) When a veteran or servicemember withdraws from a correspondence course, VA will terminate educational assistance effective the date the last lesson is serviced.

(4) When a veteran or servicemember withdraws from an apprenticeship or other on-the-job training, VA will terminate educational assistance effective the date of last training.


(5) When a veteran or servicemember withdraws from a flight course, VA will terminate educational assistance effective the date of last instruction.

(Authority: 38 U.S.C. 3034(f))

(f) Reduction in the rate of pursuit of the course. If the veteran or servicemember reduces the rate of training by withdrawing from part of a course, but continues training in part of the course, the provisions of this paragraph apply.

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the veteran's or servicemember's educational assistance effective the date on which the withdrawal occurs when either:

(i) A nonpunitive grade is assigned for the part of the course from which he or she withdraws; and

(A) The veteran or servicemember withdraws because he or she is ordered to active duty; or

(B) The withdrawal occurs with mitigating circumstances; or

(ii) A punitive grade is assigned for the part of the course from which the reservist withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when --

(i) The reduction occurs on the first date of the term; or

(ii) The veteran or servicemember --

(A) Receives a nonpunitive grade for the part of the course from which he or she withdraws; and

(B) Withdraws without mitigating circumstances; and

(C) Does not withdraw because he or she is ordered to active duty.

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

(3) A veteran or servicemember, who enrolls in several subjects and reduces his or her rate of pursuits by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7140(d) are met. If those requirements are not met, VA will reduce the individual's educational assistance effective the date the subject or subjects were completed.

(Authority: 38 U.S.C. 3034, 3680(a), 5113(b))

(g) End of course or period of enrollment. If a veteran's or servicemember's course or period of enrollment ends, the effective date of reduction or discontinuance of his or her award of educational assistance will be the ending date of the course or period of enrollment as certified by the educational institution.

(Authority: 38 U.S.C. 3034(b), 3680; Pub. L. 98-525)

(h) Nonpunitive grade. (1) If the veteran or servicemember does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies, when no mitigating circumstances are found.
(2) If an individual does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, VA will reduce his or her educational assistance effective the last date of attendance when mitigating circumstances are found.

(3) If an individual receives a nonpunitive grade through nonattendance in a particular course, VA will reduce the individual's educational assistance effective the last date of attendance when mitigating circumstances are found.

(4) If an individual receives a nonpunitive grade through nonattendance in a particular course, VA will reduce the individual's educational assistance effective the first date of enrollment in which the grade applies, when no mitigating circumstances are found.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98-525)

(i) Discontinued by VA. If VA discontinues payment to a veteran or servicemember following the procedures stated in § 21.4211(d) and (g), the date of discontinuance of payment of educational assistance will be --

(1) Date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance was preceded by such a suspension.

(2) End of the month in which the decision to discontinue, made by VA under § 21.7133 or § 21.4211(d) and (g), is effective, if the Director of a VA facility did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034, 3680; Pub. L. 98-525)

(j) Disapproval by State approving agency. If a State approving agency disapproves a course in which a veteran or servicemember is enrolled, the date of discontinuance of payment of educational assistance will be --

(1) Date on which payments first were suspended by the director of a VA facility as provided in § 21.4210, if disapproval was preceded by such a suspension.

(2) End of the month in which disapproval is effective or VA receives notice of the disapproval, whichever is later, provided that the Director of a VA facility did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034, 3672(a), 3690; Pub. L. 98-525)

(k) Disapproval by VA. If VA disapproves a course in which a veteran or servicemember is enrolled, the effective date of discontinuance of payment of educational assistance will be --

(1) The date on which the Director of a VA facility first suspended payments, as provided in § 21.4210, if such a suspension preceded the disapproval.

(2) The end of the month in which the disapproval occurred, provided that the Director of a VA facility did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034, 3671(b), 3672(a), 3690; Pub. L. 98-525)

(l) Unsatisfactory progress, conduct or attendance. If a veteran's or servicemember's progress, conduct or attendance is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

(1) The date the educational institution discontinues the veteran's or servicemember's enrollment, or

(2) The date on which the veteran's or servicemember's progress, conduct or attendance becomes unsatisfactory according to the educational institution's regularly established standards of progress, conduct or attendance.

(Authority: 38 U.S.C. 3034, 3474)
(m) Required certifications not received after certification of enrollment. If VA does not timely receive the veteran's or servicemember's certification of attendance or does not timely receive the educational institution's endorsement of the certification or the educational institution's certification of attendance or pursuit, VA will assume that the veteran or servicemember has withdrawn. VA will apply the provisions of paragraph (e) of this section. VA considers the receipt of a certificate of attendance to be timely if it is received within 60 days of the last day of the month for which attendance is to be certified.

(Authority: 38 U.S.C. 3034(b); Pub. L. 98-525)

(n) False or misleading statements. If educational assistance is paid as the result of false or misleading statements, see § 21.7158:

(Authority: 38 U.S.C. 3034, 3690; Pub. L. 98-525)

(o) Conflicting interests (not waived). If an educational institution and VA have conflicting interests as provided in § 21.4005 and § 21.7305, and VA does not grant the veteran a waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the veteran.


(p) Incarceration in prison or penal institution for conviction of a felony. (1) The provisions of this paragraph apply to a veteran or servicemember whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7139 (c), (d), (e), (f), or (g).

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the veteran's or servicemember's tuition and fees were paid by a Federal, State or local program.

(ii) The date the veteran or servicemember is incarcerated in prison or penal institution,

(iii) The comencing date of the award as determined by § 21.7131.

(Authority: 38 U.S.C. 3034, 3482(g); Pub. L. 98-525)

(q) Active duty. If a veteran reenters on active duty, the effective date of reduction of his or her award of educational assistance shall be the day before the veteran's entrance on active duty. (This reduction does not apply to brief periods of active duty for training if the educational institution permits absence for active duty for training without considering the veteran's pursuit of a program of education to be interrupted).

(Authority: 38 U.S.C. 3032)

(r) Record-purpose charge against entitlement under 38 U.S.C. chapter 34 equals entitlement that remained on December 31, 1989. A veteran who is receiving basic educational assistance at the rates stated in § 21.7137(a), will have his or her award reduced to the rates found in § 21.7136(a) effective the date the total of the veteran's record-purpose charges against his or her entitlement under 38 U.S.C. chapter 34 equals the entitlement to that benefit which the veteran had on December 31, 1989.

(Authority: 38 U.S.C. 3015(c); Pub. L. 98-525)

(s) Exhaustion of entitlement under 38 U.S.C. chapter 30. (1) If an individual who is enrolled in an educational institution regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30, the discontinuance date shall be the last day of the quarter or semester in which entitlement is exhausted.
(2) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30 after more than half of the course is completed, the discontinuance date shall be the earlier of the following:
(i) The last day of the course, or
(ii) 12 weeks from the day the entitlement is exhausted.
(3) If an individual who is enrolled in an educational institution not regularly operated on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 30 before completing the major portion of the course, the discontinuance date will be the date the entitlement is exhausted.
(Authority: 38 U.S.C. 3031(e); Pub. L. 98-525)
(t) Eligibility expires. If the veteran is pursuing a course on the date of expiration of eligibility as determined under § 21.7050 or § 21.7051 VA will discontinue educational assistance effective the day preceding the end of the eligibility period.
(Authority: 38 U.S.C. 3034(a); Pub. L. 98-525)
(u) Veteran fails to participate satisfactorily in the Selected Reserve. If a veteran is attempting to establish eligibility through service on active duty combined with service in the Selected Reserve, and he or she fails to participate satisfactorily in the Selected Reserve before completing the required service in the Selected Reserve, the effective date of reduction of the award of educational assistance will be the date the Secretary determines that he or she failed to participate satisfactorily.
(Authority: 38 U.S.C. 3012; Pub. L. 98-525)
(v) Error-payee's or administrative. (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational assistance, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later, but not before the date on which the award would have ended had the act not occurred.
(2) When VA, the Department of Defense, or the Department of Transportation makes an administrative error or an error in judgment that is the sole cause of an erroneous award, VA must reduce or terminate the award effective the date of last payment.
(Authority: 38 U.S.C. 5112(b), 5113)
(w) Forfeiture for fraud. If a veteran's or servicemember's educational assistance must be forfeited due to fraud, the effective date of discontinuance shall be the later of --
(1) The effective date of the award, or
(2) The day before the date of the fraudulent act.
(Authority: 38 U.S.C. 6103; Pub. L. 98-525)
(x) Forfeiture for treasonable acts or subversive activities. If a veteran's or servicemember's educational assistance must be forfeited due to treasonable acts or subversive activities, the effective date of discontinuance shall be the later of --
(1) The effective date of the award, or
(2) The date before the date the veteran or servicemember committed the treasonable act or subversive activities for which he or she was convicted.
(Authority: 38 U.S.C. 5112, 5113; Pub. L. 98-525)
(y) Change in law or VA issue or interpretation. If there is a change in applicable law or VA issue, or in the Department of Veterans Affairs's application of the law or VA issue,
VA will use the provisions of § 3.114(b) of this chapter to determine the date of discontinuance of the veteran's or servicemember's educational assistance. (Authority: 38 U.S.C. 5112, 5113, Pub. L. 98-525)

(z) Independent study course loses accreditation. Except as otherwise provided in § 21.7120(d), if the veteran or servicemember is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency. (Authority: 38 U.S.C. 3014, 3034, 3676, 3680A(a))

(aa) Fugitive felons. (1) VA will not award educational assistance allowance to an otherwise eligible veteran for any period after December 26, 2001, during which the veteran is a fugitive felon. The date of discontinuance of an award of educational assistance allowance to a veteran who is a fugitive felon is the later of--

(i) The date of the warrant for the arrest of the felon; or

(2) VA will not award educational assistance allowance to a dependent who is otherwise eligible to transferred entitlement if the dependent is a fugitive felon or if the veteran who transferred the entitlement is a fugitive felon. The date of discontinuance of an award of educational assistance allowance to a dependent is the later of--

(i) The date of the warrant; or

(bb) Reduction following loss of increase ("kicker") for Selected Reserve service. If a veteran is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in § 21.7136(g) or § 21.7137(e), due to service in the Selected Reserve, and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the veteran is no longer entitled to the increase ("kicker"). (Authority: 10 U.S.C. 16131)

(cc) Except as otherwise provided. If a veteran's or servicemember's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, VA will determine the date of discontinuance of educational assistance on the basis of facts found. (Authority: 38 U.S.C. 5112(a), 5113; Pub. L. 98-525)

§ 21.7136 Rates of payment of basic educational assistance.

ccxxxiviiDiscussion and Analysis in the Veterans Benefits Manual

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The monthly rate of educational assistance payable to a veteran or servicemember depends in part upon the service requirements he or she met to establish eligibility for that educational assistance.

(a) Service requirements for higher rates. The monthly rate of basic educational assistance payable to a veteran or servicemember shall be the rate stated in paragraph (b) of this section when --

(1) The veteran has established eligibility for educational assistance under § 21.7045; or
(2) The veteran has established eligibility under § 21.7042, and one of the following sets of circumstances exist.

(i) The veteran's qualifying obligated period of active duty is at least three years; or
(ii) The veteran's qualifying obligated period of active duty is at least two years and less than three years and either the veteran has served or is committed to serve in the Selected Reserve for a period of at least four years, or the veteran was committed to serve in the Selected Reserve for a period of at least four years but failed to complete four years service for one of the reasons stated in § 21.7042(b)(7)(i) or (iii); or
(iii) The veteran's qualifying obligated period of active duty is at least two years and less than three years and --

(A) The basic educational assistance is payable for training received after August 31, 1993;
(B) The veteran's continuous active duty service beginning on the date of the commencement of his or her qualifying obligated period of active duty is at least three years and upon completion of that continuous period of active duty the veteran either --
(1) Continues on active duty; or
(2) Is discharged from active duty with an honorable discharge; or
(3) Is released after service on active duty characterized by the Secretary concerned as honorable service and is placed on the retired list, transferred to the Fleet Reserve or the Fleet Marine Corps Reserve, placed on the temporary disability retired list; or
(4) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(Authority: 38 U.S.C. 3015(a))

(b) Rates. (1) Except as elsewhere provided in this section or in Sec. 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 2004, to a veteran whose service is described in paragraph (a) of this section, is the rate stated in the following table:

<table>
<thead>
<tr>
<th>Training</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full time</td>
<td>$1004.00</td>
</tr>
<tr>
<td>3/4 time</td>
<td>753.00</td>
</tr>
<tr>
<td>1/2 time</td>
<td>502.00</td>
</tr>
<tr>
<td>Less than 1/2 time but more than 1/4 time</td>
<td>502.00</td>
</tr>
<tr>
<td>1/4 time</td>
<td>251.00</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3015)

(2) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of apprenticeship or
other on-the-job training that occurs after September 30, 2004, is the rate stated in the following table:

<table>
<thead>
<tr>
<th>Training period</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>First six months of training</td>
<td>$ 753.00</td>
</tr>
<tr>
<td>Second six months of training</td>
<td>552.20</td>
</tr>
<tr>
<td>Remaining pursuit of training</td>
<td>351.40</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3015, 3032(c).)

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is $1004.00 for training that occurs after September 30, 2004. (Authority: 38 U.S.C. 3015)

(c) Rates for some veterans whose qualifying obligated period of active duty is less than three years. If a veteran has established eligibility under § 21.7042, but the veteran's service is not described in paragraph (a)(2) of this section, the monthly rate of educational assistance payable to the veteran will be determined by this paragraph.

(1) Except as elsewhere provided in this section or in Sec. 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 2004 is the rate stated in the following table:

<table>
<thead>
<tr>
<th>Training</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full time</td>
<td>$ 816.00</td>
</tr>
<tr>
<td>3/4 time</td>
<td>612.50</td>
</tr>
<tr>
<td>1/2 time</td>
<td>408.00</td>
</tr>
<tr>
<td>Less than 1/2 but more than 1/4 time</td>
<td>408.00</td>
</tr>
<tr>
<td>1/4 time or less</td>
<td>204.50</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3015)

(2) The monthly rate of basic educational assistance payable to a veteran for pursuit of apprenticeship or other on-the-job training that occurs after September 30, 2004 is the rate stated in the following table:

<table>
<thead>
<tr>
<th>Training</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>First six months of training</td>
<td>$ 612.00</td>
</tr>
<tr>
<td>Second six months of training</td>
<td>448.80</td>
</tr>
<tr>
<td>Remaining pursuit of training</td>
<td>285.60</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3015, 3032(c).)

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is $816.00 for training that occurs after September 30, 2004. (Authority: 38 U.S.C. 3015)

(d) Increase in basic educational assistance rates ("kicker"). The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but (except as provided in paragraphs (f) and (g) of this section) --

(1) For individuals, other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training, it may not exceed:

(i) $ 400 per month for full-time training,
(ii) $300 per month for three-quarter-time training,
(iii) $200 per month for one-half-time training, or for training which is less than one-half, but more than one-quarter-time, or
(iv) $100 per month for one-quarter-time training or less.
(2) For individuals who first become members of the Armed Forces after November 28, 1989 (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training), it may not exceed:
(i) $700 per month for full-time training,
(ii) $525 per month for three-quarter-time training,
(iii) $350 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or
(iv) $175 per month for one-quarter-time training or less.
(3) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing an apprenticeship or other on-job training, it may not exceed --
(i) $300 per month during the first six months of training,
(ii) $220 per month during the second six months of training, and
(iii) $140 per month during the remaining months of training.
(4) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing an apprenticeship or other on-job training, it may not exceed --
(i) $525 per month during the first six months of training,
(ii) $385 per month during the second six months of training, and
(iii) $245 per month during the remaining months of training.
(5) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing cooperative training, it may not exceed $320 per month for training received before October 9, 1996.
(6) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing cooperative training, it may not exceed $560 per month for training received before October 9, 1996.
(Authority: Sec. 108(a)(2), Pub. L. 100-689, 102 Stat. 4170; Sec. 5(a), Pub. L. 102-83, 105 Stat. 406)
(e) Less than one-half-time training and rates for servicemembers. Except as provided in paragraph (g) or (h) of this section, the monthly rate for a veteran who is pursuing a course on a less than one-half-time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of:
(1) The monthly rate stated in either paragraph (b) or (c) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (d) or (e) of this section, or
(2) The monthly rate of the cost of the course.
(3) For individuals pursuing cooperative training, it may not exceed $320 per month.
(Authority: 38 U.S.C. 3015, 3032)
(f) Increase in basic educational assistance rates ("kicker") for those eligible under § 21.7045. A veteran who formerly was eligible to receive educational assistance under 38 U.S.C. ch. 32, and becomes eligible for educational assistance under 38 U.S.C. ch. 30 as

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described in § 21.7045(b)(1)(ii), (c)(1)(ii), or (e)(2) may receive an increase in basic educational assistance allowance (kicker). The increase will be determined as follows.

(1) The basis of the increase will be that portion of the amount of money --

(i) Which remains in the VEAP fund after the veteran has been paid all assistance due him or her under 38 U.S.C. ch. 32 and refunded all of his or her contributions to the VEAP fund, and --

(ii) Which represents the Secretary of Defense's additional contributions for the veteran as stated in § 21.5132(b)(3) of this part.

(2) For a student pursuing a program of education by residence training --

(i) VA will determine the monthly rate of the increase by dividing the amount of money described in paragraph (e)(1) of this section by the number of months of entitlement to educational assistance under 38 U.S.C. chapter 30 which the veteran has at the time his eligibility for benefits under 38 U.S.C. chapter 30 is first established;

(ii) VA will use the monthly rate of the increase determined in paragraph (e)(2)(i) of this section if the veteran is pursuing his or her program full time;

(iii) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .75 for a student pursuing his or her program three-quarter time;

(iv) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .5 for a student pursuing his or her program half time; and

(v) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .25 for a student pursuing his or her program less than one-half time.

(3) For a veteran pursuing cooperative training VA will multiply the rate determined by paragraph (e)(2)(i) of this section by .8 for training received before October 9, 1996.

(4) For a veteran pursuing a program of apprenticeship or other on-job training VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section

(i) By .75 for a veteran in the first six months of pursuit of training,

(ii) By .55 for a veteran in the second six months of pursuit of training, and

(iii) By .35 for a veteran in the remaining months of pursuit of training.

(Authority: 38 U.S.C. 3015(e))

(g) Increase ("kicker") in basic educational assistance rates payable for service in the Selected Reserve. (1) The Secretary of the military department concerned may increase the amount of basic educational assistance payable under paragraph (b), (c), (d), (e), or (f) of this section, as appropriate. The increase ("kicker") is payable to a veteran who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the veteran:

(i) Establishes eligibility for educational assistance under § 21.7042(a) or § 21.7045; and

(ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned --

(i) Will, for such an increase ("kicker"), set an amount of the increase ("kicker") for full-time training, but the increase ("kicker") may not exceed $350 per month; and

(ii) May set the amount of the increase ("kicker") payable, for a veteran pursuing a program of education less than full time or pursuing a program of apprenticeship or other on-job training, at an amount less than the amount described in paragraph (g)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(2))
(h) Increase in monthly rates due to contributions. Effective May 1, 2001, a
servicemember who establishes eligibility under § 21.7042(a), (b), or (c) may contribute
up to $ 600 to the Secretary of the military department concerned in multiples of $ 20.
(1) VA will increase the monthly rate provided in paragraph (b)(2) or (c)(2) of this
section by:
(i) $ 5 for every $ 20 an individual pursuing a program of education full time has
contributed;
(ii) $ 3.75 for every $ 20 an individual pursuing a program of education three-quarter
time has contributed;
(iii) $ 2.50 for every $ 20 an individual pursuing a program of education half time or less
than one-half time but more than one-quarter time has contributed; and
(iv) $ 1.25 for every $ 20 an individual pursuing a program of education one-quarter time
has contributed.
(2) If a veteran is pursuing an apprenticeship or other on-job training --
(i) During the first six months of the veteran's pursuit of training, VA will increase the
monthly rate provided in paragraph (b)(4) or (c)(4) of this section by $ 3.75 for every $ 20
the individual has contributed;
(ii) During the second six months of the veteran's pursuit of training, VA will increase the
monthly rate provided in paragraph (b)(4) or (c)(4) of this section by $ 2.75 for every $ 20
the veteran has contributed; and
(iii) During the remaining months of the veteran's pursuit of training, VA will increase
the monthly rate proved in paragraph (b)(4) or (c)(4) of this section by $ 1.75 for every $ 20
the veteran has contributed.
(3) VA will increase the monthly rate provided in paragraph (b)(5)(iii) or (c)(5)(iii) of
this section by $ 5 for every $ 20 the veteran has contributed.
(Authority: 38 U.S.C. 3015(g))

§ 21.7137 Rates of payment of basic educational assistance for individuals with
remaining entitlement under 38 U.S.C. chapter 34.
(a) Minimum rates. (1) Except as elsewhere provided in this section, the monthly rate
of basic educational assistance for training that occurs after September 30, 2004 is the
rate stated in the following table:

<table>
<thead>
<tr>
<th>Training</th>
<th>No</th>
<th>One</th>
<th>Two</th>
<th>Additional</th>
</tr>
</thead>
</table>

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(Authority: 38 U.S.C. 3015)

(2) For veterans pursuing apprenticeship or other on-the-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 2004 is the rate stated in the following table:

<table>
<thead>
<tr>
<th>Training period</th>
<th>No dependents</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional dependent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st six months of pursuit of program</td>
<td>$885.75</td>
<td>$868.13</td>
<td>$879.00</td>
<td>$5.25</td>
</tr>
<tr>
<td>2nd six months of pursuit of program</td>
<td>608.58</td>
<td>617.93</td>
<td>625.63</td>
<td>3.85</td>
</tr>
<tr>
<td>3rd six months of pursuit of program</td>
<td>375.20</td>
<td>381.33</td>
<td>386.05</td>
<td>2.45</td>
</tr>
<tr>
<td>Remaining pursuit of program</td>
<td>363.30</td>
<td>369.08</td>
<td>374.33</td>
<td>2.45</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3015)

(3) The monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course after September 30, 2004 is the rate stated in the following table:

<table>
<thead>
<tr>
<th>Training period</th>
<th>No dependents</th>
<th>One dependent</th>
<th>Two dependents</th>
<th>Additional dependent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full time</td>
<td>$1,192.00</td>
<td>$1,228.00</td>
<td>$1,259.00</td>
<td>$16.00</td>
</tr>
<tr>
<td>3/4 time</td>
<td>894.50</td>
<td>921.00</td>
<td>944.50</td>
<td>12.00</td>
</tr>
<tr>
<td>1/2 time</td>
<td>596.00</td>
<td>614.00</td>
<td>629.50</td>
<td>8.50</td>
</tr>
<tr>
<td>Less than 1/2 but more</td>
<td>596.00</td>
<td>596.00</td>
<td>596.00</td>
<td>0</td>
</tr>
<tr>
<td>than 1/4 time</td>
<td>298.00</td>
<td>298.00</td>
<td>298.00</td>
<td>0</td>
</tr>
</tbody>
</table>

(b) Less than one-half-time training. Except as provided in paragraphs (d) and (e) of this section, the monthly rate of basic educational assistance for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

(1) The monthly rate in paragraph (a)(1) of this section, or
(2) The monthly rate of the cost of the course.

(c) Rates for servicemembers. The monthly rate of basic educational assistance for a servicemember may not exceed the lesser of the following rates (except as provided in paragraph (d) of this section):

(1) The monthly pro-rated cost of the course.
(2) The following monthly rates for training that occurs after September 30, 2004--
(i) $1,192.00 for full-time training;
(ii) $894.50 for three-quarter-time training;
(iii) $596.00 for one-half-time training and training that is less than one-half-time training but more than one-quarter-time training; and
(iv) $298.00 for one-quarter-time training.
(Authority: 38 U.S.C. 3015)
(d) Increase in basic educational assistance rates ("kicker"). The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The increase may not be applied to a servicemember whose monthly rate is determined by paragraph (c)(1) of this section, but it can serve to raise the ceiling on monthly rates stated in paragraphs (b)(1) and (c)(2) of this section. The amount of the increase is set by the Secretary concerned, but --
(1) For individuals, other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training, it may not exceed:
(i) $ 400 per month for full-time training,
(ii) $ 300 per month for three-quarter-time training.
(iii) $ 200 per month for one-half-time training or for training which is less than one-half but more than one-quarter-time, or
(iv) $ 100 per month for one-quarter-time training or less.
(2) For individuals pursuing an apprenticeship or other on-job training it may not exceed --
(i) $ 300 per month for the first six months of training.
(ii) $ 220 per month for the second six months of training, and
(iii) $ 140 per month for the remaining months of training.
(Authority: 38 U.S.C. 3015, 3032)
(3) For individuals pursuing cooperative training, it may not exceed $ 320 per month for training received before October 9, 1996.
(e) Increase ("kicker") in basic educational assistance rates for service in the Selected Reserve. (1) The Secretary of the military department concerned may increase the amount of basic educational assistance payable under paragraph (a), (b), or (d) of this section, as appropriate. The increase ("kicker") is payable to a veteran who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the veteran:
(i) Establishes eligibility for educational assistance under § 21.7044(a); and
(ii) Meets the criteria of § 21.7540(a)(1) with respect to service in the Selected Reserve.
(2) The Secretary of the military department concerned --
(i) Will, for such an increase, set the amount of the increase ("kicker") payable for full-time training, but the increase ("kicker") may not exceed $ 350 per month;
(ii) May set the amount of the "kicker" payable, for a veteran pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (e)(2)(i) of this section.
(Authority: 10 U.S.C. 16131(i)(2))
(f) Concurrent benefits. VA may pay additional educational assistance to a veteran for a dependent concurrently with additional pension or compensation for the same dependent.
(Authority: 38 U.S.C. 3015(d), Pub. L. 98-525)
(g) Two veteran cases. VA may pay additional educational assistance to a veteran for a spouse who is also a veteran. This will not bar the payment of additional educational
assistance or subsistence allowance under § 21.260 of this part to the spouse for the veteran. If the veteran is paid additional educational assistance for a child, that will not bar payment of additional educational assistance or subsistence allowance under § 21.260 of this part to the spouse for the same child.

(Authority: 38 U.S.C. 3015(d); Pub. L. 98-525)


[EFFECTIVE DATE NOTE: 68 FR 34319, 34324, June 9, 2003, revised paragraphs (a) and (c)(2), effective June 9, 2003.]

§ 21.7138 Rates of supplemental educational assistance.

In addition to basic educational assistance, a veteran or servicemember who is eligible for supplemental educational assistance and entitled to it shall be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.7139 of this part.

(a) Rates for veterans. (1) Except for a veteran pursuing apprenticeship or other on-job training, the rate of supplemental educational assistance payable to a veteran is at least the rate stated in this table.

<table>
<thead>
<tr>
<th>Training</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full time</td>
<td>$300.</td>
</tr>
<tr>
<td>3/4 time</td>
<td>225.</td>
</tr>
<tr>
<td>1/2 time</td>
<td>150.</td>
</tr>
<tr>
<td>Less than 1/2 but more than 1/4 time</td>
<td>150 See paragraph (c).</td>
</tr>
<tr>
<td>1/4 time or less</td>
<td>75 See paragraph (c).</td>
</tr>
<tr>
<td>Cooperative</td>
<td>240.</td>
</tr>
</tbody>
</table>


(2) For a veteran pursuing apprenticeship or other on-job training the rate of supplemental educational assistance payable to a veteran is as provided in this table.

<table>
<thead>
<tr>
<th>Training period</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 6 months of pursuit of program</td>
<td>$225.00</td>
</tr>
<tr>
<td>Second 6 months of pursuit of program</td>
<td>165.00</td>
</tr>
<tr>
<td>Remaining pursuit of program</td>
<td>105.00</td>
</tr>
</tbody>
</table>

(Authority: 38 U.S.C. 3015(c), 3032(c); Pub. L. 99-576)

(b) Increase in supplemental educational assistance rates ("kicker"). The Secretary concerned may increase the amount of supplemental educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but --
(1) For an individual other than one pursuing an apprenticeship or other on-job training or cooperative training it may not exceed --
(Authority: 38 U.S.C. 3022(d)) (Jan. 1, 1989)
(i) $ 300 per month for full-time training.
(ii) $ 225 per month for three-quarter-time training,
(iii) $ 150 per month for one-half-time training and for training which is less than one-half-time, but more than one-quarter-time, or
(iv) $ 75 per month for one-quarter-time training or less.
(2) For an individual pursuing an apprenticeship or other on-job training it may not exceed --
(i) $ 225 per month for the first six months of training,
(ii) $ 165 per month for the second six months of training, and
(iii) $ 105 per month for the remaining months of training.
(Authority: 38 U.S.C. 3022(b), 3032(d)) (Jan. 1, 1989)
(3) For an individual pursuing cooperative training, it may not exceed $ 240 per month.
(Authority: 38 U.S.C. 3022(b), 3022(d)) (Jan. 1, 1989)
(c) Rates of supplemental educational assistance for less than one-half-time training and for servicemembers. The monthly rate of supplemental educational assistance payable to a veteran who is training less than half-time or to a servicemember is determined as follows:
(1) The monthly rate of the veteran's or servicemember's basic educational assistance is determined as provided in §§ 21.7136(d), and 21.7137 (b), (c) and (d) of this part.
(2) If the monthly rate of basic educational assistance equals or is greater than the monthly rate of the cost of the course, no supplemental educational assistance is payable.
(3) If the monthly rate of basic educational assistance is less than monthly rate of the cost of the course, the monthly rate of supplemental educational assistance is the lesser of --
(i) The monthly rate provided in paragraph (a) of this section, plus the monthly rate provided in paragraph (b) of this section, if appropriate, or
(ii) The difference between the monthly rate of the cost of the course and the monthly rate of the veteran's or servicemember's basic educational assistance.
(Authority: 38 U.S.C. 3022, 3032; Pub. L. 98-525)

§ 21.7139 Conditions which result in reduced rates or no payment.
The monthly rates established in §§ 21.7136, 21.7137 and 21.7138 shall be reduced as stated in this section whenever the circumstances described in this section arise.
(a) Withdrawals and nonpunitive grades. Withdrawal from a course or receipt of a nonpunitive grade affects payments to a veteran or servicemember. VA will not pay benefits to a veteran or servicemember for a course from which the veteran or servicemember withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless the provisions of this paragraph are met.
(1) The veteran withdraws because he or she is ordered to active duty; or
(2) All of the following exist:
(i) There are mitigating circumstances; and
(ii) The veteran or servicemember submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the veteran or servicemember that he or she must submit a description of the mitigating circumstances, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(iii) The veteran or servicemember submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran or servicemember is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances. (Authority: 38 U.S.C. 3034, 3580(a); Pub. L. 98-525, Pub. L. 102-127)(Aug. 1, 1990)

(b) No educational assistance for some incarcerated servicemembers. As with servicemembers who are not incarcerated, VA will not pay educational assistance to an incarcerated servicemember enrolled in a course for which there are no tuition and fees. Furthermore, VA will not pay educational assistance to a servicemember who --

(1) Is enrolled in a course where his or her tuition and fees are being paid for by a Federal program (other than one administered by VA) or by a State or local program, and

(2) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony, and has incurred no expenses for supplies, books or equipment. (Authority: 38 U.S.C. 3034, 3482(g))

(c) No educational assistance for some incarcerated veterans. The VA will pay no educational assistance to a veteran who --

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course --

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course. (Authority: 38 U.S.C. 3034, 3482(g))

(d) Reduced educational assistance for some incarcerated servicemembers.

(1) VA will pay reduced educational assistance to a servicemember who --

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for entirely or partly by a Federal program (other than one administered by VA) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(2) The monthly rate of educational assistance payable to a servicemember described in this paragraph shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the monthly rate of any charges to the servicemember for the cost of necessary supplies, books and equipment;
(ii) The monthly rate of the portion of the tuition and fees paid by the servicemember plus
the monthly rate of the portion of tuition and fees paid by the Federal, State or local
program; or
(iii) The monthly rate found in § 21.7136(d) or § 21.7137(c), as appropriate.
(Authority: 38 U.S.C. 3034, 3482(g))

(e) Reduced educational assistance for some incarcerated veterans. (1) VA will pay
reduced educational assistance to a veteran who --
(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony,
and
(ii) Is enrolled in a course for which the veteran pays some (but not all) of the charges for
tuition and fees, or for which a Federal program (other than one administered by VA) or a
State or local program pays all the charges for tuition and fees, but which requires the
veteran to pay for books, supplies and equipment.
(2) The monthly rate of educational assistance payable to such a veteran who is pursuing
the course on a one-half time or greater basis shall be the lesser of the following:
(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal
program (other than one administered by VA) or a State or local program plus the
monthly rate of the charge to the veteran for the cost of necessary supplies, books and
equipment, or
(ii) If the veteran has remaining entitlement under 38 U.S.C. chapter 34, monthly rate
stated in § 21.7137(a) for a veteran with no dependents and the increase provided in §
21.7137(d) or (e), if appropriate, plus the monthly rate stated in § 21.7138 (a) and (b) for
a veteran if the veteran is entitled to supplemental educational assistance, or
(iii) If the veteran has no entitlement under 38 U.S.C. chapter 34, the monthly rate stated
in § 21.7136 (a) or (b), as appropriate, and the increase provided in § 21.7136(d), (f), or
(g), if appropriate, plus the monthly rate stated in § 21.7138 (a) and (b) for a veteran if
the veteran is entitled to supplemental educational assistance.
(3) The monthly rate of educational assistance payable to such a veteran who is pursuing
the course on a less than one-half time basis or on a one-quarter time basis shall be the
lowest of the following:
(i) The monthly rate of the tuition and fees charged for the course,
(ii) The monthly rate of the tuition and fees which the veteran must pay plus the monthly
rate of the charge to the veteran for the cost of necessary supplies, books and equipment,
or
(iii) The monthly rate determined by § 21.7136(d) or § 21.7137(b), as appropriate, plus
the monthly rate stated in § 21.7138(c) if the veteran is entitled to supplemental
educational assistance.
(Authority: 38 U.S.C. 3034, 3482(g))

(f) Payment for correspondence courses. The amount of payment due a veteran or
servicemember who is pursuing a correspondence course or the correspondence portion
of a correspondence-residence course is 55 percent of the established charge which the
educational institution requires nonveterans to pay for the lessons that the veteran or
servicemember has had completed and serviced and for which payment is due.
(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)
(g) Failure to work sufficient hours of apprenticeship and other on-job training. (1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally --
   (i) The rates specified in §§ 21.7136(b)(2), (c)(2), (d)(3), and (d)(4), and 21.7137(a)(2) and (d)(2); and
   (ii) Any increase ("kicker") set by the Secretary of the military department concerned as described in §§ 21.7136(g) and 21.7137(e).
(2) In making the computations required by paragraph (g)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.
(3) For the purpose of this paragraph "hours worked" include only --
   (i) The training hours the veteran worked, and
   (ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See § 21.4270(c), footnote 5, as to the requirements for full-time training.)
   
(Authority: 38 U.S.C. 3034, 3687(b)(3))


§ 21.7140 Certifications and release of payments.
(a) Advance payments and lump-sum payments. VA will apply the provisions of § 21.4138(a) and (b) in making advance payments and lump-sum payments to veterans and servicemembers.
   
(Authority: 38 U.S.C. 3034 and 3680)
(b) Accelerated payments. VA will apply the provisions of §§ 21.7151(a), (c), and 21.7154(d) in making accelerated payments.
(c) Other payments. An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.
   (1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship or other on-job training, a correspondence course, one who qualifies for advance payment, one who qualifies for an accelerated payment, or one who qualifies for a lump sum payment) only after --
      (i) The educational institution has certified his or her enrollment as provided in § 21.7152; and
      (ii) VA has received from the individual a verification of the enrollment.
   (Authority: 38 U.S.C. 3680(g))
(2) VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after --
   (i) The training establishment has certified his or her enrollment in the training program as provided in § 21.7152; and
   (ii) VA has received from the veteran and the training establishment a certification of hours worked.

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(3) VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course only after --
(i) The educational institution has certified his or her enrollment;
(ii) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and
(iii) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution.
(Authority: 38 U.S.C. 3034, 3680(b))
(d) Payment for intervals between terms. (1) In administering 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4138(f) when determining whether a veteran is entitled to payment for an interval between terms. References to § 21.4205 in § 21.4138(f) shall be deemed to refer to § 21.7136.
(2) The Director of the VA facility of jurisdiction may authorize payment to be made for breaks, including intervals between terms within a certified period of enrollment, during which the educational institution is closed under an established policy based upon an order of the President or due to an emergency situation.
(i) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the school, and the closing lasts more than 30 days, the Director, Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.
(ii) An educational institution, which disagrees with a decision made under this paragraph by a Director of a VA facility, has one year from the date of the letter notifying the educational institution of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA facility where the decision was made. The Director, Education Service, shall review the evidence of record and any other pertinent evidence the educational institution may wish to submit. The Director, Education Service, has the authority either to affirm or reverse a decision of the Director of a VA facility.
(3) A veteran, who is pursuing a course leading to a standard college degree, may transfer between consecutive school terms from one approved educational institution to another for the purpose of enrolling in, and pursuing, a similar course at the second educational institution. If the interval between terms does not exceed 30 days, VA shall, for the purpose of paying educational assistance, consider the veteran to be enrolled in the first educational institution during the interval.
(Authority: 38 U.S.C. 3034, 3680)
(e) Payee. (1) VA will make payment to the veteran or servicemember or to a duly appointed fiduciary. The VA will make direct payment to the veteran or servicemember even if he or she is a minor.
(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 30.
(Authority: 38 U.S.C. 3034, 3680)
(f) Limitations on payments. VA will not apportion educational assistance.
(Authority: 38 U.S.C. 3034, 3680)
(g) Payments of accrued benefits. Educational assistance remaining due and unpaid at the
date of the servicemember's or veteran's death is payable under the provisions of § 3.1000
of this chapter.

(Authority: 38 U.S.C. 5121)
[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 20136,
May 2, 1991; 56 FR 31332, July 10, 1991; 57 FR 15025, Apr. 24, 1992; 61 FR 26107,
26117, May 24, 1996; 62 FR 55759, 55761, Oct. 28, 1997; 64 FR 52650, 52652, Sept. 30,
1999; 68 FR 35177, 35180, June 12, 2003]

[EFFECTIVE DATE NOTE: 68 FR 35177, 35180, June 12, 2003, amended this section,
effective June 12, 2003.]

§ 21.7141 Tutorial assistance.
An individual who is otherwise eligible to receive benefits under the Montgomery GI Bill
- Active Duty may receive supplemental monetary assistance to provide tutorial services.
In determining whether VA will pay the individual this assistance, VA will apply the
provisions of § 21.4236.

(Authority: 38 U.S.C. 3019, 3492)

[EFFECTIVE DATE NOTE: 61 FR 26107, 26117, May 24, 1996, which revised this
section, became effective May 24, 1996.]

§ 21.7142 Accelerated payments.
The accelerated payment will be the lesser of --
(a) The amount equal to 60 percent of the charged tuition and fees for the term, quarter or
semester (or the entire program of education for those programs not offered on a term,
quarter, or semester basis), or
(b) The aggregate amount of basic education assistance to which the individual remains
entitled under this chapter at the time of the payment.

(Authority: 38 U.S.C. 3014A)
[68 FR 35177, 35180, June 12, 2003]

[EFFECTIVE DATE NOTE: 68 FR 35177, 35180, June 12, 2003, added this section,
effective June 12, 2003.]

§ 21.7143 Nonduplication of educational assistance.
(a) Payments of educational assistance shall not be duplicated. An individual, entitled to
educational assistance under 38 U.S.C. chapter 34, who establishes entitlement under 38
U.S.C. chapter 30, shall not be eligible to receive educational assistance under 38 U.S.C.
chapter 30 before January 1, 1990. An individual who is entitled to educational assistance
under 38 U.S.C. chapter 30 and any of the provisions of law listed in this paragraph must
elect which benefit he or she will receive for the program of education he or she wishes
to pursue. The provisions of law are:

(1) 38 U.S.C. chapter 31,
(2) 38 U.S.C. chapter 32,
(3) 38 U.S.C. chapter 35,
(4) 10 U.S.C. chapter 1606,
(5) 10 U.S.C. chapter 107,
(Authority: 38 U.S.C. 3033, 3681)

(b) Election of benefits. The veteran must elect in writing which benefit he or she wishes to receive. The veteran may make a new election at any time, but may not elect more than once in a calendar month.
(38 U.S.C. 3033; Pub. L. 98-525)

(c) Nonduplication -- Federal program. Payment of educational assistance is prohibited to an otherwise eligible veteran or servicemember --
(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;
(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or
(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.
(Authority: 38 U.S.C. 3034, 3681)


[EFFECTIVE DATE NOTE: 68 FR 35177, 35180, June 12, 2003, redesignated this section, effective June 12, 2003.]
[CROSS REFERENCE: This section was formerly § 21.7142.]

§ 21.7144 Overpayments.
(Authority: 38 U.S.C. 3034, 3690(b))

(b) Liability for overpayments. (1) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of that veteran or servicemember.
(2) The amount of the overpayment of educational assistance paid to a veteran or servicemember constitutes a liability of the educational institution if VA determines that the overpayment was made as the result of willful or negligent:
(i) False certification by the educational institution; or
(ii) Endorsement of a veteran's or servicemember's false certification of his or her actual attendance.
(Authority: 38 U.S.C. 3034, 3685)

(c) Recovery of overpayments. In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 30.
(Authority: 38 U.S.C. 3034, 3685)

PURSUIT OF COURSES

§ 21.7150 Pursuit.
§ 21.7151 Advance payment and accelerated payment certifications.
§ 21.7152 Certification of enrollment.
§ 21.7153 Progress and conduct.
§ 21.7154 Pursuit and absences.
§ 21.7156 Other required reports.
§ 21.7158 False, late, or missing reports.
§ 21.7159 Reporting fee.

§ 21.7150 Pursuit.
The veteran's or servicemember's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.


(38 U.S.C. 3034(b); Pub. L. 98-525)

§ 21.7151 Advance payment and accelerated payment certifications.
All certifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.
(a) Certification needed before an advance payment can be made. In order for a veteran or service member to receive an advance payment of educational assistance, the application or other document must be signed by the veteran or the enrollment certification must be signed by an authorized official of the educational institution.

(Authority: 38 U.S.C. 3034, 3680(d))
(b) Advance payments. All verifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.
(1) For each individual receiving an advance payment an educational institution must --
(i) Verify enrollment for the individual; and
(ii) Verify the delivery of the advance payment check to the individual.
(2) Once the educational institution has initially verified the enrollment of the individual, the individual, not the educational institution, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.7154(a) of this part.
(c) Accelerated payments. (1) A veteran or servicemember is eligible for an accelerated payment only if --
(i) The veteran or servicemember submits a signed statement to the school or to VA that states "I request accelerated payment";
(ii) The veteran or servicemember is enrolled in a course or program of education or training beginning on or after October 1, 2002;
(iii) The veteran is enrolled in an approved program as defined in § 21.4200 (aa);
(iv) The charged tuition and fees for the term, quarter, or semester (or entire program for those programs not offered on a term, quarter or semester basis) divided by the number of months (and fractions thereof) in the enrollment period, exceeds the amount equal to 200
percent of the monthly rate of basic educational assistance allowance otherwise payable under §§ 21.7136 or 21.7137, as applicable;
(v) The veteran or servicemember requesting the accelerated payment has not received an advance payment under § 21.7140(a) for the same enrollment period; and
(vi) The veteran or servicemember has submitted all certifications required under § 21.7154(d) for any previous accelerated payment he or she received.
(2) Except as provided in paragraph (c)(5) of this section, VA will make the accelerated payment directly to the educational institution, in the veteran's or servicemember's name, for delivery to the veteran or servicemember if:
(i) The educational institution submits the enrollment certification required under § 21.7152 before the actual start of the term, quarter or semester (or the start of the program for a program not offered on a term, quarter or semester basis); and
(ii) The educational institution at which the veteran or servicemember is accepted or enrolled agrees to --
(A) Provide for the safekeeping of the accelerated payment check before delivery to the veteran or servicemember;
(B) Deliver the payment to the veteran or servicemember no earlier than the start of the term, quarter or semester (or the start of the program if the program is not offered on a term, quarter or semester basis);
(C) Certify the enrollment of the veteran or servicemember and the amount of tuition and fees therefor; and
(D) Certify the delivery of the accelerated payment to the veteran or servicemember.
(3) VA will make accelerated payments directly to the veteran or servicemember if the enrollment certification required under § 21.7152 is submitted on or after the first day of the enrollment period. VA will electronically deposit the accelerated payment in the veteran's or servicemember's bank account unless --
(i) The veteran or servicemember does not have a bank account; or
(ii) The veteran or servicemember objects to payment by electronic funds transfer.
(4) VA must make the accelerated payment no later than the last day of the month immediately following the month in which VA receives a certification from the educational institution regarding --
(i) The veteran's or servicemember's enrollment in the program of education; and
(ii) The amount of the charged tuition and fees for the term, quarter or semester (or for a program that is not offered on a term, quarter, or semester basis, the entire program).
(5) The Director of the VA field station of jurisdiction may direct that accelerated payments not be made in advance of the first day of the enrollment period in the case of veterans or servicemembers attending an educational institution that demonstrates its inability to discharge its responsibilities for accelerated payments. In such a case, the accelerated payment will be made directly to the veteran or servicemember as provided in paragraph (a)(3).
(Authority: 38 U.S.C. 3014A)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0636.)
[55 FR 28390, July 11, 1990; 68 FR 35177, 35180, June 12, 2003]
§ 21.7152 Certification of enrollment.
As stated in § 21.7140 of this part, the educational institution must certify the veteran's or
servicemember's enrollment before he or she may receive educational assistance.
(a) Certification of enrollment is required. Except as provided in § 21.7151 of this part,
the educational institution must certify the veteran's or servicemember's enrollment
before he or she may receive educational assistance. This certification shall be in a form
and shall contain such information as specified by the Secretary.
(Authority: 38 U.S.C. 3032, 3034, 3482(g), 3680, 3687)
(b) Length of the enrollment period covered by the enrollment certification. (1)
Educational institutions organized on a term, quarter or semester basis generally shall
report enrollment for the term, quarter, semester, ordinary school year or ordinary school
year plus summer term. If the certification covers two or more terms, the educational
institution will report the dates for the break between terms if a term ends and the
following term does not begin in the same or the next calendar month or if the veteran
elects not be paid for the intervals between terms. The educational institution must submit
a separate enrollment certification for each term, quarter or semester when the
certification is for --
(i) A servicemember, or
(ii) A veteran who --
(A) Is training on a less than one-half time basis, or
(B) Is incarcerated in a Federal, State or local prison or jail for conviction of a felony.
(2) Educational institutions organized on a year-round basis will report enrollment for the
length of the course. The certification will include a report of the dates during which the
educational institution closes for any intervals designated in its approval data as breaks
between school years.
(3) When a veteran enrolls in independent study leading to a standard college degree, the
educational institution's certification will include --
(i) The enrollment date, and
(ii) The ending date for the period being certified. If the educational institution has no
prescribed maximum time for completion, the certification must include an ending date
based on the educational institution's estimate for completion.
(iii) [Redesignated as paragraph (b)(3)(i). See 61 FR 6780, 6790, Feb. 22, 1996.]
(Approved by the Office of Management and Budget under control number 2900-0073)
(Authority: 38 U.S.C. 3034, 3684; Pub. L. 98-525)
[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28390, July 11, 1990; 61 FR 6780,
6790, Feb. 22, 1996]

§ 21.7153 Progress and conduct.
(a) Satisfactory pursuit of program. In order to receive educational assistance for pursuit
of a program of education, an individual must maintain satisfactory progress. VA will
discontinue educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the educational institution he or she is attending.

(Authority: 38 U.S.C. 3034, 3474; Pub. L. 98-525)

(b) Satisfactory conduct. In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the educational institution in which he or she is enrolled. If the individual will be no longer retained as a student or will not be readmitted as a student by the educational institution in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the educational institution's action is retaliatory.

(Authority: 38 U.S.C. 3034, 3474; Pub. L. 98-525)

(c) Satisfactory attendance. In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the educational institution in which he or she is enrolled.

(Authority: 38 U.S.C. 3034, 3474)

(d) Reentrance after discontinuance. (1) An individual may be reentered following discontinuance because of unsatisfactory attendance, conduct or progress when either of the following sets of conditions exists:

(i) The individual resumes enrollment at the same educational institution in the same program of education and the educational institution has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that --

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program which the individual now proposes to pursue is suitable to his or her aptitudes, interests and abilities.

(2) Reentrance may be for the same program, for a revised program, or for an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3034, 3474)


§ 21.7154 Pursuit and absences.

Except as provided in this section, an individual must submit a verification to VA each month of his or her enrollment during the period for which the individual is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) Exceptions to the monthly verification requirement. An individual does not have to submit a monthly verification as described in the introductory text of this section when the individual --

(1) Is enrolled in a correspondence course;

(2) Has received a lump-sum payment for the training completed during a month; or
(3) Has received an advance payment for the training completed during a month.
(4) Has received an accelerated payment for the enrollment period.
(Authority: 38 U.S.C. 3014A, 3034, 3684)
(b) Items to be reported on all monthly verifications. (1) The monthly verification for all veterans and servicemembers will include a report on the following items when applicable:
   (i) Continued enrollment in and actual pursuit of the course;
   (ii) The individual's unsatisfactory conduct, progress, or attendance;
   (iii) The date of interruption or termination of training;
   (iv) Changes in the number of credit hours or in the number of clock hours of attendance other than those described in § 21.7156(a);
   (v) Nonpunitive grades; and
   (vi) Any other changes or modifications in the course as certified at enrollment.
(2) The verification of enrollment must --
   (i) Contain the information required for release of payment;
   (ii) If required or permitted by the Secretary to be submitted on paper, be signed by the veteran or servicemember on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and
   (iii) If submitted on paper, clearly show the date on which it was signed.
(c) Additional requirements for apprenticeships and other on-job training programs.
(1) When a veteran is pursuing an apprenticeship or other on-job training he or she must certify training monthly by reporting the number of hours worked.
(2) The information provided by the veteran must be verified by the training establishment.
(Authority: 38 U.S.C. 3034, 3680(a))
(d) Additional requirements for individuals receiving an accelerated payment.
(1) When an individual receives an accelerated payment as provided in § 21.7151(c) and (d), he or she must certify the following information within 60 days of the end of the term, quarter or semester (or entire program when the program is not offered on a term, quarter, or semester basis) for which the accelerated payment was made:
   (i) The course or program was successfully completed, or if the course was not completed --
      (A) The date the veteran or servicemember last attended; and
      (B) An explanation why the course was not completed;
   (ii) If the veteran or servicemember increased or decreased his or her training time --
      (A) The date the veteran or servicemember increased or decreased training time; and
      (B) The number of credit/clock hours pursued before and after each such change in training time; and
   (iii) The accelerated payment was received and used.
(2) VA will establish an overpayment equal to the amount of the accelerated payment if the required certifications in paragraph (c)(1) of this section are not timely received.
(3) VA will determine the amount of the overpayment of benefits for courses not completed in the following manner --
(i) For a veteran or servicemember who does not complete the full course, courses, or program for which the accelerated payment was made, and who does not substantiate mitigating circumstances for not completing, VA will establish an overpayment equal to the amount of the accelerated payment.

(ii) For a veteran or servicemember who does not complete the full course, courses, or program for which the accelerated payment was made, but who substantiates mitigating circumstances for not completing, VA will prorate the amount of the accelerated payment to which he or she is entitled based on the number of days from the beginning date of the enrollment period through the date of last attendance. VA will determine the prorated amount by dividing the accelerated payment amount by the number of days in the enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the date of last attendance. The result of this calculation will equal the amount the individual is due. The difference between the accelerated payment and the amount the individual is due will be established as an overpayment.

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

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0465 and 2900-0636.)


[EFFECTIVE DATE NOTE: 68 FR 35177, 35180, June 12, 2003, amended this section, effective June 12, 2003.]

§ 21.7156 Other required reports.

(a) Reports from veterans and servicemembers. (1) A veteran or servicemember enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:

(i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;

(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A veteran or servicemember not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

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

(b) Interruptions, terminations, or changes in hours of credit or attendance. (1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a veteran or servicemember:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a veteran's or servicemember's hours of credit or attendance when:
(i) The veteran or servicemember is enrolled full time in a program of education for a standard term, quarter, or semester before the change;
(ii) The veteran or servicemember continues to be enrolled full time after the change; and
(iii) The tuition and fees charged to the servicemember have not been adjusted as a result of the change.

(Authority: 38 U.S.C. 3034, 3684)

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

(4) If the educational institution has certified the veteran's or servicemember's enrollment for more than one term, quarter or semester and the veteran or servicemember interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to VA in time for VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester.

(Authority: 38 U.S.C. 3034, 3680(a), 3684)

(5) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to VA in time for VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.

(Authority: 38 U.S.C. 3034, 3684)

(c) Nonpunitive grades.

(1) An educational institution may assign a nonpunitive grade for a course or subject in which the veteran or servicemember is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in a form prescribed by the Secretary in time for VA to receive it before the earlier of the following dates is reached:
(i) Thirty days from the date on which the educational institution assigns the grade, or
(ii) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned.

(2) If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution may use the monthly certification of attendance to report nonpunitive grades provided VA will receive the report within the time period stated in paragraph (c)(1) of this section.

(Authority: 38 U.S.C. 3034, 3684)

(d) Attendance records. Nothing in this section or in any section in 38 CFR part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(Authority: 38 U.S.C. 3034, 3685)

(The information collection requirements in paragraphs (a) and (b) of this section have been approved by the Office of Management and Budget under control numbers 2900-0465 and 2900-0156, respectively.)

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§ 21.7158 False, late, or missing reports.
(a) Veteran. Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 of this part to a veteran or servicemember or any other person who submits false or misleading claims, statements or reports in connection with benefits payable under 38 U.S.C. chapter 30 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 34 or 36.
(Authority: 38 U.S.C. 3034, 3680, 3690, 6103; Pub. L. 98-525)
(b) Educational institution or training establishment.
(1) VA may hold an educational institution or training establishment liable for overpayments which result from the educational institution's or training establishment's willful or negligent failure to report excessive absences from a course or discontinuance or interruption of a course by a veteran or servicemember or from willful or negligent false certification by the educational institution or training establishment. See § 21.7144(b).
(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.
(Authority: 38 U.S.C. 3034, 3690)

§ 21.7159 Reporting fee.
In determining the amount of the reporting fee payable to educational institutions or joint apprenticeship training committees acting as training establishments for furnishing required reports, VA will apply the provisions of § 21.4206 of this part in the same manner as they are in the administration of 38 U.S.C. chapters 34 and 36.

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§ 21.7170 Course measurement.

§ 21.7170 Course measurement.
In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the following sections:
(a) § 21.4270 (except paragraphs (a)(2) and (a)(3) and those portions of paragraph (c) and footnotes dealing with farm cooperative training) -- Measurement of courses;
(b) § 21.4272 -- Collegiate course measurement;
(c) § 21.4273 -- Collegiate graduate;
(d) § 21.4274 -- Law courses; and
(e) § 21.4275 -- Practical training courses; measurement.
(Authority: 38 U.S.C. 3034, 3688)

(a) Conversion of units of measurement required. Where a veteran enrolls concurrently in courses offered by two schools and the standards for the measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the veteran is pursuing at the primary institution. This conversion will be accomplished as follows:
(1) If VA measures the courses at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis), and VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.
(2) If VA measures the courses pursued at the primary institution on a clock-hour basis, and VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the veteran's training time.
(3) If VA measures the courses pursued at the primary institution on a clock-hour basis, and
   (i) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which VA can measure on credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the veteran's training time; or
   (ii) VA measures the courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the veteran's training time.
(Authority: 38 U.S.C. 3034, 3688)
(b) Conversion of clock hours to credit hours. If the provisions of paragraph (a) of this section require VA to convert clock hours to credit hours, it will do so by --
(1) Dividing the number of credit hours which VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and
(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034, 3688)

(c) Conversion of credit hours to clock hours. If the provisions of paragraph (a) of this section require VA to convert credit hours to clock hours, it will do so by --
(1) Dividing the number of clock hours which VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and
(2) Multiplying each credit hour by the number determined in paragraph (c)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 3034, 3688)

(d) Both courses measured on a credit hour basis or both courses measured on a clock hour basis. If VA measures the courses pursued at both institutions on a credit hour basis or on a clock hour basis, VA will measure the veteran's enrollment by adding together the units of measurement for the courses at the second school and the units of measurement for the courses at the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution.

(Authority: 38 U.S.C. 3034, 3688)


STATE APPROVING AGENCIES

§ 21.7200 State approving agencies.

§ 21.7200 State approving agencies.
State approving agencies have the same general responsibilities for approving courses for training under 38 U.S.C. chapter 30 as they do for approving courses for training under 38 U.S.C. chapter 34. Accordingly, in administering 38 U.S.C. chapter 30, VA will apply the provisions of the following sections in the same manner, as they are applied for the administration of 38 U.S.C. chapters 34 and 36.
(a) Section 21.4150 (except paragraph (e)) -- Designation,
(b) Section 21.4151 -- Cooperation,
(c) Section 21.4152 -- Control by agencies of the United States,
(d) Section 21.4153 -- Reimbursement of expenses;
(e) Section 21.4154 -- Report of activities; and
(f) Section 21.4155 -- Evaluation of State approving agency performance.
APPROVAL OF COURSES

§ 21.7220 Course approval.
§ 21.7222 Courses and enrollments which may not be approved.
§ 21.7280 Death benefit.

§ 21.7220 Course approval.
(a) Courses must be approved. (1) A course of education, including the class schedules of a resident course not leading to a standard college degree, offered by an educational institution must be approved by -- (i) The State approving agency for the State in which the educational institution is located, or (ii) The State approving agency which has appropriate approval authority, or (iii) VA, where appropriate. In determining when it is appropriate for VA to approve a course, VA will apply the provisions of § 21.4250(b)(3) and (c) of this part. (2) A course approved under 38 U.S.C. chapter 36 is approved for the purposes of 38 U.S.C. chapter 30 unless it is one of the types of courses listed in § 21.7222 of this part. (Authority: 38 U.S.C. 3034, 3672; Pub. L. 98-525)
(b) Course approval criteria. In administering benefits payable under 38 U.S.C. chapter 30, VA and, where appropriate, the State approving agencies, shall apply the following sections. (1) Section 21.4250 (except paragraphs (a) and (c)(1)) -- Approval of courses, (2) Section 21.4251 -- Period of operation of course, (3) Section 21.4253 (except that portion of paragraph (f)(3) which permits approval of a course leading to a high school diploma) -- Accredited courses, (4) Section 21.4254 -- Nonaccredited courses, (5) Section 21.4255 -- Refund policy -- nonaccredited courses, (6) Section 21.4258 -- Notice of approval, (7) Section 21.4259 -- Suspension or disapproval, (8) Section 21.4260 -- Courses in foreign countries, (9) Section 21.4265 -- Practical training approved as institutional training or on-job training, (10) Section 21.4266 -- Courses offered at subsidiary branches or extensions, (11) Section 21.4267 -- Approval of independent study. (Authority: 38 U.S.C. 3034, 3476, 3672, 3675, 3676, 3678, 3679, 3680A, 3689)

[EFFECTIVE DATE NOTE: 63 FR 34127, 34131, June 23, 1998, substituted "when approving" for "Flight training when administering" in paragraph (c), effective June 23, 1998.]
§ 21.7222 Courses and enrollments which may not be approved.
The Secretary may not approve an enrollment by a veteran or servicemember in, and a State approving agency may not approve for training under 38 U.S.C. chapter 30 --
(a) A bartending or personality development course;
(b) A flight training course unless the course meets the requirements of § 21.4263.
(Authority: 38 U.S.C. 3034(d))
(c) A course offered by radio;
(d) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment commonly called a farm cooperative course; or
(e) Except as provided in § 21.7120(d), an independent study course which --
(1) Does not lead to a standard college degree, or
(2) Is a nonaccredited course.
(Authority: 38 U.S.C. 3676, 3680A)

[EFFECTIVE DATE NOTE: 61 FR 6780, 6791, Feb. 22, 1996, which revised paragraph (e), became effective Feb. 22, 1996.]

§ 21.7280 Death benefit.
(a) Overview. VA will pay a death benefit under 38 U.S.C. ch. 30 when an individual's death meets the criteria of this section; the individual is survived by someone described in this section; and the amount of educational assistance paid or payable to the individual is less than the amount reduced from the individual's basic pay.
(b) Necessary criteria for death benefit. VA may pay a death benefit under 38 U.S.C. ch. 30 only if --
(1) The individual either --
(i) Dies while on active duty, or
(ii) Dies after October 28, 1992, and his or her date of death is within one year after the date of his or her last discharge or release from active duty; and
(2) The death of the individual is service connected. In determining if the death is service connected, VA will apply the provisions of § 3.312 of this chapter; and
(3) Either --
(i) At the time of the individual's death he or she is entitled to basic educational assistance through having met the eligibility requirements of § 21.7042, or
(ii) At the time of the individual's death he or she is on active duty with the Armed Forces and but for the minimum service requirements of § 21.7042(a)(2) or § 21.7042(b)(3) or (4) or the educational requirements of § 21.7042(a)(3) or § 21.7042(b)(2) or both would be entitled to basic educational assistance through having met the eligibility requirements of § 21.7042.
(Authority: 38 U.S.C. 3017(a))
(c) Payee. (1) VA shall pay a death benefit to the living person or persons in the order listed in this paragraph.
(i) The beneficiary or beneficiaries designated by the individual under the individual's Servicemen's Group Life Insurance Policy,
(ii) The surviving spouse of the individual,
(iii) The surviving child or children of the individual, in equal shares,
(iv) The surviving parent or parents of the individual in equal shares.
(2) If none of the persons listed in this paragraph is living, VA shall not pay a death benefit under this section.
(d) Amount of death benefit. (1) The amount of any payment made under this section shall be equal to --
(i) The amount reduced from the individual's basic pay as provided in § 21.7042(f) less --
(ii) The total of --
(A) The amount of educational assistance that has been paid to the individual under 38 U.S.C. ch. 30, and
(B) The amount of accrued benefits paid or payable with respect to the individual.
(2) VA shall pay no death benefit when the amount determined by subparagraph (1) of this paragraph is zero or less than zero.
(Authority: 38 U.S.C. 3017 (b) and (c); Pub. L. 100-689) (Jul. 1, 1985)

§ 21.7301 Delegations of authority.
§ 21.7302 Finality of decisions.
§ 21.7303 Revision of decisions.
§ 21.7305 Conflicting interests.
§ 21.7307 Examination of records.
§ 21.7310 Civil rights.
§ 21.7320 Procedural protection; reduction following loss of dependent.

§ 21.7301 Delegations of authority.
(a) General delegation of authority. Except as otherwise provided, authority is delegated to the Under Secretary for Benefits of VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA designated by him or her, to make findings and decisions under 38 U.S.C. chapter 30 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter.
   (Authority: 38 U.S.C. 512(a))
(b) Other delegations of authority. In administering benefits payable under 38 U.S.C. chapter 30, VA shall apply § 21.4001(b), (c)(1) and (2) and (f) of this part in the same manner as those paragraphs are applied in the administration of 38 U.S.C. chapter 34.
   (Authority: 38 U.S.C. 512(a), 3034, 3696; Pub. L. 98-525)


§ 21.7302 Finality of decisions.
(a) Agency decisions generally are binding. The decision of a VA facility of original jurisdiction on which an action is based --
   (1) Will be final,
   (2) Will be binding upon all field offices of the VA as to conclusions based on evidence on file at that time, and
   (3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7303 of this part. (See §§ 19.192 and 19.193 of this chapter).
   (Authority: 38 U.S.C. 511)
(b) Decisions of an activity within VA. Current determinations of line of duty and other pertinent elements of eligibility for a program of education made by either an Adjudicative activity or an Insurance activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.
   (Authority: 38 U.S.C. 511)
(c) Character of discharge determinations. (1) A determination of the character of a veteran's discharge made by a competent military or naval authority or by the Coast Guard is binding upon VA.
(2) Any determination of the character of a veteran's discharge made by VA in connection with the veteran's eligibility for a benefit other than educational assistance under 38 U.S.C. chapter 30, shall not affect his or her eligibility for educational assistance.
(Authority: 38 U.S.C. 3011(a), 3012(a); Pub. L. 98-525)
[53 FR 1757, Jan. 22, 1988]

§ 21.7303 Revision of decisions.
The revision of a decision on which an action was predicated is subject to the following sections:
(a) Clear and unmistakable error, § 3.105(a) of this chapter; and
(b) Difference of opinion, § 3.105(b) of this chapter.
(Authority: 38 U.S.C. 511; Pub. L. 98-525)
[53 FR 1757, Jan. 22, 1988]

§ 21.7305 Conflicting interests.
In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4005.
(Authority: 38 U.S.C. 3034, 3036)


§ 21.7307 Examination of records.
In administering benefits payable under 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4209.
(Authority: 38 U.S.C. 3034, 3690)


§ 21.7310 Civil rights.
(a) Delegation of authority concerning Federal equal opportunity laws. The Under Secretary for Benefits is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. See part 18 of this chapter. These equal opportunity laws are:
(1) Title VI, Civil Rights Act of 1964;
(2) Title IX, Education Amendments of 1972, as amended;
(3) Section 504, Rehabilitation Act of 1973; and
(b) Role of State approving agencies. In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Under Secretary for Benefits may use the State approving agencies as provided in §21.4258(d).

(Authority: 42 U.S.C. 2000)


§21.7320 Procedural protection; reduction following loss of dependent.

(a) Notice of reduction required when a veteran loses entitlement to additional educational assistance for a dependent. Except as provided in paragraph (b) of this section, VA will not reduce an award of educational assistance following the veteran's loss of a dependent unless:

1. VA has notified the veteran of the adverse action; and
2. VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance should not be reduced.

(b) No advance notice required in certain situations. When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

1. VA will not send either an advance or a prereduction notice as stated in paragraph (a) of this section; but
2. VA will send notice of the adverse action contemporaneous with the reduction in educational assistance.

(Authority: 38 U.S.C. 5112, 5113)

[58 FR 63531, Dec. 2, 1993]

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SUBPART L -- EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

§ 21.7500 Establishment and purpose of educational assistance program.
DEFINITIONS
CLAIMS AND APPLICATIONS
ELIGIBILITY
ENTITLEMENT
COUNSELING
PROGRAMS OF EDUCATION
COURSES
PAYMENTS -- EDUCATIONAL ASSISTANCE
PURSUIT OF COURSE AND REQUIRED REPORTS
COURSE ASSESSMENT
STATE APPROVING AGENCIES
APPROVAL OF COURSES
ADMINISTRATIVE


§ 21.7500 Establishment and purpose of educational assistance program.
An educational assistance program for certain members of the Selected Reserve is established to encourage membership in the Selected Reserve of the Ready Reserve. (Authority: 10 U.S.C. 16131(a); Pub. L. 98-525)
[53 FR 34740, Sept. 8, 1988; 61 FR 20727, 20729, May 8, 1996]
DEFINITIONS

§ 21.7520 Definitions.

For the purposes of regulations from § 21.7500 through § 21.7999, governing the administration and payment of educational assistance under 10 U.S.C. chapter 1606, the Selected Reserve Educational Assistance Program, the following definitions apply. (See also additional definitions in § 21.1029).

(a) Definitions of participants -- (1) Reservist. The term reservist means a member of the Selected Reserve who is eligible for educational assistance under 10 U.S.C. chapter 1606.

(2) Selected Reserve. The term Selected Reserve means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces of the United States, as required to be maintained under section 268(b), 10 U.S.C.

(b) Other definitions. (1) Attendance. The term attendance means the presence of a reservist --

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

(ii) At a training establishment; or

(iii) In any other place of instruction, training, or study designated by the educational institution or training establishment where the reservist is enrolled and is pursuing a program of education.

(2) Audited course. The term audited course has the same meaning as provided in § 1.4200(i) of this part.

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

(4) Divisions of the school year. The term divisions of the school year has the same meaning as provided in § 21.4200(b) of this part.

(5) Drop-add period. The term drop-add period has the same meaning as provided in § 21.4200(l) of this part.

(6) Educational assistance. The term educational assistance means the monthly payment made to members of the Selected Reserve for pursuit of a program of education.

(7) Educational objective. An approvable educational objective is one that leads to the awarding of an associated degree, a bachelor's degree or the equivalent.

(8) Enrollment. The term enrollment means the state of being on that roll or file of an educational institution which contains the names of active students.
(9) Enrollment period. The term enrollment period has the same meaning as provided in § 21.4200(p) of this part.

(10) In residence on a standard quarter- or semester-hour basis. The term in residence on a standard quarter- or semester-hour basis has the same meaning as provided in § 21.4200(r) of this part.

(11) Independent study. The term independent study has the same meaning as provided in § 21.4267(b) of this part.

(12) Independent study-resident training. The term independent study-resident training means:
(i) The state of being enrolled concurrently in one or more undergraduate courses or subjects offered by independent study as defined in paragraph (b)(11) of this section and one or more courses or subjects offered by resident training as defined by paragraph (b)(22) of this section, or
(ii) The state of being enrolled in one or more undergraduate level subjects which
(A) Do not meet the requirements of either paragraphs (b)(22)(i), (b)(22)(ii) or (b)(22)(iii) of this section,
(B) Have some weeks when standard class sessions are scheduled, and
(C) Consist of independent study as defined in paragraph (b)(11) of this section during those weeks when there are no regularly scheduled standard class sessions.

(13) Institution of higher learning. The term institution of higher learning means
(i) A college, university or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree, if the educational institution is empowered by the appropriate State education authority under State law to grant an associate or higher degree.
(ii) When there is no state law to authorize the granting of a degree, an educational institution which
(A) Is accredited for degree programs by a recognized accrediting agency, or
(B) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.
(iii) A hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree.
(iv) An educational institution which
(A) Is not located in a State,
(B) Offers a course leading to a standard college degree or the equivalent, and
(C) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located.

(14) Mitigating circumstances.
(i) Mitigating circumstances are circumstances beyond the reservist's control which prevent him or her from continuously pursuing a program of education. The following
circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the reservist;
(B) An illness or death in the reservist's family;
(C) An unavoidable change in the reservist's conditions of employment;
(D) An unavoidable geographical transfer resulting from the reservist's employment;
(E) Immediate family or financial obligations beyond the control of the reservist which require him or her to suspend pursuit of the program of education to obtain employment;
(F) Discontinuance of the course by the educational institution;
(G) Unanticipated active duty for training; and
(H) Unanticipated difficulties in providing for child care for the reservist's child or children.

(ii) If a reservist withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating.

(iii) In the first instance of a withdrawal after May 31, 1989, from a course or course for which the reservist received educational assistance under chapter 1606, title 10, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider courses dropped during an educational institution's drop-add period as provided in paragraph (b)(14)(ii) of this section.

(15) Nonpunitive grade. The term nonpunitive grade has the same meaning as provided in § 21.4200(j) of this part.

(16) Normal commuting distance. The term normal commuting distance has the same meaning as provided in § 21.4200(m) of this part.

(17) Program of education. A program of education --

(i) Is any unit course or subject or combination of unit courses or subjects pursued by a reservist at an educational institution, required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 636; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution, which combination is generally accepted as necessary to meet requirements for a predetermined educational, professional, or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; and

(iii) Includes an approved full-time program of apprenticeship or of other on-job training.

(18) Punitive grade. The term punitive grade has the same meaning provided in § 21.4200(k) of this part.

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(i) The term pursuit means work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and with applicable criteria of 10 U.S.C. and 38 U.S.C.; must be necessary to reach the program's objective; and must be accomplished through --
(A) Resident courses;
(B) Independent study;
(C) Correspondence courses;
(D) An apprenticeship or other on-job training program; or
(E) Flight courses.

(ii) VA will consider a reservist who qualifies for payment during an interval, school closing, or holiday vacation to be in pursuit of a program of education during the interval, school closing, or holiday vacation.

(20) Refresher course. The term refresher course means either:
(i) A course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed; or
(ii) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the reservist's field of employment since his or her entry on active duty and which is necessary to enable the individual to pursue an approved program of education.

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

(22) Resident training. The term resident training means --
(i) A course or subject, leading to a standard college degree, offered in residence on a standard quarter- or semester-hour basis;
(ii) A course of subject leading to a standard college degree at the undergraduate level which requires regularly scheduled, weekly classroom or laboratory sessions but does not require them in sufficient number to meet the provision of paragraph (23)(i) of this section,
(iii) A course or subject leading to standard college degree at the undergraduate level which
   (A) Would qualify as a course under paragraph (b)(22)(i) of this section except that it does not have weekly class instruction,
   (B) Requires pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks,
   (C) Requires monthly pursuit of a total number of standard class sessions which, during the month, is required by a course meeting the provisions of paragraph (b)(22)(i) of this section,
(D) Is considered by the institution offering it as fully equivalent to a course described in paragraph (b)(22)(i) of this section including payment of tuition and fees; the awarding of academic credit for the purpose of meeting graduation requirements; and the transfer of credits to a course meeting the provision of paragraph (b)(22)(i) of this section, and 
(E) Together with all other similar courses offered by the institution of higher learning, has an enrollment representing less than 50 percent of persons at that institution receiving educational assistance under either chapter 31, 32, 34, 35 or 36 of title 38 U.S.C., (iv) The hospital or fieldwork phase of a course with the objective of registered professional nurse or registered nurses, including a course leading to a degree in nursing when -- 
(A) The hospital or fieldwork phase of the course is an integral part of the course, 
(B) The completion of the hospital or fieldwork course is a prerequisite to the successful completion of the course, 
(C) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase, and 
(D) The training is under the direct supervision of the institution of higher learning, 
(v) The clinical training portion of a course leading to the objective of practical nurse, practical trained nurse, or licensed practical nurse when -- 
(A) The clinical training is offered by an affiliated or cooperating hospital, 
(B) The student is enrolled in and supervised by the institution of higher learning during the clinical training, and 
(C) The course is accredited by a nationally recognized accrediting agency or meets the requirements of the licensing body of the State in which the institution of higher learning is located. 
(vi) An off-campus job experience included in a course offered by an institution of higher learning is resident training only if the course is -- 
(A) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting agencies; 
(B) A part of the approved curriculum of the institution of higher learning; 
(C) Directly supervised by the institution of higher learning; 
(D) Measured in the same unit as other courses; 
(E) Required for graduation; and 
(F) Has a planned program of activities described in the institution of higher learning’s official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least a unit subject description; a provision for an assigned instructor; a statement that the planned program of activities is controlled by the institution of higher learning, not by the officials of the job establishment; a requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student; a statement that appropriate assignments are required for completion of the course; a grading system similar to the system used for other resident subjects offered by the institution of higher learning; and a schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the institution of higher learning for its other resident courses. 
(vii) A course including student teaching, or
(viii) A flight training course when included as a creditable part of an undergraduate course leading to a standard college degree.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98-525)

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

(i) A vocational school or business school;
(ii) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;
(iii) A public or private elementary school or secondary school which offers courses for adults, provided that the courses lead to an objective other than an elementary school diploma, a high school diploma, or their equivalents; or
(iv) Any entity, other than an institution of higher learning, that provides training required for completion of a State-approved alternative teacher certification program.

(Authority: 10 U.S.C. 16131(a), (c); 38 U.S.C. 3002, 3452)

(24) School year. The term school year means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 10 U.S.C. 16136(b); Pub. L. 98-525)

(25) Standard class session. The term standard class session has the same meaning as provided in § 21.4200(g) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688(c); Pub. L. 98-525)

(26) Standard college degree. The term standard college degree has the same meaning as provided in § 21.4200(e) of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3688; Pub. L. 98-525)

(27) State. The term State has the same meaning as provided in § 21.1021(c) of this part.

(Authority: 38 U.S.C. 101(20); Pub. L. 98-525)

(28) Vocational or professional objective. A vocational or professional objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation, but not include any educational objectives beyond the bachelor's degree. When a program of education consists of series of courses not leading to an educational objective, these courses must be pursued at an institution of higher learning and must be required for attainment of a designated vocational or professional objective.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98-525)

(29) Disabling effects of chronic alcoholism.

(i) The term disabling effects of chronic alcoholism means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case, --

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a reservist as a proximate and immediate result of activity undertaken by the reservist while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.
(Authority: 38 U.S.C. 105, 3031(d); Pub. L. 100-689) (Nov. 18, 1988)

(30) Cooperative course. The term cooperative course means a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion.

(Authority: 10 U.S.C. 2131(e); 38 U.S.C. 3686; sec. 642(b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

(31) Established charge. The term established charge means the lesser of --

(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency; or

(ii) The actual charge to the reservist.

(Authority: 10 U.S.C. 2131(f); sec. 642(b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

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

(Authority: 10 U.S.C. 2131(d), 16136(b); 38 U.S.C. 3452(e); sec. 642(b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

(33) Continuously enrolled. The term continuously enrolled means being in an enrolled status at an educational institution for each day during the ordinary school year, and for consecutive school years. Consequently, continuity of enrollment is not broken by holiday vacations, vacation periods, periods during the school year between terms, quarters, or semesters, or by nonenrollment during periods of enrollment outside the ordinary school year (e.g., summer sessions).

(Authority: 10 U.S.C. 16136(b))

(34) Persian Gulf War. The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33))

(35) Alternative teacher certification program. The term alternative teacher certification program, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (b)(23)(iv) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3452(c))


CLAIMS AND APPLICATIONS

§ 21.7530 Applications, claims, and time limits.

§ 21.7530 Applications, claims, and time limits.
The provisions of subpart B of this part apply with respect to claims for educational assistance under 10 U.S.C. chapter 1606, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3472)

[EFFECTIVE DATE NOTE: 64 FR 23769, 23773, May 4, 1999, revised this section, effective June 3, 1999.]
ELIGIBILITY

§ 21.7540 Eligibility for educational assistance.
§ 21.7550 Ending dates of eligibility.
§ 21.7551 Extended period of eligibility.

§ 21.7540 Eligibility for educational assistance.
(a) Basic eligibility requirements. The Armed Forces will determine whether a reservist is eligible to receive benefits pursuant to 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994). To be eligible a reservist --
(1) Shall:
   (i) Enlist, reenlist, or extend an enlistment as a Reserve for service in the Selected Reserve so that the total period of obligated service is at least six years from the date of such enlistment, reenlistment, or extension; or
   (ii) Be appointed as, or be serving as, a reserve officer and agree to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject;
(2) Must complete his or her initial period of active duty for training;
(3) Must be participating satisfactorily in the Selected Reserve; and
(4) Must not have elected to have his or her service in the Selected Reserve credited toward establishing eligibility to benefits provided under 38 U.S.C. chapter 30.
(b) Eligibility requirements for expanded benefits. (1) A reservist shall be eligible to pursue all types of training described in subpart L of this part regardless of whether he or she has received a baccalaureate degree or equivalent evidence of completion of study if --
   (i) After September 30, 1990, he or she takes one of the actions described in paragraph (a)(1)(i) or (a)(1)(ii) of this section;
   (ii) The reservist meets the criteria of paragraphs (a)(2) through (a)(4) of this section; and
   (iii) The reservist does not have his or her eligibility limited as described in paragraph (c) of this section.
(2) A reservist shall be eligible to pursue all types of training described in subpart L of this part except the training described in paragraph (b)(3) of this part if --
   (i) After June 30, 1985, but not after September 30, 1990, he or she takes one of the actions described in paragraph (a)(1) or (a)(2) of this section;
   (ii) The reservist has not received a baccalaureate degree or the equivalent evidence of completion of study;
   (iii) The reservist meets all the other eligibility criteria of paragraph (a) of this section; and
   (iv) The reservist does not have his or her eligibility limited by paragraph (c) of this section.
(3) The types of training which a reservist described in paragraph (b)(1) of this section may pursue, but which may not be pursued by a reservist described in paragraph (b)(2), are:

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(i) A course which is offered by an educational institution which is not an institution of higher learning (to determine if a nursing course is offered by an institution of higher learning, see § 21.7622(f));
(ii) A correspondence course;
(iii) An accredited independent study course leading to a standard college degree. (See § 21.7622(f) concerning enrollment in a nonaccredited independent study course after October 28, 1992);
(iv) An accredited independent study course leading to a certificate that reflects educational attainment from an institution of higher learning. This provision applies to enrollment in an independent study course that begins on or after December 27, 2001. (See § 21.7622(f) concerning enrollment in a nonaccredited independent study course after October 28, 1992);
(v) A refresher, remedial or deficiency course;
(vi) A cooperative course;
(vii) An apprenticeship or other on-job training; and
(viii) A flight course.


(c) Limitations on establishing eligibility. (1) An individual must elect in writing whether he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 when:
   (i) The individual is a reservist who is eligible for basic educational assistance provided under 38 U.S.C. 3012, and has established eligibility to that assistance partially through service in the Selected Reserve; or
   (ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. 3012 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504, or 505 followed by service in the Selected Reserve.
(2) An election under this paragraph (c) to have Selected Reserve service credited towards eligibility for payment of educational assistance under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 1606 is irrevocable when the reservist either negotiates the first check or receives the first payment by electronic funds transfer of the educational assistance elected.
(3) If a reservist is eligible to receive educational assistance under both 38 U.S.C. chapter 30 and 10 U.S.C. chapter 1606, he or she may receive educational assistance alternately or consecutively under each of these chapters to the extent that the educational assistance is based on service not irrevocably credited to one or the other chapter as provided in paragraphs (c)(1) and (c)(2) of this section.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c))

(d) Dual eligibility. An individual who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 solely through service on active duty may establish eligibility for educational assistance under 10 U.S.C. chapter 1606 by meeting the requirements of paragraph (a) of this section.

(Authority: 10 U.S.C. 16132(d), 16134)

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0594)
§ 21.7550 Ending dates of eligibility.
(a) Time limit on eligibility. (1) Reservists who become eligible before October 1, 1992. Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if the reservist becomes eligible for educational assistance before October 1, 1992, the period of eligibility expires effective the earlier of the following dates:
(i) The last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance; or
(ii) The date the reservist is separated from the Selected Reserve.
(2) Reservists who become eligible after September 30, 1992. Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if a reservist becomes eligible for educational assistance after September 30, 1992, the period of eligibility expires effective the earlier of the following dates:
(i) The last day of the 14-year period beginning on the date the reservist becomes eligible for educational assistance; or
(ii) The date the reservist is separated from the Selected Reserve.

(b) Extension due to active duty orders. If the reservist serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S. Code, the period of this active duty plus four months shall not be considered in determining the time limit on eligibility found in paragraph (a) of this section.

(c) Completion of term of program. (1) If a reservist is enrolled in an educational institution regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire during a quarter or semester, the period of eligibility shall be extended to the end of the quarter or semester.
(2) If a reservist is enrolled in an educational institution not regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire after a major portion of the course is completed, the period of eligibility shall be extended until the earlier of the following occurs:
(i) The end of the course, or
(ii) 12 weeks from the date on which the reservist's eligibility otherwise would have expired.

(d) Discharge for disability. In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to education assistance, the reservist's period of eligibility expires effective the last day of the --
(1) 10-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or
(2) 14-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.
(Authority: 10 U.S.C. 16133)
(e) Unit deactivated. (1) Except as provided in paragraph (e)(3) or (e)(4) of this section, the period of eligibility of a reservist, eligible for educational assistance under this subpart, who ceases to become a member of the Selected Reserve during the period beginning October 1, 1991, and ending December 31, 2001, under either of the conditions described in paragraph (e)(2) of this section will expire on the date --
(i) 10 years after the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or
(ii) 14 years after the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.
(2) The conditions referred to in paragraph (e)(1) of this section for ceasing to be a member of the Selected Reserve are:
(i) The deactivation of the reservist's unit of assignment; and
(ii) The reservist's involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 10143(a).
(3) The provisions of paragraphs (e)(1) and (e)(2) of this section do not apply if the reservist ceases to be a member of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned. The expiration of such a reservist's period of eligibility will be on the date the reservist ceases, under adverse conditions, to be a member of the Selected Reserve.
(4) A reservist's period of eligibility will expire if he or she is a member of a reserve component of the Armed Forces and (after having involuntarily ceased to be a member of the Selected Reserve) is involuntarily separated from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned. The expiration of such a reservist's period of eligibility will be on the date the reservist is involuntarily separated under adverse conditions from the Armed Forces.
(Authority: 10 U.S.C. 16133)


§ 21.7551 Extended period of eligibility.
(a) Period of eligibility may be extended. VA shall grant an extension of a delimiting period determined by § 21.7550(a) of this part provided:
(1) The individual applies for an extension within the time period specified in § 21.1033(c) of subpart B.
(2) The individual was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period, because of a physical or mental disability, which is not the result of the reservist's own willful misconduct, and
which was incurred in or aggravated by service in the Selected Reserve. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7520(b)(29)). Evidence must establish that such a program of education was medically infeasible. VA will not grant a reservist an extension for a period of disability which was 30 days or less unless the evidence establishes that the reservist was prevented from enrolling or reenrolling in the chosen program, or was forced to discontinue attendance, because of the short disability.


(b) Commencing date. The reservist shall elect the commencing date of an extended period of eligibility. The date chosen --
(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7550(a) of this part, and
(2) Must either be --
(i) On or before the 90th day following the date on which the reservist's application for an extension was approved by VA if the reservist is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or
(ii) On or before the first day of a term, quarter or semester within an ordinary school year following the 90th day after the reservist's application for an extension was approved in VA, if the reservist is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 10 U.S.C. 16133(b)(2), 38 U.S.C. 3031(d); Pub. L. 98-525)

(c) Length of extended period of eligibility. A reservist's extended period of eligibility shall be for the length of time that the reservist was prevented from initiating or completing his or her chosen program of education, except that it must end when the reservist is separated from the Selected Reserve. VA shall determine the length of time the reservist was prevented from initiating or completing his or her chosen program of education as follows:
(1) If the reservist is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the reservist's original eligibility period that his or her training became medically infeasible to the earliest of the following dates:
(i) The commencing date of the ordinary term, quarter or semester following the day the reservist's training became medically infeasible,
(ii) The last date of the reservist's delimiting date as determined by § 21.7550(a) of this part, or
(iii) The date the reservist resumed training.
(2) If the reservist is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the reservist's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:
(i) The date the reservist's training became medically feasible, or
(ii) The reservist's delimiting date as determined by § 21.7550(a)(1) of this part.

(Authority: 10 U.S.C. 16133(b)(2), 38 U.S.C. 3031(d); Pub. L. 98-525)

[EFFECTIVE DATE NOTE: 61 FR 20727, 20729, May 8, 1996, which substituted "16133(b)(2)" for "2133(b)(2)" in paragraphs (a)(2), (b)(2)(ii) and (c)(2)(ii), became effective May 8, 1996.]
§ 21.7570 Entitlement.
§ 21.7576 Entitlement charges.

§ 21.7570 Entitlement.
Except as provided in § 21.7576(e) each reservist is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under this program, but is also subject to the provisions of § 21.4020 (a) and (b).

§ 21.7576 Entitlement charges.
(a) Overview. VA will make charges against entitlement as stated in this section. Charges are based upon the principle that a reservist who trains full time for one day should be charged one day of entitlement, except for those pursuing:
(1) Flight training;
(2) Correspondence training;
(3) Cooperative training; or
(4) Apprenticeship or other on-job training.
(Authority: 10 U.S.C. 2131(c); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565; sec. 642(a), (b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)
(b) Determining entitlement charge. This paragraph states how VA will generally determine the charge against the entitlement of a reservist who is receiving educational assistance. However, when the circumstances described in paragraph (e) of this section apply to a reservist, VA will use that paragraph to determine an entitlement charge instead of this paragraph.
(1) Except for those pursuing flight training, correspondence training, cooperative training, apprenticeship or other on-job training, VA will make a charge against entitlement --
(i) On the basis of total elapsed time (one day for each day of pursuit for which the reservist is paid educational assistance) if the reservist is pursuing the program of education on a full-time basis; or
(ii) On the basis of a proportionate rate of elapsed time, if the reservist is pursuing the program of education on a three-quarter, one-half, or one-quarter-time basis.
(2) VA will compute elapsed time from the commencing date of the award of educational assistance to the date of discontinuance. If the reservist changes his or her training time after the commencing date of the award, VA will --
(i) Divide the enrollment period into separate periods of time during which the reservist's training time remains constant; and
(ii) Compute the elapsed time separately for each time period.
(3) For each month that a reservist is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a charge against entitlement of --
(i) .75 of a month in the case of payments made during the first six months of the reservist's pursuit of the program of apprenticeship or other on-job training;
(ii) .55 of a month in the case of payments made during the second six months of the reservist's pursuit of the program of apprenticeship or other on-job training; and
(iii) .35 of a month in the case of payments made following the first twelve months of the reservist's pursuit of the program of apprenticeship or other on-job training.

(4) When a reservist is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge will be made in months and decimal fractions of a month, as determined by dividing the amount of the payment by an amount equal to the rate stated in § 21.7636(a)(1) as the rate otherwise applicable to the reservist for full-time training.

(5) When a reservist is pursuing a program of education partly in residence and partly by correspondence, VA will make a charge against entitlement --
(i) For the residence portion of the program as provided in paragraphs (b)(1) and (b)(2) of this section; and
(ii) For the correspondence portion of the program as provided in paragraph (b)(4) of this section.

(6) When a reservist is pursuing a program of education through cooperative training, VA will make a charge against entitlement of .8 of a month for each month in which the reservist is receiving payment at the rate for cooperative training. If the reservist is pursuing cooperative training for a portion of a month, VA will make a charge against entitlement on the basis of total elapsed time (.8 of a day for each day of pursuit).

(7) When a reservist is pursuing a program of education through flight training, VA will make a charge against entitlement at the rate of one month for each amount equal to the monthly rate stated in § 21.7636(a)(1) as applicable for the month in which the training occurred.

(c) Overpayment cases. VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by --

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,
(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (c)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(i) of this section by the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 10 U.S.C. 16133(c); Pub. L. 98-525)

(d) Interruption to conserve entitlement. A reservist may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the reservist is enrolled for the entire term, quarter or semester. VA will make a charge for the entire period of certified enrollment, if the reservist is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;
(2) The reservist cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;
(3) The reservist interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester; and
(4) The reservist requests interruption or cancellation for any break when an institution of higher learning was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. In such a case entitlement will be restored unless the reservist negotiated a check for educational assistance for the certified period and does not repay the amount received.

(Authority: 10 U.S.C. 16133(c); Pub. L. 98-525)

(e) No entitlement charge for some reservists. When the criteria described in this paragraph are met, there is an exception to the charges against entitlement described in paragraph (b) of this section.

(1) VA will make no charge against a reservist's entitlement when the reservist --

(i) While not serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered to serve on active duty under sections 12301(a),(d),(g), 12302, or 12304 of title 10, U. S. Code; and

(ii) Failed to receive credit or lost training time toward completion of the reservist's approved educational, professional or vocational objective as a result of having to discontinue his or her course pursuit.

(2) The period for which receipt of educational assistance allowance is not charged against a reservist's entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the reservist failed to receive credit or with respect to which the reservist lost training time.

(Authority: 10 U.S.C. 16131(c)(3))


COUNSELING

§ 21.7600 Counseling.
§ 21.7603 Travel expenses.

§ 21.7600 Counseling.
A reservist may receive counseling from VA before beginning training and during training.
(a) Purpose. The purpose of counseling is --
(1) To assist in selecting an objective;
(2) To develop a suitable program of education;
(3) To select an institution of higher learning appropriate for the educational or training objective;
(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and
(5) To select an employment objective for the reservist that would be likely to provide the reservist with satisfactory employment opportunities in light of his or personal circumstances.
(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3233; Pub. L. 98-525)
(b) Required counseling. (1) In any case in which the Department of Veterans Affairs has rated the reservist as being incompetent, the reservist must be counseled before selecting a program of education. The requirement that counseling be provided is met when --
(i) The reservist has had one or more personal interviews with the counselor;
(ii) The counselor and the reservist have jointly developed recommendations for selecting a program of education; and
(iii) The counselor has reviewed the recommendations with the reservist.
(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.
(3) The Department of Veterans Affairs will take no further action on a reservist's application for assistance under this chapter when he or she --
(i) Fails to report for counseling;
(ii) Fails to cooperate in the counseling process; or
(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.
(c) Availability of counseling. Counseling is available for
(1) Identifying and removing reasons for academic difficulties which may result in interruption of discontinuance of training, or
(2) Considering changes in career plans and making sound decisions about the changes.
(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3967(a); Pub. L. 98-525)
(d) Provision of counseling. The Department of Veterans Affairs shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the reservist. In addition, the Department of Veterans Affairs shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the reservist's request for counseling, the reservist's initial application for benefits or any communication from the reservist or guardian indicating that the reservist wishes to

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change his or her program. The Department of Veterans Affairs shall take appropriate steps (including individual notification where feasible) to acquaint reservists with the availability and advantages of counseling services.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3967(a); Pub. L. 98-525, Pub. L. 99-576)

§ 21.7603 Travel expenses.
The Department of Veterans Affairs will not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 10 U.S.C. chapter 1606 or for whom counseling is required under that chapter.
(Authority: 38 U.S.C. 111)

§ 21.7610 Selection of a program of education.
§ 21.7612 Programs of education combining two or more types of courses.
§ 21.7614 Changes of program.

§ 21.7610 Selection of a program of education.
(a) General requirement. An individual must be pursuing an approved program of
education in order to receive educational assistance.
(Authority: 10 U.S.C. 16131; Pub. L. 98-525)
(b) Approval of a program of education. VA will approve a program of education
selected by a reservist for payment of educational assistance under 10 U.S.C. chapter
1606 if --
(1) The program accords with the definition of a program of education found in §
21.7520(b)(17) of this part,
(2) It has an educational, professional or vocational objective (as defined in §§
21.7520(b)(7) and (28) of this part), and
(3) The courses and subjects in the program are approved for VA purposes as provided in
§ 21.7720 of this part.
(4) The reservist is not already qualified for the objective of the program.
(Authority: 10 U.S.C. 16136(b), 1671; Pub. L. 98-525)
[53 FR 34740, Sept. 8, 1988; 61 FR 20727, 20729, May 8, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20727, 20729, May 8, 1996, which amended this
section, became effective May 8, 1996.]

§ 21.7612 Programs of education combining two or more types of courses.
An approved program may consist of courses offered by two educational institutions
concurrently, or courses offered through class attendance and by television concurrently.
An educational institution may contract the actual training to another educational
institution, provided the course is approved by the State approving agency having
approval jurisdiction over the educational institution actually providing the training.
(a) Concurrent enrollment. When a reservist cannot schedule his or her complete program
at one educational institution, VA may approve a program of concurrent enrollment.
When requesting such a program, the reservist must show that his or her complete
program of education is not available at the educational institution in which he or she will
pursue the major portion of his or her program (the primary educational institution), or
that it cannot be scheduled within the period in which he or she plans to complete his or
her program. A reservist who is limited in the types of courses he or she may pursue, as
provided in § 21.7540 (b)(2) and (b)(3), may pursue courses only at an institution of
higher learning. If such a reservist cannot complete his or her program at one institution
of higher learning, VA may approve a concurrent enrollment only if both the educational
institutions the reservist enrolls in are institutions of higher learning.
(Authority: 10 U.S.C. 2131(c), 2136(b); 38 U.S.C. 3680(g); sec. 705(a)(1), Pub. L.
(b) Television. In determining whether a reservist may pursue all or part of a program of education by television, VA will apply the provisions of § 21.4233(c).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680A)


§ 21.7614 Changes of program.

In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.


COURSES

§ 21.7620 Courses included in programs of education.
§ 21.7622 Courses precluded.
§ 21.7624 Overcharges and restrictions on enrollments.

§ 21.7620 Courses included in programs of education.

(a) General. Generally, VA will approve, and will authorize payment of educational assistance for the reservist's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7720 of this part, and which forms a part of a program of education as defined in § 21.7520(b)(17) of this part. Restrictions on this general rule are stated in the other paragraphs in this section and in § 21.7722(b) of this part, however.

(b) Flight training. (1) VA may pay educational assistance for an enrollment in a flight training course when --

(i) An institution of higher learning offers the course for credit toward the standard college degree the reservist is pursuing; or

(ii) When:

(A) The reservist is eligible to pursue flight training as provided in § 21.7540(b)(1) and (b)(3);

(B) The State approving agency has approved the course;

(C) A flight school is offering the course;

(D) The reservist's training meets the requirements of § 21.4263(b)(1);

(E) The reservist meets the requirements of § 21.4263(a); and

(F) The training for which payment is made occurs after September 29, 1990.

(2) VA will not pay educational assistance for an enrollment in a flight training course when the reservist is pursuing an ancillary flight objective.

(c) Independent study. (1) VA will pay educational assistance to a reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), for an enrollment in any course or unit subject offered by independent study only when the reservist is enrolled concurrently in one or more courses or unit subjects offered by resident training.

(2) Only a reservist who meets the requirements of § 21.7540(b)(1) may be paid educational assistance for an enrollment in an independent study course or unit subject without a simultaneous enrollment in a course or unit subject offered by resident training. The independent study course or unit subject must be accredited and lead to a standard college degree. Beginning with enrollments on or after December 27, 2001, a reservist may receive educational assistance for an independent study course that leads to a certificate. The certificate must reflect educational attainment and must be offered by an institution of higher learning.

(3) Except as provided in paragraph (c)(4) of this section and subject to the restrictions found in paragraph (c)(1) of this section, effective October 29, 1992, VA may pay
Section 21.7622 Courses precluded.

(a) Unapproved courses. VA will not pay educational assistance for an enrollment in any course which has not been approved by a State approving agency or by VA when that agency acts as a State approving agency. VA will not pay educational assistance for a new enrollment in a course when a State approving agency has suspended the approval of the course for new enrollments, nor for any period within any enrollment after the date that the State approving agency disapproves a course. See § 21.7720 of this part.

(b) Courses not part of a program of education. VA will not pay educational assistance for an enrollment in any course which is not part of a program of education.

(c) Erroneous, deceptive, misleading practices. VA will not pay educational assistance for an enrollment in any course offered at an educational institution that uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading by actual statement, omission, or intimation. VA will apply the provisions of § 21.4252(h) in making these decisions with regard to enrollments under 10 U.S.C. chapter 1606.

(d) Avocational and recreational. (1) VA will not pay educational assistance for an enrollment in any course --
(i) Which is avocational or recreational in character, or
(ii) The advertising for which contains significant avocational or recreational themes.
(2) VA presumes that the following courses are avocational or recreational in character unless the reservist justifies their pursuit to VA as provided in paragraph (3) of this section. The courses are:
(i) Any photography course or entertainment course; or
(ii) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective; or
(iii) Any other type of course which VA determines to be avocational or recreational.
(3) To overcome a presumption that a course is avocational or recreational in character, the reservist must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3473(d); Pub. L. 98-525)
(e) Mitigating circumstances. The reservist is not entitled to receive payment of educational assistance from VA for a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless --
(1) There are mitigating circumstances, and
(2) The reservist submits the circumstances in writing to VA within 1 year from the date VA notifies the reservist that he or she must submit the mitigating circumstances.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(a); Pub. L. 98-525)
(f) Other courses. (1) A reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), may not receive any educational assistance for pursuit of any of the types of training listed in § 21.7540(b)(3).
(2) VA will not consider the hospital or field work phase of a nursing course, including a course leading to a degree in nursing, to be provided by an institution of higher learning unless --
(i) The hospital or fieldwork phase is an integral part of the course;
(ii) Completion of the hospital or fieldwork phase of the course is a prerequisite to the successful completion of the course;
(iii) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase of the course; and
(iv) The training is under the direction and supervision of the institution of higher learning.
(3) A reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), may not receive educational assistance for an enrollment in a course pursued after the reservist has completed the course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study, unless the reservist is pursuing a course or courses leading to a graduate degree or graduate certificate. Such a reservist may receive educational assistance while pursuing a course or courses leading to a graduate degree or graduate certificate (subject to the restrictions in § 21.7620(d)). Equivalent evidence of completion of study may include, but is not limited
to, a copy of the reservist's transcript showing that he or she has received passing grades in all courses needed to obtain a baccalaureate degree at the institution of higher learning which he or she has been attending.

(4) No reservist may receive payment of educational assistance from VA for:
   (i) An audited course (see § 21.4252(i));
   (ii) A new enrollment in a course during a period when approval has been suspended by a State approving agency or VA;
   (iii) Pursuit of a course by a nonmatriculated student except as provided in § 21.4252(l);
   (iv) An enrollment in a course at an educational institution for which the reservist is an official of such institution authorized to sign certificates of enrollment under 10 U.S.C. chapter 1606;
   (v) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201;
   (vi) Except as provided in § 21.7620(c), an enrollment in a nonaccredited independent study course; or
   (vii) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 10 U.S.C. 16131(c), 16136(b); 38 U.S.C. 3672(a), 3676, 3680(a), 3680A(f), 3680A(g); § 642, Public Law 101-189, 103 Stat. 1458)

§ 21.7624 Overcharges and restrictions on enrollments.

(a) Overcharges. VA may disapprove an educational institution for further enrollments when the educational institution charges or receives from a reservist tuition and fees that exceed the established charges which the educational institution requires from similarly circumstanced nonreservists enrolled in the same course.


(b) Restriction on enrollments. The provisions of § 21.4210(b) apply to any determination by VA as to whether to impose restrictions on approval of enrollments and whether to discontinue payments to reservists already enrolled at an educational institution.


§ 21.7630 Educational assistance.

VA will pay educational assistance pursuant to 10 U.S.C. chapter 1606 to an eligible reservist while he or she is pursuing approved courses in a program of education at the rates specified in § 21.7636 and § 21.7639.

(Authority: 10 U.S.C. 16131(b); Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988; 61 FR 20727, 20729, May 8, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20727, 20729, May 8, 1996, which amended this section, became effective May 8, 1996.]

§ 21.7631 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) Entrance or reentrance including change of program or educational institution. When an eligible reservist enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the reservist is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;
(ii) One year before the date of claim as determined by § 21.1029(b);
(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the reservist is pursuing, the effective date of the award of educational assistance is the later of--

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or
(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3672, 5103)
(b) Certification by educational institution -- course or subject leads to a standard college degree. (1) When a student enrolls in a course offered by independent study, the commencing date of the award or increased award of educational assistance will be the date the student began pursuit of the course according to the regularly established practices of the educational institution.
(2) When a student enrolls in a resident course or subject, the commencing date of the award will be the date of reporting provided that --
   (i) The published standards of the school require the student to register before reporting, 
   (ii) The published standards of the school require the student to report no more than 14 days before the first scheduled date of classes for the term, quarter or semester for which the student has registered, and 
   (iii) The first scheduled class for the course or subject in which the student is enrolled begins during the calendar week when, according to the school's academic calendar, classes are generally scheduled to commence for the term.
(3) When a student enrolls in a resident course or subject whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to commence for the term, quarter, or semester, the commencing date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for the particular course or subject.
(4) When a student enrolls in a resident course or subject and neither the provisions of paragraph (b)(2) nor (b)(3) of this section apply to the enrollment, the commencing date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the student is enrolled.
(Authority: 10 U.S.C. 16136(b)).
(c) Certification by educational institution -- course does not lead to a standard college degree. (1) When a reservist enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance will be as stated in paragraph (b) of this section.
(2) When a reservist enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of --
   (i) The date the first lesson was sent, or 
   (ii) The date of affirmance in accordance with 38 U.S.C. 3686.
(3) When a reservist enrolls in a program of apprenticeship or other on-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.
(Authority: 10 U.S.C. 16136(b))
(d) Liberalizing laws and VA issues. When a liberalizing law or VA issue affects the commencing date of a reservist's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.
(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)
(e) Individuals in a penal institution. If a reservist is paid a reduced rate of educational assistance under § 21.7639 (d), (e), (f), (g) and (h) of this section, the rate will be increased or assistance will commence effective the earlier of the following dates:
   (1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or
(2) The date of the release from the prison or jail.
(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98-525)
(f) [Reserved]
(g) Increase ("kicker") in amount payable. If a reservist is entitled to an increase ("kicker") in the monthly rate of educational assistance because he or she has met the requirements of § 21.7636(b), the effective date of that increase ("kicker") will be the latest of the following dates:
(1) The commencing date of the reservist's award as determined by paragraphs (a) through (g) of this section; or
(2) The first date on which the reservist is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned; or
(3) February 10, 1996.
(Authority: 10 U.S.C. 16131)

[EFFECTIVE DATE NOTE: 66 FR 38938, 38939, July 26, 2001, removed and reserved paragraph (f), effective July 26, 2001.]

§ 21.7633 Suspension or discontinuation of payments.
VA may suspend or discontinue payments of educational assistance. In doing so, VA will apply §§ 21.4210 through 21.4216.
(Authority: 10 U.S.C 16136(b); 38 U.S.C. 3690)
[53 FR 34740, Sept. 8, 1988; 61 FR 20727, 20729, May 8, 1996; 63 FR 35830, 35837, July 1, 1998]

[EFFECTIVE DATE NOTE: 63 FR 35830, 35837, July 1, 1998, revised this section, effective July 31, 1998.]

§ 21.7635 Discontinuance dates.
The effective date of reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.
(a) Death of reservist. (1) If the reservist receives an advance payment and dies before the end of the period covered by the advance payment, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.
(2) In all other cases if the reservist dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.
(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680(e))
(b) Course discontinued -- course interrupted -- course terminated -- course not satisfactorily completed or withdrawn from. (1) If the reservist, for reasons other than being called or ordered to active duty, withdraws from all courses or receives all nonpunitive grades, and in either case there are no mitigating circumstances VA will terminate or reduce educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which grades are assigned.
(2) If the reservist withdraws from all courses with mitigating circumstances or withdraws from all courses such that a punitive grade is or will be assigned for those courses or the reservist withdraws from all courses because he or she is ordered to active duty, VA will terminate educational assistance for --
(i) Residence training: last date of attendance; and
(ii) Independent study: official date of change in status under the practices of the institution of higher learning.

(3) When a reservist withdraws from a correspondence course, VA will terminate educational assistance effective the date the last lesson is serviced.

(4) When a reservist withdraws from an apprenticeship or other on-job training, VA will terminate educational assistance effective the date of last training.
(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(5) When a reservist withdraws from flight training, VA will terminate educational assistance effective the date of last instruction.
(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642 (c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(c) Reduction in the rate of pursuit of the course. If the reservist reduces the rate of training by withdrawing from part of a course, but continues training in part of the course, the provisions of this paragraph apply.
(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the reservist's educational assistance effective on the date the reduction occurred when:
(i) A nonpunitive grade is assigned for the part of the course from which he or she withdraws, and
(A) The reservist withdraws because he or she is ordered to active duty, or
(B) The withdrawal occurs with mitigating circumstances; or
(ii) A punitive grade is assigned for the part of the course from which the reservist withdraws,
(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when --
(i) The reduction occurs on the first date of the term, or
(ii) The reservist --
(A) Receives a nonpunitive grade for the part of the course from which he or she withdraws, and
(B) Withdraws without mitigating circumstances, and
(C) Does not withdraw because he or she is ordered to active duty.

(3) A reservist, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7640 are met. If those requirements are not met, VA will reduce the reservist's educational assistance effective the date the subject or subjects were completed.
(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680; Pub. L. 98-525; Pub. L. 100-689)
(d) Nonpunitive grade. (1) If the reservist receives a nonpunitive grade in a particular course, for any reason other than a withdrawal from it, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies when no mitigating circumstances are found.
(2) If the reservist receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the reservist's educational assistance effective the last date of attendance when mitigating circumstances are found.

(e) Discontinued by VA. If VA discontinues payment to a reservist following the procedures stated in § 21.4211(d) and (g), the date of discontinuance of payment of educational assistance will be --
(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210, if the discontinuance was preceded by suspension.
(2) The end of the month in which the decision to discontinue, made by VA under § 21.7633 or § 21.4211(d) and (g), is effective, if the Director of a VA facility did not suspend payments before the discontinuance.
(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3672(a), 3690; Pub. L. 98-525)

(f) Disapproved by State approving agency. If a State approving agency disapproves a course in which a reservist is enrolled, the date of discontinuance of payment of educational assistance will be --
(1) The date on which payments first were suspended by the Director of a VA facility as provided in § 21.4210 if disapproval was preceded by such a suspension.
(2) The end of the month in which disapproval is effective or VA receives notice of the disapproval, whichever is later, provided that the Director of a VA facility did not suspend payments before the disapproval.
(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3672(a), 3690; Pub. L. 98-525)

(g) Disapproval by VA. If VA disapproves a course in which a reservist is enrolled, the effective date of discontinuance of payment of educational assistance will be --
(1) The date on which the Director of a VA facility first suspended payments, as provided in § 21.4210, if such a suspension preceded the disapproval.
(2) The end of the month in which the disapproval occurred, provided that the Director of a VA facility did not suspend payments before the disapproval.
(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3671(b), 3672(a), 3690; Pub. L. 98-525)

(h) Unsatisfactory progress. If a reservist's progress is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:
(1) The date the educational institution discontinues the reservist's enrollment, or
(2) The date on which the reservist's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress.
(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3474; Pub. L. 98-525)

(i) False or misleading statements. If educational assistance is paid as the result of false or misleading statements, see § 21.7658 of this part.
(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98-525)

(j) Conflicting interests (not waived). If an institution of higher learning and VA have conflicting interests as provided in § 21.4005 and § 21.7805 of this part, and VA does not
grant the waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the reservist.


(k) Incarceration in prison or penal institution for conviction of a felony. (1) The provisions of this paragraph apply to a reservist whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7639(d) of this part.

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the reservist's tuition and fees were paid by a Federal, State or local program,

(ii) The date the reservist is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by § 21.7631 of this part.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98-525)

(l) Exhaustion of entitlement. If a reservist exhausts his or her 36 months of entitlement, the discontinuance date shall be the date the entitlement is exhausted.

(Authority: 10 U.S.C. 16131(c); Pub. L. 98-525)

(m) End of eligibility period. If the reservist's eligibility period ends while the reservist is receiving educational assistance, the date of discontinuance shall be the date on which eligibility ends as determined by § 21.7550 and § 21.7551 of this part.

(Authority: 10 U.S.C. 16133; Pub. L. 98-525)

(n) Required certifications not received after certification of enrollment. (1) If VA does not timely receive a required certification of attendance for a reservist enrolled in a course not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which a certification of the reservist's attendance was received. If VA later receives the certification, VA will make any adjustment on the basis of facts found.

(2) In the case of an advance payment, if VA does not receive verification of enrollment and certificate of delivery of the check within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the reservist failed to enroll, termination will be effective the beginning date of the enrollment period.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(d); Pub. L. 98-525)

(o) Receipt of financial assistance under 10 U.S.C. 2107. If the reservist receives financial assistance under 10 U.S.C. 2107, the effective date for discontinuance of payment of educational assistance shall be the first date for which the reservist receives such assistance.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(p) Failure to participate satisfactorily in required training in Selected Reserve. If the reservist fails to participate satisfactorily in required training in the Selected Reserve, VA will discontinue payment of educational assistance allowance effective the first date certified by the Department of Defense or the Department of Transportation as the date on which the reservist fails to participate satisfactorily as a member of the Selected Reserve.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(q) Error-payee's or administrative. (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational
assistance, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later, but not before the last date on which the reservist was entitled to payment of educational assistance.

(2) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Transportation is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(Authority: 38 U.S.C. 5112(b), 5113; Pub. L. 98-525)

(r) Completion of baccalaureate instruction. If a reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540 (b)(2) and (b)(3), completes a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study (see § 21.7622(f)), VA will discontinue educational assistance effective the day after the date upon which the required course of instruction was completed.

(Authority: 10 U.S.C. 2131; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565; secs. 642 (a), (b), (d), 645(a), (b), Pub. L. 101-189, 103 Stat. 1456-1458)

(s) Forfeiture for fraud. If a reservist must forfeit his or her educational assistance due to fraud, the date of discontinuance of payment of educational assistance will be the later of --

(1) The effective date of the award, or
(2) The day before the date of the fraudulent act.


(t) Forfeiture for treasonable acts or subversive activities. If a reservist must forfeit his or her educational assistance due to treasonable acts or subversive activities, the date of discontinuance of payment of educational assistance will be the later of --

(1) The effective date of the award, or
(2) The day before the date the reservist committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 6104, 6105; Pub. L. 98-525)

(u) Change in law or VA issue or interpretation. If there is a change in applicable law or VA issue, or in the Department of Veterans Affairs's application of the law or VA issue, VA will use the provisions of § 3.114(b) of this chapter to determine the date of discontinuance of the reservist's educational assistance.

(Authority: 38 U.S.C. 5112, 5113; Pub. L. 98-525)

(v) Independent study course loses accreditation. If the reservist is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency, unless the provisions of § 21.7620 (c)(3) or (c)(4) apply.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680A(a)(4))

(w) [Reserved]

(x) Reduction following loss of increase ("kicker"). If a reservist is entitled to an increase ("kicker") in the monthly rate of basic educational assistance as provided in § 21.7636(b) and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date, as determined by the Secretary of the military department concerned, that the reservist is no longer entitled to the increase ("kicker").

(Authority: 10 U.S.C. 16131)
(y) Election to receive educational assistance under 38 U.S.C. chapter 30. VA shall terminate educational assistance effective the first date for which the reservist received educational assistance when --
(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in § 21.7020(b)(1)(iv); and
(2) The reservist subsequently made an election, as described in § 21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.
(Authority: Sec. 107, Pub. L. 104-275, 110 Stat. 3329-3330)
(z) Except as otherwise provided. If the reservist's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, VA will determine the date of discontinuance of payment of educational assistance on the basis of facts found.
(Authority: 38 U.S.C. 5112(a), 5113; Pub. L. 98-525)

§ 21.7636 Rates of payment.
(a) Monthly rate of educational assistance. (1) Except as otherwise provided in this section or in Sec. 21.7639, the monthly rate of educational assistance payable for training that occurs after September 30, 2003, and before October 1, 2004, to a reservist pursuing a program of education is the rate stated in this table:

<table>
<thead>
<tr>
<th>Training</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full</td>
<td>$ 282.00</td>
</tr>
<tr>
<td>3/4</td>
<td>212.00</td>
</tr>
<tr>
<td>1/2</td>
<td>140.00</td>
</tr>
<tr>
<td>1/4</td>
<td>70.50</td>
</tr>
</tbody>
</table>

(2)(i) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in this table:

<table>
<thead>
<tr>
<th>Training period</th>
<th>Monthly rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>First six months of pursuit of training</td>
<td>$ 211.50</td>
</tr>
<tr>
<td>Second six months of pursuit of training</td>
<td>155.10</td>
</tr>
<tr>
<td>Remaining pursuit of training</td>
<td>98.70</td>
</tr>
</tbody>
</table>

(ii) Full-time training will consist of the number of hours which constitute the standard workweek of the training establishment, but not less than 30 hours unless a lesser number of hours is established as the standard workweek for the particular establishment through bona fide collective bargaining between employers and employees.
(3) The monthly rate of basic educational assistance payable to a reservist for pursuit of a cooperative course that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in paragraph (a)(1) of this section for full-time training during that period of time. 

(Authority: 10 U.S.C. 16131(b), (c); sec. 8203(b), Pub. L. 105-178, 112 Stat. 493-494)

(b) Increase ("kicker") in educational assistance rates. (1) The Secretary of the military department concerned may increase the amount of educational assistance stated in paragraph (a) of this section that is payable to a reservist who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel.

(2) The Secretary of the military department concerned --
(i) Will set the amount of the increase ("kicker") for full-time training, but the increase ("kicker") may not exceed $ 350 per month; and
(ii) May set the amount of the increase ("kicker") payable, for a reservist pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (b)(2)(i) of this section.

(Authority: 10 U.S.C. 16131(i)(1))

(c) Limitations on payments. VA may withhold final payment until VA receives proof of the reservist's enrollment and adjusts the reservist's account.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

§ 21.7639 Conditions which result in reduced rates or no payment.
The payment of educational assistance at the monthly rates established in § 21.7636 shall be subject to reduction, whenever the circumstances described in this section arise.
(a) Withdrawals and nonpunitive grades. (1) Withdrawal from a course or receipt of a nonpunitive grade affects payments to a reservist. VA will not pay benefits to a reservist for pursuit of a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing requirements for graduation unless the provisions of this paragraph are met.
(i) The reservist withdraws because he or she is ordered to active duty; or
(ii) Both of the following exist.
(A) There are mitigating circumstances, and
(B) The reservist submits a description of the circumstances in writing to VA either within one year from the date VA notifies the reservist that he or she must submit the mitigating circumstances, or at a later date if the reservist is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances.
(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471, 5101, 5113)

(2) If VA considers that mitigating circumstances exist because the reservist withdrew during a drop-add period or because the withdrawal constitutes the first withdrawal of no more than six credits after May 31, 1989, the reservist is not subject to the reporting requirement found in paragraph (b)(1)(ii)(B) of this section.


(b) No education assistance for some incarcerated reservists. VA will pay no educational assistance to reservists who are incarcerated and who are training less than one-half time. In addition, VA will pay no educational assistance to a reservist who --

(1) Is incarcerated in Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course --

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98-525)

(c) Reduced educational assistance for some incarcerated reservists. (1) VA will pay reduced educational assistance to a reservist who --

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course --

(A) For which the reservist pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but for which the reservist must pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a reservist is the lesser of the following:

(i) The monthly rate of the portion of tuition and fees that are not paid by a Federal program (other than one administered by VA or a State or local program plus the monthly rate of any charges to the reservist for the cost of necessary supplies, books and equipment, or

(ii) The monthly rate as stated in § 21.7636(a) and any increase payable under § 21.7636(b).

(3) In determining the monthly rate stated in paragraph (c)(2)(i) of this paragraph, VA will --

(i) Add the portion of tuition and fees that are not paid by a Federal program (other than one administered by VA) for the reservist's enrollment period to the total cost to the reservist for the cost of necessary supplies, books and equipment, and

(ii) Divide the figure obtained in paragraph (c)(3)(i) of this paragraph by the number of months and fractions of a month in the reservist's enrollment period.

(Authority: 10 U.S.C. 16131(i)(1), 16136(b); 38 U.S.C. 3482(g))

(d)(1) A reservist pursuing only independent study and whose enrollment begins after June 30, 1993, shall be paid educational assistance on the basis of his or her training time.

(2) No payments may be made to a reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540(b)(2) and (b)(3), and who is pursuing
independent study unless he or she is concurrently pursuing one or more courses offered through resident training at an institution of higher learning.


(e) Payment for correspondence courses. A reservist who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course shall be paid 55 percent of the established charge which the educational institution requires nonreservists to pay for the lessons --

(1) Which the reservist has completed;
(2) Which the educational institution has serviced; and
(3) For which payment is due.

(Authority: 10 U.S.C. 2131(f); sec. 642 (b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

(f) Failure to work sufficient hours of apprenticeship and other on-job training. (1) For any calendar month in which a reservist pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally --

(i) The rates specified in § 21.7636(a)(2); and
(ii) Any increase set by the Secretary of the military department concerned as described in § 21.7636(b).

(2) In making the computations required by paragraph (f)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

(3) For the purpose of this paragraph, hours worked include only --

(i) The training hours the reservist worked; and
(ii) All hours of the reservist's related training which occurred during the standard workweek and for which the reservist received wages. (See § 21.7636(a)(2)(ii) as to the requirements for full-time training.)

(Authority: 10 U.S.C. 2131(d)(2), 16131(i)(1); sec. 642 (b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

(g) Flight training course. A reservist who is pursuing a flight training course shall be paid 60 percent of the established charge for tuition and fees (other than tuition and fees charged for or attributable to solo flying hours) which the flight school requires similarly circumstanced nonreservists enrolled in the same course to pay.

(Authority: 10 U.S.C. 16131(g))

(h) Membership in the Senior Reserve Officers' Training Corps. A reservist may not receive educational assistance for any period for which he or she receives financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps.

(Authority: 10 U.S.C. 16134)

(i) Course not offered by an institution of higher learning or not leading to an identifiable educational, professional, or vocational objective. A reservist who is limited in the types of courses he or she may pursue, as described in § 21.7540(b)(2) and (b)(3), may not receive educational assistance for instruction in a program of education unless it is offered at an institution of higher learning. The instruction must lead to an identifiable educational, professional, or vocational objective, but does not have to lead to a standard college degree.
§ 21.7640 Release of payments.

(a) Payments are dependent upon certifications, reports, and verifications of pursuit. When certifications, reports, or verifications of pursuit are mentioned in this paragraph, the certifications, reports, and verifications of pursuit are to be made in the form prescribed by the Secretary of Veterans Affairs.

(1) VA will pay educational assistance to a reservist who is pursuing a standard college degree only after the educational institution has certified his or her enrollment.

(2) VA will pay educational assistance to a reservist who is pursuing a course not leading to a standard college degree (other than a correspondence course, a course of flight training, or an apprenticeship or other on-job training) only after:
   (i) The educational institution has certified his or her enrollment in the form prescribed by the Secretary of Veterans Affairs; and
   (ii) VA has received a report by the reservist, which report is endorsed by the educational institution, of --
      (A) Each day of absence that occurred before December 18, 1989; or
      (B) A verification of pursuit from the reservist of training that occurred on or after December 18, 1989.

(3) VA will pay educational assistance to a reservist pursuing a program of apprenticeship or other on-job training only after:
   (i) The training establishment has certified his or her enrollment in the training program in the form prescribed by the Secretary of Veterans Affairs; and
   (ii) VA has received certification by the reservist and the training establishment of the reservist's hours worked.

(4) VA will pay educational assistance to a reservist who is pursuing a correspondence course only after:
   (i) The educational institution has certified his or her enrollment in the form prescribed by the Secretary of Veterans Affairs; and
   (ii) VA has received a certification by the reservist, which certification is endorsed by the educational institution, as to the number of lessons completed and serviced by the educational institution.

(5) VA will pay educational assistance to a reservist who is pursuing a flight course only after:
   (i) The educational institution certifies the reservist's enrollment in the form prescribed by the Secretary of Veterans Affairs; and
(ii) VA has received a report by the reservist of the flight training the reservist has completed, which report is endorsed by the educational institution.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(b) Payment for intervals between terms. (1) In administering 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4138(f) in the same manner as they are applied in the administration of 38 U.S.C. chapter 34 when determining whether a reservist is entitled to payment for an interval between terms. References to § 21.4205 and § 21.4138(f) deemed to refer to § 21.7636.

(2) The Director of the VA facility of jurisdiction may authorize payment to be made for breaks, including intervals between terms within a certified period of enrollment, during which the educational institution is closed under an established policy based upon an order of the President or due to an emergency situation.

(i) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the educational institution, and the closing lasts more than 30 days, the Director, Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(ii) An educational institution which disagrees with a decision made under this subparagraph by a Director of a VA facility, has 1 year from the date of the letter notifying the educational institution of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA facility where the decision was made. The Director, Education Service, shall review the evidence of record and any other pertinent evidence the educational institution may wish to submit. The Director, Education Service has the authority either to affirm or reverse a decision of the Director of a VA facility.

(3) A reservist, who is pursuing a course leading to a standard college degree, may transfer between consecutive school terms from one approved institution of higher learning to another for the purpose of enrolling in, and pursuing, a similar course at the second institution of higher learning. If the interval between terms does not exceed 30 days, VA shall, for the purpose of paying educational assistance, consider the reservist to be enrolled in the first institution of higher learning during the interval.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3680(a))

(c) Payee. (1) VA will make payment to the reservist or to a duly appointed fiduciary. VA will make direct payment to the reservist even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of §§ 21.4146 (a), (b), (c) and (e) of this part to 10 U.S.C. chapter 1606 in a manner not inconsistent with the way in which they are applied in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3680, 5301(a))

(d) Advance payments. VA will apply the provisions of § 21.4138(a) in making advance payments to reservists.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(e) Frequency of payment. Except as provided in § 21.4138(a), VA shall pay educational assistance in the month following the month for which training occurs. VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree.
for any month until the reservist's attendance has been reported for that month. VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments. 

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3680(g))

(f) Apportionments prohibited. VA will not apportion educational assistance. 

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(Approved by the Office of Management and Budget under control number 2900-0073)


[EFFECTIVE DATE NOTE: 64 FR 52650, 52652, Sept. 30, 1999, amended this section, effective Sept. 30, 1999.]

§ 21.7642 Nonduplication of educational assistance.

(a) Payments of educational assistance shall not be duplicated. A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. Chapter 1606 and any of the following provisions of law --

(1) 38 U.S.C. ch. 30;
(2) 38 U.S.C. ch. 31;
(3) 38 U.S.C. ch. 32;
(4) 38 U.S.C. ch. 34;
(5) 38 U.S.C. ch. 35;
(6) 10 U.S.C. ch. 107;
(8) The Hostage Relief Act of 1980; or


(b) Election of benefits. When paragraph (a) of this section applies, the reservist must elect in writing which benefit he or she wishes to receive. The reservist may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3695; Pub. L. 98-525)

(c) Senior Reserve Officers' Training Corps scholarship program. Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(d) Nonduplication -- Federal program. Payment of educational assistance is prohibited to an otherwise eligible reservist --

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;
(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or
(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3681; Pub. L. 98-525)

Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766


[EFFECTIVE DATE NOTE: 61 FR 29297, 29307, June 10, 1996, amended paragraphs (a)(6) and (d)(3), revised paragraphs (a)(7) and (a)(8), and added paragraph (a)(9), effective June 10, 1996.]

§ 21.7644 Overpayments.

(a) Prevention of overpayments. In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of §§ 21.4008 and 21.4009 of this part in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36. See § 21.7633.

Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3690(b); Pub. L. 98-525

(b) Penalties are not overpayments. The Secretary concerned may require a refund from an individual who fails to participate satisfactorily in required training as a member of the Selected Reserve. This refund is subject to waiver by the Secretary. However, this refund --

(1) Is not an overpayment for VA purposes, and
(2) Is not subject to waiver by VA under § 1.957 of this chapter.

Authority: 10 U.S.C. 16135; Pub. L. 98-525

(c) Liability for overpayments. (1) The amount of the overpayment of educational assistance paid to a reservist constitutes a liability of that reservist unless --

(i) The overpayment is waived as provided in § 1.957 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.7635(o) of this part.

(2) The amount of the overpayment of educational assistance paid to a reservist constitutes as liability of the educational institution if VA determines that the overpayment was made as the result of --

(i) Willful or negligent false certification by the educational institution, or

(ii) Willful or negligent failure to certify excessive absences from a course, or discontinuance or interruption of a course by the reservist.

Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3685; Pub. L. 98-525

(d) Waiver of recovery of overpayments. (1) Except as stated in paragraph (b) of this section in determining whether an overpayment should be waived or recovered from a reservist, VA will apply the provisions of § 1.957 of this chapter.

(2) In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of § 21.4009(a)(2), (3), (4), and (5), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this part to overpayments of educational assistance under 10 U.S.C. chapter 1606 in the same manner as they are applied to overpayments of educational assistance allowance under 38 U.S.C. chapters 34 and 36.

Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685, 5302; Pub. L. 98-525
[53 FR 34740, Sept. 8, 1988; 61 FR 20727, 20729, May 8, 1996]

[EFFECTIVE DATE NOTE: 61 FR 20727, 20729, May 8, 1996, which amended this section, became effective May 8, 1996.]
CROSS-REFERENCE: Entitlement charges. See § 21.7576(c) of this part offering training to veterans and servicemembers under 38 U.S.C. ch. 34.
§ 21.7650 Pursuit.

The reservist is entitled to educational assistance only for actual pursuant of a program of educational. Verification is accomplished by various certifications.

(Authority: 10 U.S.C. 16136(a); Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988; 61 FR 20727, 20729, May 8, 1996]

§ 21.7652 Certification of enrollment and verification of pursuit.

As stated in § 21.7640 of this part, the educational institution must certify the reservist's enrollment before he or she may receive educational assistance. Nothing in this section or in any section in Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(a) Content of certification of entrance or reentrance. The certification of entrance or reentrance must clearly specify:

1. The course;
2. The starting and ending dates of the enrollment period;
3. The credit hours or clock hours being pursued by the reservist;
4. The amount of tuition, fees and the cost of books, supplies and equipment charged to a reservist who is incarcerated in a Federal, State or local prison or jail for conviction of a felony; and
5. Such other information as the Secretary may find is necessary to determine the reservist's monthly rate of educational assistance.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3482(g), 3680; Pub. L. 98-525)

(b) Length of the enrollment period covered by the enrollment certification. (1)

Educational institutions organized on a term, quarter or semester basis generally shall report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month, or if the reservist elects not to be paid for the intervals between terms. The educational institution must submit a separate enrollment certificate for each term, quarter or semester when the certification is for a reservist who is incarcerated in a Federal, State or local prison or jail for conviction of a felony.

(2) Educational institutions organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the
educational institution closes for any interval designated in its approval data as breaks between school years.

(3) When a reservist enrolls in independent study leading to a standard college degree concurrently with resident training, the educational institution's certification will include --

   (i) The enrollment date, and
   (ii) The ending date for the period being certified. If the educational institution has not prescribed maximum time for completion of the independent study portion of the enrollment, the certification must include an ending date for the independent study based on the educational institution's estimate for completion.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3684; Pub. L. 98-525)

(c) Verification of pursuit. (1) A reservist who is pursuing a course leading to a standard college degree must have his or her continued enrollment in and pursuit of the course verified for the entire enrollment period. Verification of continued enrollment will be made at least once a year and in the last month of enrollment if the enrollment period ends more than 3 months after the last verification. In the case of a reservist who completed, interrupted or terminated his or her course, any communication from the reservist or other authorized person notifying the VA of the reservist's completion of a course as scheduled or an earlier termination date, will be accepted to terminate payments accordingly.

   (2) The verification of pursuit will also include a report on the following items when applicable:

   (i) Continued enrollment in and pursuit of the course,
   (ii) Conduct and progress (See § 21.7653(c)),
   (iii) Date of interruption or termination of training (See § 21.7656(a)),
   (iv) Changes in number of credit hours or clock hours of attendance (See § 21.7656(a)), and
   (v) Any other changes or modifications in the course as certified at enrollment.

   (vi) [Redesignated as (c)(2)(v). See 61 FR 29481, 29482, June 11, 1996.]

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g); Pub. L. 98-525)


[EFFECTIVE DATE NOTE: 61 FR 29481, 29482, June 11, 1996, which amended this section, became effective June 11, 1996.]

§ 21.7653 Progress, conduct, and attendance.

(a) Satisfactory pursuit of program. In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory progress. Progress is unsatisfactory if the reservist does not satisfactorily progress according to the regulatory prescribed standards of the educational institution he or she is attending.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3474; Pub. L. 98-525)

(b) Satisfactory conduct. In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory conduct according to the regularly prescribed standards and practices of the educational institution in which he or she is enrolled. If the reservist will no longer be retained as a student or will not be readmitted as a student by the educational institution in which he or she is enrolled, the

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VA will discontinue educational assistance, unless further development establishes that the educational institution's action is retaliatory.

(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3474; Pub. L. 98-525)

(c) Satisfactory attendance. In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory course attendance. VA will discontinue educational assistance if the reservist does not maintain satisfactory course attendance. Attendance is unsatisfactory if the reservist does not attend according to the regularly prescribed standards of the educational institution in which he or she is enrolled.


(d) Reports. At times the unsatisfactory progress, conduct, or course attendance of a reservist is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with § 21.7656(a). If the reservist continues in training despite making unsatisfactory progress, the fact of his or her unsatisfactory progress must be reported to VA within the time allowed by paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) A reservist's progress may become unsatisfactory as a result of the grades he or she receives. The educational institution shall report such unsatisfactory progress to VA in time for VA to receive it before the earlier of the following dates is reached:

(i) Thirty days from the date on which the school official who is responsible for determining whether a student is making progress first receives the final grade report which establishes that the reservist is not progressing satisfactorily; or

(ii) Sixty days from the last day of the enrollment period during which the reservist earned the grades that caused him or her to meet the unsatisfactory progress standards.

(2) If the unsatisfactory progress of the reservist is caused solely by any factors other than the grades which he or she receives, the educational institution shall report the unsatisfactory progress in time for VA to receive it within 30 days of the date on which the progress of the reservist becomes unsatisfactory.

(3) The educational institution shall report the unsatisfactory conduct or attendance of the reservist to VA in time for VA to receive it within 30 days of the date on which the conduct or attendance of the reservist becomes unsatisfactory.

(e) Reentrance after discontinuance. In order for a reservist to receive educational assistance following discontinuance for unsatisfactory progress, conduct, or attendance, the provisions of this paragraph must be met.

(1) The reservist's subsequent reentrance into a program of education may be for the same program, for a revised program, or for an entirely different program, depending on the cause of the discontinuance and removal of that cause.

(2) A reservist may reenter following discontinuance because of unsatisfactory attendance, conduct, or progress when either of the following sets of conditions exists:

(i) The reservist resumes enrollment at the same educational institution in the same program of education and the educational institution has both approved the reservist's reenrollment and certified it to VA; or

(ii) In all other cases, VA determines that --

(A) The cause of the unsatisfactory attendance, conduct, or progress in the previous program has been removed and is not likely to recur; and
(B) The program which the reservist now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.


(Approved by the Office of Management and Budget under control number 2900-0552)


[EFFECTIVE DATE NOTE: 61 FR 29297, 29307, June 10, 1996, which revised the section heading and paragraphs (c) and (d), and added paragraph (e), became effective June 10, 1996.]

§ 21.7654 Pursuit and absences.

Except as provided in this section, a reservist must submit a verification to VA each month of his or her enrollment during the period for which the reservist is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) Exceptions to the monthly verification requirement. A reservist does not have to submit a monthly verification as described in the introductory text of this section when the reservist --

(1) Is enrolled in a correspondence course; or

(2) Has received an advance payment for the training completed during a month.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(a), (g))

(b) Items to be reported on all monthly verifications. (1) The monthly verification for all reservists will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The date of interruption or termination of training;

(iii) Except as provided in § 21.7656(a), changes in the number of credit hours or in the number of clock hours of attendance;

(iv) Nonpunitive grades; and

(v) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must:

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the reservist on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone or electronically in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

(c) Additional requirements for apprenticeships and other on-job training programs. (1) When a reservist is pursuing an apprenticeship or other on-job training, he or she must monthly certify training by reporting the number of hours worked.

(2) The information provided by the reservist must be verified by the training establishment.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3680(a); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642(c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)
§ 21.7656 Other required reports.

(a) Reports from reservists. (1) A reservist enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:
   (i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;
   (ii) Any change in his or her pursuit that would result in less than full-time enrollment; and
   (iii) Any interruption or termination of his or her attendance.

(2) A reservist not described in paragraph (a)(1) of this section must report without delay to VA:
   (i) Any change in his or her credit hours or clock hours of attendance;
   (ii) Any change in his or her pursuit; and
   (iii) Any interruption or termination of his or her attendance.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

(b) Interruptions, terminations or changes in hours of credit or attendance. When a reservist interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to VA.

(1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a reservist:
   (i) Interrupts or terminates his or her training for any reason; or
   (ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a reservist's hours of credit or attendance when:
   (i) The reservist is enrolled full time in a program of education for a standard term, quarter, or semester before the change; and
   (ii) The reservist continues to be enrolled full time after the change.

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

(4) If the educational institution has certified the reservist's enrollment for more than one term, quarter or semester and the reservist interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to VA in time for VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester.

(5) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to VA in time.

for VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first. 
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

(c) Nonpunitive grades. An educational institution may assign a nonpunitive grade for a course or subject in which the reservist is enrolled even though the reservist does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in time for VA to receive it before the earlier of the following dates is reached:
(1) 30 days from the date on which the educational institution assigns the grade, or
(2) 60 days from the last day of the enrollment period for which the nonpunitive grade is assigned.
(The Office of Management and Budget has approved information collection requirements in this section under control numbers 2900-0612 and 2900-0597.)
(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3684; Pub. L. 98-525)

§ 21.7658 False, late, or missing reports.
(a) Reservist. Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 of this part to a reservist or any other person who submits false or misleading claims, statements or reports in connection with benefits payable under 10 U.S.C. chapter 1606 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 34 or 36.
(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3680, 3690, 6103; Pub. L. 98-525)
(b) Educational institution or training establishment. (1) VA may hold an educational institution liable for overpayments which result from a willful or negligent:
(i) Failure of the educational institution to report excessive absences from a course or discontinuance or interruption of a course by a reservist; or
(ii) False certification by the educational institution. See § 21.7644(c).
(2) If an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove that institution's or establishment's courses for further enrollments and may discontinue educational assistance to reservists already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3690)
[53 FR 34740, Sept. 8, 1988; 61 FR 20727, 20729, May 8, 1996; 63 FR 35830, 35837, July 1, 1998]

[EFFECTIVE DATE NOTE: 63 FR 35830, 35837, July 1, 1998, amended this section, effective July 31, 1998.]

§ 21.7659 Reporting fee.
In determining the amount of the reporting fee payable to educational institutions for furnishing required reports, VA will apply the provisions of § 21.4206.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

COURSE ASSESSMENT

§ 21.7670 Measurement of courses leading to a standard, undergraduate college degree.
§ 21.7672 Measurement of courses not leading to a standard college degree.
§ 21.7674 Measurement of practical training courses.

§ 21.7670 Measurement of courses leading to a standard, undergraduate college degree.
Except as provided in § 21.7672, VA will measure a reservist's courses as stated in this section.
(a) Fourteen semester hours are full time. Unless 12 or 13 semester hours are full time as provided in paragraphs (b) and (c) of this section, or unless paragraphs (d) or (e) of this section apply to measurement of the reservist's enrollment VA will measure a reservist's enrollment as follows:
(1) 14 or more semester hours or the equivalent are full-time training,
(2) 10 through 13 semester hours or the equivalent are three-quarter-time training;
(3) 7 through 9 semester hours or the equivalent are half-time training; and
(4) 1 through 6 semester hours or the equivalent are less than half-time training.
(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3688(a); Pub. L. 98-525, Pub. L. 100-689)
(Nov. 18, 1988)
(b) Thirteen semester hours are full time. (1) VA will consider that 13 semester hours or the equivalent are full-time training when the educational institution certifies that all undergraduate students enrolled for 13 semester hours or the equivalent are
(i) Charged full-time tuition, or
(ii) Considered full-time for other administrative purposes.
(2) When 13 semester hours or the equivalent are full-time training --
(i) 10 through 12 semester hours or the equivalent are three-quarter-time training;
(ii) 7 through 9 semester hours or the equivalent are half-time training; and
(iii) 1 through 6 semester hours or the equivalent are less than half-time training.
(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3688(a); Pub. L. 98-525, Pub. L. 100-689)
(Nov. 18, 1988)
(c) Twelve semester hours are full time. (1) VA will consider that 12 semester hours or the equivalent are full-time training when the educational institution certifies that all undergraduate students enrolled for 12 semester hours or the equivalent are --
(i) Charged full-time tuition, or
(ii) Considered full time for other administrative purposes.
(2) When 12 semester hours or the equivalent are full-time training --
(i) 9 through 11 semester hours or the equivalent are three-quarter-time training;
(ii) 6 through 8 semester hours or the equivalent are half-time training; and
(iii) 1 through 5 semester hours or the equivalent are less than half-time training.
(Authority: 10 U.S.C. 16131(b), 38 U.S.C. 3688(a); Pub. L. 98-525, Pub. L. 100-689)
(d) Other requirements. Notwithstanding any other provision of this section, in administering benefits payable under 10 U.S.C. chapter 1606, VA shall apply the provisions of § 21.4272.
§ 21.7672 Measurement of courses not leading to a standard college degree.
(a) Overview. (1) Courses not leading to a standard college degree may be measured on either a clock-hour basis, or a credit-hour basis or a combination of both. Factors which the Department of Veterans Affairs must include in determining the proper basis for measurement include whether the courses are accredited; whether the course could be credited toward a standard college degree; and whether the course is offered on a standard quarter or semester-hour basis.
(2) In determining which is the correct basis for measuring a reservist's enrollment, VA will first examine whether credit-hour measurement is appropriate, as provided in paragraph (b) of this section.
(3) If it is not appropriate to measure a reservist's enrollment on a credit-hour basis, VA will measure the enrollment on a clock-hour basis as described in paragraph (c) of this section.

Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688(b)
(b) Credit-hour measurement-standard method.
(1) When all the conditions of paragraph (b)(1) of this section are met, the Department of Veterans Affairs will --
   (i) Measure the reservist's enrollment in the same manner as collegiate undergraduate courses are measured in § 21.7670 (a), (b), and (c).
   (ii) Apply the provisions of § 21.4272(g) if one or more of the reservist's courses are offered during a nonstandard term.

Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688
(2) For new enrollments beginning on or after July 1, 1993, when a course is offered by an institution of higher learning in residence on a standard quarter- or semester-hour basis, VA will measure a reservist's enrollment in a course not leading to a standard college degree on the same credit-hour basis as courses leading to a standard undergraduate degree, as provided in § 21.7670.
(3) For new enrollments beginning on or after July 1, 1993, when a course is offered in residence on a standard quarter- or semester-hour basis by an educational institution which is not an institution of higher learning, VA also will measure on a credit-hour basis as provided in § 21.7670 a reservist's enrollment in a course not leading to a standard college degree, provided that the educational institution requires at least the same number of clock-hours of attendance as required in paragraph (c) of this section. If the educational institution does not require at least the same number of clock-hours of attendance as required in paragraph (c) of this section, VA will not apply the provisions of § 21.7670, but will measure the course according to paragraph (c) of this section.
(4) VA will apply the provisions of § 21.4272(g) to new enrollments beginning on or after July 1, 1993, if one or more of the reservist's courses are offered during a nonstandard term.
(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688(a)(7))

(c) Clock-hour measurement. The provisions of this paragraph apply to all enrollments in courses not leading to a standard college degree. If VA concludes that the courses in which a reservist is enrolled do not qualify for credit-hour measurement, VA shall measure those courses as follows. (Supervised study shall be excluded from measurement of all courses to which this paragraph applies).

(1) If shop practice is an integral part of the course --
   (i) Full-time training shall be 22 clock hours attendance with not more than 2 1/2 hours rest period allowance;
   (ii) Three-quarter-time training shall be 16 through 21 clock hours attendance with not more than 2 hours rest period allowance;
   (iii) Half-time training shall be 11 through 15 clock hours attendance with not more than 1 1/4 hours rest period allowance; and
   (iv) One-quarter-time training shall be 1 through 10 clock hours attendance. For attendance of 6 through 10 clock hours, there shall be not more than one quarter hour rest period allowance. For attendance of 1 through 5 clock hours, there shall be no rest period allowance.

(2) If theory and class instruction predominates --
   (i) Full-time training is 18 clock hours net instruction;
   (ii) Three-quarter-time training is 13 through 17 clock hours net instruction;
   (iii) Half-time training is 9 through 12 clock hours net instruction; and
   (iv) Less than half-time training is 1 through 8 clock hours net instruction. In measuring net instruction for this paragraph there will be included customary intervals not to exceed 10 minutes between classes: however, supervised study must be excluded.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688)

[EFFECTIVE DATE NOTE: 61 FR 29481, 29482, June 11, 1996, amended this section, effective June 11, 1996.]


(a) Conversion of units of measurement required. Where a reservist enrolls concurrently in courses offered by two schools and the standards for measurement of the courses pursued concurrently in the two schools are different, the Department of Veterans Affairs will measure the reservist's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the reservist is pursuing at the primary institution. This conversion will be accomplished as follows:

(1) If VA measures the course at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in § 21.7672(b)), and VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.
(2) If VA measures the courses pursued at the primary institution on a clock-hour basis, and VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of § 21.7672(b), VA will convert the credit hours to clock hours to determine the reservist's training time. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3688)

(3) [Redesignated as paragraph (a)(2). See 61 FR 29297, 29310, June 10, 1996.]

(b) Conversion of clock hours to credit hours. If the provisions of paragraph (a) of this section require the Department of Veteran Affairs to convert clock hours, it will do so by --

(1) Dividing the number of clock hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours. (Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3688)

(c) Conversion of credit hours to clock hours. If the provisions of paragraph (a) of this section require the Department of Veteran Affairs to convert credit hours to clock hours, it will do so by --

(1) Dividing the number of clock hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours. (Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3688)

(d) Standards for measurement the same. If VA measures the courses pursued at both institutions on either a clock-hour basis or a credit-hour basis, VA will measure the reservist's enrollment by adding together the units of measurement for the courses in the second school and the units of measurement for courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. (Authority 10 U.S.C. 16136(b); 38 U.S.C. 3688)


[EFFECTIVE DATE NOTE: 61 FR 29297, 29310, June 10, 1996, which removed paragraph (a)(2), redesignated paragraph (a)(3) as (a)(2), and revised paragraphs (a)(1), newly redesignated (a)(2), and (d), became effective June 10, 1996.]

§ 21.7674 Measurement of practical training courses.

(a) Nursing courses. (1) Courses for the objective of registered nurse or registered professional nurse will be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate. The clock hours of attendance may include academic class time, clinical training, and supervised study periods.
(2) Courses offered by institutions of higher learning which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be measured on credit hours or clock hours of attendance per week whichever is appropriate.
(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3688; Pub. L. 98-525)
(b) Medical and dental assistants courses for VA. Programs approved in accordance with the provisions of § 21.7720(b)(9) will be measured on a clock-hour basis as provided in § 21.7672. However, the program will be regarded as full-time institutional training, provided the combined total of the classroom and other formal instruction portion of the program and the on-the-job portion of the program requires 30 or more clock hours of attendance per week.
(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3688; Pub. L. 98-525)
(c) Other practical training courses. These courses will be measured in semester hours of credit or clock hours of attendance per week, whichever is appropriate.
(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 3688; Pub. L. 98-525)

[EFFECTIVE DATE NOTE: 61 FR 29297, 29310, June 10, 1996, which amended paragraphs (b) and (c), became effective June 10, 1996.]
STATE APPROVING AGENCIES

§ 21.7700 State approving agencies.

§ 21.7700 State approving agencies.
VA and State approving agencies have the same general responsibilities for approving courses for training under 38 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994) as they do for approving courses for training under 38 U.S.C. chapter 30 or 32. Accordingly, in administering 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), VA will apply the provisions of the following sections:
(a) § 21.4150 -- Designation,
(b) § 21.4151 -- Cooperation,
(c) § 21.4152 -- Control by agencies of the United States,
(d) § 21.4153 -- Reimbursement of expenses,
(e) Section 21.4154 -- Report of activities,
(f) [Removed. See 61 FR 29297, 29310, June 10, 1996.]
(g) [Removed. See 61 FR 29297, 29310, June 10, 1996.]

(10 U.S.C. 16136(b); 38 U.S.C. 3670 through 3676)
[EFFECTIVE DATE NOTE: 61 FR 29297, 29310, June 10, 1996, which removed paragraphs (f) and (g), and revised the introductory text, paragraph (a), and the authority citation, became effective June 10, 1996.]
APPROVAL OF COURSES

§ 21.7720 Course approval.
§ 21.7722 Courses and enrollments which may not be approved.

§ 21.7720 Course approval.
(a) Courses must be approved. (1) A course of education offered by an educational institution must be approved by --
(i) The State approving agency for the State in which the educational institution is located; or
(ii) The State approving agency which has appropriate approval authority; or
(iii) VA, where appropriate.
(2) In determining when approval authority rests with the State approving agency or VA, the provisions of § 21.4250 (b)(3), (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) apply.
(3) A course approved under 38 U.S.C. chapter 36 is approved for purposes of 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994).
(Authority: 10 U.S.C. 2131(c), 2136(b); 16131(c)(1), 16136(b); 38 U.S.C. 3672; sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; sec. 642, Pub. L. 101-189, 103 Stat. 1456-1458)
(b) Course approval criteria. In administering benefits payable under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), VA and, where appropriate, the State approving agencies, shall apply the following sections:
(1) § 21.4250 (except paragraph (c)(1)) -- Approval of courses;
(2) § 21.4251 -- Period of operation of course;
(3) § 21.4253 (except those portions of paragraphs (b) and (f) that permit approval of a course leading to a high school diploma) -- Accredited courses;
(4) § 21.4254 -- Nonaccredited courses;
(5) § 21.4255 -- Refund policy; nonaccredited courses;
(6) § 21.4258 -- Notice of approval;
(7) § 21.4259 -- Suspension or disapproval;
(8) § 21.4260 -- Courses in foreign countries;
(9) § 21.4261 -- Apprentice courses;
(10) § 21.4262 -- Other training on-the-job courses;
(11) § 21.4265 -- Practical training approved as institutional training or on -- job training;
(12) § 21.4266 -- Courses offered at subsidiary branches or extensions; and
(13) § 21.4267 -- Approval of independent study.
(Authority: 10 U.S.C. 16131(c)(1), 16136(b); 38 U.S.C. 3670 through 3676)


§ 21.7722 Courses and enrollments which may not be approved.
(a) The Secretary of Veterans Affairs may not approve an enrollment by a reservist in, and a State approving agency may not approve for training under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994):

1. A bartending or personality development course;
2. A course offered by radio;
3. Except for enrollments in a nurse's aide course approved pursuant to § 21.4253(a)(5), an institutional course for the objective of nurse's aide or a nonaccredited nursing course which does not meet the licensing requirements in the State where the course is offered; or
4. Effective October 29, 1992, a nonaccredited course or unit subject offered entirely or partly by independent study. However, see §§ 21.7620(c) and 21.7622(f) concerning payment of educational assistance to reservists enrolled in such a course.

(b) A State approving agency (or VA when acting as a State approving agency) may approve the following courses for training under 10 U.S.C. chapter 1606 (or 10 U.S.C. chapter 106 as in effect before December 1, 1994), but VA may not approve an enrollment in any of these courses by a reservist who is limited in the types of courses he or she may pursue, as provided in § 21.7540 (b)(2) and (b)(3):

1. A correspondence course;
2. A cooperative course;
3. An apprenticeship or other on-job training program;
4. A nursing course offered by an autonomous school of nursing;
5. A medical or dental specialty course not offered by an institution of higher learning;
6. A refresher, remedial, or deficiency course; or
7. A course or combination of courses consisting solely of independent study.

[53 FR 34740, Sept. 8, 1988; 61 FR 29297, 29310, June 10, 1996]

[EFFECTIVE DATE NOTE: 61 FR 29297, 29310, June 10, 1996, which revised this section, became effective June 10, 1996.]
ADMINISTRATIVE

§ 21.7801 Delegation of authority.
§ 21.7802 Finality of decisions.
§ 21.7803 Revision of decisions.
§ 21.7805 Conflicting interests.
§ 21.7807 Examination of records.

§ 21.7801 Delegation of authority.
(a) General delegation of authority. Except as otherwise provided, authority is delegated to the Under Secretary for Benefits of VA, and to supervisory or adjudication personnel within the jurisdiction of the Education Service of VA designated by the Under Secretary for Benefits to make findings and decisions under 10 U.S.C. chapter 1606 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter to the extent that the program is administered by VA.
(Authority: 10 U.S.C. 16136(b) 38 U.S.C. 512(a); Pub. L. 98-525)
(b) Other delegations of authority. In administering benefits payable under 10 U.S.C. chapter 1606, VA shall apply § 21.4001(b), (c)(1), (2), and (3) (in part), and (f) in the same manner as those paragraphs are applied in the administration of 38 U.S.C. chapter 34.
(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 512(a); 3696; Pub. L. 98-525)

[EFFECTIVE DATE NOTE: 61 FR 29481, 29483, June 11, 1996, amended this section, effective June 11, 1996.]

§ 21.7802 Finality of decisions.
(a) Agency decisions generally are binding. The decision of the VA facility of original jurisdiction on which an action is based --
(1) Will be final,
(2) Will be binding upon all facilities of VA as to conclusions based on evidence on file at that time, and
(3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7803. (See §§ 19.192 and 19.193 of this chapter).
(Authority: 38 U.S.C. 511)
(b) Decisions of an Activity within the VA. Current determinations of pertinent elements of eligibility for a program of education made by a VA adjudicative activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.
(Authority: 38 U.S.C. 511)
(c) Determinations of satisfactory participation. A determination made by a competent military or naval authority or by the Coast Guard as to whether or not an individual is participating satisfactorily in required training as a member of the Selected Reserve is binding upon VA.
§ 21.7803 Revision of decisions.
The revision of a decision on which an action was predicated is subject to the following sections:
(a) Clear and unmistakable error, § 3.105(a) of this chapter; and
(b) Difference of opinion, § 3.105(b) of this chapter.

§ 21.7805 Conflicting interests.
In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4005 in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36.

§ 21.7807 Examination of records.
In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of §§ 21.4209 and 21.4263 in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36.
(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98-525)

Subpart M -- Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans -- Spina Bifida and Covered Birth Defects

General
Basic Entitlement Requirements
Evaluation
Services and Assistance to Program Participants
Duration of Vocational Training
Individualized Written Plan of Vocational Rehabilitation
Counseling
Vocational Training, Services, and Assistance
Evaluation and Improvement of Vocational Potential
Supplies
Program Costs
Vocational Training Program Entrance, Termination, and Resources
Rate of Pursuit
Authorization of Services
Leaves of Absence
Satisfactory Conduct and Cooperation
Transportation Services
Additional Applicable Regulations
Delegation of Authority

38 U.S.C. 101, 501, 512, 1151 note, 1802, 1804-1805, 1811, 1811 note, 1812, 1814, 1816, 1821-1824, 5112, unless otherwise noted.
General

§ 21.8010 Definitions and abbreviations.
§ 21.8012 Vocational training program for certain children of Vietnam veterans --
spina bifida and covered birth defects.
§ 21.8014 Application.
§ 21.8016 Nonduplication of benefits.

§ 21.8010 Definitions and abbreviations.

(a) Program-specific definitions and abbreviations. For the purposes of this subpart:
Covered birth defect means the same as defined at § 3.815(c)(3) of this title.
Eligible child means, as appropriate, either an individual as defined at § 3.814(c)(2) of
this title who suffers from spina bifida, or an individual as defined at § 3.815(c)(2) of this
title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).
Employment assistance means employment counseling, placement and post-placement
services, and personal and work adjustment training.
Institution of higher education has the same meaning that § 21.4200 provides for the term
institute of higher learning.
Program of employment services means the services an eligible child may receive if the
child's entire program consists only of employment assistance.
Program participant means an eligible child who, following an evaluation in which VA
finds the child's achievement of a vocational goal is reasonably feasible, elects to
participate in a vocational training program under this subpart.
Spina bifida means the same as defined at § 3.814(c)(3) of this title.
Vietnam veteran means, in the case of a child suffering from spina bifida, the same as
defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a
covered birth defect, the same as defined at § 3.815(c)(1) of this title.
Vocational training program means the vocationally oriented training services, and
assistance, including placement and post-placement services, and personal and
work-adjustment training that VA finds necessary to enable an eligible child to prepare
for and participate in vocational training or employment. A vocational training program
may include a program of education offered by an institution of higher education only if
the program is predominantly vocational in content.
VR&E refers to the Vocational Rehabilitation and Employment activity (usually a
division) in a Veterans Benefits Administration regional office, the staff members of that
activity in the regional office or in outbased locations, and the services that activity
provides.
(Authority: 38 U.S.C. 101, 1801, 1802, 1804, 1811-1812, 1814, 1821)
(b) Other terms and abbreviations. The following terms and abbreviations have the same
meaning or explanation that § 21.35 provides:
(1) CP (Counseling psychologist);
(2) Program of education;
(3) Rehabilitation facility;
(4) School, educational institution, or institution;
(5) Training establishment;

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VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

§ 21.8014 Application.
(a) Filing an application. To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:
(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;
(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and
(3) Clearly identify the benefit sought.

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§ 21.8016 Nonduplication of benefits.
(a) Election of benefits -- chapter 35. An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.
(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)
(b) Reelections of benefits -- chapter 35. An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training.
(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)
(c) Length of benefits under multiple programs -- chapter 35. The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.
(Authority: 38 U.S.C. 1804(e)(2), 1814)
(d) Nonduplication of benefits under 38 U.S.C. 1804 and 1814. An eligible child may only be provided one program of vocational training under this subpart.
(Authority: 38 U.S.C. 1804, 1814, 1824)
Basic Entitlement Requirements

§ 21.8020 Entitlement to vocational training and employment assistance.
§ 21.8022 Entry and reentry.

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) Basic entitlement requirements. Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) Services and assistance. An eligible child may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

(1) Section 21.250(a) and (b)(2);
(2) Section 21.252;
(3) Section 21.254;
(4) Section 21.256 (not including paragraph (e)(2));
(5) Section 21.257; and
(6) Section 21.258.

(Authority: 38 U.S.C. 1804, 1814)

(c) Requirements to receive employment services and assistance. VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) Additional employment services and assistance. If an eligible child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) Program entitlement usage. -- (1) Basic entitlement period. An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including
employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) Extension of basic entitlement period. VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:
(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and
(ii) The child can achieve the vocational goal within the extended period.

(3) Principles for charging entitlement. VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)


[EFFECTIVE DATE NOTE: 67 FR 72563, 72566, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]

§ 21.8022 Entry and reentry.
(a) Date of program entry. VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) Reentry. If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1822)


[EFFECTIVE DATE NOTE: 67 FR 72563, 72567, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Evaluation

§ 21.8030 Requirement for evaluation of child.
§ 21.8032 Evaluations.

§ 21.8030 Requirement for evaluation of child.
(a) Children to be evaluated. The VR&E Division will evaluate each child who:
(1) Applies for a vocational training program; and
(2) Has been determined to be an eligible child as defined in § 21.8010.
(Authority: 38 U.S.C. 1804(a), 1814)
(b) Purpose of evaluation. The evaluation has two purposes:
(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and
(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.
(Authority: 38 U.S.C. 1804, 1814)

§ 21.8032 Evaluations.
(a) Scope and nature of evaluation. The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).
(Authority: 38 U.S.C. 1804(a), 1814)
(b) Specific services to determine the reasonable feasibility of achieving a vocational goal. As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:
(1) Assessment of feasibility by a CP or VRC;
(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;
(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and
(4) Evaluation of employability by professional staff of an educational or rehabilitation facility, for a period not to exceed 30 days.
(Authority: 38 U.S.C. 1804(a), 1814)
(c) Responsibility for evaluation. A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.
(Authority: 38 U.S.C. 1804(a), (b), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72567, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
§ 21.8050 Scope of training, services, and assistance.

(a) Allowable training, services, and assistance. VA may provide to vocational training program participants:

1. Vocationally oriented training, services, and assistance, to include:
   i. Training in an institution of higher education if the program is predominantly vocational; and
   ii. Tuition, fees, books, equipment, supplies, and handling charges.

2. Employment assistance including:
   i. Vocational, psychological, employment, and personal adjustment counseling;
   ii. Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and
   iii. Personal adjustment and work adjustment training.

3. Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

4. Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(b) Vocational training program. VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(c) Prohibited services and assistance. VA may not provide to a vocational training program participant any:

1. Loan;

2. Subsistence allowance;

3. Automobile adaptive equipment;

4. Training at an institution of higher education in a program of education that is not predominantly vocational in content;

5. Employment adjustment allowance;

6. Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

7. Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72567, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Duration of Vocational Training

§ 21.8070 Basic duration of a vocational training program.
§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.
§ 21.8074 Computing the period for vocational training program participation.

§ 21.8070 Basic duration of a vocational training program.

Discussion and Analysis in the Veterans Benefits Manual
(a) Basic duration of a vocational training program. The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of § 21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.
(Authority: 38 U.S.C. 1804(d), 1814)
(b) Responsibility for estimating the duration of a vocational training program. While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.
(Authority: 38 U.S.C. 1804(c), 1814)
(c) Duration and scope of training must meet general requirements for entry into the selected occupation. The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.
(Authority: 38 U.S.C. 1804(c), 1814)
(d) Approval of training beyond the entry level. To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:
(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;
(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;
(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or
(4) The number of employment opportunities within a feasible occupation is restricted.
(Authority: 38 U.S.C. 1804(c), 1814)
(e) Estimating the duration of the training period. In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:
(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and
(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).
§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) Extension of the duration of a vocational training program. VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(b) Extensions for prior participants in the program. (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:
   (i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and
   (ii) Meet the same provisions as apply to training for new participants.
(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(c) Responsibility for authorizing a program extension. A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:
   (1) The child has completed more than half of the planned training; and
   (2) The child is making satisfactory progress.

[Authority: 38 U.S.C. 1804(b) through (e), 1814]


[EFFECTIVE DATE NOTE: 67 FR 72563, 72568, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
§ 21.8074 Computing the period for vocational training program participation.

(a) Computing the participation period. To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:
   (i) Pursuit of vocational education or training;
   (ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and
   (iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:
   (i) The initial evaluation period;
   (ii) Any period before the child enters a vocational training program under this subpart;
   (iii) Days of authorized leave; and
   (iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) Consistency with principles for charging entitlement. Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)


[EFFECTIVE DATE NOTE: 67 FR 72563, 72568, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Individualized Written Plan of Vocational Rehabilitation

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.
§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.
(a) General. A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.
(Authority: 38 U.S.C. 1804(b), 1814)
(b) Selecting the type of training to include in the individualized written plan of vocational rehabilitation. If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:
(1) Is available;
(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and
(3) Will meet the child's vocational training program needs.
(Authority: 38 U.S.C. 1804(b), (c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72569, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]

§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.
(a) Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal. After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.
(b) Allowable changes in the individualized written plan of vocational rehabilitation or goal. Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the
vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) Change in the individualized written plan of vocational rehabilitation or vocational goal. (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:
   (i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and
   (ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:
   (i) Before the end of the basic 24-month entitlement period that § 21.8020(e)(1) describes; or
   (ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d), 1814)

(d) Assistance if child terminates planned program before completion. If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)


[EFFECTIVE DATE NOTE: 67 FR 72563, 72569, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
§ 21.8100 Counseling.

§ 21.8100 Counseling.
An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.
(Authority: 38 U.S.C. 1803(c)(8), 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72569, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Vocational Training, Services, and Assistance

§ 21.8120 Vocational training, services, and assistance.

(a) Purposes. An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) Training permitted. VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

1. Remedial, deficiency, and refresher training; and
2. Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) Cost of education and training services. The CP or VRC will consider the cost of training in selecting a facility when:

1. There is more than one facility in the area in which the child resides that:
   (i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),
   (ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and
   (iii) Is within reasonable commuting distance; or
2. The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words "under § 21.282" in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

d) Accessible courses not locally available. If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

1. Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or
(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes. (Authority: 38 U.S.C. 1804(b), (c), 1814) [62 FR 51286, 51293, Sept. 30, 1997; 67 FR 72563, 72569, Dec. 6, 2002]

[EFFECTIVE DATE NOTE: 67 FR 72563, 72569, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
§ 21.8140 Evaluation and improvement of vocational potential.

§ 21.8140 Evaluation and improvement of vocational potential.

CCXIV Discussion and Analysis in the Veterans Benefits Manual

(a) General. A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;
(2) Provide a basis for planning:
   (i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or
   (ii) A vocational training program;
(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and
(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) Periods when evaluation and improvement services may be provided. A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or
(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) Duration of services. The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) Scope of services. Evaluation and improvement services include:

(1) Diagnostic services;
(2) Personal and work adjustment training;
(3) Referral for medical care and treatment pursuant to §§ 17.900 through 17.905 of this title for the spina bifida, covered birth defects, or related conditions;
(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;
(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;
(6) Orientation, adjustment, mobility and related services; and
(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) Applicability of chapter 31 rules on special rehabilitation services. The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a
manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: §
21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph
(b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.
(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72570, Dec. 6, 2002, revised Subpart M,
effective Dec. 6, 2002.]
§ 21.8210 Supplies.

§ 21.8210 Supplies. (a) Purpose of furnishing supplies. VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program. (Authority: 38 U.S.C. 1804(c), 1814)

(b) Types of supplies. VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31. (Authority: 38 U.S.C. 1804(c), 1814)

(c) Periods during which VA may furnish supplies. VA may provide supplies to an eligible child receiving:

(1) An initial or extended evaluation;
(2) Vocational training, services, and assistance to reach the point of employability; or
(3) Employment services. (Authority: 38 U.S.C. 1804(c), 1814)

(d) Other rules. The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:

(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;
(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;
(3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program. (Authority: 38 U.S.C. 1804(c), 1814)


[EFFECTIVE DATE NOTE: 67 FR 72563, 72570, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Program Costs

§ 21.8260 Training, services, and assistance costs.

§ 21.8260 Training, services, and assistance costs.
The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.
(Authority: 38 U.S.C. 1804(c), 1814)
(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72571, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Vocational Training Program Entrance, Termination, and Resources

§ 21.8280 Effective date of induction into a vocational training program.
§ 21.8282 Termination of a vocational training program.
§ 21.8284 Additional vocational training.
§ 21.8286 Training resources.

§ 21.8280 Effective date of induction into a vocational training program.
Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation. (Authority: 38 U.S.C. 1804(c), (d), 1814) [62 FR 51286, 51294, Sept. 30, 1997; 67 FR 72563, 72571, Dec. 6, 2002]

[EFFECTIVE DATE NOTE: 67 FR 72563, 72571, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]

§ 21.8282 Termination of a vocational training program.
A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:
(a) Fraud. If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.
(b) Administrative error. If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.
(c) Change in status as an eligible child with a covered birth defect. If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.
(d) Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation. If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter,
semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.
(Authority: 38 U.S.C. 1804, 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72571, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]

§ 21.8284 Additional vocational training.
VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:
(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;
(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;
(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;
(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or
(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:
(1) Performing the duties of the occupation for which VA provided training, services, or assistance, or in a related occupation; or
(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.
(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72571, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]

§ 21.8286 Training resources.
(a) Applicable 38 U.S.C. chapter 31 resource provisions. The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.
(Authority: 38 U.S.C. 1804(c), 1814)
(b) Limitations. The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this
subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.
(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72571, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Rate of Pursuit

§ 21.8310 Rate of pursuit.

§ 21.8310 Rate of pursuit.
(a) General requirements. VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:
(1) Effects of his or her disability;
(2) Family responsibilities;
(3) Travel;
(4) Reasonable adjustment to training; and
(5) Other circumstances affecting the child's ability to pursue training.
(Authority: 38 U.S.C. 1804(c), 1814)
(b) Continuous pursuit. An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.
(Authority: 38 U.S.C. 1804(c), 1814)
(c) Responsibility for determining the rate of pursuit. VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.
(Authority: 38 U.S.C. 1804(c), 1814)
(d) Measurement of training time used. VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.
(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72571, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Authorization of Services

§ 21.8320 Authorization of services.

§ 21.8320 Authorization of services.
The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.
(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72572, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Leaves of Absence

§ 21.8340 Leaves of absence.

§ 21.8340 Leaves of absence.
(a) Purpose of leave of absence. The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.
(Authority: 38 U.S.C. 1804(c), 1814)
(b) Basis for leave of absence. The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.
(Authority: 38 U.S.C. 1804(c), 1814)
(c) Effect on entitlement. During a leave of absence, VA suspends the running of the basic 24-month period of entitlement, plus any extensions thereto, until the child resumes the program.
(Authority: 38 U.S.C. 1804(c), 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72572, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
§ 21.8360 Satisfactory conduct and cooperation.

§ 21.8360 Satisfactory conduct and cooperation. The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)


[EFFECTIVE DATE NOTE: 67 FR 72563, 72572, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Transportation Services

§ 21.8370 Authorization of transportation services.

§ 21.8370 Authorization of transportation services.
(a) General. VA authorizes transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:
(1) Transportation for evaluation or counseling under § 21.376;
(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;
(3) Special transportation allowance under § 21.154; and
(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.
(Authority: 38 U.S.C. 1804(c), 1814)

(b) Reimbursement. For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.
(Authority: 38 U.S.C. 1804(c), 1814)

(c) Payment for commuting expenses for training and seeking employment. VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $ 200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:
(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or
(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.
(Authority: 38 U.S.C. 1804(c), 1814)

(d) Limitations. Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:
(1) Is gainfully employed;
(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or
(3) Can commute to school with family, friends, or fellow students.
(Authority: 38 U.S.C. 1804(c), 1814)

(e) Documentation. VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.
(Authority: 38 U.S.C. 1804(c), 1814)
(f) Nonduplication. If a child is eligible for reimbursement of transportation services both under this section and under § 21.154, the child will receive only the benefit under § 21.154.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0580)

(Authority: 38 U.S.C. 1804(c), 1814)


[EFFECTIVE DATE NOTE: 67 FR 72563, 72572, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
Additional Applicable Regulations

§ 21.8380 Additional applicable regulations.

§ 21.8380 Additional applicable regulations.
The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except (c), (d), and (e)), 21.420, and 21.430. (Authority: 38 U.S.C. 1804, 1814, 5112) [62 FR 51286, 51296, Sept. 30, 1997; 67 FR 72563, 72572, Dec. 6, 2002]

[EFFECTIVE DATE NOTE: 67 FR 72563, 72572, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
§ 21.8410 Delegation of authority.

§ 21.8410 Delegation of authority.
The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members. 
(Authority: 38 U.S.C. 512(a), 1804, 1814)

[EFFECTIVE DATE NOTE: 67 FR 72563, 72572, Dec. 6, 2002, revised Subpart M, effective Dec. 6, 2002.]
PART 23 -- NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A -- Introduction
Subpart B -- Coverage
Subpart C -- Discrimination on the Basis of Sex in Admission and Recruitment Prohibited
Subpart D -- Discrimination on the Basis of Sex in Education Programs or Activities Prohibited
Subpart E -- Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited
Subpart F -- Procedures
Subpart A -- Introduction

§ 23.100 Purpose and effective date.
§ 23.105 Definitions.
§ 23.110 Remedial and affirmative action and self-evaluation.
§ 23.115 Assurance required.
§ 23.120 Transfers of property.
§ 23.125 Effect of other requirements.
§ 23.130 Effect of employment opportunities.
§ 23.135 Designation of responsible employee and adoption of grievance procedures.
§ 23.140 Dissemination of policy.

§ 23.100 Purpose and effective date.
The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.105 Definitions.
As used in these Title IX regulations, the term:
Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.
Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.
Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.
Designated agency official means Deputy Assistant Secretary for Resolution Management.
Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.
Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:
(1) A grant or loan of Federal financial assistance, including funds made available for:
(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.
(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
(3) Provision of the services of Federal personnel.
(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.
(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:
(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;
(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or
(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:
(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or
(2) An institution offering academic study leading to a baccalaureate degree; or
(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is
extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.


Title IX regulations means the provisions set forth at §§ 23.100 through 23.605.

Transition plan means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§ 23.110 Remedial and affirmative action and self-evaluation.

(a) Remedial action. If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) Affirmative action. In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966-1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966-1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) Self-evaluation. Each recipient education institution shall, within one year of September 29, 2000:

1. Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;
2. Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and
3. Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) Availability of self-evaluation and related materials. Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph

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§ 23.115 Assurance required.
(a) General. Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 23.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.
(b) Duration of obligation. (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.
(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.
(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.
(c) Form. (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, 1685-1688).
(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.120 Transfers of property.
If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such
sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 23.205 through 23.235(a).
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.125 Effect of other requirements.
(b) Effect of State or local law or other requirements. The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.
(c) Effect of rules or regulations of private organizations. The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.130 Effect of employment opportunities.
The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.135 Designation of responsible employee and adoption of grievance procedures.
(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to
such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.140 Dissemination of policy.
(a) Notification of policy. (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 23.300 through 23.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 23.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) Publications. (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) Distribution. Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its
admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

[65 FR 52858, 52889, Aug. 30, 2000]

Subpart B -- Coverage

§ 23.200 Application.
§ 23.205 Educational institutions and other entities controlled by religious organizations.
§ 23.210 Military and merchant marine educational institutions.
§ 23.215 Membership practices of certain organizations.
§ 23.220 Admissions.
§ 23.225 Educational institutions eligible to submit transition plans.
§ 23.230 Transition plans.
§ 23.235 Statutory amendments.

§ 23.200 Application.
Except as provided in §§ 23.205 through 23.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.205 Educational institutions and other entities controlled by religious organizations.
(a) Exemption. These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.
(b) Exemption claims. An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.210 Military and merchant marine educational institutions.
These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.215 Membership practices of certain organizations.
(a) Social fraternities and sororities. These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.
(b) YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls. These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.
(c) Voluntary youth service organizations. These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.220 Admissions.
(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.
(b) Administratively separate units. For the purposes only of this section, §§ 23.225 and 23.230, and §§ 23.300 through 23.310, each administratively separate unit shall be deemed to be an educational institution.
(c) Application of §§ 23.300 through 23.310. Except as provided in paragraphs (d) and (e) of this section, §§ 23.300 through 23.310 apply to each recipient. A recipient to which §§ 23.300 through 23.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 23.300 through 23.310.
(d) Educational institutions. Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 23.300 through 23.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.
(e) Public institutions of undergraduate higher education. §§ 23.300 through 23.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.225 Educational institutions eligible to submit transition plans.
(a) Application. This section applies to each educational institution to which §§ 23.300 through 23.310 apply that:
(1) Admitted students of only one sex as regular students as of June 23, 1972; or
(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 23.300 through 23.310.

[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.230 Transition plans.
(a) Submission of plans. An institution to which § 23.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.
(b) Content of plans. In order to be approved by the Secretary of Education, a transition plan shall:
(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.
(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.
(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.
(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.
(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.
(c) Nondiscrimination. No policy or practice of a recipient to which § 23.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 23.300 through 23.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.
(d) Effects of past exclusion. To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 23.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution’s commitment to enrolling students of the sex previously excluded.

[65 FR 52858, 52889, Aug. 30, 2000]
§ 23.235 Statutory amendments.
(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.
(b) These Title IX regulations shall not apply to or preclude:
(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;
(2) Any program or activity of a secondary school or educational institution specifically for:
   (i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
   (ii) The selection of students to attend any such conference;
(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;
(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.
(c) Program or activity or program means:
   (1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:
      (i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
      (B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
      (ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or
      (B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;
      (iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship --
         (1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
         (2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
      (B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
      (iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.
(2)(i) Program or activity does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization. 

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a "program or activity" subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

[65 FR 52858, 52889, Aug. 30, 2000]

Subpart C -- Discrimination on the Basis of Sex in Admission and 
Recruitment Prohibited

§ 23.300 Admission.
§ 23.305 Preference in admission.
§ 23.310 Recruitment.

§ 23.300 Admission.
(a) General. No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 23.300 through §§ 23.310 apply, except as provided in §§ 23.225 and §§ 23.230.
(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 23.300 through 23.310 apply shall not:
   (i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;
   (ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or
   (iii) Otherwise treat one individual differently from another on the basis of sex.
(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.
(c) Prohibitions relating to marital or parental status. In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 23.300 through 23.310 apply:
   (1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;
   (2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;
   (3) Subject to § 23.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and
   (4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.305 Preference in admission.

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A recipient to which §§ 23.300 through 23.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 23.300 through 23.310.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.310 Recruitment.
(a) Nondiscriminatory recruitment. A recipient to which §§ 23.300 through 23.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 23.110(a), and may choose to undertake such efforts as affirmative action pursuant to § 23.110(b).
(b) Recruitment at certain institutions. A recipient to which §§ 23.300 through 23.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 23.300 through 23.310.
[65 FR 52858, 52889, Aug. 30, 2000]

Subpart D -- Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 23.400 Education programs or activities.
§ 23.405 Housing.
§ 23.410 Comparable facilities.
§ 23.415 Access to course offerings.
§ 23.420 Access to schools operated by LEAs.
§ 23.425 Counseling and use of appraisal and counseling materials.
§ 23.430 Financial assistance.
§ 23.435 Employment assistance to students.
§ 23.440 Health and insurance benefits and services.
§ 23.445 Marital or parental status.
§ 23.450 Athletics.
§ 23.455 Textbooks and curricular material.

§ 23.400 Education programs or activities.
(a) General. Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 23.400 through 23.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 23.300 through 23.310 do not apply, or an entity, not a recipient, to which §§ 23.300 through 23.310 would not apply if the entity were a recipient.
(b) Specific prohibitions. Except as provided in §§ 23.400 through 23.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:
(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
(3) Deny any person any such aid, benefit, or service;
(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;
(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.
(c) Assistance administered by a recipient educational institution to study at a foreign institution. A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or
domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) Aids, benefits or services not provided by recipient. (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:
(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and
(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.405 Housing.
(a) Generally. A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) Housing provided by recipient. (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:
(i) Proportionate in quantity to the number of students of that sex applying for such housing; and
(ii) Comparable in quality and cost to the student.

(c) Other housing. (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:
(A) Proportionate in quantity; and
(B) Comparable in quality and cost to the student. 
(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex. 
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.410 Comparable facilities. 
A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex. 
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.415 Access to course offerings. 
(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses. 
(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000. 
(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex. 
(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact. 
(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect. 
(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls. 
(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. 
[65 FR 52858, 52889, Aug. 30, 2000]
§ 23.420 Access to schools operated by LEAs.
A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:
(a) Any institution of vocational education operated by such recipient; or
(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.425 Counseling and use of appraisal and counseling materials.
(a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.
(b) Use of appraisal and counseling materials. A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.
(c) Disproportion in classes. Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.430 Financial assistance.
(a) General. Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:
(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;
(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or
(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) Financial aid established by certain legal instruments. (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) Athletic scholarships. (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 23.450.

[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.435 Employment assistance to students.

(a) Assistance by recipient in making available outside employment. A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) Employment of students by recipients. A recipient that employs any of its students shall not do so in a manner that violates §§ 23.500 through 23.550.

[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.440 Health and insurance benefits and services.
Subject to § 23.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 23.500 through 23.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.445 Marital or parental status.
(a) Status generally. A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.
(b) Pregnancy and related conditions. (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.
(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.
(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.
(4) Subject to § 23.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.
(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.450 Athletics.

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) Equal opportunity. (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
(ii) The provision of equipment and supplies;
(iii) Scheduling of games and practice time;
(iv) Travel and per diem allowance;
(v) Opportunity to receive coaching and academic tutoring;
(vi) Assignment and compensation of coaches and tutors;
(vii) Provision of locker rooms, practice, and competitive facilities;
(viii) Provision of medical and training facilities and services;
(ix) Provision of housing and dining facilities and services;
(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) Adjustment period. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

[65 FR 52858, 52889, Aug. 30, 2000]
§ 23.455 Textbooks and curricular material.
Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

[65 FR 52858, 52889, Aug. 30, 2000]
Subpart E -- Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 23.500 Employment.
§ 23.505 Employment criteria.
§ 23.510 Recruitment.
§ 23.515 Compensation.
§ 23.520 Job classification and structure.
§ 23.525 Fringe benefits.
§ 23.530 Marital or parental status.
§ 23.535 Effect of state or local law or other requirements.
§ 23.540 Advertising.
§ 23.545 Pre-employment inquiries.
§ 23.550 Sex as a bona fide occupational qualification.

§ 23.500 Employment.
(a) General. (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.
(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.
(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 23.500 through 23.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.
(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) Application. The provisions of §§ 23.500 through 23.550 apply to:
(1) Recruitment, advertising, and the process of application for employment;
(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
(3) Rates of pay or any other form of compensation, and changes in compensation;
(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;
(5) The terms of any collective bargaining agreement;
(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
§ 23.505 Employment criteria.
A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:
(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and
(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.510 Recruitment.
(a) Nondiscriminatory recruitment and hiring. A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.
(b) Recruitment patterns. A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 23.500 through 23.550.
[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.515 Compensation.
A recipient shall not make or enforce any policy or practice that, on the basis of sex:
(a) Makes distinctions in rates of pay or other compensation;
(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.
§ 23.520 Job classification and structure.
A recipient shall not:
(a) Classify a job as being for males or for females;
(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or
(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 23.550.

§ 23.525 Fringe benefits.
(a) "Fringe benefits" defined. For purposes of these Title IX regulations, fringe benefits means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 23.515.
(b) Prohibitions. A recipient shall not:
(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;
(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or
(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 23.530 Marital or parental status.
(a) General. A recipient shall not apply any policy or take any employment action:
(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or
(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.
(b) Pregnancy. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.
(c) Pregnancy as a temporary disability. Subject to § 23.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) Pregnancy leave. In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.535 Effect of state or local law or other requirements.

(a) Prohibitory requirements. The obligation to comply with §§ 23.500 through 23.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) Benefits. A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

[65 FR 52858, 52889, Aug. 30, 2000]

§ 23.545 Pre-employment inquiries.

(a) Marital status. A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) Sex. A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes.
and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.550 Sex as a bona fide occupational qualification.
A recipient may take action otherwise prohibited by §§ 23.500 through 23.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.
[65 FR 52858, 52889, Aug. 30, 2000]

Subpart F -- Procedures

§ 23.600 Notice of covered programs.
§ 23.605 Enforcement procedures.

§ 23.600 Notice of covered programs.
Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the Federal Register a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.
[65 FR 52858, 52889, Aug. 30, 2000]


§ 23.605 Enforcement procedures.
The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 38 CFR 18.6 through 18.11.
[65 FR 52858, 52890, Aug. 30, 2000]

PART 25 -- UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

§ 25.1 Uniform relocation

§ 25.1 Uniform relocation

[52 FR 48022, Dec. 17, 1987]

PART 26 -- ENVIRONMENTAL EFFECTS OF THE DEPARTMENT OF VETERANS AFFAIRS (VA) ACTIONS

§ 26.1 Issuance and purpose.

§ 26.2 Applicability and scope.

§ 26.3 Definitions.

§ 26.4 Policy.

§ 26.5 Responsibilities.

§ 26.6 Environmental documents.

§ 26.7 VA environmental decision making and documents.

§ 26.8 Assistance to applicants.

§ 26.9 Information on and public participation in VA environmental process.

§ 26.1 Issuance and purpose.
The purpose of this part is to implement the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321-4370a), in accordance with regulations promulgated by the Council of Environmental Quality (CEQ Regulations, 40 CFR parts 1500-1508), and Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977. This part shall provide guidance to officials of the Department of Veterans Affairs (VA) on the application of the NEPA process to Department activities.


(42 U.S.C. 4321-4370a)

§ 26.2 Applicability and scope.
This part applies to VA, its administrations and staff offices.


(42 U.S.C. 4321-4370a)

§ 26.3 Definitions.
(a) United States means all States, territories, and possessions of the United States and all waters and air space subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) VA elements, for the purposes of this part, means the Veterans Health Services and Research Administration (VHS&RA), the Veterans Benefits Administration (VBA), the National Cemetery Administration (NCS), and the Office of Facilities.

(c) Other terms used in this part are defined in CEQ Regulations, 40 CFR part 1508.


(42 U.S.C. 4321-4370a)

§ 26.4 Policy.
(a) VA must act with care in carrying out its mission of providing services for veterans to ensure it does so consistently with national environmental policies. Specifically, VA shall ensure that all practical means and measures are used to protect, restore, and enhance the quality of the human environment; to avoid or minimize adverse environmental consequences, consistently with other national policy considerations; and to attain the following objectives:

1. Achieve the fullest possible use of the environment, without degradation, or undesirable and unintended consequences;
2. Preserve historical, cultural, and natural aspects of our national heritage, while maintaining, where possible, an environment that supports diversity and variety and individual choice;
3. Achieve a balance between the use and development of resources, within the sustained capacity of the ecological system involved; and,
4. Enhance the quality of renewable resources while working toward the maximum attainable recycling of nonrenewable resources.

(b) VA elements shall:
1. Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the NEPA and CEQ Regulations;
2. Prepare concise and clear environmental documents which shall be supported by documented environmental analyses;
3. Integrate the requirements of NEPA with Department planning and decision-making procedures;
4. Encourage and facilitate involvement by affected agencies, organizations, interest groups and the public in decisions which affect the quality of the human environment; and,
5. Consider alternatives to the proposed actions which are encompassed by the range of alternatives discussed in relevant environmental documents, and described in the environmental impact statement.


(42 U.S.C. 4321-4370a)

§ 26.5 Responsibilities.
(a) The Director of the Office of Environmental Affairs shall:
1. Be responsible to coordinate and provide guidance to VA elements on all environmental matters;
2. Assist in the preparation of environmental documents by VA elements; and, where more than one VA element, or Federal, State, or local agency is involved, assign the lead VA element or propose the lead Federal, State or local agency to prepare the environmental documents;
3. Recommend appropriate actions to the Secretary of Veterans Affairs on those environmental matters for which the Secretary of Veterans Affairs has final approval authority;
4. Assist in resolution of disputes concerning environmental matters within VA, and among VA and other Federal, State and local agencies;
5. Coordinate preparation of VA comments on draft and final environmental impact statements of other agencies;

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(6) Serve as the VA's principal liaison to the CEQ, the Environmental Protection Agency, the Office of Management and Budget, and other Federal, State, and local agencies on VA environmental actions; and
(7) Prepare appropriate supplemental guidance on implementation of these regulations.
(b) VA General Counsel shall provide legal advice and assistance in meeting the requirement of NEPA, the CEQ Regulations and these regulations.
(c) The heads of each VA element shall:
(1) Adopt procedures to ensure that decisions are made in accordance with NEPA, the CEQ Regulations and these regulations; and
(2) Be responsible to prepare environmental documents relating to programs and proposed actions by their elements, when required by these regulations.

(42 U.S.C. 4321-4370a)

§ 26.6 Environmental documents.
(a) Environmental Impact Statements. The head of each VA element shall include a detailed written statement "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." NEPA 102(2), 42 U.S.C. 4332(2) see CEQ Regulations, 40 CFR part 1502. An environmental impact statement shall be prepared in accordance with the following procedures:
(1) Typical Classes of Action Which Normally Do Require Environmental Impact Statements: (i) Proposed legislation (CEQ Regulation, 40 CFR 1508.17);
(ii) Acquisition of land in excess of 10 acres for development of a VA medical center facility;
(iii) Acquisition of land in excess of 50 acres for development of a VA national cemetery; and
(iv) Promulgation of policies which substantially alter agency programs and which have a significant effect on the quality of the human environmental.
(2) Specific Criteria for Typical Classes of Action Which Normally Do Require Environmental Impact Statements: (i) Probable significant degradation of historic or cultural resources, park lands, prime farmlands, designated wetlands or ecologically critical areas;
(ii) An increase in average daily vehicle traffic volume of at least 20 percent on access roads to the site or the major roadway network;
(iii) Probable conflict with Federal, State, or local environmental protection laws or requirements;
(iv) Probable threat or hazard to the public, or the involvement of highly uncertain risks to the environment;
(v) Similarity to previous actions that required an environmental impact statement; and
(vi) Probable conflict with, or significant effect on, local or regional zoning or comprehensive land use plans.
(b) Categorical Exclusions. A categorical exclusion is a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal Agency in implementation of these regulations . . . and for which, therefore, neither an
environmental assessment (see subparagraph (c), infra) or an environmental impact statement is required." CEQ Regulations, 40 CFR 1508.4.

1. Typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment:
   (i) Repair, replacement, and new installation of primary or secondary electrical distribution systems;
   (ii) Repair, replacement, and new installation of components such as windows, doors, roofs; and site elements such as sidewalks, patios, fences, retaining walls, curbs, water distribution lines, and sewer lines which involve work totally within VA property boundaries;
   (iii) Routine VA grounds and facility maintenance activities;
   (iv) Procurement activities for goods and services for routing facility operations maintenance and support;
   (v) Interior construction or renovation;
   (vi) New construction of 75,000 gross square feet or less;
   (vii) Development of 20 acres of land or less within an existing cemetery, or development on acquired land of five acres or less;
   (viii) Actions which involve support or ancillary appurtenances for normal operation;
   (ix) Leases, licenses, permits, and easements;
   (x) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes;
   (xi) VA policies, actions and studies which do not significantly affect the quality of the human environment;
   (xii) Preparation of regulations, directives, manuals or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency; and
   (xiii) Actions, activities, or programs that do not require expenditure of Federal funds.

2. Specific criteria for typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment:
   (i) Minimal or no effect on the environment;
   (ii) No significant change to existing environmental conditions;
   (iii) No significant cumulative environmental impact; and
   (iv) Similarity to Actions previously assessed with a finding of no significant impact.

3. Extraordinary circumstances that must be considered by a VA element before categorically excluding a particular Department action:
   (i) Greater scope or size than normally experienced for a particular categorical exclusion;
   (ii) Actions in highly populated or congested areas;
   (iii) Potential for degradation, although slight, or existing poor environmental conditions;
   (iv) Use of unproven technology;
   (v) Potential presence of an endangered species, archeological remains, or other protected resources; or
   (vi) Potential presence of hazardous or toxic substances.

(c) Environmental assessments. If the proposed action is not covered by paragraph (a) or (b) of this section, the responsible official (head of the VA element) will prepare an environmental assessment (CEQ Regulations, 40 CFR 1508.9). Based on the environmental assessment, the official shall determine whether it is necessary to prepare
an environmental impact statement, or to prepare a finding of no significant impact (CEQ Regulations, 40 CFR 1508.13).

(1) Typical classes of action which normally do require Environmental Assessments, but not necessarily Environmental Impact Statements:
   (i) Acquisition of land of 10 acres or less for development of a VA medical facility;
   (ii) Acquisition of land from 5 to 50 acres for development of a VA national cemetery; and,
   (iii) New construction in excess of 75,000 gross square feet;

(2) Specific criteria for typical classes of action which normally do require an Environmental Assessment:
   (i) Potential minor degradation of environmental quality;
   (ii) Potential cumulative impact on environmental quality;
   (iii) Presence of hazardous or toxic substances;
   (iv) Potential violation of pollution abatement laws;
   (v) Potential impact on protected wildlife or vegetation;
   (vi) Potential effects on designated prime farmlands, wetlands, floodplains, or ecologically critical areas;
   (vii) Alteration of stormwater runoff and retention;
   (viii) Potential dislocation of persons or residences;
   (ix) Potential increase of average daily vehicle traffic volume on access roads to the site by 10 percent or more but less than 20 percent, or which alters established traffic patterns in terms of location and direction;
   (x) Potential threat or hazard to the public, or highly uncertain risks to the environment;
   (xi) Potential conflicts with Federal, State, or local environmental protection laws or requirements;
   (xii) Potential conflict with, or significant impact on, official local or regional zoning or comprehensive land use plans; and,
   (xiii) Overloading of public utilities with insufficient capacity to provide reliable service and for average and peak periods.


(42 U.S.C. 4321-4370a)

§ 26.7 VA environmental decision making and documents.
(a) Relevant environmental documents shall accompany other decision documents as they proceed through the decision-making process.
(b) The major decision points for VA actions, by which time the necessary environmental documents must be completed, are as follows:
   (1) Leases. Prior to execution of lease agreement.
   (2) Grants. Prior to notification of grant award.
   (3) Policy. Prior to final approval of a policy which substantially alters agency programs and which affects the human environment.
   (4) Legislative proposals. Included in any recommendation or report to Congress on a legislative proposal which would affect the environment. The document must be available in time for Congressional hearings and deliberations.
   (5) Major, minor, minor miscellaneous delegated projects, and non-recurring maintenance projects. Prior to contract award for working drawings or prior to in-house
initiation of working drawings. If the Secretary of Veterans Affairs or designee makes a finding of compelling need, working drawings may commence prior to completion of the environmental compliance process. However, this will not preclude completion of environmental compliance prior to construction.

(6) Land acquisition for development. Prior to the Secretary's acceptance of custody and accountability (for Federal lands), or acceptance of offer to donate or contract for purchase (for private lands).

(c) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, VA must act in accordance with CEQ Regulations, 40 CFR 1506.11.


(42 U.S.C. 4321-4370a)

§ 26.8 Assistance to applicants.

(a) The CEQ Regulations (40 CFR 1501.2(d)) provide for advising of private applicants or other non-Federal groups when VA involvement in a particular action is reasonably foreseeable. Such foreseeable actions involve application to a VA element by private persons, States, and local agencies and pertain primarily to permits, leases, requests for financial assistance, grants, and related actions involving the use of VA real property.

(b) VA involvement may be reasonably foreseeable when the following actions are initiated by non-Federal groups:

(1) Easements and rights-of-way on VA land;
(2) Petroleum, grazing, and timber leases;
(3) Permits, license, and other use agreements or grants of real property for use by non-VA groups; and,
(4) Application for grants-in-aid for acquisition, construction, expansion or improvement of state veterans' health care facilities or cemeteries.

(c) Public notices or other means used to inform or solicit applicants for permits, leases, or related actions will describe the environmental documents, studies or information foreseeably required for later action by VA elements and will advise of the assistance available to applicants by VA element.

(d) When VA owned land is leased or otherwise provided to non-VA groups, VA element affected will initiate the NEPA process pursuant to these regulations.

(e) When VA grant funds are requested by a State agency, VA element affected will initiate the NEPA process and ensure compliance with VA environmental program. The environmental documents prepared by the grant applicant shall assure full compliance with State and local regulations as well as NEPA before the proposed action is approved.

[51 FR 37182, Oct. 20, 1986]

(42 U.S.C. 4321-4370a)

§ 26.9 Information on and public participation in VA environmental process.

(a) During the preparation of environmental documents, the responsible VA element shall include the participation of environmental agencies, applicants, State and local governments and the public to the extent practicable and in conformance with CEQ
Regulations. Information or status reports on environmental documents shall be provided to interested persons upon request.

(b) Notice of availability or filing requirements vary, depending on the type of environmental documents requested. Specific requirements and procedures are defined for each VA element.

(c) For those actions relating specifically to the Secretary of Veterans Affairs, the Office of Environmental Affairs, or a VA element, information is available by writing to the Director, Office of Environmental Affairs, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.


(42 U.S.C. 4321-4370a)
PART 36 -- LOAN GUARANTY

GUARANTY OF LOANS TO VETERANS TO PURCHASE MANUFACTURED
HOMES AND LOTS, INCLUDING SITE PREPARATION
GUARANTY OR INSURANCE OF LOANS TO VETERANS
LOANS UNDER 38 U.S.C. 3703(a)
FEDERALLY ASSISTED CONSTRUCTION CONTRACTS --
NONDISCRIMINATION IN EMPLOYMENT -- EXECUTIVE ORDERS 11246
AND 11375
ASSISTANCE TO CERTAIN DISABLED VETERANS IN ACQUIRING
SPECIALY ADAPTED HOUSING
DIRECT LOANS
SALE OF LOANS, GUARANTEE OF PAYMENT
Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501, 3701-3704, 3707,
3710-3714, 3719, 3720, 3729.
Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701-3704, 3710,
3712-3714, 3720, 3729, 3732.
Sections 36.4400 through 36.4411 issued under 72 Stat. 1114, 1168, as amended (38
NOTE: Those requirements, conditions, or limitations which are expressly set forth in 38
U.S.C. 3712 and are not restated herein must be taken into consideration in conjunction
with the § 36.4200 series.

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GUARANTY OF LOANS TO VETERANS TO PURCHASE MANUFACTURED HOMES AND LOTS, INCLUDING SITE PREPARATION

§ 36.4201 Applicability of the § 36.4200 series.
§ 36.4202 Definitions.
GENERAL PROVISIONS
FINANCING MANUFACTURED HOME UNITS
COMBINATION AND MANUFACTURED HOME LOT LOANS
SERVICING, LIQUIDATION OF SECURITY AND CLAIM

§ 36.4201 Applicability of the § 36.4200 series.
The § 36.4200 series shall be applicable to each loan entitled to guaranty under 38 U.S.C. 3712 on or after the date of publication thereof in the Federal Register.
[36 FR 1253, Jan. 27, 1971]


§ 36.4202 Definitions.
Wherever used in 38 U.S.C. 3712 or the § 36.4200 series, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated.
Automatic lender. A lender that may process a loan or assumption without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 3702(d) there are two categories of lenders who may process loans automatically: (1) Entities such as banks, savings and loan associations, and mortgage and loan companies that are subject to examinations by an agency of the United States or any State and (2) lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.
(Authority: 38 U.S.C. 3702(d))
Credit package. Any information, report of verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.
(Authority; 38 U.S.C. 3710 and 3714)
Date of first uncured default. The due date of the earliest payment not fully satisfied by the proper application or available credits or deposits.
Default. Failure of a borrower to comply with the terms of a loan agreement.
Guaranty. The obligation of the United States, assumed by virtue of 38 U.S.C. 3712, to repay a specified percentage of a loan upon default of the primary debtor, which guaranty payment shall be made after liquidation of the security for the loan and an accounting with the Secretary.
Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred.
Indebtedness. The unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with the § 36.4200 series, which have been paid and debited to the loan account. Unpaid late charges may not be included in the indebtedness.
Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers, and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed by VA.

(Authority: 38 U.S.C. 3704(d), 3712(g))

Lien. Any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, security instruments, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

Loan. Unpaid principal balance plus unpaid earned interest due under the terms of the obligation.

Lot. A parcel of land acceptable to the Secretary as a manufactured home site.

Manufactured home. A movable dwelling unit designed and constructed for year-round occupancy on land by a single family, which dwelling unit contains permanent eating, cooking, sleeping, and sanitary facilities. A double-wide manufactured home is a movable dwelling designed for occupancy by one family consisting of (1) two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit.

Manufacturer's invoice. A document, issued by a manufacturer and provided with a manufactured home to a retail dealer, acceptable in form and content to the Secretary which indicates the wholesale (base) price at the factory of the manufactured home model or series including any furnishings, equipment and accessories installed by the manufacturer, net of all rebates to the dealer. The following certification or a reasonable facsimile thereof, signed by an authorized representative of the manufacturer, must appear on the invoice:

"The undersigned certifies that the manufacturer's invoice price shown on this invoice reflects the dealer's cost at point of manufacture, exclusive of any and all freight or transportation charges, net of any and all discounts, bonuses, refunds, rebates (including volume rebates), prizes or anything of value which will inure to the benefit of the dealer at the time of purchase or at any future date."

Necessary site preparation. Those improvements essential to render a manufactured home site acceptable to the Secretary including, but not limited to, the installation of utility connections, sanitary facilities and paving, and the construction of a suitable pad.

New manufactured home. A manufactured home which, at the time of purchase by the veteran-borrower, has not been previously occupied and was manufactured less than 1 year prior to the date of application to the Department of Veterans Affairs for loan guaranty.

(Authority: Sec. 406, Pub. L. 97-306)

Reasonable value means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.
Repossession -- repossessed means recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise. Resale means sale of the property by the holder to a third party for the purpose of liquidating the security for the loan after having acquired the property by repossession, public or private sale, or by any other means. Secretary. The Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead. Servicing agent. An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder. (Authority: 38 U.S.C. 3714) Used manufactured home. A manufactured home which has been previously occupied or which was manufactured more than 1 year prior to date of loan application. Wholesale (base) price list. The price list(s) as periodically amended, published and distributed by a home manufacturer to all retail dealers in a given marketing area, quoting the actual wholesale (base) price at the factory for specific models or series of manufactured homes, itemized options, itemized furniture, and specialty items offered for sale to such dealers during a specified period of time. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of a dealer and/or home purchaser at any date, as required to be disclosed in the manufacturer's invoice. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication to be available to VA and other Federal agencies upon request. [36 FR 1253, Jan. 27, 1971, as amended at 40 FR 13212, Mar. 25, 1975; 43 FR 37197, Aug. 22, 1978; 44 FR 22723, Apr. 17, 1979; 48 FR 40227, Sept. 6, 1983; 50 FR 13193, Apr. 3, 1985; 54 FR 34988, Aug. 23, 1989; 55 FR 37471, Sept. 12, 1990; 58 FR 29114, May 19, 1993; 58 FR 37858, July 14, 1993] 38 U.S.C. 501, 3701-3704, 3707, 3710-3714, 3719, 3720, 3729.
GENERAL PROVISIONS

§ 36.4203 Eligibility of the veteran for the manufactured home loan benefit under 38 U.S.C. 3712.

(a) To be eligible for the manufactured home loan benefit a veteran must have loan guaranty entitlement for manufactured home purposes available for use. Notwithstanding the provisions of § 36.4205(e), the Secretary may exclude the amount of guaranty entitlement used for any guaranteed manufactured home loan provided:

(1) The property which served as security for the loan has been disposed of by the veteran, or has been destroyed by fire or other natural hazard; and

(2)(i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or

(ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally, and the veteran-transferee otherwise meets the requirements of 38 U.S.C. chapter 37.

(3) In a case in which the veteran still owns a property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement if:
(i) The loan has been repaid in full, or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or
(ii) The Secretary has been released from liability as to the loan and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(4) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (a)(1) and (a)(2)(i) of this section.

(b) A veteran may use his or her remaining home loan guaranty entitlement for any purpose authorized by 38 U.S.C. 3710, 3711, or 3712 except that a veteran who has purchased a manufactured home unit may not purchase a second manufactured home unit until the unit which secured the first loan has been disposed of by the veteran or has been destroyed by fire or other natural hazard.

(c) The available entitlement of a veteran will be determined by the Secretary as of the date of receipt of an application for guaranty of a manufactured home loan or loan report. Such date of receipt shall be the date the application or loan report is date stamped into the Department of Veterans Affairs. Eligibility derived from the most recent period of service (1) shall cancel any unused entitlement derived from any earlier period of service, and (2) shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan:
(i) On property which the veteran owns at the time of application; or
(ii) As to which the Secretary has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Secretary the resulting indebtedness of the veteran to the United States has been paid in full.

Provided, That if the Secretary issues or has issued a certificate of commitment covering the loan described in the application for guaranty or in the loan report, the amount and percentage of guaranty contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date which is not later than the expiration date of the certificate of commitment, notwithstanding that the Secretary in the meantime and prior to the issuance of the evidence of guaranty shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Secretary will be deemed to have incurred actual loss on a guaranteed or insured loan if the Secretary has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Secretary is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Secretary will be deemed to have incurred an actual loss if the loan is in default.

(Authority: 38 U.S.C. 3702, 3712)

[44 FR 22723, Apr. 17, 1979, as amended at 48 FR 40227, Sept. 6, 1983; 49 FR 28243, July 11, 1984; 60 FR 38257, July 26, 1995]
the existing paragraph (d) at 58 FR 37858, therefore two versions of paragraph (d) appear in the section.]

(a) A manufactured home loan may be guaranteed if the loan is for one of the following purposes;
(1) To purchase a lot on which to place a manufactured home already owned by the veteran;
(2) To purchase a single-wide manufactured home;
(3) To purchase a single-wide manufactured home and a lot on which to place such home;
(4) To purchase a double-wide manufactured home;
(5) To purchase a double-wide manufactured home and lot on which to place such home;
(6) To refinance an existing loan, including a previously refinanced purchase money loan, that was made for the purchase of and is secured by a manufactured home and to purchase a lot on which the manufactured home is or will be placed; or
(7) To refinance in accordance with § 36.4223 an existing manufactured home loan guaranteed, insured or made under paragraphs (a)(1) through (6) of this section provided the amount of the loan to refinance does not exceed an amount equal to 95 percent of the reasonable value of the manufactured home securing the loan, as determined by the Secretary.

(Authority: 38 U.S.C. 3712(a)(1))

(b) In the case of a loan to purchase a new manufactured home unit only, the loan amount shall not exceed the lesser of an amount equal to 95 percent of the purchase price of the property securing the loan or the amount computed in paragraph (c), of this section, provided the total loan amount does not exceed 145 percent of the manufacturer's invoice.

(c) For all manufactured home loans, the maximum loan amount is as follows:
(1) In the case of a loan to purchase a new manufactured home unit only, the loan amount is to be computed as the sum of:
   (i) One hundred twenty-five (125) percent of the figure produced by this computation: Subtract from the manufacturer's invoice cost the manufacturer's invoice cost of any components (furnishings, accessories, equipment) removed from the unit by the dealer. To the remainder add the dealer's cost for any components added by such dealer. The sum so obtained shall be the figure to be multiplied by the specified percentage; and
   (ii) One hundred (100) percent of the actual amount of fees and charges permitted in § 36.4232.
(2) A loan to purchase a lot upon which a manufactured home owned by the veteran will be placed is limited to the reasonable value of a developed lot or the reasonable value plus such amount determined by the Secretary to be appropriate to cover the cost of necessary site preparation for an undeveloped lot.
(3) The maximum loan amount for a used manufactured home may not exceed the reasonable value as established by the Secretary, plus:
   (i) Actual fees or charges for required recordation of documents;
   (ii) The amount of any documentary stamp taxes levied on the transactions;
   (iii) The amount of State and local taxes levied on the transactions; and
   (iv) The premium for customary physical damage insurance and vendor's single interest coverage on the manufactured home for an initial policy term not to exceed one year.
(4) In the case of an interest rate reduction refinancing loan (38 U.S.C. 3712(a)(1)(F)) the maximum loan may not exceed the sum of:
   (i) The balance of the VA loan being refinanced;
   (ii) Closing costs as authorized by § 36.4232 or § 36.4254, as appropriate; and
   (iii) Allowable discounts, provided that:
       (A) The loan application is submitted to the Secretary for prior approval;
       (B) The amount of discount is disclosed to the Secretary and the veteran prior to the issuance of the certificate of commitment by the Secretary. This certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment has been issued without the approval of the Secretary;
       (C) The discount has been determined by the Secretary to be reasonable in amount; and

(5) For a loan to refinance a purchase money lien on a manufactured home and to purchase a lot (38 U.S.C. 3712(a)(1)(G)) on which the manufactured home is or will be placed:
   (i) The loan must be secured by the same manufactured home which must be owned and occupied by the veteran as the veteran's home; and
   (ii) The amount of the loan may not exceed an amount equal to the sum of:
       (A) The purchase price of the lot, not to exceed the reasonable value thereof, as authorized by § 36.4252;
       (B) The amount determined by the Secretary to be appropriate to cover the cost of necessary preparation of the lot;
       (C) The balance of the loan being refinanced; and
       (D) Closing costs, as authorized by § 36.4232 or § 36.4254, as appropriate, and a reasonable discount with respect to that portion of the loan used to refinance the existing purchase money lien.
   (iii) Allowable discounts may be charged to the veteran on the portion of the loan used to refinance the existing purchase money lien provided:
       (A) The loan application is submitted to the Secretary for prior approval;
       (B) The amount of discount to be paid on the unit portion of the loan is disclosed to the Secretary and the veteran prior to the issuance of the certificate of commitment by the Secretary. The certificate of commitment shall specify the discount to be paid by the veteran on the unit portion of the loan, and this discount may not be increased once the commitment has been issued without the approval of the Secretary; and
       (C) The discount on the unit portion of the loan has been determined by the Secretary to be reasonable in amount.

(6) All powers of the Secretary under paragraphs (c) (4) and (5) of this section, except the authority to revise the discount after the commitment is issued, are hereby delegated to those officials designated by § 36.4221(b). The power of the Secretary to approve an increase in the discount on the unit portion of the loan after the commitment is issued is delegated to those officials designated by § 36.4220(a).

(d) [This is the version of paragraph (d) in effect before and after 58 FR 37858, July 14, 1993.] The loan amount in an individual case shall not exceed the following:
   (1) In the case of a loan to purchase a new manufactured home unit only, the loan amount shall not exceed the sum of the following:
       (i) 120 percent of the figure produced by the following computation:
Subtract from the manufacturer's invoice cost the manufacturer's invoice cost of any components (furnishings, accessories, equipment) removed from the unit by the dealer. To the remainder add the dealer's cost for any components added by such dealer. The sum so obtained shall be the figure to be multiplied by the specified percentage.

(ii) 100 percent of the actual amount of fees and charge permitted in § 36.4232.

(2) In the case of a loan to purchase a new manufactured home unit plus the cost of necessary site preparation where the veteran owns the lot, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus such costs of necessary site preparation as are approved by the Secretary.

(3) In the case of a loan to purchase a new manufactured home unit plus the purchase of an undeveloped lot on which to place such home plus the cost of necessary site preparation, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus the reasonable value of the undeveloped lot as determined by the Secretary plus such costs of necessary site preparation as are approved by the Secretary.

(4) In the case of a loan to purchase a new manufactured home unit plus the cost of a suitably developed lot on which to place such home, the loan amount shall be limited to the amount determined in paragraph (d)(1) of this section plus the reasonable value of the developed lot as determined by the Secretary.

(5) In the case of a loan to purchase a lot upon which will be placed a manufactured home owned by the veteran the loan is limited to the reasonable value of a developed lot or the reasonable value plus such amount as is determined by the Secretary to be appropriate to cover the cost of necessary site preparation for an undeveloped lot.

(6) In the case of a used manufactured home the maximum loan may not exceed the reasonable value as established by the Secretary, plus:

(i) Actual fees or charges for required recordation of documents;
(ii) The amount of any documentary stamp taxes levied on the transaction;
(iii) The amount of State and local taxes levied on the transaction; and
(iv) The premium for customary physical damage insurance and vendor's single interest coverage on the manufactured home for an initial policy term of not to exceed 5 years.

(7) In the case of an interest rate reduction refinancing loan (38 U.S.C. 3712(a)(1)(F)) the maximum loan may not exceed:

(i) The balance of the Department of Veterans Affairs loan being refinanced;
(ii) Closing costs as authorized by § 36.4232 or § 36.4254, as appropriate; and
(iii) Allowable discounts provided:
(A) The loan application is submitted to the Secretary for prior approval;
(B) The amount of discount is disclosed to the Secretary and the veteran prior to the issuance of the certificate of commitment by the Secretary. Said certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment has been issued without the approval of the Secretary;
(C) The discount has been determined by the Secretary to be reasonable in amount; and
(D) All powers of the Secretary under this paragraph (d)(7) of this section, except the authority to revise the discount after the commitment is issued, are hereby delegated to those officials designated by § 36.4221(b). The power of the Secretary to approve an increase in the discount after the commitment is issued is delegated to those officials designated in § 36.4220(a).
(Authority: 38 U.S.C. 3712(a)(4) and (g))

(8) In the case of a loan to refinance a purchase money lien on a manufactured home and to buy a lot (38 U.S.C. 3712(a)(1)(G)) on which the manufactured home is or will be placed:

(i) The loan must be secured by the same manufactured home which must be owned and occupied by the veteran as the veteran's home; and

(ii) The amount of the loan may not exceed an amount equal to the sum of:
(A) The purchase price, not to exceed the reasonable value of the lot, as authorized by § 36.4252.
(B) The amount determined by the Secretary to be appropriate to cover the cost of necessary preparation of the lot,
(C) The balance of the loan being refinanced, and
(D) Closing costs, as authorized by § 36.4232 or § 36.4254, as appropriate, and a reasonable discount with respect to that portion of the loan used to refinance the existing purchase money lien.

(iii) Allowable discounts may be charged to the veteran on the portion of the loan used to refinance the existing purchase money lien provided:
(A) The loan application is submitted to the Secretary for prior approval;
(B) The amount of discount to be paid on the unit portion of the loan is disclosed to the Secretary and the veteran prior to the issuance of the certificate of commitment by the Secretary. The certificate of commitment shall specify the discount to be paid by the veteran on the unit portion of the loan, and this discount may not be increased once the commitment has been issued without the approval of the Secretary;
(C) The discount on the unit portion of the loan has been determined by the Secretary to be reasonable in amount; and
(D) All powers of the Secretary under paragraph (d)(8) of this section, except the authority to revise the discount after the commitment is issued, are hereby delegated to those officials designated by § 36.4221(b). The power of the Secretary to approve an increase in the discount on the unit portion of the loan after the commitment is issued is delegated to those officials designated by § 36.4220(a).

(Authority: 38 U.S.C. 3712 (a)(1)(G), (a)(5) and (g))

(d) [Redesignated from paragraph (b), at 58 FR 37858, July 14, 1993, effective Aug. 13, 1993.] A loan for any of the purposes described in paragraphs (a)(1) through (6) of this section may include an amount determined by the Secretary to be appropriate to cover the cost of necessary preparation of a lot already owned or to be acquired by the veteran, including the costs of installing utility connections and sanitary facilities, of paving, and of constructing a suitable pad for the manufactured home.

(e) The maximum permissible loan terms shall not exceed:
(1) 20 years and 32 days in the case of a loan to purchase a single-wide manufactured home or a single-wide manufactured home and lot;
(2) 15 years and 32 days in the case of a loan to purchase a lot on which to place a manufactured home already owned by the veteran;
(3) 23 years and 32 days in the case of a loan to purchase a double-wide manufactured home, or 25 years and 32 days in the case of a loan to purchase a double-wide manufactured home and lot; or
(4) In the case of a used manufactured home the maximum term set forth in paragraph (c)(1) or (3) of this section or the remaining physical life expectancy of the unit as established by the Secretary, whichever is less.

(Authority: 38 U.S.C. 3712(a)(1) and (2) (d)(1), (e)(4)(B))

(f) An itemized list of all items included in the manufactured home loan as enumerated in § 36.4232 shall be provided to both the purchaser and the Secretary. At the time of loan origination an independent fee inspection shall be conducted to assure that all items included in the loan amount are accounted for and in place. A similar inspection will be conducted in the event of repossession immediately prior to repossession. The costs of the fee inspections may be included in the loan amount or the claim amount and charged to the borrower pursuant to the provisions of § 36.4232 (a) and (b).

[Information collection requirements contained in § 36.4204(f) were approved by the Office of Management and Budget under OMB control number 2900-0516]

(g) The cost of the transaction which cannot be paid from the proceeds of the loan must be paid by the veteran in cash from the veteran's own resources. Except for interest rate reduction refinancing loans pursuant to paragraph (a)(7) of this section or loans to refinance a manufactured home and to buy a lot pursuant to paragraph (a)(8) of this section, closing costs and prepaid items incident to the real estate portion of any manufactured home loan must be paid in cash and may not be included in the loan amount.

(Authority: 38 U.S.C. 501, 3701-3704, 3707, 3710-3714, 3719, 3720, 3729.)


§ 36.4205 Computation of guaranty.

(a) The amount of guaranty in respect to a loan guaranteed under 38 U.S.C. 3712 shall be forty (40) percent of the original principal amount of the loan or $20,000, whichever is less. With respect to a loan guaranteed under 38 U.S.C. 3712(a)(1)(F), the dollar amount of guaranty may not exceed the original dollar amount of guaranty on the loan being refinanced. With respect to a loan guaranteed under 38 U.S.C. 3712(a)(1)(G), the dollar amount of guaranty previously used to obtain a manufactured unit loan may be transferred pursuant to § 36.4224(b) for use in refinancing the unit when simultaneously acquiring a lot.

(b) Subject to the provisions of paragraph (c) of § 36.4203, the following formulas will determine the amount of guaranty entitlement which remains available to an eligible veteran after prior use of entitlement:

1. If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use not to exceed $20,000 for manufactured home purposes.

2. If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $36,000. The sum remaining is the amount of available entitlement for use not to exceed $20,000 for manufactured home purposes.

3. If a veteran previously secured a manufactured home loan, the amount of entitlement used for manufactured home purposes is subtracted from $36,000. The sum remaining is the amount of available entitlement for use for home loan purposes only. To determine

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the amount of additional entitlement available for manufactured home purposes, the amount of entitlement previously used for manufactured home purposes is subtracted from $20,000. Except for manufactured home loans to be obtained pursuant to 38 U.S.C. 3712(a)(1)(F) or (G), the sum remaining is the amount of available entitlement for use for manufactured home purposes.

(c) For the purpose of computing the remaining guaranty benefit to which a veteran is entitled, manufactured home and manufactured home lot loans guaranteed prior to October 1, 1978, shall be taken into consideration as if made subsequent thereto, and the veteran's entitlement will be reduced by the amount of the Secretary's guaranty issued in the particular loan transaction.

(d) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty exceed the amount of the original guaranty or the percentage of the indebtedness corresponding to that of the original guaranty.

(e) The amount of any guaranty for a manufactured home or manufactured home lot loan shall be charged against the original or remainder of the borrower's guaranty benefit available for manufactured home purposes. Complete or partial liquidation, by payment or otherwise, of the veteran's guaranteed indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum guaranty available legally to a veteran for manufactured home purposes shall have been granted, no further guaranty for manufactured home purposes shall be available to the veteran.

(f)(1) The amount of guaranty entitlement, available and unused, of an eligible unremarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the Secretary, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity.

(Authority: 38 U.S.C. 3701(a)(2), 3712(c)(4))

(2) For the purpose of obtaining an interest rate reduction refinancing loan pursuant to 38 U.S.C. 3712(a)(1)(F), an unmarried surviving spouse who was a co-obligor under an existing Department of Veterans Affairs guaranteed loan shall be considered to be eligible for the 38 U.S.C. 3712(a)(1)(F) benefit.

(Authority: 38 U.S.C. 3712(a)(4)(C))

(g) Any evidence of guaranty issued by the Secretary in respect to such loan shall be conclusive evidence of the eligibility of the loan for guaranty and of the amount of such guaranty. Provided, however, That the Secretary may establish against the original lender, defenses based on fraud or material misrepresentation and that the Secretary may by regulations in force at the date of such issuance establish partial defenses to the amount payable on the guaranty.


§ 36.4206 Underwriting standards, occupancy, and non-discrimination requirements.

(a) Except for refinancing loans pursuant to 38 U.S.C. 3712(a)(1)(F), no loan shall be guaranteed unless the terms of repayment bear a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, as determined by use of the standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 3712)

(b) Use of the standards in § 36.4337 of this part for underwriting manufactured home loans will be waived only in extraordinary circumstances.

(Authority: 38 U.S.C. 3712)

(c) The lender responsibilities contained in § 36.4337 of this part and the certification required and penalties to be assessed under § 36.4337A of this part against lenders making false certifications also apply to lenders originating VA guaranteed manufactured home loans under the authority of 38 U.S.C. 3712.

(Authority: 38 U.S.C. 3712)

(d) No loan shall be guaranteed pursuant to 38 U.S.C. 3712(a)(1) unless:

(1) The veteran certifies, in such form as the Secretary shall prescribe, that he or she will personally occupy the property as his or her home or, if the veteran is on active duty status as a member of the Armed Forces and is for that reason unable to occupy the property, the veteran's spouse must certify that he or she will personally occupy the property as his or her home. For the purposes of this section, the words personally occupy the property as his or her home mean that the veteran as of the date of his or her certification actually lives in the property personally as his or her residence or actually intends upon completion of the loan and acquisition of the manufactured home to move into the home personally within a reasonable time and to utilize the home as his or her residence.

(2) The veteran certifies, in such form as the Secretary shall prescribe that:

(i) Neither the veteran, nor anyone authorized to act for the veteran, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, handicap, familial status, or national origin;

(ii) The veteran recognizes that any restrictive covenant on the property relating to race, color, religion, sex, handicap, familial status, or national origin is illegal and void and any such covenant is specifically disclaimed; and

(iii) The veteran understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. district court against any person responsible for a violation of the applicable law.


§ 36.4207 Manufactured home standards.

To qualify for purchase with a guaranteed loan a manufactured home must:

(a) Meet the following dimensional requirements.

(1) A single-wide unit must be a minimum of ten (10) feet wide and have a minimum floor area of four hundred (400) square feet.
(2) A double-wide unit, when assembled, must be a minimum of twenty (20) feet wide and have a minimum floor area of seven hundred (700) square feet.

(b) Be so constructed as to be towed on its own chassis and undercarriage and/or independent undercarriage;

(c) Contain living facilities for year around occupancy by one family, including permanent provisions for heat, sleeping, cooking, and sanitation; and

(d) Comply with the specifications in effect at the time the loan is made that are prescribed by the Secretary.

(Authority: 38 U.S.C. 3712(h)(1))


§ 36.4208 Manufactured home location standards.

(a) Any rental site on which a manufactured home to be purchased with a guaranteed loan will be placed must qualify as an acceptable rental site as follows:

(1) Be located within a manufactured home park or subdivision which is acceptable to the Department of Veterans Affairs; or

(2) Be a site which is not within a manufactured home park or subdivision provided that

(i) the site is determined by the Department of Veterans Affairs to be an acceptable rental site, or

(ii) in the absence of a determination by the Department of Veterans Affairs in respect to such site the manufactured home purchaser and the dealer certify to the Secretary as follows:

(A) Placement of the manufactured home on the site or lot is not a violation of zoning laws or other local requirements applicable to manufactured homes;

(B) The site or lot is served by water and sanitary facilities which are approved by the local public authority and which are acceptable to the Department of Veterans Affairs;

(C) The site or lot is served by an all-weather street or road;

(D) The site or lot is not known to be subject to conditions that may be hazardous to the health or safety of the manufactured home occupants or that may endanger the manufactured home; and

(E) The site is free from, and the location of the manufactured home thereon will not substantially contribute to, adverse scenic or environmental conditions.

(b) No manufactured home purchased with a guaranteed loan may be placed on a lot owned by an eligible veteran or on a lot to be purchased or improved with the proceeds of a guaranteed manufactured home loan unless the lot owned or to be so purchased or improved is determined by the Department of Veterans Affairs to be an acceptable manufactured home site.

(c) A manufactured home park or subdivision which is not approved by the Federal Housing Administration will be acceptable to the Department of Veterans Affairs for the purpose of 38 U.S.C. 3712 if the Secretary determines that the park or subdivision, whether existing or proposed, (1) is designed to encourage the maintenance and development of manufactured home sites which will be free from, and not substantially contribute to, adverse scenic and environmental conditions, and (2) complies otherwise with the applicable standards for planning, construction, and general acceptability prescribed by the Secretary.
§ 36.4209 Reporting requirements.

(a) Each loan proposed for guaranty under 38 U.S.C. 3712 shall, unless otherwise provided in the § 36.4200 series, be submitted to the Secretary for approval prior to closing. The Secretary upon determining any such proposed loan to be eligible for guaranty will issue a certificate of commitment.

(b) Except as provided in paragraph (c) of this section, a certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing such fact and:

(1) That the loan conforms to the terms of the certificate of commitment;
(2) The identity of all property purchased therewith, including the itemized list required by § 36.4204(f);
(3) That all property purchased with the proceeds of the loan has been encumbered as required by the § 36.4200 series;
(4) In respect to any property purchased with the loan proceeds as to which the Secretary issued a certificate of reasonable value which was conditioned upon completion of any construction, repairs, alterations or improvements not inspected and approved subsequent to completion by a compliance inspector designated by the Secretary that such construction, repairs, alterations or improvements have been completed according to the plans and specifications upon which such reasonable value was based; and
(5) That the loan conforms otherwise to the applicable provisions of 38 U.S.C. chapter 37 and § 36.4200 series.

(c) A deviation of more than five (5) percent between the estimates upon which the certificate of commitment was issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property acquired by the veteran with the loan proceeds will invalidate the certificate of commitment, unless such deviation or change is approved by the Secretary.

(d) Upon the failure of the lender to report in accordance with paragraph (b) of this section, the certificate of commitment shall have no further effect; Provided, nevertheless, That if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Secretary, notwithstanding the report is received after the date otherwise required.

(e) Subject to compliance with the regulations concerning guaranty of manufactured home loans to veterans, the Certificate of Guaranty will be issuable within the available entitlement of the veteran on the basis of the loan reported, except for refinancing loans for interest rate reductions. No certificate of commitment shall be issued, and no loan shall be guaranteed, unless the lender, the veteran, and the loan are shown to be eligible; nor shall guaranty be issued on any manufactured home loan unless the Secretary determines that there has been compliance by the veteran with the certification requirements of 38 U.S.C. 3712(e)(5).

(Authority: 38 U.S.C. 3712(a)(4), (c)(2), (e)(5))
(f) Any amount of the loan that is disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty.

(g) Approval by the Secretary pursuant to 38 U.S.C. 3712(c)(1) is required before a lender may close manufactured home loans or manufactured home lot loans on the automatic basis. Evidence of guaranty will be issuable if the loan closed on the automatic basis is reported to the Secretary within 60 days of full disbursement, and upon certification of the lender that no default exists thereunder which has continued for more than 30 days and that the loan complies with paragraphs (b)(2), (3), (4), and (5), (e), and (f) of this section. Upon the failure of the lender to report in accordance with this paragraph the loan will not be eligible for guaranty unless the lender submits with the report a certification that the loan is not in default and an explanation as to why the loan was not timely reported.

(Authority: 38 U.S.C. 3712 (c)(1) and (g))

(h) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of a manufactured home and/or lot securing a Department of Veterans Affairs guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 3714. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 3714. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 3714 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and Department of Veterans Affairs regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall consist of the credit package (unless previously provided in accordance with paragraph (h)(1)(i)(B) of this section) and a copy of the executed deed, bill of sale, transfer of equity agreement, and/or assumption agreement as required by the VA office of jurisdiction. The notice shall be submitted to the Department of Veterans Affairs with the Department of Veterans Affairs receipt for the funding fee provided for in §§ 36.4232(e)(3) or 36.4254(d)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction within 30 days. The holder shall make available to that Department of Veterans Affairs office all items used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs. If the application remains disapproved after 60 days (to allow time for appeal to and review by the Department of Veterans Affairs) then the holder must refund $50 of any fee previously collected under the provisions of § 36.4275(a)(3)(iii) of this part. If the application is subsequently approved and the sale is completed, then the holder (or its authorized
servicing agent) shall provide the notice described in paragraph (h)(1)(i)(A) of this section.
(C) In performing the requirements of paragraphs (h)(1)(i)(A) or (h)(1)(i)(B) of this section the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller of its decision no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application which are documented as beyond the control of the holder, such as employers or depositaries not responding to requests for verifications, which were timely forwarded, or followups on those requests.
(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to the Department of Veterans Affairs shall include:
   (A) Advice regarding whether the loan is current or in default;
   (B) A copy of the purchase contract; and
   (C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.
(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (h)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent pursuant to the automatic authority provisions, § 50 of any fee collected in accordance with § 36.4275(a)(3)(iii) of this part must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $ 50 of any fee collected under § 36.4275(a)(3)(iii) of this part must be refunded following expiration of the 30-day appeal period set out in paragraph (h)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of the security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (h)(1)(i)(A) of this section.
(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to immediately accelerate the loan or whether an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph
(Authority: 38 U.S.C. 3714)

§ 36.4210 Joint loans.
(a) Except as provided in paragraph (b) of this section, the prior approval of the Secretary is required in respect to any manufactured home loan to be made to two or more borrowers who become jointly and severally liable, or jointly liable therefor, and who
will acquire an undivided interest in the property to be purchased or who will otherwise share in the proceeds of the loan, or in respect to any loan to be made to an eligible veteran whose interest in the property owned, or to be acquired with the loan proceeds, is an undivided interest only. The amount of the guaranty shall be computed in such cases only on that portion of the loan allocable to the eligible veteran which, taking into consideration all relevant factors, represents the proper contribution of the veteran to the transaction. Such loans shall be secured to the extent required by 38 U.S.C. chapter 37 and the regulations concerning guaranty of manufactured home loans to veterans.

(b) Notwithstanding the provisions of paragraph (a) of this section, the joinder of the spouse of a veteran-borrower in the ownership of property shall not require prior approval or preclude the issuance of a guaranty based upon the entire amount of the loan. If both spouses be eligible veterans, either or both, within permissible maxima, may utilize available guaranty entitlement.

(c) For the purpose of determining the rights and the liabilities of the Secretary with respect to a loan subject to paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran.

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4211 Amortization -- prepayment.

(a) To be eligible for guaranty under 38 U.S.C. 3712 a loan shall be amortized fully within the term of the loan in accordance with any generally recognized plan of amortization requiring approximately equal monthly payments. The loan shall not be payable on demand or at sight or presentation, or at a time not specified or computable from the language in the evidence of indebtedness, or on a renewal basis at the option of the holder. The first payment may be deferred not longer than 2 months from the date the loan is closed.

(b) No guaranteed loan security instrument shall contain any provision giving the holder a right to declare the loan due or otherwise to declare a default if the holder "shall feel insecure" or upon the occurrence of any similar condition at the holder's option, without regard to any act or omission by the debtor.

(c) The debtor shall have the right, without penalty or fee, to prepay all or not less than one installment of the indebtedness at any time. Credit for any partial prepayment made on other than an installment due date may be postponed to the next installment due date. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied for the purpose of curing or preventing any subsequent default. Any prepayment in full of the indebtedness (unpaid principal balance plus earned interest) shall be credited on the date received.
(d) Subject to paragraph (a) of this section any amounts which under the terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in § 36.4204 shall automatically fall due on such date.
[36 FR 1253, Jan. 27, 1971]

§ 36.4212 Interest rates and late charges.

(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the Federal Register. Provided, however, that the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3712(a)(1)(F) must be less than the interest rate of the VA loan being refinanced. This paragraph (a) does not apply in the case of an adjustable rate mortgage being refinanced with a fixed rate loan.
(Authority: 38 U.S.C. 3703, 3712)

(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3712(a)(1)(F).
(Authority: 38 U.S.C. 3703, 3712)

(c) The rate of interest in instruments securing the indebtedness for all loans may be expressed in terms of add-on or discount.
(Authority: 38 U.S.C. 3710, 3712)

(d) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default; Provided, that a late charge not in excess of an amount equal to 4 percent of any installment paid more than 15 days after due date shall not be considered a violation of this limitation.
(Authority: 38 U.S.C. 3712)

(e) Adjustable rate mortgage loans which comply with the requirements of this paragraph are eligible for guaranty.
(1) Interest rate index. Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 week) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at "constant maturity" are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H.15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System,
as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) Frequency of interest rate changes. Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur not sooner than 12 months nor later than 18 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) Method of rate changes. Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) Initial rate and magnitude of changes. The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. The rate must be reflective of adjustable rate lending. Annual adjustments in the interest rate shall be set at a certain spread or margin over the interest rate index prescribed in paragraph (e)(1) of this section. Except for the initial rate, this margin shall remain constant over the life of the loan. Annual adjustments to the contract interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8 1/8 percent.

(5) Pre-loan disclosure. The lender shall explain fully and in writing to the borrower, no later than on the date upon which the lender provides the prospective borrower with a loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and included in the loan submission to VA. Such lender disclosure must include the following items:

(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;

(ii) Identification of the interest rate index, its source of publication and availability;

(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and
(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) Annual disclosure. At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707, 3712 (f) and (g))


§ 36.4213 Capacity of parties.

Nothing in the § 36.4200 series shall be construed to relieve any lender of responsibility for any loss caused by lack of legal capacity of any person to contract, sell, convey or encumber, or by the existence of other legal disability or defects invalidating or rendering unenforceable in whole or in part either the loan obligation or the security therefor.

[36 FR 1253, Jan. 27, 1971]

§ 36.4214 Geographical limits.

The site for any manufactured home purchased with a guaranteed loan must be located within the United States of America, which for the purposes of 38 U.S.C. 3712 comprises the several States, the Territories and possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.


§ 36.4215 Maintenance of records.

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Secretary ceases to be liable as guarantor of the loan. For the purpose of any accounting with the Secretary or computation of claim against the Secretary, any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The lender shall retain copies of all loan origination records on VA guaranteed loan for at least one year from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal reports, reports on other inspections of the property, and all closing papers and documents.

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§ 36.4217 Delivery of notice.
Any notice required by the § 36.4200 series to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4221(b) and delivered, by mail or otherwise, to the VA office at which the guaranty was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by the § 36.4200 series. This section does not apply to legal process. (See § 36.4282.)
[58 FR 29114, May 19, 1993]

§ 36.4218 Payment in full; termination of guaranty.
Upon full satisfaction of a guaranteed loan by payment or otherwise the instrument evidencing the guaranty shall be returned to the Department of Veterans Affairs office issuing the same with the holder's cancellation or endorsement of release thereon. [36 FR 1253, Jan. 27, 1971]

§ 36.4219 Incorporation by reference.
Department of Veterans Affairs regulations issued under 38 U.S.C. 3712, and in effect on the date of any loan which is submitted and accepted or approved for a guaranty thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto. [36 FR 1253, Jan. 27, 1971]

§ 36.4220 Substantive and procedural requirements; waiver.
(a) Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning the guaranty of manufactured home loans to veterans, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, is hereby authorized, if the Under Secretary for Benefits or Director, Loan Guaranty Service finds the interests of the Government are not adversely affected, to relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided no such action may be taken which would impair the vested rights of any person affected thereby. If such requirement, condition, or limitation
is of an administrative or procedural (not substantive) nature, any employee designated in § 36.4221 is hereby authorized to grant similar relief if the designated employee finds the failure or error of the lender was due to misunderstanding or mistake and that the interests of the Government are not adversely affected. Provisions of the regulations considered to be of an administrative or procedural (nonsubstantive) nature are limited to the following:

(1) The requirement in § 36.4209(b) that a lender originating a loan under a certificate of commitment report the loan for issuance of guaranty evidence within 60 days following actual payment of the full proceeds of the loan. In such cases it is not necessary that a finding be made that the loan is not in default.

(2) The requirements in § 36.4209(h) of this part concerning the giving of notice in assumption cases under 38 U.S.C. 3714.

(Authority: 38 U.S.C. 3714)

(3) The requirement in § 36.4279 that a holder promptly forward an advice of the terms of any agreement effecting a reamortization or extension of a loan.

(4) The requirement in § 36.4280 concerning the giving of notice of default.

(5) The requirement in § 36.4280 that a holder give 30 days advance notice of its intention to foreclose or repossess the security.

(6) The requirement in § 36.4282 that a holder give notice of repossession of personal property within 10 days after such repossession has occurred.

(7) The requirement in § 36.4210(a) that a lender obtain the prior approval of the Secretary before closing a joint loan if the lender or class of lenders is approved by the Secretary to close loans on the automatic basis pursuant to 38 U.S.C. 3712(c)(1).

(Authority: 38 U.S.C. 3712(c)(1))

(b) No waiver, consent, or approval required or authorized by the regulations concerning guaranty of loans to veterans shall be valid unless in writing signed by the Secretary or the employee designated in § 36.4221.


[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in the introductory text of paragraph (a), became effective June 4, 1996.]

§ 36.4221 Delegation of authority.

(a) Except as hereinafter provided, each employee of the Department of Veterans Affairs heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the guaranty of manufactured home loans and the rights and liabilities arising therefrom, including but not limited to the adjudication and allowance, disallowance, and compromise of claims; the collection or compromise of amounts due, in money or other property; the extension, rearrangement, or acquisition of loans; the management and disposition of secured and unsecured notes and other property; and those functions expressly or impliedly embraced within paragraphs (2) to (6), inclusive, of 38 U.S.C. 3720(a). Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without
acknowledgment) for, and on behalf of, the Secretary, evidence of guaranty and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property, or of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(b) Designated positions:
Under Secretary for Benefits.
Director, Loan Guaranty Service.
Director, Regional Office.
Director, Medical and Regional Office Center.
Director, VA Regional Office and Insurance Center.
Loan Guaranty Officer.
Assistant Loan Guaranty Officer.
The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Under Secretary for Benefits, be redelegated.

(c) Nothing in this section shall be construed (1) to authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 501 or 3715(b) or to sue, or enter appearance for and on behalf of the Secretary, or confess judgment against the Secretary in any court without prior authorization; or (2) to include the authority to exercise those powers delegated to the Under Secretary for Benefits, or the Director, Loan Guaranty Service, under § 36.4220: Provided, That anything in the regulations concerning guaranty of loans to veterans to the contrary notwithstanding, any evidence of guaranty issued on or after January 27, 1971 by any of the employees designated in paragraph (b) of this section or by any employee designated an authorized agent or a loan guaranty agent shall be deemed to have been issued by the Secretary, subject to the defenses reserved in 38 U.S.C. 3721.

(d) Each Regional Office, regional office and insurance center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours.

(Authority: 38 U.S.C. 501, 3720(a)(5))

[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraphs (b) and (c), became effective June 4, 1996.]

§ 36.4222 Hazard insurance.
(a) The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against risks or hazards to which it may be subjected to the extent customary in the locality. The costs of such required insurance coverage may be paid for by the veteran. Only the costs for one year may be included in the loan amount.

(1) Flood insurance will be required on any manufactured home, building or personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot guarantee a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(2) Broad Lender's Protection Insurance or its equivalent is required to protect against loss for any items missing from the manufactured home at time of repossession and to cover repossession expenses including, but not limited to, breakdown and transport charges, permit and export fees, and an amount, limited by the Secretary, of unpaid park rent.

(b) All monies under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance.


(42 U.S.C. 4012a, 4106(a))


§ 36.4223 Interest rate reduction refinancing loan.

(a) A veteran may refinance [38 U.S.C. 3712(a)(1)(F)] an existing Department of Veterans Affairs guaranteed loan to reduce the interest rate payable on the Department of Veterans Affairs loan provided the following requirements are met:

(1) The loan application must be submitted to the Secretary for prior approval unless the veteran is not charged a discount, in which case the loan application may be processed on the automatic basis;

(2) The loan must be secured by the same real property and/or personal property as the loan being refinanced and the veteran must own the manufactured home and/or manufactured home lot securing the loan; and

(i) Presently occupy or have previously occupied the manufactured home, a manufactured home on the lot securing the loan, or the manufactured home and the lot securing the loan as his or her home and must certify in such form as the Secretary shall prescribe that the veteran presently or has previously so occupied the manufactured home or a manufactured home on the lot; or

(ii) When a veteran is on Active Duty status as a member of the Armed Forces and is unable to occupy the manufactured home or a manufactured home on the lot securing the
loan as a home because of such status, the veteran's spouse must occupy or must have previously occupied the manufactured home or a manufactured home on the lot as the spouse's home and must certify such occupancy in such form as the Secretary shall prescribe.

(3) The amount of the refinancing loan may not exceed an amount equal to the sum of the balance of the loan being refinanced and such closing costs as authorized in § 36.4232 or § 36.4254, as appropriate, and a discount not to exceed 2 percent of the loan amount;

(Authority: 38 U.S.C. 3703, 3712)

(4) The dollar amount of the guaranty of the 38 U.S.C. 3712(a)(1)(F) loan may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the loan; and

(Authority: 38 U.S.C. 3703, 3712)

(5) The term of the refinancing loan 38 U.S.C. 3712(a)(1)(F) may not exceed the original term of the loan being refinanced.

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement for manufactured home purposes available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement for manufactured home purposes shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the entitlement used by the veteran to obtain the loan being refinanced. The veteran's loan guaranty entitlement used originally for a purpose as enumerated in 38 U.S.C. 3712(a)(1)(A) through (E) or (G) and subsequently transferred for use on an interest rate reduction refinancing loan (38 U.S.C. 3712(a)(1)(F)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loan on the same property meets the requirements of § 36.4203(a).

(c) Title to the security which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4234, and/or § 36.4253, as appropriate.

(Authority: 38 U.S.C. 3712(a)(1)(F) and (4))


§ 36.4224 Refinancing existing manufactured home loan including purchase of lot.

(a) A veteran may refinance (38 U.S.C. 3712(a)(1)(G)) an existing purchase money lien on a manufactured home owned and occupied by the veteran as his or her home in conjunction with a loan to acquire a suitable lot on which that manufactured home is or will be located provided the following requirements are met.

(1) The loan application must be submitted to the Secretary for prior approval;

(2) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located.

(3) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the
lot, as authorized in § 36.4252; the costs of necessary site preparation of the lot as determined by the Secretary; a reasonable discount as authorized in § 36.4204(d)(8) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4232 or § 36.4254, as appropriate.

(b) If the loan being refinanced was guaranteed by the Department of Veterans Affairs, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 3702(b) the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced. Guaranty for the refinancing loan shall be computed by first applying to the loan a combined total of the guaranty entitlement used to obtain the VA-guaranteed loan being refinanced and second any additional guaranty entitlement available to the veteran for manufactured home purposes, up to a maximum of $20,000 or forty (40) percent of the original principal amount of the loan, whichever is less.

(Authority: 38 U.S.C. 3712(a)(1)(G) and (5))
[48 FR 40229, Sept. 6, 1983; 58 FR 37860, July 14, 1993]

§ 36.4225 Authority to close manufactured home loans on the automatic basis.
(a) Supervised lenders of the classes described in 38 U.S.C. 3702(d) (1) and (2) are authorized by statute to process VA guaranteed manufactured home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.

(b) Nonsupervised lenders of the class described in 38 U.S.C. 3702(d)(3) must apply to the Secretary for authority to process manufactured home loans on the automatic basis. The following minimum requirements must be met:

(1) Minimum assets. A minimum of $50,000 of working capital must be maintained. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other assets that could readily be converted into cash within 1 year on the normal accounting or business cycle. Current liabilities are defined as obligations that would be paid within a year on a normal accounting or business cycle. The lender's latest financial statements (profit and loss statements and balance sheets), audited and certified by a CPA (certified public accountant), must accompany the application. If the date of the financial statement precedes that of the application by more than 6 months, the lender-applicant must also attach a copy of its latest internal quarterly report. In addition, the lender-applicant must agree that if the application is approved, the applicant will provide within 120 days following the end of each of its fiscal years an audited financial statement to the Director, Loan Guaranty Service for review.

(2) Experience. The firm must have been actively engaged in originating manufactured home loans for at least the last 2 years. Alternately, each principal officer of the firm who is actively involved in managing origination functions must have a minimum of 2 recent
years' total experience in the field of VA manufactured home mortgages in managerial functions in either the present company of employment or in companies other than that of his or her present employment. In either case, every principal officer (president and vice presidents) must submit a resume of his or her experience in the mortgage lending field. Should the secretary and/or treasurer participate in the management of origination functions, they too must submit a resume and meet the minimum experience requirement if the company does not meet the experience requirement. Should the lender or any of its directors or officers ever have been debarred or suspended by any Federal agency or department or any of its directors or officers have been a director or officer of any other lender or corporation that was so suspended, or if the lender-applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must also be submitted. Lender-applicants will submit individual requests for each branch office they wish to have approved. The parent organization must agree to accept full responsibility for the actions of branch offices.

(3) Underwriter. If it is proposed that all loans to be made by the lender will be submitted to its home office for approval or rejection, the lender must have at least one full-time designated underwriter in its home office. If the loans will be approved or rejected by branch managers, the lender must have at least one full-time designated underwriter in each branch. In either event, the designated underwriters must be identified and a resume on each submitted to VA. The underwriters should have at least three years of experience in consumer installment finance. If changes in underwriting personnel occur, the lender must notify VA.

(4) Lines of credit. The identity of the source(s) of warehouse lines of credit must be revealed to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information.

(5) Secondary market. If the lender-applicant customarily sells the manufactured home loans it originates, it must provide a listing of all permanent investors to whom the loans are sold, including the investor's address, telephone number and names of persons to contact.

(6) Liaison. The lender-applicant must designate one employee to act as liaison on its behalf with the VA. If possible, the lender-applicant should select employees other than VA approved underwriters to act as liaison. Officers from branch or regional offices should also be appointed to act as liaison with local VA offices. The lender must notify VA of any changes in liaison personnel.

(7) Courtesy closing. The lender-applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders whether or not such lenders are themselves approved to close on an automatic basis. The lender must agree that the processing of forms other than the initial credit application will not be delegated to the dealer or developer.

(8) Subsidiaries/affiliates. A lender approved for automatic processing may not close manufactured home loans on the automatic basis involving any dealership or manufacturer in which it has a financial interest or which it owns, is owned by, or with which it is affiliated. This restriction may be eliminated for lenders that can provide documentation which demonstrates to VA's satisfaction that (i) the lender and the manufacturer and/or dealer are separate entities that operate independently for each other, and (ii) the percentage of all VA manufactured home loans originated by the lender
during at least a one-year period on which payments are past due 90 days or more is no higher than the national average for the same period for all mortgage loans.

(9) Lender agents. A lender using an agent to perform a portion of the work involved in originating and closing a VA guaranteed loan on an automatic basis must take full responsibility by certification or corporate resolution for all acts, errors and omissions of the agent and its employees. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent.

(10) Minimum use of automatic authority. If approved, lenders must use their automatic authority to the maximum extent possible. Any lender with automatic authority who submits a loan on the prior approval basis will be required to submit an explanation from the designated underwriter as to why the loan was not closed automatically. Such a statement will not be needed for loans that must be processed on the prior approval basis, e.g., joint loans.

(11) Probation. Lender-applicants meeting the requirements of this section will be approved to close loans on an automatic basis for a 1-year probationary period. Poor underwriting and/or consistently careless processing by the lender during the probationary period will be a basis for withdrawal of automatic authority.

(12) Quality control system. In order to be approved as a nonsupervised lender for automatic processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its system to VA on demand. The elements of the quality control system must include the following:

(i) Underwriting policies. Each office of the lender shall maintain copies of VA credit standards and all available VA underwriting guidelines.

(ii) Corrective measures. The system should ensure the effective corrective measures are taken promptly when deficiencies in loan originations are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) System integrity. The quality control system should be independent of the loan production function.

(iv) Scope. The review of understanding decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report the circumstances surrounding the deficiency and the remedial action to be taken to cure it to VA.

(Authority: 38 U.S.C. 501, 1803(c)(1), and 1812(g))

(d) To participate in VA's automatic program nonsupervised lenders of the class described in paragraph 3702(d)(3) of title 38 U.S. Code shall pay fees as follows:

(1) $ 500 for new applications;

(2) $ 200 for reinstatement of lapsed or terminated automatic authority;

(3) $ 100 for each underwriter approval;

(4) $ 100 for each agent approval;

(5) $ 100 for each regional underwriting office approval;

(6) A minimum fee of $ 100 for any other VA administrative action pertaining to a lender's participation in ALP;
(7) $200 annually for certification of home offices;
(8) $100 annually for certification of regional offices; and
(9) $100 annually for each agent renewal.
(e) Supervised lenders of the classes described in paragraphs (d)(1) and (d)(2) of 38 U.S.
Code 3702 participating in VA's Loan Guaranty Program shall pay fees as follows:
(1) $100 fee for each agent approval; and
(2) $100 annually for each agent renewal.
(Authority: 38 U.S.C. 3712(g))
(f) Lenders participating in VA's Lender Appraisal Processing Program shall pay a fee of
$100 for approval of each staff appraisal reviewer.
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§ 36.4226 Withdrawal of authority to close manufactured home loans on the
automatic basis.
(a)(1) As provided in 38 U.S.C. 3702(e), the authority of any lender to close
manufactured home loans on the automatic basis may be withdrawn by the Secretary at
any time upon 30 days notice. The automatic processing authority of both supervised and
nonsupervised lenders may be withdrawn for engaging in practices which are imprudent
from a lending standpoint or which are prejudicial to the interests of veterans or the
Government but are of a lesser degree than would warrant complete debarment or
suspension of the lender from participation in the program.
(2) Automatic processing authority may be withdrawn for failure to meet basic qualifying
criteria. For non-supervised lenders, this includes lack of a designated underwriter, failure
to maintain $50,000 working capital and/or failure to file required financial statements.
For supervised lenders this includes loss of status as an entity subject to examination and
supervision by a Federal or State supervisory agency as required by 38 U.S.C. 3702(d).
During the 1 year probationary period for newly approved automatic lenders, automatic
authority may be withdrawn based upon poor underwriting or consistently careless
processing by the lender, as determined by VA.
(3) Automatic processing authority may also be withdrawn based on any of the causes for
debarment set forth at § 44.305 of this title.
(b) Authority to close manufactured home loans on the automatic basis may also be
temporarily withdrawn for a period of time under the following schedule.
(1) Withdrawal for 60 days:
(i) Automatic loan submissions show deficiencies in credit underwriting, such as use of
unstable sources of income to qualify the borrower, ignoring significant adverse credit
items affecting the applicant's creditworthiness, etc., after such deficiencies have been
repeatedly called to the lender's attention;
(ii) Employment or deposit verifications are handcarried by applicants or otherwise
improperly permitted to pass through the hands of a third party;
(iii) Automatic loan submissions are consistently incomplete after such deficiencies have
been repeatedly called to the lender's attention by VA; or
(iv) There are continued instances of disregard of VA requirements after they have been
called to the lender's attention.
(2) Withdrawal for 180 days:
(i) Loans are closed automatically which conflict with VA credit standards and which would not have been made by a lender acting prudently;
(ii) The lender fails to disclose to VA significant obligations or other information so material to the veteran's ability to repay the loan that undue risk to the Government results;
(iii) Employment or deposit verifications are allowed to be handcarried by applicant or otherwise mishandled, resulting in the submission of significant misinformation to VA;
(iv) Substantiated complaints are received that the lender misrepresented VA requirements to veterans to the detriment of their interests (e.g., veteran was dissuaded from seeking a lower interest rate based on lender's incorrect advice that such options were precluded by VA requirements);
(v) Closing documentation shows instances of improper charges to the veteran after the impropriety of such charges has been called to the lender's attention by Va, or refusal to refund such charges after notification by VA; or
(vi) There are other instances of lender actions which are prejudicial to the interests of veterans, such as deliberate delays in scheduling loan closings.
(3) Withdrawal for a period from one year to three years:
(i) The lender fails to properly disburse loans (e.g., loan disbursement checks returned due to insufficient funds); or
(ii) There is involvement by the lender in the improper use of a veteran's entitlement (e.g., knowingly permitting the veteran to violate occupancy requirements, lender involvement in sale of veteran's entitlement).
(4) A continuation of actions that have led to previous withdrawal of automatic authority justifies withdrawal of automatic authority for the next longer period of time.
(5) Withdrawal of automatic processing authority does not prevent a lender from processing VA guaranteed manufactured home loans on the prior approval basis.
(6) Action by VA to remove a lender's automatic authority does not prevent VA from also taking debarment or suspension action based on the same conduct by the lender.
(7) VA field facilities are authorized to withdraw automatic privileges for 60 days, based on any of the violations set forth in paragraphs (b)(1) through (b)(3) of this section, for nonsupervised lenders without operations in other stations' jurisdictions. All determinations regarding withdrawal of automatic authority for longer periods of time or multi-jurisdictional lenders must be made in Central Office.
(c) VA will provide 30 days notice of withdrawal of automatic authority in order to enable the lender to either close or obtain prior approval for a loan on which processing has begun. There is no right to a formal hearing to contest the withdrawal of automatic processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit in person, in writing, or through a representative, information and argument in opposition to the withdrawal.
(d) If the lender's submission in opposition raises a dispute over facts material to the withdrawal of automatic authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses VA presents. The Under Secretary for Benefits will appoint a hearing officer or panel to conduct the hearing.
(e) A transcribed record of the proceedings shall be made available at cost to the lender, upon request, unless the requirement for a transcript is waived by mutual agreement.

(f) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Under Secretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submissions made by the lender.

(g) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact will be prepared by the hearing officer or panel. The Under Secretary for Benefits shall base the decision on the facts as found, together with any information and argument submitted by the lender and any other information in the administrative record.

(Authority: 38 U.S.C. 501, 1803(c)(1), and 1812(g))


[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraphs (d), (f) and (g), became effective June 4, 1996.]

§ 36.4227 Advertising and Solicitation Requirements.

Any advertisement or solicitation in any form (e.g., written, electronic, oral) from a private lender concerning manufactured housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and

(b) Must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

[67 FR 9402, Mar. 1, 2002]

(38 U.S.C. 3703, 3704)

[EFFECTIVE DATE NOTE: 67 FR 9402, Mar. 1, 2002, added this section, effective Mar. 1, 2002.]
FINANCING MANUFACTURED HOME UNITS

§ 36.4231 Warranty requirements.
§ 36.4232 Allowable fees and charges; manufactured home unit.
§ 36.4234 Title and lien requirements.

§ 36.4231 Warranty requirements.
(a) When a new manufactured home purchased with financing guaranteed under 38 U.S.C. 3712 is delivered to the veteran-borrower he or she will be supplied a written warranty by the manufacturer in the form and content prescribed by the Secretary. Such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument, and the warranty instrument will so provide. No evidence of guaranty shall be issued by the Secretary unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.
(b) Any manufactured housing unit properly displaying a certification of conformity to all applicable Federal manufactured home construction and safety standards pursuant to 42 U.S.C. 5415 shall be acceptable as security for a VA guaranteed loan.
(Authority: 38 U.S.C. 3712)
(c) When a used manufactured home is purchased from a manufactured home dealer with financing guaranteed under 38 U.S.C. 3712 the veteran-borrower must be supplied with a written warranty by the manufactured home dealer in the form and content prescribed by the Secretary. Such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument, and the warranty instrument will so provide. No evidence of guaranty shall be issued by the Secretary unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.
[48 FR 40229, Sept. 6, 1983; 60 FR 38259, July 26, 1995]

§ 36.4232 Allowable fees and charges; manufactured home unit.
(a) Incident to the origination of a guaranteed loan for the purchase or refinancing of a manufactured home unit only, no charge shall be made against, or paid by, the veteran-borrower without the express prior approval of the Secretary except as provided in paragraph (e) of this section and as follows:
(1) Actual fees or charges for required recordation of documents;
(2) The costs of independent fee inspections for itemized items included in the manufactured home loan, as required by § 36.4204(f);
(3) The amount of any documentary stamp taxes levied on the transaction;
(4) The amount of State and local taxes levied on the transaction;
(5) The premium for customary physical damage insurance and vendor's single interest coverage on the manufactured home for an initial policy term of not to exceed one (1) year;
(6) The premium for insurance against loss for items missing at time of repossession and for repossession expenses, unless State law prohibits charging borrowers for this
coverage, in which case the lender is required to pay for the coverage without reimbursement from the veteran;
(7) For the purposes of obtaining a refinancing loan for interest rate reduction or a refinancing loan to simultaneously refinance a unit and acquire a lot, the cost of a credit report and an appraisal; and
(Authority: 38 U.S.C. 3712 (a)(1)(b), (a)(4)(A) and (g)).
(8) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.
(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)
(b) Any charge against the borrower properly made under paragraph (a) of this section may be included in the loan and paid out of the proceeds of the loan provided the total loan amount does not exceed 145 percent of the manufacturer's invoice.
(Authority: 38 U.S.C. 3712(g))
(c)(1) Costs of a credit report (except for 38 U.S.C. 3712(a)(1)(F) or (G) refinancing loans) such additional insurance as the veteran may desire, and any other expenses normally charged to a manufactured home purchaser under local customs may be paid by the borrower other than from the loan proceeds.
(2) For the purchase of a used manufactured home unit, the fee of a Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs, except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender, may be paid by the borrower from other than the loan proceeds.
(Authority: 38 U.S.C. 3712 (e)(4) and (g))
(d) Subject to the limitations set forth in this section, the following may be included in the loan made for the purchase of a new (not used) manufactured home unit and paid out of the proceeds of the loan:
(1) The actual cost of transportation or freight;
(2) Setup charges for installing the manufactured home on site not to exceed $400 for a single-wide manufactured home or $800 for a double-wide manufactured home.
(Authority: 38 U.S.C. 3712(g))
If the actual costs exceed the limitations in this section, the veteran must certify that any excess cost has been paid in cash from the veteran's own resources without borrowing.
(e)(1) Subject to the limitations set out in paragraph (e)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total amount must be paid in a manner prescribed by the Secretary before a manufactured home unit loan will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender shall disregard any amount included in the loan to enable the borrower to pay such fee.
(Authority: 38 U.S.C. 3729(a))
(2) Subject to the limitations set out in paragraph (e)(5) of this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 3714 of chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provisions describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of receipt by the holder of notice of the transfer.

(Authority: 38 U.S.C. 3714, 3729)

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraph (e)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 501)

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or central processing unit-to-central processing unit (CPU-to-CPU) transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

(5) The fee described in paragraphs (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 3701(b)(2) of title 38, United States Code.

(Authority: 38 U.S.C. 3729(b))

(The information collection requirements in this section have been approved by the Office of Management and Budget under control numbers 2900-0474 and 2900-0516.)
§ 36.4234 Title and lien requirements.
(a) The interest in the manufactured home acquired by the veteran at the time of purchase shall be either:
(1) Legal title evidenced by such document as is customarily issued to the purchaser of a manufactured home in the jurisdiction in which the manufactured home is initially sited, or
(2) A full possessory interest convertible into a legal title conforming to paragraph (a)(1) of this section upon payment in full of the guaranteed loan.
(b) The loan must be secured by a properly recorded financing statement and security agreement or other security instrument that creates a first lien on or equivalent security interest in the manufactured home and all of the furnishings, equipment, and accessories paid for in whole or in part out of the loan proceeds.
(c) It is the responsibility of the lender that the veteran initially obtains an interest in the manufactured home meeting the requirements of paragraph (a) of this section and to obtain and retain a security interest meeting the requirements of paragraph (b) of this section.
COMBINATION AND MANUFACTURED HOME LOT LOANS

§ 36.4251 Loans to finance the purchase of manufactured homes and the cost of necessary site preparation.
§ 36.4252 Loans for purchase or refinancing of a manufactured home.
§ 36.4253 Title and lien requirements.
§ 36.4254 Fees and charges.
§ 36.4255 Loans for the acquisition of a lot.

§ 36.4251 Loans to finance the purchase of manufactured homes and the cost of necessary site preparation.
(a) A loan to finance the purchase of a manufactured home may include funds (or be augmented by a separate loan) to pay all or a part of the cost of the necessary site preparation of a lot on which to place the manufactured home and the loan shall be eligible for guaranty: Provided, that:
(1) The veteran has, or incident to the transaction will acquire, a title to the lot that conforms to § 36.4253(a).
(2) The loan is secured as required by § 36.4253(d).
(3) The lot is determined by the Secretary to be an acceptable manufactured homesite pursuant to § 36.4208,
(4) The cost of the necessary site preparation is determined by the Secretary to be reasonable.
(5) The amount of the loan to pay for necessary site preparation does not exceed the cost thereof and also does not exceed the reasonable value of the developed lot as determined by the Secretary, and
(6) The loan conforms otherwise to the requirements of the § 36.4200 series.
(b) Notwithstanding that the veteran-borrower's obligation for such site preparation be evidenced and secured separately from the obligation for purchase of the manufactured home, the obligations together shall constitute one loan for the purposes of the § 36.4200 series, including computation of the Secretary's guaranty liability.
(c) The cost of site preparation which will not be paid from the proceeds of the loan must be paid by the veteran in cash from the veteran's own resources.

§ 36.4252 Loans for purchase or refinancing of a manufactured home.
(a) A loan to purchase a manufactured home may include funds (or be augmented by a separate loan) to finance all or part of the cost of acquisition by the veteran of a lot on which to place the manufactured home and the loan shall be eligible for guaranty: Provided, That:
(1) The veteran will acquire title to such lot that conforms to the requirements of § 36.4253(a),
(2) The loan is secured as required by § 36.4253(d),
(3) The lot is determined by the Secretary to be an acceptable manufactured homesite pursuant to § 36.4208,
(4) The portion of the loan allocated to acquisition of the lot does not exceed the reasonable value of the lot as determined by the Secretary, and
(5) The loan conforms otherwise to the requirements of the § 36.4200 series.
(b) Notwithstanding that the veteran-borrower's obligation for acquisition of the lot be evidenced and secured separately from the obligation for purchase of the manufactured home, the obligations together (including, where appropriate, that for site preparation) shall constitute one loan for the purposes of the § 36.4200 series, including computation of the Secretary's guaranty liability.
(c) The cost of lot acquisition which will not be paid from the proceeds of the loan must be paid by the veteran in cash from the veteran's own resources.
(d) For the purpose of this section acquisition of a manufactured home lot includes:
   (1) The refinancing of the balance owed by the veteran as purchaser under an existing real estate installment contract, and
   (2) The refinancing of existing mortgage loans or other liens which are secured of record on a manufactured home lot owned by the veteran.
(e) A loan to acquire a lot on which to site a manufactured home may include funds to refinance an existing loan made for the purchase of and secured by a manufactured home on which lot the manufactured home is located or will be placed, provided that:
      (1) The veteran will acquire or retain title to such manufactured home and lot that conforms to the requirements of §§ 36.4234 and 36.4253,
      (2) The loan is secured as required by § 36.4253(g),
      (3) The lot is determined by the Secretary to be an acceptable manufactured homesite pursuant to § 36.4208,
      (4) The portion of the loan allocated to the acquisition and preparation of the lot does not exceed the reasonable value of the developed lot as determined by the Secretary,
      (5) The cost of necessary site preparation is determined by the Secretary to be reasonable.
      (6) The portion of the loan allocated to the refinancing of the manufactured home does not exceed an amount equal to the sum of the balance of the loan being refinanced; a reasonable discount as authorized in § 36.4204(d)(8) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured loan, and closing costs as authorized in § 36.4232 or § 36.4254, as appropriate,
      (7) The loan conforms otherwise to the requirements of the § 36.4200 series,
      (8) The veteran-borrower's obligation for acquisition of the lot and for refinancing the existing loan on the manufactured home (including site preparation, where appropriate), shall constitute one loan for the purposes of the § 36.4200 series, including computation of the Secretary's guaranty liability.
(Authority: 38 U.S.C. 3712(a)(1)(G) or (5)).

§ 36.4253 Title and lien requirements.
(a) The interest in the realty constituting a manufactured home lot acquired by the veteran wholly or in part with the proceeds of a guaranteed loan, or in the realty constituting a manufactured home lot improved wholly or in part with the proceeds of a guaranteed loan, shall not be less than:
   (1) A fee simple estate therein, legal or equitable; or
(2) A leasehold estate running or renewable at the option of the lessee for a period of not
less than 14 years from the maturity of the loan, or to any earlier date at which the fee
simple title will vest in the lessee, which is assignable or transferable, if the same be
subjected to the lien; however, a leasehold estate which is not freely assignable and
transferable will be considered an acceptable estate if it is determined by the Under
Secretary for Benefits, or the Director, Loan Guaranty Service, (i) that such type of
leasehold is customary in the area where the property is located, (ii) that a veteran or
veterans will be prejudiced if the requirement for free assignability is adhered to and, (iii)
that the assignability and other provisions applicable to the leasehold estate are sufficient
to protect the interests of the veteran and the Government and are otherwise acceptable;
or
(3) A life estate, provided that the remainder and reversionary interests are subjected to
the lien; or
(4) A beneficial interest in a revocable Family Living Trust that ensures that the veteran,
or veteran and spouse, have an equitable life estate, provided the lien attaches to any
remainder interest and the trust arrangement is valid under State law.
(b) Any such property or estate will not fail to comply with the requirements of paragraph
(a) of this section by reason of the following:
(1) Encroachments;
(2) Easements;
(3) Servitudes;
(4) Reservations for water, timber, or subsurface rights;
(5) Right in any grantor or cotenant in the chain of title, or a successor of either, to
purchase for cash, which right by the terms thereof is exercisable only if:
(i) An owner elects to sell,
(ii) The option price is not less than the price at which the then owner is willing to sell to
another, and
(iii) Exercised within 30 days after notice is mailed by certified mail to the address of
optionee last known to the then owner of the then owner's election to sell, stating the
price and the identity of the proposed vendee;
(6) State and local housing agency deed restrictions provided that the veteran obtained
the property under a State or local political subdivision program designed to assist low-
or moderate-income purchasers, and as a condition the purchaser must agree to one or
more of the following restrictions:
(i) If the property is resold within a time period as established by local law or ordinance,
after the purchaser acquires title, the purchaser must first offer the property to the
government housing agency, or a low- or moderate-income purchaser designated by such
agency, provided the option to purchase is exercised within 90 days after notice by the
purchaser to the agency of intention to sell;
(ii) If the property is resold within a time period as established by local law or ordinance,
after the purchaser acquires title, a governmental agency may specify a maximum price
for the property upon resale; or
(iii) Such other restriction approved by the Secretary designed to insure either that a
property acquired under such program again be made available to low- or
moderate-income purchasers, or to prevent a private purchaser from obtaining a windfall
profit on the resale of such property, while assuring that the purchaser has a reasonable opportunity to dispose of the property without undue difficulty at a reasonable price. The sale price of a property under any of the restrictions of paragraph (b)(6) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner, plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Secretary. The veteran must be fully informed and consent in writing to the deed restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manufactured home loan processed on the automatic basis; (Authority: 38 U.S.C. 3712(g))

(7) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manufactured home loan processed on the automatic basis; (Authority: 38 U.S.C. 501, 3703(c)(1), 3712(g))

(8) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter; (9) Violation of a restriction based on race, color, religion, sex, handicap, familial status, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach; (10) Any other covenant, condition, restriction, or limitation approved by the Secretary in the particular case. Such approval shall be a condition precedent to the guaranty of the loan; (c) The following limitations on the quantum or quality of the estate or property shall be deemed for the purposes of paragraph (b) of this section to have been taken into account in the appraisal of the manufactured home lot and determined by the Secretary as not materially affecting the reasonable value of such property: (1) Building or use restrictions. Provided, (i) no violation exists, (ii) the proposed use by a veteran does not presage a violation of a condition affording a right of reverter, and (iii) any right of future modification contained in the building or use restrictions is not exercisable, by its own terms, until at least 10 years following the date of the loan. (2) Violations of equal opportunity restrictions. Violations of a restriction based on race, color, religion, sex, handicap, familial status, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach. (3) Violations of building or use restrictions of record. Violations of building or use restrictions of record which have existed for more than 1 year, are not the subject of pending or threatened litigation, and which do not provide for a reversion or termination

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of title or condemnation by municipal authorities or a lien for liquidated damages which may be superior to the lien securing the guaranteed loan.

(4) Easements. (i) Easements for public utilities along one or more of the property lines and easements for drainage or irrigation ditches, provided the exercise of the rights thereof do not interfere with the use of the manufactured home or improvements located on the subject property.

(ii) Mutual easements for joint driveways located partly on the subject property and partly on adjoining property, provided the agreement is recorded in the public records.

(iii) Easements for underground conduits which are in place and which do not extend under any buildings in the subject property.

(5) Encroachments. (i) On the subject property by improvements on the adjoining property where such encroachments do not exceed 1 foot within the subjects boundaries, provided such encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the subject property.

(ii) By hedges or removable fences belonging to subject or adjoining property.

(iii) Not exceeding 1 foot on adjoining property by driveways belonging to subject property, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment.

(6) Variations of lot lines. Variations between the length of the subject property lines as shown on the plot plan or other exhibits submitted to the Department of Veterans Affairs and as shown by the record or possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property including the manufactured home and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line.

(d) In a combination loan (loan to finance the purchase of a manufactured home and to finance the purchase of a lot and/or necessary site preparation) the total indebtedness of the veteran arising from such combination loan transaction must be secured by a first lien or the equivalent thereof on the estate of the veteran in the manufactured home lot, which real estate security interest shall be in addition to the manufactured home security interest required by § 36.4234.

(e) Tax liens special assessment liens, and ground rents shall be disregarded with respect to any requirement that loans shall be secured by a lien of specified dignity. With the prior approval of the Secretary, Under Secretary for Benefits, or Director, Loan Guaranty Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or improvement of a manufactured home lot is secured by a first lien the Secretary may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien created after June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.
(f) In the case of a combination loan or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed it shall be the responsibility of the lender that the veteran initially obtains or has an estate in the land constituting the manufactured home lot meeting the requirements of paragraph (a) of this section and to obtain and retain a security interest thereon meeting the requirements of paragraph (d) of this section.

(g) In the case of a combination loan to purchase a manufactured home lot and to refinance an existing purchase money loan on a manufactured home unit which is or will be located on the lot to be purchased, it shall be the responsibility of the lender to assure that the veteran obtains or retains an estate in the manufactured home and in the land meeting the requirements of paragraph (a) of this section and § 36.4234. The lender must also obtain and retain a first lien or the equivalent thereof on the estate of the veteran in both the manufactured home and in the lot on which the manufactured home is located.

(Authority: 38 U.S.C. 501, 3703(c), and 3712(a)(1)(G), (e)(3) and (g))


[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraphs (a)(2) and (e), revised paragraph (a)(3), and added paragraph (a)(4), became effective June 4, 1996.]

§ 36.4254 Fees and charges.

(a) Except as provided in § 36.4232 fees and charges incident to origination of a combination loan or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed which may be paid by the veteran shall be limited, with respect to the real estate portion of the loan, to reasonable and customary amounts for any of the following:

(1) Fees of the Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs, except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender,

(2) Recording fees and recording taxes or other charges incident to recordation,

(3) Credit report,

(4) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for any tax and insurance account,

(5) Survey, if required by lender or veteran,

(6) Title examination and title insurance, if any,

(7) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination, and

(8) Such other items as may be authorized in advance by the Under Secretary for Benefits as appropriate for inclusion under this paragraph as proper local variances.

(Authority: 38 U.S.C. 3712; 42 U.S.C. 4001 note, 4012a)
(b) A lender may charge and the veteran may pay a flat charge not exceeding one (1) percent of the amount of the loan less the portion thereof allocated to the manufactured home: Provided, That such flat charge shall be in lieu of all other charges relating to costs of origination not expressly specified and allowed in this schedule.

(c) Except for a refinancing loan pursuant to 38 U.S.C. 3712(a)(1)(F) or (G) fees and charges specified in this section may not be included in the loan.

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee must be paid to the Secretary. A fee of 1 percent of the total loan amount must be paid to the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. Provided, however, that the fee shall be 0.50 percent of the total loan amount for interest rate reduction refinancing loans guaranteed under 38 U.S.C. 3712(a)(1)(F). All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729(a))

(2) Subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 3714 of chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of receipt by the holder of notice of the transfer.

(Authority: 38 U.S.C. 3714, 3729)

(3) The lender is required to pay to the Secretary the fee described in paragraph (d)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the 1 percent fee is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury’s Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(Authority: 38 U.S.C. 501)

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (d)(1) and (d)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee
(including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type; sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

(5) The fee described in paragraphs (d)(1) and (d)(2) of this section shall not be collected from a veteran who is receiving compensation or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 3701(b)(2) of title 38 U.S.C.

(Authority: 38 U.S.C. 3729(b))

(6) Collection of the loan fee in this paragraph does not apply to loans closed prior to August 17, 1984, between October 1, and October 15, 1987, inclusive, between November 16 and December 20, 1987, inclusive, nor to loans closed after September 30, 1989.

(Authority: 38 U.S.C. 3729(c))

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0474.)


[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (a)(8), effective June 4, 1996; 62 FR 63277, 63278, Nov. 28, 1997, redesignated paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), added a new paragraph (d)(4) and a parenthetical at the end of the section, effective Jan. 1, 1998.]

§ 36.4255 Loans for the acquisition of a lot.

(a) A loan to finance all or part of the cost of acquisition by the veteran of a lot on which to place a manufactured home owned by the veteran shall be eligible for guaranty, Provided, That:

(1) The veteran will acquire title to such lot that conforms to the requirements of § 36.4253(a),
(2) The loan is secured as required by § 36.4253(d),
(3) The lot is determined by the Secretary to be an acceptable manufactured homesite pursuant to § 36.4208,
(4) The portion of the loan allocated to acquisition of the lot does not exceed the reasonable value of the lot as determined by the Secretary,
(5) The loan conforms otherwise to the requirements of the § 36.4200 series.
(b) The cost of lot acquisition which will not be paid from the proceeds of the loan must be paid by the veteran in cash from his or her own resources.
(c) For the purpose of this section, acquisition of a manufactured home lot includes:
(1) The refinancing of the balance owed by the veteran as purchaser under an existing real estate installment contract, and
(2) The refinancing of existing mortgage loans or other liens which are secured of record on a manufactured home lot owned by the veteran.
(Authority: 38 U.S.C. 501 and 3712(g))
[40 FR 13215, Mar. 25, 1975, as amended at 48 FR 40231, Sept. 6, 1983]
§ 36.4275 Events constituting default and acceptability of partial payments.
§ 36.4276 Advances and other charges.
§ 36.4277 Release of security.
§ 36.4278 Servicing procedures for holders.
§ 36.4279 Extensions and reamortizations.
§ 36.4280 Reporting of defaults.
§ 36.4281 Refunding of loans in default.
§ 36.4282 Legal proceedings (notice of repossesion).
§ 36.4283 Foreclosure or repossesion.
§ 36.4284 Computation of guaranty claims.
§ 36.4285 Subrogation and indemnity.
§ 36.4286 Partial or total loss of guaranty.
§ 36.4287 Substitution of trustees.

§ 36.4275 Events constituting default and acceptability of partial payments.
(a) Except as provided in paragraphs (a)(1), (a)(2) and (a)(3) of this section, the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty.
(1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a mobile home or lot. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority.
(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.
(3) Any housing loan which is financed under 38 U.S.C. chapter 37 and to which section 3714 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714.
(i) A holder may not exercise its option to accelerate a loan upon:
(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;
(B) The creation of a purchase money security interest for household appliances;
(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
(D) The granting of a leasehold interest of three years or less not containing an option to purchase;
(E) A transfer to a relative resulting from the death of a borrower;
(F) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;
(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4285 of this part; or
(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.
(ii) Any instrument evidencing the loan (i.e., the retail installment contract, promissory note and/or mortgage or deed of trust) shall bear in a conspicuous position in capital letters on the first page of the document in type at least 2 1/2 times larger in height than the regular type on such page the following warning: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT." Due to the difficulty in obtaining some commercial type sizes which are exactly 2 1/2 times larger in height than other sizes, minor deviations will be permitted based on commercially available type sizes nearest to 2 1/2 times the size of the print on the document. A similar warning in regular size type must appear on every assumption statement provided on a loan to which this paragraph applies.
(iii) On any loan to which 38 U.S.C. 3714 applies, the holder may charge a reasonable fee, not to exceed the lesser of (A) $300 and the actual cost of any credit report required, or (B) any maximum prescribed by applicable state law, for processing an application for assumption and changing its records. A provision authorizing the collection by the holder of this fee shall be contained in the instrument securing the loan.
(Authority: 38 U.S.C. 3704 and 3714)
(b) The inclusion in the guaranteed obligation of a provision contrary to the provisions of this section or § 36.4211 shall not impair the right of the holder to payment of the guaranty provided that:
(1) Default was declared or maturity was accelerated under some other provision of the note, mortgage, or other loan instrument, or
(2) Activation or enforcement of such provision is warranted under § 36.4280, or
(3) The prior approval of the Secretary was obtained.
(c) If the title to real property or a leasehold interest therein which secures a manufactured home loan guaranteed after December 22, 1970, is restricted against sale or occupancy on the ground of race, color, religion, or national origin, by restrictions created and filed of record by the borrower subsequent to that date, such action, at the election of the holder, shall constitute an event of default entitling the holder to declare the unpaid balance of the loan immediately due and payable.
(d) The holder of any guaranteed obligation shall have the right, notwithstanding the absence of express provision therefor in the instruments evidencing the indebtedness, to accelerate the maturity of such obligation at any time after the continuance of any default for the period specified in § 36.4280.
(e) If sufficient funds are tendered to bring a delinquency current at any time prior to repossession or foreclosure of the manufactured home the holder shall be obligated to
accept the funds in payment of the delinquency, unless the prior approval of the Secretary is obtained to do otherwise.

(f) A partial payment is a remittance on a loan in default (as defined in § 36.4202(c)) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(1) Except as provided in paragraph (f)(2) of this section, or upon the express waiver of the Secretary, the holder shall accept any partial payment and either apply it to the obligor's account or identify it with the obligor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the obligor's account.

(2) A partial payment may be returned to the obligor within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:

(i) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;
(ii) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;
(iii) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a written repayment plan;
(iv) The payment is less than the amount agreed to in a written repayment plan;
(v) The amount tendered is in the form of a personal check and the holder has previously notified the obligor in writing that only cash or certified remittances are acceptable;
(vi) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged;
(vii) Foreclosure and/or repossession has been commenced by the taking of the first action required for foreclosure/repossession under local law;
(viii) The holder's lien position would be jeopardized by acceptance of the partial payment.

(3) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4286(b), but such failure shall not constitute a defense to any legal action to terminate the loan.

(Authority: 38 U.S.C. 501, 3703(c), 3712(g)).


§ 36.4276 Advances and other charges.

(a) A holder may advance any reasonable amount necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments or other charges which constitute prior liens, or premiums on fire or other hazard insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 3714 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 3714 applies must include a clause authorizing an advance for this purpose if it is not paid at the time of transfer.
(Authority: 38 U.S.C. 3714)
(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; against gross amounts collected; or, in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to § 36.4284, any of the following items actually paid:
(1) Any expense which is reasonably necessary for preservation of the security,
(2) Court costs in a foreclosure or other proper judicial proceeding involving the security,
(3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security, including a reasonable sales commission to the dealer or sales broker for resale of the security,
(4) Reasonable trustee's fees or commissions paid incident to the sale of real property,
(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $ 850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b)(4) and (5) of this section) exceed $ 850.
(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Secretary in connection with the claim,
(7) Reasonable and customary costs of property inspections,
(8) Any other expense or fee that is approved in advance by the Secretary.

(Authority: 38 U.S.C. 3720(g))

(c) In claims filed under § 36.4283(f)(4) of this part, the following costs and expenditures actually incurred and paid may be included in the computation of the indebtedness:
(1) Property preservation or repair costs incurred prior to the date of the liquidation appraisal, to the extent that they contributed to the minimum selling price of the property as determined by the Secretary, and subject to the limitation that they do not exceed the actual cost incurred by the holder, and,
(2) Costs of loan termination, including, but not limited to:
(i) The reasonable and customary expense of transporting the home to the site where it will be repaired and/or resold;
(ii) The cost of the liquidation appraisal;
(iii) A reasonable amount for legal services actually performed and trustee fees, not to exceed a total of $ 700;
(iv) Court costs in a foreclosure or other judicial proceeding involving the security;
(v) Any other expenses reasonably necessary for repossession of the security or other termination of the loan; and,
(vi) Any other expense or fee that is approved in advance by the Secretary.


§ 36.4277 Release of security.
(a) Except upon full payment of the indebtedness the holder shall not release a lien or other right in or to property held as security for a guaranteed loan, or grant a fee or other interest in such property, without the prior approval of the Secretary, unless in the opinion of the holder such release does not involve a decrease in the value of the security in excess of $ 500: Provided, That the aggregate of the reduction in the original value of
the security resultant from such releases without the Secretary's prior approval does not exceed $500.

(b) Except upon full payment of the indebtedness or upon the prior approval of the Secretary, the holder shall not release a lien under paragraph (a) of this section unless the consideration received for the release is commensurate with the fair market value of the property released and the entire consideration is applied to the indebtedness, or if encumbrance on other property is accepted in lieu of that released it shall be the holder's duty to acquire such lien on property of substantially equal value which is reasonably capable of serving the purpose for which the property released was utilized.

(c) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.

(d) The holder shall notify the Secretary of any such release or substitution of security within 30 days after completion of such transaction.

(e) The release of the personal liability of any obligor on a guaranteed obligation resultant from the act or omission of any holder without the prior approval of the Secretary shall release the obligation of the Secretary as guarantor, except when such act or omission consists of

1. Failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed debt is thereby impaired or destroyed; or
2. An election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by §36.4280 and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates is such notice to the holder; or
3. The release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on his or her account pursuant to 38 U.S.C. 3712; or
4. The release of an obligor or obligors as provided in §36.4279.
5. The release of an obligor, or obligors, incident to the sale of property which the holder is authorized to approve under the provisions of 38 U.S.C. 3714.

(Authority: 38 U.S.C. 3714)


§ 36.4278 Servicing procedures for holders.

(a) Establishment of loan servicing program. The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.
(b) Procedures for providing information. (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:
   (i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.
   (ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.
(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.
(c) Statement for income tax purposes. Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.
(d) Change of servicing. Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.
(e) Escrow accounts. A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.
(f) System for servicing delinquent loans. In addition to the requirements of the Real Estate Settlement Procedures Act concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:
   (1) An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;
   (2) A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;
   (3) Procedural guidelines for individual analysis of each delinquency;
   (4) Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;
(5) Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;
(6) Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and,
(7) Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.
(g) Collection actions. (1) Holders should employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum, the holder's collection procedures must include the following actions:
(i) A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.
(ii) An effort, concurrent with the written delinquency notice, to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.
(iii) A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the seriousness of the delinquency and the importance of taking prompt action to resolve the default. It should also notify the borrower(s) that the loan is in default, state the total amount due and advise the borrower(s) how to contact the holder to make arrangements for curing the default.
(iv) In the event the holder has not established contact with the borrower(s) and has not determined the financial circumstances of the borrower(s) or established a reason for the default or obtained agreement to a repayment plan from the borrower(s), then a face-to-face interview with the borrower(s) or a reasonable effort to arrange such a meeting is required.
(2) The holder must provide a valid explanation of any failure to perform these collection actions when reporting loan defaults to the Secretary. A pattern of such failure may be a basis for sanctions under 38 CFR 36.4216.
(h) Conducting interviews with delinquent borrowers. When personal contact with the borrower(s) is established, the holder shall solicit sufficient information to properly evaluate the prospects for curing the default and whether the granting of forbearance or other relief assistance would be appropriate. At a minimum, the holder must make a reasonable effort to establish the following facts:
(1) The reason for the default and whether the reason is a temporary or permanent condition;
(2) The present income and employment of the borrower(s);
(3) The current monthly expenses of the borrower(s) including household and debt obligations;
(4) The current mailing address and telephone number of the borrower(s); and,
(5) A realistic and mutually satisfactory arrangement for curing the default.

(i) Property inspection. (1) The holder shall make an inspection of the property securing the loan whenever it becomes aware that the physical condition of the security may be in jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be made:

(i) Before the 60th day of delinquency or before initiating action to liquidate a loan, whichever is earlier; and

(ii) At least once each month after liquidation proceedings have been started unless servicing information shows the property remains owner-occupied.

(2) Whenever a holder obtains information which indicates that a property securing a loan is abandoned, it shall make appropriate arrangements to protect the property from vandalism and the elements. Thereafter, the holder shall schedule inspections at least monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect to any loan more than 30 days delinquent, a property abandonment must be reported to the Secretary and appropriate action initiated under 36.4280(e) within 15 days after the holder confirms the property is abandoned.

(j) Collection records. The holder shall maintain individual file records of collection action on delinquent loans and make such records available to the Secretary for inspection on request. Such collection records shall show:

(1) The dates and content of letters and notices which were mailed to the borrower(s);

(2) Dated summaries of each personal servicing contact and the result of same;

(3) The indicated reason(s) for default; and

(4) The date and result of each property inspection.

(k) Reporting to the Secretary. A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to § 36.4280.

(l) Quality control procedures. No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and ensure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

(1) Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate the effectiveness of its collection efforts;

(2) Determine how its VA delinquency and foreclosure rates compare with rates in various reports published by the industry, investors and others; and

(3) Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(m) Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Approved by the Office of Management and Budget under Control Number 2900-0530) [58 FR 29114, May 19, 1993]

§ 36.4279 Extensions and reamortizations.
(a) Provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s), the terms of repayment of any loan may, by written agreement between the holder and debtor(s), be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Secretary is obtained. Except with the prior approval of the Secretary, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class. 
(b) In the event of a partial prepayment pursuant to § 36.4211, the balance of the indebtedness may, by written agreement between the holder and the debtor(s), be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity, and provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s).
(c) Unless the prior approval of the Secretary has been obtained, any extension or reamortization agreed to by a holder which relieves any obligor from liability will release the liability of the Secretary under the guaranty on the entire loan. However, if such release of liability of an obligor results through operation of law by reason of an extension or other act of forbearance, the liability of the Secretary as guarantor will not be affected thereby, Provided, The required lien is maintained and the title holder is and will remain liable for the payment of the indebtedness: And further provided, That if such extension or act of forbearance will result in the release of the veteran, all delinquent installments, plus any foreclosure expenses which may have been incurred, shall have been fully paid.
(d) The holder shall promptly forward to the Secretary an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed loan, together with copy(ies) of the credit report(s) obtained on the debtor(s).
Authority: 38 U.S.C. 3712
[36 FR 1253, Jan. 27, 1971, as amended at 53 FR 34295, Sept. 6, 1988]

§ 36.4280 Reporting of defaults.
The holder of any guaranteed loan shall give notice to the Secretary within 15 days after any debtor:
(a) Is in default by reason of nonpayment of two full installments; or
(b) Is in default by failing to comply with any other covenant or obligation of such guaranteed loan which failure persists for a continuing period of 60 days after demand for compliance therewith has been made, except that if the default is due to nonpayment of real estate taxes, the notice shall not be required until the failure to pay when due has persisted for a continuing period of 120 days.
(c) In the event any failure of the months or for more than 1 month on an extended loan, the holder may then or thereafter give the notice in the manner described in paragraph (e) of this section.
(d) The notice prescribed in paragraph (e) of this section may be submitted prior to the time prescribed in paragraph (c) of this section in any case where any material prejudice to the rights of the holder or to the Secretary or hazard to the security warrants more prompt action.

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(e) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, repossess the security, or accelerate the loan, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by certified mail to the Secretary of a notice of intention to take such action; provided, that immediate action as required under 38 CFR 36.4278(i) may be taken if the property to be affected thereby has been abandoned by the debtor, or has been or may be otherwise subjected to extraordinary waste or hazard.

(f) The notice required under subparagraph (e) of this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty pursuant to VA Regulation 36.4286(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include:

(1) A search of the holder's automated and physical loan record systems to identify the name and current or last address of the original veteran and any other liable obligors;
(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;
(3) Conducting the trace inquiry using an in-house credit reporting terminal;
(4) Obtaining the results of the inquiry;
(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and
(6) Documentation of the holder's records.

[36 FR 1253, Jan. 27, 1971, as amended at 58 FR 29116, May 19, 1993]

§ 36.4281 Refunding of loans in default.
Upon receiving a notice of default the Secretary may at any time prior to the termination of the borrower's interest in the property require the holder upon penalty of otherwise losing the guaranty to transfer and assign the loan and the security therefor to the Secretary or to another designated by him or her upon receipt of payment of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4286.


§ 36.4282 Legal proceedings (notice of repossession).
(a) When the holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed indebtedness, or involving title to, or other lien on, the security, such holder, within the time that would be required if the Secretary were a party to the proceeding, shall deliver to the Secretary, by mail or otherwise, by making such delivery to the loan guaranty officer at the office which
granted the guaranty, or other office to which the holder has been notified the file is transferred, a copy of every procedural paper filed on behalf of holder, and shall also so deliver, as promptly as possible, a copy of each similar pleading served on holder or filed in the cause by any other party thereto. Notice of, or motion for, continuance and orders thereon are excepted from the foregoing.

(b) A copy of a notice of sale under power by a holder or one acting at his or her behest (e.g., trustee or public official) shall be similarly delivered to the Secretary at or before the date of first publication, posting, or other notice, but in any event, except in emergency or when waived by the Secretary, not less than 10 days prior to date of sale. Copy of any other notice of sale served on the holder or of which he or she has knowledge shall be similarly delivered to the Secretary, including any such notice of sale under tax or other superior lien or any judicial sale.

(c) The procedure prescribed in paragraphs (a) and (b) of this section shall not be applicable in any proceeding to which the Secretary is a party, after the Secretary's appearance shall have been entered therein by a duly authorized attorney.

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Secretary is a party, original process and any other process prior to appearance, proper to be served on the Secretary, shall be delivered to the loan guaranty officer of the office of the Department of Veterans Affairs having jurisdiction of the area in which the court is situated. Within the time required by applicable law, or rule of court, the Secretary will cause appropriate special or general appearance to be entered in the cause by the Secretary's authorized attorney.

(e) After appearance of the Secretary by attorney, all process and notice otherwise proper to serve on the Secretary before or after judgment, if served on the Secretary's attorney of record shall have the same effect as if the Secretary were personally served within the jurisdiction of the court.

(f) If following a default the holder does not begin appropriate action within 30 days after requested in writing by the Secretary to do so, or does not prosecute such action with reasonable diligence, the Secretary shall have the option to intervene in, or begin and prosecute to completion any action or proceeding, in the Secretary's name or in the name of the holder, which the Secretary deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim. The Secretary shall pay, in advance if necessary, any court costs or other expenses incurred by the Secretary, or properly taxed against the Secretary, in any such action to which the Secretary is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4276), or otherwise collect from the holder any such expenses incurred by the Secretary because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

(g) The holder, no later than 10 days after it has repossessed a property, must advise the Secretary of such repossession. The holder shall proceed thereafter, within a reasonable time after repossession, to terminate the debtors' rights in the property. If it is a legal requirement or if the Secretary requires that the debtors' rights be terminated by public
§ 36.4283 Foreclosure or repossession.
(a) Upon receipt by the Secretary of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any security for a guaranteed loan, the Secretary may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the provisions of paragraphs (a)(1), (2), (3), and (4) of this section:

(1) If a minimum amount has been specified in relation to a sale of the property and the holder is the successful bidder at the sale for an amount not in excess of such specified amount the holder shall dispose of the property in the manner set forth in paragraph (f) and the amount realized from the resale of the property shall govern in the final accounting for determining the rights and liabilities of the holder and the Secretary.

(2) If a minimum amount has been specified by the Secretary and:
(i) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale.
(ii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified less expenses allowable under § 36.4276.
(iii) The holder is the successful bidder at the sale for an amount in excess of the specified amount the indebtedness shall be credited with the net proceeds of the sale or an amount established in accordance with paragraph (f) of this section, whichever is the greater, unless the bid in excess of the specified amount was made pursuant to paragraph (d) of this section.

(3) If a minimum amount has not been specified by the Secretary under paragraph (a)(1) or (2) of this section, and the Secretary advised the holder that it did not intend to specify an amount, and the property is purchased at the sale by a third party, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d) of this section. However, if the property is purchased at the sale by the holder, the indebtedness will be credited with the net proceeds of the sale or an amount established in accordance with paragraph (f) of this section, whichever is greater.

(4) The holder shall notify the Secretary of the results of the sale within 10 days after the sale is completed.

(b) In the event that any real property which is security for a guaranteed loan is to be acquired by a holder in a manner other than as provided in paragraph (a) or (c) of this section (e.g., by strict foreclosure or by the termination without a public sale of the purchaser's interest in a land sale contract), the holder shall notify the Secretary of the acquisition within 15 days thereafter and account to the Secretary for the proceeds of the liquidation of the security in accordance with paragraph (f) of this section.

(c) When a debtor proposes to convey or transfer any property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Secretary to the terms of such proposal shall be obtained.
in advance of such conveyance or transfer. If the Secretary consents thereto, the holder may acquire the property and account to the Secretary for the proceeds of the liquidation of the security in accordance with paragraph (f) of this section.

(d) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Secretary and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purpose of this section.

(e) If the Secretary has specified an amount as provided in this section, and the holder learns of any material damage to the property occurring prior to the foreclosure sale or to the acceptance of a deed in lieu of foreclosure or prior to any other event to which such specified amount is applicable, the holder shall promptly advise the Secretary of such damage. Also, if the holder acquires or repossesses the property and the holder learns of any material damage to it, the holder shall promptly advise the Secretary of such damage.

(f) When the security for a guaranteed loan is acquired by the holder through foreclosure or otherwise, the holder shall resell the property within a reasonable time and may thereafter submit its claim under the guaranty. The Secretary, upon receipt of a notice of acquisition, shall determine the current reasonable value of the property and advise the holder of the minimum selling price that will be acceptable in any accounting with the Secretary upon liquidation of the security.

(1) If the holder resells the property for an amount at least equal to the minimum selling price, it shall credit the indebtedness with the proceeds of the sale.

(2) If the holder is unable to resell the property for an amount at least equal to the minimum selling price after exposure to the market for a reasonable period of time, the holder may submit to the Secretary a written advice setting forth the price, terms, conditions and expenses of any offer received. The Secretary shall thereupon:

   (i) Assent to the resale of the property upon the terms of such offer, in which event the holder will credit the indebtedness with the proceeds of the sale, or

   (ii) Review the minimum selling price previously established and, if appropriate, provide the holder with a reduced minimum selling price at which the property shall be further exposed to the market.

(3) If the holder resells the property and finances the sale under the terms of a new security agreement and note, the Secretary may, pursuant to paragraph (f)(3)(iv) of this section, agree to indemnify the holder against loss on the new loan.

   (i) The Secretary's maximum liability under the indemnity agreement shall be the percentage of the loan originally guaranteed applied to the indebtedness as of the date of claim computation as set forth in § 36.4284(a), or the amount originally guaranteed, or the amount of the Secretary's liability under a preexisting indemnity agreement, whichever is less.

   (ii) In the event the proceeds of sale are less than the total indebtedness, the Secretary may pay a partial claim for the difference between the indebtedness and the proceeds of sale and thereafter agree to indemnify the holder for the amount of the maximum liability as of the date of claim computation, less the amount of claim paid.

   (iii) Subject to the limitation that the total amount payable under an indemnity agreement shall in no event exceed the Secretary's maximum liability, the remaining liability will be
continued as a percentage of the new loan amount increasing or decreasing pro rata with any increase or decrease in the balance of the loan obligation.

(iv) The Secretary shall execute an indemnity agreement evidencing the amount and terms of the indemnity liability, provided:
(A) The Secretary has determined that resale of the security under an indemnity agreement is in the best interest of the Government, and the holder has obtained the prior approval of the Secretary;
(B) The terms of repayment of the proposed loan bear a proper relationship to the borrower's present and anticipated income and expenses, and the borrower is a satisfactory credit risk;
(C) The borrower executes an agreement establishing liability to the Secretary for the amount of any claim paid under the indemnity agreement;
(D) The term of the proposed loan does not exceed the maximum term allowable under § 36.4204(c)(4);
(E) The interest rate charged the borrower does not exceed the maximum rate allowable under § 36.4212 as of the date of closing pursuant to the indemnity agreement;
(F) The holder agrees to comply with VA manufactured home regulations as if the original loan had not been terminated.

(Authority: 38 U.S.C. 3712(g))

(4) If the holder has not resold the property, it may elect to submit its claim under Loan Guaranty within 60 days of the date of the Secretary's written advice of the minimum selling price.

(i) For purposes of computation of a claim submitted pursuant to this paragraph, and subject to the limitation that the maximum amount of claim payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date the holder acquired the security. Further:
(A) The minimum selling price determined by the Secretary and provided to the holder shall be credited to the indebtedness as proceeds of sale; or
(B) If no minimum selling price is provided then the current reasonable value of the property as determined by the Secretary and provided to the holder shall be credited to the indebtedness as proceeds of sale; and

The amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(ii) Allowable post-acquisition expenditures or costs paid by the holder which may be included in the accounting with the Secretary are limited to those specified in § 36.4276(c).

(g) If at the end of 6 months from the date of acquisition the holder has been unable to resell the property and no claim has been filed pursuant to paragraph (f)(4) of this section, a claim may be submitted under the guaranty and the Secretary will pay to the holder upon submission of such claim:

(1) The difference between the appraised value of the property as determined by the Secretary and the indebtedness including those costs allowable under § 36.4276 and the costs of repossessing the manufactured home not to exceed $ 100, plus any accrued and unpaid interest to the applicable cutoff date as set forth in § 36.4284(a) at the maximum rate allowable. For loans guaranteed prior to May 8, 1984, the Secretary will also pay
accrued interest at a rate of 6 percent from such cutoff date to the date of claim but not to exceed 60 days. For loans guaranteed on or after May 8, 1984, the Secretary will pay accrued interest at a rate 4.75 percent below the contract interest rate from such cutoff date to the date of claim but not to exceed 90 days.

(Authority: 38 U.S.C. 3712(g))

(2) The amount of the guaranty payable on the total outstanding indebtedness as of the applicable cutoff date set forth in § 36.4284(a), whichever is less.

(h) If the property securing the guaranteed loan is acquired by a holder pursuant to paragraph (a), (b) or (c) of this section, or § 36.4282(g), the following provisions shall apply:

(1) The holder's notice to the Secretary after acquisition shall state the amount of the successful bid at public sale, or in the event of a repossession or a voluntary conveyance, the date of acquisition.

(2) The holder's notice after acquisition shall also provide complete occupancy data. Except with the prior approval of the Secretary the holder shall not rent the property to a new tenant nor extend the terms of an existing tenancy on other than a month-to-month basis.

(3) Except with the prior approval of the Secretary, any taxes or special assessments which constitute prior liens due and payable after acquisition of the property by the holder shall be paid by the holder sufficiently in advance of the payment due dates to avoid penalties and to take advantage of any discounts. The holder also may include in its accounting with the Secretary any expenditures for repairs made that were reasonably necessary to properly maintain or refurbish the security property, not to exceed $ 400. Expenditures in excess of $ 400 shall not be made without the prior approval of the Secretary.

(4) As between the holder and the Secretary, the holder shall be responsible for any loss due to damage to or destruction of the property, ordinary wear and tear excepted, from the date of repossession or acquisition by the holder to the date the property has been liquidated.

(5) The holder shall include as credits in its accounting with the Secretary all rentals and other income collected from the property and insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(i) Definitions: (1) The terms date of sale or date of acquisition as used in this section are defined as the date of the event (e.g., date of repossession, date of sale confirmation when required under local practice, date of acceptance of deed in case of voluntary conveyance, etc.) which fixes the rights of the parties in the property.

(2) The term property or real property as used in this section shall include:

(i) A leasehold estate therein which at the time of closing the loan was of not less duration than that prescribed by § 36.4253, and

(ii) The rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.

(j) A claim for the guaranty must include a copy(ies) of a current credit report(s) on the debtor(s).

(Authority: 38 U.S.C. 3712)

(k) The provisions of this section shall not be in derogation of any rights which the Secretary may have under § 36.4286. The Under Secretary for Benefits, or the Director,
Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State, Territory, or the District of Columbia: Provided, That no such deviation shall impair the rights of any holder not consenting thereto with respect to loans made or approved prior to the date the holder is notified of such action.

(Information collection requirements contained in paragraph (j) were approved by the Office of Management and Budget under control number 2900-0480)


[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (k), became effective June 4, 1996.]

§ 36.4284 Computation of guaranty claims.

(a) Subject to the limitation that the maximum amount payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the date of claim but not later than (1) the date of judgment or of decree of foreclosure; or (2) in nonjudicial foreclosures, the date of publication of the first notice of sale; or (3) in cases in which the security is repossessed without a judgment, decree, or foreclosure, the date the holder repossesses the security; or (4) if no security is available, the date of claim but not more than 6 months after the first uncured default. Deposits or other credits or setoffs including any escrowed or earmarked funds legally applicable to the indebtedness on the date of the claim computation shall be applied in reduction of the indebtedness upon which the claim is based.

(b) Credits accruing from the proceeds of a sale or other disposition of the security shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.

(c) Any allowable expenditures or costs, paid by the holder, and any accrued and unpaid interest to the applicable cutoff date as set forth in paragraph (a) of this section at the maximum rate allowable, may be deducted from the proceeds of the sale of the property, or may be included in the accounting to the Secretary on such loan. For loans guaranteed prior to May 8, 1984, the holder may also either deduct from sales proceeds, or include in the accounting, accrued interest at a rate of 6 percent from such cutoff date to the date of resale or other liquidation but not to exceed 60 days. For loans guaranteed on or after May 8, 1984, the holder may also either deduct from sales proceeds, or include in the accounting, accrued interest at a rate 4.75 percent below the contract interest rate from such cutoff date to the date of resale or other liquidation but not to exceed 90 days.

(Authority: 38 U.S.C. 3712(g))

(d) In computing the indebtedness for the purpose of filing a claim for payment of a guaranty, or in the event of a transfer of the loan under § 36.4281, or other accounting to the Secretary, the holder shall not be entitled to treat repayments theretofore made, as
liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

(e) Appropriate computation of the guaranty, proceeds of liquidation, and allowable costs for claims filed under § 36.4283(f)(4) are specified in § 36.4276(c).

§ 36.4285 Subrogation and indemnity.
(a) The Secretary shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor except that where the holder has entered into a recourse and/or repurchase or indemnity agreement with a dealer or servicer or other entity and the Department of Veterans Affairs pays a claim under guaranty to the holder the Department of Veterans Affairs will not be subrogated to any rights the holder may have under the recourse and/or repurchase or indemnity agreement. No partial or complete release by a creditor shall impair the rights of the Secretary with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge, and deliver an appropriate instrument tendered the holder for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary may cause the instrument required by paragraph (b) of this section to be filed for record in the Office of the Recorder of Deeds, or other appropriate office of the proper county, town, or State, in accordance with the applicable State law.

(d) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed under the provisions of 38 U.S.C. 3712 shall constitute a debt owing to the United States by such veteran.

(e) Whenever any veteran disposes of residential property securing a guaranteed loan obtained under 38 U.S.C. 3712, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as the Secretary may deem appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 3713(a). The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Secretary may require. Release of the veteran from liability to the Secretary will not impair or otherwise affect the Secretary's guaranty on the loan, or the liability of the veteran to the holder. Any release of liability granted to a veteran by the Secretary shall inure to the spouse of such veteran. The release of the veteran from liability to the Secretary will constitute the Secretary's prior approval to a release of the veteran from liability on the loan by the holder thereof. This release will not result in the veteran being entitled to further loan benefits unless the requirements of § 36.4203 are met.

(Authority: 38 U.S.C. 3713, 3714)
(f) If, on or after July 1, 1972, any veteran disposes of residential property securing a guaranteed loan obtained by him or her under 38 U.S.C. 3712, without securing a release from liability with respect to such loan under 38 U.S.C. 3713(a) and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if the Secretary determines that:

(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and
(2) The original loan was current at the time such transferee acquired the property, and
(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time he or she acquired the property.

(Authority: 38 U.S.C. 3713(b))

(g) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(1) The proposed purchaser is creditworthy;
(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and,
(3) The payments on the loan are current.

Should these requirements be satisfied, the holder may also release the selling veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(Authority: 38 U.S.C. 3712, 3714)


§ 36.4286 Partial or total loss of guaranty.

(a) There shall be no guaranty liability on the part of the Secretary in respect to any loan as to which a signature to the note, the mortgage or other security instrument is a forgery. Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any willful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty shall relieve the Secretary of liability, or shall constitute a defense against liability on account of the guaranty of the loan in respect to which the willful misrepresentation, or the fraud, is practiced: Provided, That if a misrepresentation, although material, is not made willfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(b) In taking security required by 38 U.S.C. 3712 and the § 36.4200 series, a holder shall obtain the required lien on real property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally in
the community in which the property is situated: Provided, That a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4253. If such holder fails in this respect or fails to comply with any of the requirements of 38 U.S.C. 3712 and the § 36.4200 series with respect to:
(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. 3712 or the § 36.4200 series,
(2) Inclusion of power to substitute trustees,
(3) The procurement and maintenance of insurance coverage,
(4) Advice to Secretary as to default,
(5) Notice of intention to begin action,
(6) Notice to the Secretary in any suit or action, or notice of sale,
(7) The release, conveyance, substitution, or exchange of security,
(8) Lack of legal capacity of a party to the transaction incident to which the guaranty is granted,
(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,
(10) The taking into consideration of limitations upon the quantum or quality of the estate or property,
(11) Any other requirement of 38 U.S.C. 3712 or the § 36.4200 series which does not by the terms of said section or regulations result in relieving the Secretary of all liability with respect to the loan,
no claim on the guaranty shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure of misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty payment shall subordinate the holder's right to those of the Secretary.
(c) If after the payment of a guaranty, or after a loan is transferred pursuant to § 36.4281, the fraud, misrepresentation, or failure to comply with the regulations concerning guaranty of loans to veterans as provided in this section is discovered and the Secretary determines that an increased loss to the Government resulted therefrom, the transferee or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such misrepresentation or failure.
[Sections 36.4201 through 36.4287 appear at 36 FR 1253, Jan. 27, 1971]

§ 36.4287 Substitution of trustees.
In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed loan, if it names trustees or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees or other person
with such power to sell, who shall succeed to all the rights, powers, and duties of the trustees, or other person, originally designated.

[53 FR 1350, Jan. 19, 1988]
§ 36.4301 Definitions.

GENERAL PROVISIONS
UNDERWRITING STANDARDS, PROCESSING PROCEDURES, AND LENDER RESPONSIBILITY AND CERTIFICATION

(a) Sections 36.4300 to 36.4393 of this part, inclusive, shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication in the Federal Register, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.
(b) Title 38 U.S.C., chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of title 38 U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.
(Authority: 38 U.S.C. 501, 3703(c), 3712(g))
[53 FR 1350, Jan. 19, 1988]

§ 36.4301 Definitions.
Whenever used in 38 U.S.C. chapter 37 or §§ 36.4300 to 36.4375 of this part, inclusive, and §§ 36.4390 through 36.4393 of this part, unless the context otherwise requires, the terms defined in this section shall have the following meaning:
A period of more than 180 days. For the purposes of sections 3707 and 3702(a)(2)(C) of title 38 U.S.C., the term a period of more than 180 days shall mean 181 or more calendar days of continuous active duty.
Acquisition and improvement loan. A loan to purchase an existing property which includes additional funds for the purpose of installing energy conservation improvements or making other alterations, improvements, or repairs.
(Authority: 38 U.S.C. 3702(c)(1), 3710(a)(1), (4), and (7))
Alterations. Any structural changes or additions to existing improved realty.
Automatic lender. A lender that may process a loan or assumption 1/4 without submitting the credit package to the Department of Veterans Affairs for underwriting review.
Pursuant to 38 U.S.C. 3702(d) there are two categories of lenders who may process loans automatically: (1) Entities such as banks, savings and loan associations, and mortgage and loan companies that are subject to examination by an agency of the United States or any State and (2) lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.
(Authority: 38 U.S.C. 3702(d))
Condominium. Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the
individual living unit together with an undivided interest or share in the ownership of common elements.

Cost means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

Credit package. Any information, reports or verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assume of such a loan.

(Authority: 38 U.S.C. 3710 and 3714)

Date of first uncured default means the due date of the earliest payment not fully satisfied by the proper application of available credits or deposits.

Default means failure of a borrower to comply with the terms of a loan agreement.

Designated appraiser means a person requested by the Secretary to render an estimate of the reasonable value of a property, or of a specified type of property, within a stated area for the purpose of justifying the extension of credit to an eligible veteran for any of the purposes stated in 38 U.S.C. Chapter 37. An appraiser on a fee basis is not an agent of the Secretary.

Discharge or release. For purposes of basic eligibility a person will be considered discharged or released if the veteran was issued a discharge certificate under conditions other than dishonorable (38 U.S.C. 3702(c)). The term discharge or release includes (1) retirement from the active military, naval, or air service, and (2) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(Authority: 38 U.S.C. 101(18))

Dwelling. Any building designed primarily for use as a home consisting of not more than four family units plus an added unit for each veteran if more than one eligible veteran participates in the ownership, except that in the case of a condominium housing development or project within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4356 through 36.4360(a) of this part the term is limited to a one single-family residential unit. Also, a manufactured home, permanently affixed to a lot owned by a veteran and classified as real property under the laws of the State where it is located.

(Authority: 38 U.S.C. 3710(a)(9) and (f))

Economic readjustment means rearrangement of an eligible veteran's indebtedness in a manner calculated to enable the veteran to meet obligations and thereby avoid imminent loss of the property which secures the delinquent obligation.

Energy conservation improvement. An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 3710(d) or by the Secretary.

(Authority: 38 U.S.C. 3710(a)(7))

Full disbursement. Payment by a lender of the entire proceeds of a loan or the purposes described in the report of the lender in respect of such loan to the Secretary either:
(1) By payment to those contracting with the borrower for such purposes, or
(2) By payment to the borrower, or
(3) By transfer to an account against which the borrower can draw at will, or
(4) By transfer to an escrow account, or
(5) By transfer to an earmarked account if
   (i) The amount is not in excess of 10 percent of the loan, or
   (ii) The loan is an Acquisition and Improvement loan pursuant to § 36.4301, or
   (iii) The loan is one submitted by a lender of the class specified in 38 U.S.C. 3702(d) or 3703(a)(2).
   (Authority: 38 U.S.C. 3703(c)(1))
Graduated payment mortgage loan. A loan for the purpose of acquiring a single-family dwelling unit involving a plan for repayment in which a portion of the interest due is deferred for a period of time. The interest so deferred is added to the principal balance thus resulting in a principal amount greater than at loan origination (negative amortization). The monthly payments increase on an annual basis (graduate) for a predetermined period of time until the payments reach a level which will fully amortize the loan during the remaining loan term.
   (Authority: 38 U.S.C. 3703 (c) and (d))
Guaranty means the obligation of the United States, assumed by virtue of 38 U.S.C. Chapter 37, to repay a specified percentage of a loan upon the default of the primary debtor.
Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation or the authorized servicing agent of the lender or of the assignee or transferee if the obligation has been assigned or transferred.
   (Authority: 38 U.S.C. 3714)
Home means place of residence.
Improvements. Any alteration that improves the property for the purpose for which it is occupied.
Indebtedness. The unpaid principal and interest plus any other amounts allowable under the terms of a loan including those authorized by statute and consistent with §§ 36.4300 to 36.4393 of this part, inclusive, which have been paid and debited to the loan account as of the applicable date established pursuant to paragraph (f) of § 36.4319 or § 36.4321 of this part.
   (Authority: 38 U.S.C. 3732)
Insurance means the obligation assumed by the United States to indemnify a lender to the extent specified in §§ 36.4300 to 36.4393, inclusive, for any loss incurred upon any loan insured under 38 U.S.C. 3703(a)(2).
Insurance account means the record of the amount available to a lender or purchaser for losses incurred on loans insured under 38 U.S.C. 3703(a).
Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by VA.
   (Authority: 38 U.S.C. 3704(d), 3712(g))
Lien means any interest in, or power over, real or personal property, reserved by the vendor, or created by the parties or by operation of law, chiefly or solely for the purpose of assuring the payment of the purchase price, or a debt, and irrespective of the identity of the party in whom title to the property is vested, including but not limited to mortgages, deeds with a defeasance therein or collaterally, deeds of trust, security deeds, mechanics' liens, lease-purchase contracts, conditional sales contracts, consignments.

Liquidation sale. Any judicial, contractual or statutory disposition of real property, under the terms of the loan instruments and applicable law, to liquidate a defaulted loan that is secured by such property. This includes a voluntary conveyance made to avoid such disposition of the obligation or of the security.

Lot. A parcel of land acceptable to the Secretary as a manufactured home site.

Manufactured home. A moveable dwelling unit designed and constructed for year-round occupancy by a single family, on land, containing permanent eating, cooking, sleeping and sanitary facilities. A double-wide manufactured home is a moveable dwelling designed for occupancy by one family and consisting of: (1) Two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit. For the purposes of this section of VA regulations, manufactured home/lot loans guaranteed under the purview of §§ 36.4300 to 36.4393, inclusive, must be for units permanently affixed to a lot and considered to be real property under the laws of the State where it is located. If the loan is for the purchase of a manufactured home and lot it must be considered as one loan.

Net loss. (insured loans) means the indebtedness, plus any other charges authorized under § 36.4313, remaining unsatisfied after the liquidation of all available security and recourse to all intangible rights of the holder against those obligated on the debt.

Net value. The fair market value of real property, minus an amount representing the costs that the Secretary estimates would be incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current cost factor. The cost factor used will be the most recent percentage of the fair market value that VA calculated and published in the Notices section of the Federal Register (it is intended that this percentage will be calculated annually). In computing this cost factor, VA will determine the average operating expenses and losses (or gains) on resale incurred for properties acquired under § 36.4320 which were sold during the preceding fiscal year and the average administrative cost to VA associated with the property management activity. The final net value derived from this calculation will be stated as a whole dollar amount (any fractional amount will be rounded up to the next whole dollar). The cost items included in the calculation will be:

1. Property operating expenses. All disbursements made for payment of taxes, assessments, liens, property maintenance and related repairs, management broker's fees and commissions, and any other charges to the property account excluding property improvements and selling expenses.
(2) Selling expenses. All disbursements for sales commissions plus any other costs incurred and paid in connection with the sale of the property.

(3) Administrative costs. (i) An estimate of the total cost for VA of personnel (salary and benefits) and overhead (which may include things such as travel, transportation, communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(A) Dividing the total cost for VA personnel and overhead salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(B) Dividing the figure calculated in paragraph (3)(i)(A) of this definition by the VBA ratio of personal services costs to total obligations.

(ii) The three cost averages will be added to the average loss (or gain) on property sold during the preceding fiscal year (based on the average property purchase price) and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value.

(Authority: 38 U.S.C. 3732)

Purchase price. The entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied to the property.

Real-estate loan. Any obligation incurred for the purchase of real property or a leasehold estate as limited in §§ 36.4300 to 36.4393, inclusive, or for the construction of fixtures or appurtenances thereon or for alterations, improvements, or repairs thereon required by §§ 36.4300 to 36.4393, inclusive, to be secured by a lien on such property or is so secured. Loans for the purpose specified in 38 U.S.C. 3710(a)(5) (refinancing of mortgage loans or other liens on a dwelling or farm residence), loans for the purpose specified in 38 U.S.C. 3710(a)(8) (refinancing of a VA guaranteed, insured or direct loan to lower the interest rate), loans for the purposes specified in 38 U.S.C. 3710(a)(9) (purchase of manufactured homes/ lots or the refinancing of such loans in order to reduce the interest rate or purchase a lot, in States in which manufactured homes, when permanently affixed to a lot, are considered real property, and loans to purchase one-family residential units in condominium housing developments or projects within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4356 through 36.4360a shall also be considered real estate loans.

Reasonable value means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions.

Registered mail. The term registered mail wherever used in the regulations concerning guaranty or insurance of loans to veterans shall include certified mail.

Repairs. Any alteration of existing improved realty or equipment which is necessary or advisable for protective, safety or restorative purposes.

Repossession -- repossessed means recovery or acquisition of such physical control of property (pursuant to the provisions of the security instrument or as otherwise provided by law) as to make further legal or other action unnecessary in order to obtain actual possession of the property or to dispose of the same by sale or otherwise.
Residential property. (1) Any one-family residential unit in a condominium housing development within the purview of 38 U.S.C. 3710(a)(6) and §§ 36.4356 through 36.4360a, (2) any manufactured home permanently affixed to a lot owned or being purchased by a veteran and considered to be real property under the laws of the State where it is located, and (3) any improved real property (other than a condominium housing development or a manufactured home and/or lot) or leasehold estate therein as limited by §§ 36.4300 to 36.4393, inclusive, the primary use of which is for occupancy as a home, consisting of not more than four family units, plus an added unit for each eligible veteran if more than one participates in the ownership thereof, or (4) any land to be purchased out of the proceeds of a loan for the construction of a dwelling, and on which such dwelling is to be erected.

(Authority: 38 U.S.C. 3710(f)(2) and (3))

Secretary. The Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.

Servicing agent. An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder.

(Authority: 38 U.S.C. 3714)

Specified amount. A sum, equal to the lesser of the net value of real property or the total indebtedness secured thereby, which the Secretary designates as the minimum amount to be credited to the indebtedness incident to a liquidation sale.

(Authority: 38 U.S.C. 3732)

Unguaranteed portion of the indebtedness. The indebtedness computed as of the applicable date of under paragraph (f) of § 36.4319 or § 36.4321 of this part minus the amount of the guaranty payable as of such date.

(Authority: 38 U.S.C. 3732)

(Authority: 38 U.S.C. 3732; 38 U.S.C. 501, 3703(c)(1))

[24 FR 2651, Apr. 7, 1959; 67 FR 62646, 62647, Oct. 8, 2002]

§ 36.4302 Computation of guaranties or insurance credits.
§ 36.4303 Reporting requirements.
§ 36.4304 Deviations; changes of identity.
§ 36.4305 Partial disbursement.
§ 36.4306 Refinancing of mortgage or other lien indebtedness.
§ 36.4306a Interest rate reduction refinancing loan.
§ 36.4307 Joint loans.
§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.
§ 36.4309 Amortization.
§ 36.4310 Prepayment.
§ 36.4311 Interest rates.
§ 36.4312 Charges and fees.
§ 36.4313 Advances and other charges.
§ 36.4314 Extensions and reamortizations.
§ 36.4315 Notice of default and acceptability of partial payments.
§ 36.4316 Continued default.
§ 36.4317 Notice of intention to foreclose.
§ 36.4318 Refunding of loans in default.
§ 36.4319 Legal proceedings.
§ 36.4320 Sale of security.
§ 36.4321 Computation of guaranty claims; Subsequent accounting.
§ 36.4322 Computation of indebtedness.
§ 36.4323 Subrogation and indemnity.
§ 36.4324 Release of security.
§ 36.4325 Partial or total loss of guaranty or insurance.
§ 36.4326 Hazard insurance.
§ 36.4327 Substitution of trustees.
§ 36.4328 Capacity of parties to contract.
§ 36.4329 Geographical limits.
§ 36.4330 Maintenance of records.
§ 36.4332 Delivery of notice.
§ 36.4333 Satisfaction of indebtedness.
§ 36.4334 Incorporation by reference.
§ 36.4335 Supplementary administrative action.
§ 36.4336 Eligibility of loans; reasonable value requirements.

§ 36.4302 Computation of guaranties or insurance credits.
(a) With respect to a loan to a veteran guaranteed under 38 U.S.C. 3710 the guaranty shall not exceed the lesser of the dollar amount of entitlement available to the veteran or (1) 50 percent of the original principal loan amount where the loan amount is not more than $45,000; or
(2) $22,500 where the original principal loan exceeds $45,000, but is not more than $56,250; or
(3) Except as provided in subparagraph (4), the lesser of $36,000 or 40 percent of the original principal loan amount where the loan amount exceeds $56,250; or
(4) The lesser of $60,000 or 25 percent of the original principal loan amount where the loan amount exceeds $144,000 and the loan is for the purchase or construction of a home or the purchase of a condominium unit.
(b) With respect to an interest rate reduction refinancing loan guaranteed under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11), the dollar amount of guaranty may not exceed the greater of the original guaranty amount of the loan being refinanced, or 25 percent of the refinancing loan amount.
Authority: 38 U.S.C. 3703, 3710
(c) With respect to a loan for an energy efficient mortgage guaranteed under 38 U.S.C. 3710(d), the amount of the guaranty shall be in the same proportion as would have been provided if the energy efficient improvements were not added to the loan amount, and there shall be no additional charge to the veteran's entitlement as a result of the increased guaranty amount.
Authority: 38 U.S.C. 3703, 3710
(d) An amount equal to 15 percent of the original principal amount of each insured loan shall be credited to the insurance account of the lender and shall be charged against the guaranty entitlement of the borrower: Provided, That no loan may be insured unless the borrower has sufficient entitlement remaining to permit such credit.
(e) Subject to the provisions of §36.4303(g), the following formulas shall govern the computation of the amount of the guaranty or insurance entitlement which remains available to an eligible veteran after prior use of entitlement:
(1) If a veteran previously secured a nonrealty (business) loan, the amount of nonrealty entitlement used is doubled and subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:
   (i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and
   (ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.
(2) If a veteran previously secured a realty (home) loan, the amount of realty (home) loan entitlement used is subtracted from $36,000. The sum remaining is the amount of available entitlement for use, except that:
   (i) Entitlement may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium; and
   (ii) Entitlement for manufactured home loans that are to be guaranteed under 38 U.S.C. 3712 may not exceed $20,000.
(3) If a veteran previously secured a manufactured home loan under 38 U.S.C. 3712, the amount of entitlement used for that loan is subtracted from $36,000. The sum remaining is the amount of available entitlement for home loans and the sum remaining may be increased by up to $24,000 if the loan amount exceeds $144,000 and the loan is for purchase or construction of a home or purchase of a condominium. To determine the amount of entitlement available for manufactured home loans processed under 38 U.S.C. 3712, the amount of entitlement previously used for that purpose is subtracted from $20,000. The sum remaining is the amount of available entitlement for use for manufactured home loan purposes under 38 U.S.C. 3712.
(Authority: 38 U.S.C. 3703)

(f) For the purpose of computing the remaining guaranty or insurance benefit to which a veteran is entitled, loans guaranteed prior to the effective date of §§ 36.4300 to 36.4393, inclusive, shall be taken into consideration as if made subsequent thereto.

(g) A loan eligible for insurance may be either guaranteed or insured at the option of the borrower and the lender: Provided, That if the Secretary is not advised of the exercise of such option at the time the loan is reported pursuant to § 36.4303 such loan will not be eligible for insurance.

(h) A guaranty is reduced or increased pro rata with any deduction or increase in the amount of the guaranteed indebtedness, but in no event will the amount payable on a guaranty or the percentage of the indebtedness corresponding to that of the original guaranty whichever is less. However, on a graduated payment mortgage loan, the percentage of guaranty applicable to the original loan amount pursuant to paragraph (a) of this section shall apply to the loan indebtedness to the extent scheduled deferred interest is added to principal during the graduation period without regard to the original maximum dollar amount of guaranty.

(i) The amount of any guaranty or the amount credited to a lender's insurance account in relation to any insured loan shall be charged against the original or remainder of the guaranty benefit of the borrower. Complete or partial liquidation, by payment or otherwise, of the veteran's guaranteed or insured indebtedness does not increase the remainder of the guaranty benefit, if any, otherwise available to the veteran. When the maximum amount of guaranty or insurance legally available to a veteran shall have been granted, no further guaranty or insurance is available to the veteran.

(j) Notwithstanding the provisions of paragraph (g) of this section, the Secretary may exclude the amount of guaranty or insurance entitlement used for any guaranteed or insured loan provided:

1. The property which served as security for the loan has been disposed of by the veteran, or has been destroyed by fire or other natural hazard; and
2. (i) The loan has been repaid in full or the Secretary has been released from liability as to the loan, or if the Secretary has suffered a loss on said loan, such loss has been paid in full; or
   (ii) A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of his or her entitlement to the extent the entitlement of the veteran-transferor had been used originally; or
3. The loan has been repaid in full, and the loan for which the veteran seeks to use entitlement is secured by the same property which secured the fully repaid loan; or
4. In a case in which the veteran still owns the property purchased with a VA-guaranteed loan, the Secretary may, one time only, restore entitlement used on that loan if:
   (i) the loan has been repaid in full or, if the Secretary has suffered a loss on the loan, the loss has been paid in full; or
   (ii) the Secretary has been released from liability as to the loan, and, if the Secretary has suffered a loss on the loan, the loss has been paid in full.

(k) The Secretary may, in any case involving circumstances deemed appropriate, waive either or both of the requirements set forth in paragraphs (j)(1) and (j)(2)(i) of this section.

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(Authority: 38 U.S.C. 3702(b), 3710)
(l)(1) The amount of guaranty entitlement, available and unused, of an eligible unmarried surviving spouse (whose eligibility does not result from his or her own service) is determinable in the same manner as in the case of any veteran, and any entitlement which the decedent (who was his or her spouse) used shall be disregarded. A certificate as to the eligibility of such surviving spouse, issued by the Secretary, shall be a condition precedent to the guaranty or insurance of any loan made to a surviving spouse in such capacity.
(Authority: 38 U.S.C. 3701(a))
(2) An unmarried surviving spouse who was a co-obligor under an existing VA guaranteed, insured or direct loan shall be considered to be a veteran eligible for an interest rate reduction refinancing loan pursuant to 38 U.S.C. 3710(a)(8) or (9)(B)(i).
(Authority: 38 U.S.C. 3710(e)(3))
(Authority: 38 U.S.C. 501, 3703(c)(1))


§ 36.4303 Reporting requirements.
(a) With respect to loans automatically guaranteed under 38 U.S.C. 3703(a)(1), evidence of the guaranty will be issuable to a lender of a class described under 38 U.S.C. 3702(d) if the loan is reported to the Secretary within 60 days following full disbursement and upon the certification of the lender that:
(1) No default exists thereunder that has continued for more than 30 days;
(2) Except for acquisition and improvement loans as defined in § 36.4301, any construction, repairs, alterations, or improvements effected subsequent to the appraisal of reasonable value, and paid for out of the proceeds of the loan, which have not been inspected and approved upon completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and any deviations or changes of identity in said property have been approved as required in § 36.4304 concerning guaranty or insurance of loans to veterans;
(3) The loan conforms otherwise with the applicable provisions of 38 U.S.C. Chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans.
(Authority: 38 U.S.C. 3703(c)(1))
(b) Loans made pursuant to 38 U.S.C. 3703(a), although not entitled to automatic insurance thereunder, may, when made by a lender of a class described in 38 U.S.C. 3702(d)(1), be reported for issuance of an insurance credit.
(Authority: 38 U.S.C. 3702(d), 3703(a)(2))
(c) Each loan proposed to be made to an eligible veteran by a lender not within a class described in 38 U.S.C. 3702(d) shall be submitted to the Secretary for approval prior to closing. Lenders described in 38 U.S.C. 3702(d) shall have the optional right to submit any loan for such prior approval. The Secretary, upon determining any loan so submitted
to be eligible for a guaranty, or for insurance, will issue a certificate of commitment with respect thereto.
(d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing that fact and:
(1) The identity of any property purchased therewith,
(2) That all property purchased or acquired with the proceeds of the loan has been encumbered as required by the regulations concerning guaranty or insurance of loans to veterans,
(3) Except for acquisition and improvement loans as defined in § 36.4301(c), any construction, repairs, alterations, or improvements paid for out of the proceeds of the loan, which have not been inspected and approved subsequent to completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and that any deviations or changes of identity in said property have been approved as required by § 36.4304, and
(4) That the loan conforms otherwise with the applicable provisions of 38 U.S.C. Chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.
(Authority: 38 U.S.C. 3703(c)(1))
(e) Upon the failure of the lender to report in accordance with the provisions of paragraph (d) of this section, the certificate of commitment shall have no further effect, or the amount of guaranty or insurance shall be reduced pro rata, as may be appropriate under the facts of the case: Provided, nevertheless, that if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Secretary, notwithstanding the report is received after the date otherwise required.
(f) For loans not reported within 60 days, evidence of guaranty will be issued only if the loan report is accompanied by a statement signed by a corporate officer of the lending institution which explains why the loan was reported late. The statement must identify the case or cases in issue and must set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement evidence of guaranty will be issued. A pattern of late reporting and the reasons therefore will be considered by VA in taking action under § 36.4349.
(g) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran, or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan unless the veteran, or spouse of an active duty servicemember,
certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property that will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such a case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or reoccupy the property as his or her home upon completion of the substantial improvements or repairs. All of the mentioned certifications must take place at the time of loan application and closing except in the case of loans automatically guaranteed, in which case veterans or, in the case of an active duty veteran, the veterans' spouse shall make the required certification only at the time the loan is closed.

(Authority: 38 U.S.C. 3704(c))

(h) Subject to compliance with the regulations concerning guaranty or insurance of loans to veterans, the certificate of guaranty or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the loan stated in the final loan report or certification of loan disbursement, except for refinancing loans for interest rate reductions. The available entitlement of a veteran will be determined by the Secretary as of the date of receipt of an application for guaranty or insurance of a loan or of a loan report. Such date of receipt shall be the date the application or loan report is date-stamped into VA. Eligibility derived from the most recent period of service:

(1) Shall cancel any unused entitlement derived from any earlier period of service, and
(2) Shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan.

(i) On property which the veteran owns at the time of application, or
(ii) As to which the Secretary has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Secretary, the resulting indebtedness of the veteran to the United States has been paid in full. Provided, That if the Secretary issues or has issued a certificate of commitment covering the loan described in the application for guaranty or insurance or in the loan report, the amount and percentage of guaranty or the amount of the insurance credit contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date that is not later than the expiration date of the certificate of commitment, notwithstanding that the Secretary in the meantime and prior to the issuance of the evidence of guaranty or insurance shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Secretary will be deemed to have incurred actual loss on a guaranteed or insured loan if the Secretary has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Secretary is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Secretary will be deemed to have incurred an actual loss if the loan is in default. A loan, the proceeds of which are to be disbursed progressively or at intervals, will be deemed to have been closed for the purposes of this paragraph if the loan has been completed in all respects excepting the actual "payout" of the entire loan proceeds.

(Authority: 38 U.S.C. 3702(a), 3710(c))

(i) Any amounts that are disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.
(j) Notwithstanding the lender has erroneously, but without intent to misrepresent, made certification with respect to paragraph (a)(1) of this section, the guaranty or insurance will become effective upon the curing of such default and its continuing current for a period of not less than 60 days thereafter. For the purpose of this paragraph a loan will be deemed current so long as the installment is received within 30 days after its due date.

(k) No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract that:
(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;
(2) Is dated on or after June 4, 1969;
(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Secretary; and
(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value; unless such contract includes, or is amended to include, a provision substantially as follows:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(l) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a VA-guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:
(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 3714. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 3714. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 3714 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and VA regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall consist of the credit package (unless previously provided in accordance with paragraph (k)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by VA office of jurisdiction. The notice shall be submitted to the Department with VA receipt for the funding fee provided for in § 36.4312(e)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the VA office of jurisdiction within 30
days. The holder shall make available to that VA office all items used by the holder in making the holder's decision in case the decision is appealed to VA. If the application remains disapproved after 60 days (to allow time for appeal to and review by VA), then the holder must refund $50 of any fee previously collected under the provisions of § 36.4312(d)(8) of this part. If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (k)(1)(i)(A) of this section.

(C) In performing the requirements of paragraphs (k)(1)(i)(A) or (k)(1)(i)(B) of this section, the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application that are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or follow-ups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to VA shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the VA office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (k)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4312(d)(8) of this part must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4312(d)(8) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (k)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (k)(1)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 3714)

(The Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0516)
A deviation of more than 5 percent between the estimates upon which a certificate of commitment has been issued and the report of final payment of the proceeds of the loan, or a change in the identity of the property upon which the original appraisal was based, will invalidate the certificate of commitment unless such deviation or change be approved by the Secretary. Any deviation in excess of 5 percent or change in the identity of the property upon which the original appraisal was based must be supported by a new or supplemental appraisal of reasonable value: Provided, That substitution of materials of equal or better quality and value approved by the veteran and the designated appraiser shall not be deemed a "change in the identity of the property" within the purview of this section. A deviation not in excess of 5 percent will not require the prior approval of the Secretary.

§ 36.4305 Partial disbursement.
In cases where intervening circumstances make it impracticable to complete the actual paying out of the loan originally proposed, or justify the lender in declining to make further disbursements on a construction loan, evidence of guaranty or of insurance of the loan or the proper pro rata part thereof will be issuable if the loan is otherwise eligible for automatic guaranty or a certificate of commitment was issued thereon: Provided,
(a) A report of the loan is submitted to the Secretary within a reasonable time subsequent to the last disbursement, but in no event more than 90 days thereafter, unless report of the facts and circumstances is made and an extension of time obtained from the Secretary.
(b) There has been no default on the loan, except that the existence of a default shall not preclude issuance of a guaranty certificate or insurance advice if a certificate of commitment was issued with respect to the loan.
(c) The Secretary determines that a person of reasonable prudence similarly situated would not make further disbursements in the situation presented.
(d) There has been full compliance with the provisions of 38 U.S.C. Chapter 37 and of the applicable regulations up to the time of the last disbursement.
(e) In the case of a construction loan when the construction is not fully completed, the amount and percentage of the guaranty and the amount of the loan for the purposes of insurance or accounting to the Secretary shall be based upon such portion of the amount disbursed out of the proceeds of the loan which, when added to any other payments made by or on behalf of the veteran to the builder or the contractor, does not exceed 80 percent of the value of that portion of the construction performed (basing value on the contract price) plus the sum, if any, disbursed by the lender out of the proceeds of the loan for the
land on which the construction is situated: And provided further, That the lender shall certify as follows:
(1) Any amount advanced for land is protected by title or lien as provided in the regulations concerning guaranty or insurance of loans to veterans; and
(2) No enforceable liens, for any work done or material furnished for that part of the construction completed and for which payment has been made out of the proceeds of the loan, exist or can come into existence.
[13 FR 7275, Nov. 27, 1948, as amended at 15 FR 4397, July 12, 1950; 24 FR 2653, Apr. 7, 1959]

§ 36.4306 Refinancing of mortgage or other lien indebtedness.
(a) Any loan for the purpose of refinancing (38 U.S.C. 3710(a)(5)) an existing mortgage loan or other lien indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied or to be reoccupied if the refinancing loan is for the completion of major alterations, repairs or improvements to the property, by an eligible veteran as the veteran's home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home, shall be eligible for guaranty in an amount as computed under § 36.4302(a) provided that --
(1) The amount of the loan may not exceed an amount equal to 90 percent of the reasonable value of the dwelling or farm residence which will secure the loan, as determined by the Secretary.
(Authority: 38 U.S.C. 3710(e)(1) and 3710(h))
(2) The dollar amount of discount, if any, to be paid by the veteran is reasonable in amount as determined by the Secretary in accordance with § 36.4312(d)(7)(i),
(3) The loan is otherwise eligible for guaranty.
(b) [Reserved]
(c) Nothing shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance under the provisions of 38 U.S.C. 3710(a)(5) a VA guaranteed or insured (or direct) mortgage loan made to him or her which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as a home, or in the case of an eligible veteran unable to occupy the property because of active duty status in the Armed Forces, occupied or to be reoccupied by the veteran's spouse as the spouse's home.
(Authority: 38 U.S.C. 3710(e)(1))
(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.
(e) [Reserved]
(f) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.
(g) A veteran may refinance (38 U.S.C. 3710(a)(9)(B)(ii)) an existing loan that was for the purchase of, and is secured by, a manufactured home in order to purchase the lot on
which the manufactured home is or will be permanently affixed, provided the following requirements are met:
(1) The refinancing of a manufactured home and the purchase of a lot must be considered as one loan;
(2) The manufactured home upon being permanently affixed to the lot will be considered real property under the laws of the State where it is located;
(3) The loan must be secured by the same manufactured home which is being refinanced and the real property on which the manufactured home is or will be located;
(4) The amount of the loan may not exceed an amount equal to the sum of the balance of the loan being refinanced; the purchase price, not to exceed the reasonable value of the lot; the costs of the necessary site preparation of the lot as determined by the Secretary; a reasonable discount as authorized in § 36.4312(d)(6) with respect to that portion of the loan used to refinance the existing purchase money lien on the manufactured home, and closing costs as authorized in § 36.4312.
(5) If the loan being refinanced was guaranteed by VA, the portion of the loan made for the purpose of refinancing an existing purchase money manufactured home loan may be, guaranteed without regard to the outstanding guaranty entitlement available for use by the veteran, and the veteran's guaranty entitlement shall not be charged as a result of any guaranty provided for the refinancing portion of the loan. For the purposes enumerated in 38 U.S.C. 3702(b) the refinancing portion of the loan shall be considered to have been obtained with the guaranty entitlement used to obtain VA-guaranteed loan being refinanced. The total guaranty for the new loan shall be the sum of the guaranty entitlement used to obtain VA-guaranteed loan being refinanced and any additional guaranty entitlement available to the veteran. However, the total guaranty may not exceed the guaranty amount as calculated under § 36.4302(a) of this part.

(Authority: 38 U.S.C. 3703(a))


§ 36.4306a Interest rate reduction refinancing loan.
(a) Pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11), a veteran may refinance an existing VA guaranteed, insured, or direct loan to reduce the interest rate payable on the existing loan provided the following requirements are met:
(1) The loan must be secured by the same dwelling or farm residence as the loan being refinanced; and
(2) The veteran must own the dwelling or farm residence securing the loan and
(i) Must occupy the dwelling or residence as his or her home; or
(ii) Must have previously occupied the dwelling or residence as his or her home and must certify, in such form as the Secretary shall require, that he or she has previously occupied the dwelling or residence; or
(iii) In any case in which the veteran is on, or was on, active duty status as a member of the Armed Forces and is unable, or was unable, to occupy the residence or dwelling as a home because of such active duty status, the spouse of the veteran must occupy, or must have previously occupied, such dwelling or residence as the spouse's home and must certify to that occupancy in such form as the Secretary shall require.
(Authority: 38 U.S.C. 3710(e)(1))

(3) The monthly principal and interest payment on the new loan must be lower than the payment on the loan being refinanced, except when the term of the new loan is shorter than the term of the loan being refinanced; or the new loan is a fixed-rate loan that refinances a VA-guaranteed adjustable rate mortgage; or the increase in the monthly payments on the loan results from the inclusion of energy efficient improvements, as provided by § 36.4336(a)(4); or the Secretary approves the loan in advance after determining that the new loan is necessary to prevent imminent foreclosure and the veteran qualifies for the new loan under the credit standards contained in § 36.4337.

(4) The amount of the refinancing loan may not exceed:

(i) An amount equal to the balance of the loan being refinanced, which must not be delinquent, except in cases described in paragraph (a)(5) of this section, and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA-guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, the amount referred to with respect to the loan under paragraph (a)(4)(i) of this section, plus the amount authorized by § 36.4336(a)(4).

(Authority: 38 U.S.C. 3703, 3710)

(5) If the loan being refinanced is delinquent (delinquent means that a scheduled monthly payment of principal and interest is more than 30 days past due), the new loan will be guaranteed only if the Secretary approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standards contained in § 36.4337. In such cases, the term "balance of the loan being refinanced" shall include any past due installments, plus allowable late charges.

(6) The dollar amount of guaranty on the 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i) loan may not exceed the greater of the original guaranty amount of the loan being refinanced or 25 percent of the loan; and

(7) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being refinanced plus ten years, or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 3712, the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3703(c)(1), 3710(e)(1))

(b) Notwithstanding any other regulatory provision, the interest rate reduction refinancing loan may be guaranteed without regard to the amount of guaranty entitlement available for use by the veteran, and the amount of the veteran's remaining guaranty entitlement, if any, shall not be charged for an interest rate reduction refinancing loan. The interest rate reduction refinancing loan will be guaranteed with the lesser of the entitlement used by the veteran to obtain the loan being refinanced or the amount of the guaranty as calculated under § 36.4302(a) of this part. The veteran's loan guaranty entitlement originally used for a purpose as enumerated in 38 U.S.C. 3710(a) (1) through (7) and (9)(A) (i) and (ii) and subsequently transferred to an interest rate reduction refinancing...
loan (38 U.S.C. 3710(a) (8) or (9)(B)(i)) shall be eligible for restoration when the interest rate reduction refinancing loan or subsequent interest rate reduction refinancing loans on the same property meets the requirements of § 36.4302(h).

(Authority: 38 U.S.C. 3703(a))

(c) Title to the estate which is refinanced for the purpose of an interest rate reduction must be in conformity with § 36.4350.

(Authority: 38 U.S.C. 3710(a)(8), (9)(B)(i) and (e))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0601)


[EFFECTIVE DATE NOTE: 64 FR 19906, 19910, Apr. 23, 1999, amended this section, effective June 7, 1999.]

§ 36.4307 Joint loans.

(a) Except as provided in paragraph (b) of this section, the prior approval of the Secretary is required in respect to any loan to be made to two or more borrowers who become jointly and severally liable, or jointly liable therefor, and who will acquire an undivided interest in the property to be purchased or who will otherwise share in the proceeds of the loan, or in respect to any loan to be made to an eligible veteran whose interest in the property owned, or to be acquired with the loan proceeds, is an undivided interest only, unless such interest is at least a 50 percent interest in a partnership. The amount of the guaranty or insurance credit shall be computed in such cases only on that portion of the loan allocable to the eligible veteran which, taking into consideration all relevant factors, represents the proper contribution of the veteran to the transaction. Such loans shall be secured to the extent required by 38 U.S.C. Chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(b) Notwithstanding the provisions of paragraph (a) of this section, the joinder of the spouse of a veteran-borrower in the ownership of residential property shall not require prior approval or preclude the issuance of a guaranty or insurance credit based upon the entire amount of the loan. If both spouses be eligible veterans, either or both may, within permissible maxima, utilize available guaranty or insurance entitlement.

(c) For the purpose of determining the rights and the liabilities of the Secretary with respect to a loan subject to paragraph (a) of this section, credits legally applicable to the entire loan shall be applied as follows:

(1) Prepayments made expressly for credit to that portion of the indebtedness allocable to the veteran (including the gratuity paid pursuant to former provisions of law), shall be applied to such portion of the indebtedness. All other payments shall be applied ratably to those portions of the loan allocable respectively to the veteran and to the other debtors.

(2) Proceeds of the sale or other liquidation of the security shall be applied ratably to the respective portions of the loan, such portion of the proceeds as represents the interest of the veteran being applied to that portion of the loan allocable to such veteran.
§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.

(a) Except as provided by paragraphs (b) or (c) of this section the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed or insured in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty or insurance.

(b) (1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a dwelling. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority.

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.

(c) Any housing loan which is financed under 38 U.S.C. chapter 37, and to which section 3714 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714.

(1) A holder may not exercise its option to accelerate a loan upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to the transfer of rights of occupancy in the property;

(ii) The creation of a purchase money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest of three years or less not containing an option to purchase;

(v) A transfer to a relative resulting from the death of a borrower;

(vi) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;

(vii) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4323 of this part; or

(viii) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.
(2) With respect to each such loan at least one of the instruments used in the transaction shall contain the following statement: "This loan is not assumable without the approval of the Department of Veterans Affairs or its authorized agent." This statement must be:

(i) Printed in a font size which is the larger of:
(A) Two times the largest font size contained in the body of the instrument; or
(B) 18 points; and
(ii) Contained in at least one of the following:
(A) The note;
(B) The mortgage or deed of trust; or
(C) A rider to either the note, the mortgage, or the deed of trust.

Authority: (38 U.S.C.3714(d))

(d) The term of payment of any guaranteed or insured obligation shall bear a proper relation to the borrower's present and anticipated income and expenses, (except loans pursuant to 38 U.S.C. 3710(a)(8) or (9)(B)(i)). In addition the terms of payment of any guaranteed or insured obligation shall provide for discharge of the obligation at a definite date or dates or intervals, in amount specified on or computable from the face of the instrument. A loan which is payable on demand, or at sight, or on presentation, or at a time not specified or computable from the language in the note, mortgage, or other loan instrument, or which contemplates periodic renewals at the option of the holder to satisfy the repayment requirements of this section, is not eligible for guaranty or insurance, except as provided in paragraph (f) of this section.

(e) No guaranteed or insured obligation shall contain a provision to the effect that the holder shall have the right to declare the indebtedness due, or to pursue one or more legal or equitable remedies, if holder "shall feel insecure," or upon the occurrence of one or more such conditions optional to the holder, without regard to an act or omission by the debtor, which condition by the terms of the note, mortgage, or other loan instrument would at the option of the holder afford a basis for declaring a default.

(f) Notwithstanding the inclusion in the guaranteed or insured obligation of a provision contrary to the provisions of this section, the right of the holder to payment of the guaranty or insurance shall not be thereby impaired: Provided,

(1) Default was declared or maturity was accelerated under some other provision of the note, mortgage, or other loan instrument, or

(2) Activation or enforcement of such provision is warranted under § 36.4317 (a), or

(3) The prior approval of the Secretary was obtained.

(Authority: 38 U.S.C. 3703(c))

(g) The holder of any guaranteed or insured obligation shall have the right, notwithstanding the absence of express provision therefor in the instruments evidencing the indebtedness, to accelerate the maturity of such obligation at any time after the continuance of any default for the period specified in § 36.4316.

(h) If sufficient funds are tendered to bring a delinquency current at any time prior to a judicial or statutory sale or other public sale under power of sale provisions contained in the loan instruments to liquidate any security for a guaranteed loan, the holder shall be obligated to accept the funds in payment of the delinquency unless:

(1) The prior approval of the Secretary is obtained to do otherwise, or

(2) Reinstatement of the loan would adversely affect the dignity of the lien or be otherwise precluded by law.
A delinquency will include all installment payments (principal, interest, taxes, insurance, advances, etc.) due and unpaid and any accumulated late charges plus any reasonable expenses incurred and paid by the holder if termination proceedings have begun (e.g., advertising costs, foreclosure costs, attorney or trustee fees, recording fees, etc.).

(Authority: 38 U.S.C. 501, 3703(c), 3712(g))

(Approved by the Office of Management and Budget under OMB control number 2900-0516)


§ 36.4309 Amortization.

(a) All loans, the maturity date of which is beyond 5 years from date of loan or date of assumption by the veteran, shall be amortized. Except as provided in paragraph (e) of this section, the schedule of payments thereon shall be in accordance with any generally recognized plan of amortization requiring approximately equal periodic payments and shall require a principal reduction not less often than annually during the life of the loan. The final installment on any loan shall not be in excess of two times the average of the preceding installments, except that on a construction loan such installment may be for an amount not in excess of 5 per centum of the original principal amount of the loan. The limitations imposed herein on the amount of the final installment shall not apply in the case of any loan extended pursuant to § 36.4314(a).

(b) Any plan of repayment on loans required to be amortized which does not provide for approximately equal periodic payments shall not be eligible unless the plan conforms with the provisions of paragraph (e) of this section, or is otherwise approved by the Secretary.

(c) Every guaranteed or insured loan shall be repayable within the estimated economic life of the property securing the loan.

(d) Subject to paragraph (a) of this section, any amounts which under the terms of a loan do not become due and payable on or before the last maturity date permissible for loans of its class under the limitations contained in 38 U.S.C. Chapter 37 shall automatically fall due on such date. (See § 36.4334.)

(e) A graduated payment mortgage loan, providing for deferrals of interest during the first 5 years of the loan and addition of the deferred amounts to principal shall be eligible, Provided:

(1) The loan is for the purpose of acquiring a single-family dwelling unit, including a condominium unit or simultaneously acquiring and improving a previously occupied, existing single-family dwelling unit.

(2)(i) For proposed construction or existing homes not previously occupied (new homes), the maximum loan amount cannot exceed 97.5 percent of the lesser of the reasonable value of the property as of the time the loan is made or the purchase price.

(ii) For previously occupied, existing homes the maximum loan amount must be computed to assure that the principal amount of the loan, including all interest scheduled
to be deferred and added to the loan principal, will not exceed the purchase price or reasonable value of the property, whichever is less, as of the time the loan is made;
(3) The increases in the monthly periodic payment amount occur annually on each of the first five annual anniversary dates of the first loan installment due date, at a rate of 7.5 percent over the preceding year's monthly payment amount;
(4) Beginning with the payment due on the fifth annual anniversary date of the first loan installment due date, all remaining monthly periodic payments are approximately equal in amount and amortize the loan fully in accordance with the requirements of this section, and
(5) The plan is otherwise acceptable to the Secretary.
(Authority: 38 U.S.C. 3703(d))
[13 FR 7275, Nov. 27, 1948, as amended at 24 FR 2653, Apr. 7, 1959; 47 FR 15139, Apr. 8, 1982]

§ 36.4310 Prepayment.
The debtor shall have the right to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or $100, whichever is less. Any prepayment in full of the indebtedness shall be credited on the date received, and no interest may be charged thereafter. Any partial prepayment made on other than an installment due date need not be credited until the next following installment due date or 30 days after such prepayment, whichever is earlier. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied for the purpose of curing or preventing any subsequent default.
[38 FR 25678, Sept. 14, 1973]

§ 36.4311 Interest rates.
(a) In guaranteeing or insuring loans under 38 U.S.C. chapter 37, the Secretary may elect to require that such loans either bear interest at a rate that is agreed upon by the veteran and the lender, or bear interest at a rate not in excess of a rate established by the Secretary. The Secretary may, from time to time, change that election by publishing a notice in the Federal Register. However, the interest rate of a loan for the purpose of an interest rate reduction under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) must be less than the interest rate of the VA loan being refinanced. This paragraph does not apply in the case of an adjustable rate mortgage being refinanced under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), or (a)(11) with a fixed rate loan.
(Authority: 38 U.S.C. 3703, 3710)
(b) For loans bearing an interest rate agreed upon by the veteran and the lender, the veteran may pay reasonable discount points in connection with the loan. The discount points may not be included in the loan amount, except for interest rate reduction refinancing loans under 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), and (a)(11). For loans bearing an interest rate agreed upon by the veteran and the lender, the provisions of § 36.4312(d)(6) and (d)(7) do not apply.
(Authority: 38 U.S.C. 3703, 3710)
(c) Interest in excess of the rate reported by the lender when requesting evidence of guaranty or insurance shall not be payable on any advance, or in the event of any delinquency or default: Provided, that a late charge not in excess of an amount equal to 4 percent on any installment paid more than 15 days after due date shall not be considered a violation of this limitation. 

(Authority: 38 U.S.C. 3710)

(d) Effective October 1, 2003, adjustable rate mortgage loans which comply with the requirements of this paragraph (d) are eligible for guaranty.

(1) Interest rate index. Changes in the interest rate charged on an adjustable rate mortgage must correspond to changes in the weekly average yield on one year (52 weeks) Treasury bills adjusted to a constant maturity. Yields on one year Treasury bills at "constant maturity" are interpolated by the United States Treasury from the daily yield curve. This curve, which relates the yield on the security to its time to maturity, is based on the closing market bid yields on actively traded one year Treasury bills in the over-the-counter market. The weekly average one year constant maturity Treasury bill yields are published by the Federal Reserve Board of the Federal Reserve System. The Federal Reserve Statistical Release Report H. 15 (519) is released each Monday. These one year constant maturity Treasury bill yields are also published monthly in the Federal Reserve Bulletin, published by the Federal Reserve Board of the Federal Reserve System, as well as quarterly in the Treasury Bulletin, published by the Department of the Treasury.

(2) Frequency of interest rate changes. Interest rate adjustments must occur on an annual basis, except that the first adjustment may occur no sooner than 36 months from the date of the borrower's first mortgage payment. The adjusted rate will become effective the first day of the month following the adjustment date; the first monthly payment at the new rate will be due on the first day of the following month. To set the new interest rate, the lender will determine the change between the initial (i.e., base) index figure and the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

(3) Method of rate changes. Interest rate changes may only be implemented through adjustments to the borrower's monthly payments.

(4) Initial rate and magnitude of changes. The initial contract interest rate of an adjustable rate mortgage shall be agreed upon by the lender and the veteran. Annual adjustments in the interest rate shall correspond to annual changes in the interest rate index, subject to the following conditions and limitations:

(i) No single adjustment to the interest rate may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage point may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(ii) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, rounded to the nearest one-eighth of one percent, up or down. For example, if the margin is 2 percent
and the new index figure is 6.06 percent, the adjusted mortgage interest rate will be 8 percent. If the margin is 2 percent and the new index figure is 6.07 percent, the adjusted mortgage interest rate will be 8 1/8 percent.

(5) Pre-loan disclosure. The lender shall explain fully and in writing to the borrower, at the time of loan application, the nature of the obligation taken. The borrower shall certify in writing that he or she fully understands the obligation and a copy of the signed certification shall be placed in the loan folder and furnished to VA upon request. Such lender disclosure must include the following items:
(i) The fact that the mortgage interest rate may change, and an explanation of how changes correspond to changes in the interest rate index;
(ii) Identification of the interest rate index, its source of publication and availability;
(iii) The frequency (i.e., annually) with which interest rate levels and monthly payments will be adjusted, and the length of the interval that will precede the initial adjustment; and
(iv) A hypothetical monthly payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the mortgage, subject to the provisions of the mortgage instrument.

(6) Annual disclosure. At least 25 days before any adjustment to a borrower's monthly payment may occur, the lender must provide a notice to the borrower which sets forth the date of the notice, the effective date of the change, the old interest rate, the new interest rate, the new monthly payment amount, the current index and the date it was published, and a description of how the payment adjustment was calculated. A copy of the annual disclosure shall be made a part of the lender's permanent record on the loan.

(Authority: 38 U.S.C. 3707A)

§ 36.4312 Charges and fees.
(a) No charge shall be made against, or paid by, the borrower incident to the making of a guaranteed or insured loan other than those expressly permitted under paragraph (d) or (e) of this section, and no loan shall be guaranteed or insured unless the lender certifies to the Secretary that it has not imposed and will not impose any charges or fees against the borrower in excess of those permissible under paragraph (d) or (e) of this section. Any charge which is proper to make against the borrower under the provisions of this paragraph may be paid out of the proceeds of the loan: Provided, That if the purpose of the loan is to finance the purchase or construction of residential property the costs of closing the loan including the pro rata portion of the ground rents, hazard insurance premiums, current year's taxes, and other prepaid items normally involved in financing such transaction may not be included in the loan.

(b) Except as provided in the regulations concerning the guaranty or insurance of loans to veterans, no brokerage or service charge or their equivalent may be charged against the debtor or the proceeds of the loan either initially, periodically, or otherwise.
(c) Brokerage or other charges shall not be made against the veteran for obtaining any guaranty or insurance under 38 U.S.C. chapter 37, nor shall any premiums for insurance on the life of the borrower be paid out of the proceeds of a loan.
(d) The following schedule of permissible fees and charges shall be applicable to all Department of Veterans Affairs guaranteed or insured loans.
(1) The veteran may pay reasonable and customary amounts for any of the following items:
   (i) Fees of Department of Veterans Affairs appraiser and of compliance inspectors designated by the Department of Veterans Affairs except appraisal fees incurred for the predetermination of reasonable value requested by others than veteran or lender.
   (ii) Recording fees and recording taxes or other charges incident to recordation.
   (iii) Credit report.
   (iv) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial deposit (lump-sum payment) for the tax and insurance account.
   (v) Hazard insurance required by § 36.4326.
   (vi) Survey, if required by lender or veteran; except that any charge for a survey in connection with a loan under §§ 36.4356 through 36.4360a (Condominium Loans) must have the prior approval of the Secretary.
   (vii) Title examination and title insurance, if any.
   (viii) The actual amount charged for flood zone determinations, including a charge for a life-of-the-loan flood zone determination service purchased at the time of loan origination, if made by a third party who guarantees the accuracy of the determination. A fee may not be charged for a flood zone determination made by a Department of Veterans Affairs appraiser or for the lender's own determination.
   (ix) Such other items as may be authorized in advance by the Under Secretary for Benefits as appropriate for inclusion under this paragraph as proper local variances.
(2) A lender may charge and the veteran may pay a flat charge not exceeding 1 percent of the amount of the loan, provided that such flat charge shall be in lieu of all other charges relating to costs of origination not expressly specified and allowed in this schedule.
(3) In cases where a lender makes advances to a veteran during the progress of construction, alteration, improvement, or repair, either under a commitment of the Department of Veterans Affairs to issue a guaranty certificate or insurance credit upon completion, or where the lender would be entitled to guaranty or insurance on such advances when reported under automatic procedure, the lender may make a charge against the veteran of not exceeding 2 percent of the amount of the loan for its services in supervising the making of advances and the progress of construction notwithstanding that the "holdback" or final advance is not actually paid out until after the construction, alteration, improvement, or repair is fully completed: Provided, That the major portion (51 percent or more) of the loan proceeds is paid out during the actual progress of the construction, alteration, improvement, or repair. Such charge may be in addition to the 1 percent charge allowed under paragraph (d)(2) of this section.
(4) In consideration, alteration, improvement or repair loans, including supplemental loans made pursuant to § 36.4355, where no charge is permissible under the provisions of paragraph (d)(3) of this section the lender may charge and the veteran may pay a flat sum
not exceeding 1 percent of the amount of the loan. Such charge may be in addition to the 1 percent allowed under paragraph (d)(2) of this section.

(5) The fees and charges permitted under this paragraph are maximums and are not intended to preclude a lender from making alternative charges against the veteran which are not specifically authorized in the schedule provided the imposition of such alternative charges would not result in an aggregate charge or payment in excess of the prescribed maximum.

(6) Allowable discounts. The veteran borrower subject to the limitations set forth in paragraphs (d)(6) and (7) of this section may pay a discount required by a lender when the proceeds of the loan will be used for any of the following purposes:

(i) To refinance existing indebtedness pursuant to 38 U.S.C. 3710(a)(5), (8), (9)(B)(i) or (ii);

(ii) To repair, alter or improve a dwelling owned by the veteran pursuant to 38 U.S.C. 3710(a) (4) or (7) if such loan is to be secured by a first lien;

(iii) To construct a dwelling or farm residence on land already owned or to be acquired by the veteran, provided that the veteran did not or will not acquire the land directly or indirectly from a builder or developer who will be constructing such dwelling or farm residence;

(iv) To purchase a dwelling from a class of sellers which the Secretary determines are legally precluded under all circumstances from paying such a discount if the best interest of the veteran would be so served.

(7) Computation of discounts -- (i) Computation of discount -- loans secured by a first lien. Unless otherwise approved by the Secretary, the discount, if any, to be paid by the borrower may not exceed the difference between the bid price, rounded to the lower whole number, and par value for GNMA (Government National Mortgage Association) 90-day forward bid closing price for pass through securities 1/2 percent less than the face note rate of the loan. Unless the lender and borrower negotiate a firm written commitment for a maximum amount of discount to be paid, the bid price to be used in the computation must be the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing. "Loan closing" is defined for this purpose as the date on which the borrower's 3-day right of rescission commences pursuant to the Truth in Lending Act. If the lender and borrower choose to negotiate a firm discount commitment for a maximum amount of discount to be paid, the bid price to be used in establishing the maximum discount must be the closing quote for the business day prior to the date of the commitment. Lenders negotiating firm commitments must close that loan at a discount no higher than the firm commitment regardless of changes in the maximum allowable Department of Veterans Affairs interest rate. If a lender's commitment expires prior to loan closing, the lender and borrower may negotiate a new firm commitment based on the procedure outlined in this paragraph (d)(7)(i) or may use the procedure for determining the discount based on the GNMA 90-day forward bid closing quote for any day 1 to 4 business days prior to loan closing.

(ii) Computation of discount -- unsecured loans or loans secured by less than a first lien. The borrower, subject to the limitations set forth in paragraphs (d)(6) and (7) of this section, may pay a discount required by the lender when the proceeds of the loan will be used to repair, alter, or improve a dwelling owned by the veteran pursuant to 38 U.S.C.
3710(a)(4) or (7) if such loan is unsecured or secured by less than a first lien. No such discount may be charged unless:
(A) The loan is submitted to the Secretary for prior approval;
(B) The dollar amount of the discount is disclosed to the Secretary and the veteran prior to the issuance by the Secretary of the certificate of commitment. Said certificate of commitment shall specify the discount to be paid by the veteran, and this discount may not be increased once the commitment is issued without the approval of the Secretary;
(C) The discount has been determined by the Secretary to be reasonable in amount.
(iii) A veteran may pay the discount on an acquisition and improvement loan (as defined in § 36.4301 provided:
(A) The veteran pays no discount on the acquisition portion of the loan except in accordance with paragraph (d)(6)(iv) of this section; and
(B) The discount paid on the improvements portion of the loan does not exceed the percentage of discount paid on the acquisition portion of the loan.
Acquisition and improvement loans may be closed either on the automatic or prior approval basis.
(iv) Unless the Under Secretary for Benefits otherwise directs, all powers of the Secretary under paragraphs (d) (6) and (7) of this section are hereby delegated to the officials designated by § 36.4342(b).

(8) On any loan to which section 3714 of 38 U.S.C. chapter 37 applies, the holder may charge a reasonable fee, not to exceed the lesser of (i) $ 300 and the actual cost of any credit report required, or (ii) any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(9) On any loan to which section 3714 of 38 U.S.C. chapter 37 applies, the holder may charge a reasonable fee, not to exceed the lesser of (i) $ 300 and the actual cost of any credit report required, or (ii) any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(10) On any loan to which section 3714 of 38 U.S.C. chapter 37 applies, the holder may charge a reasonable fee, not to exceed the lesser of (i) $ 300 and the actual cost of any credit report required, or (ii) any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(11) On any loan to which section 3714 of 38 U.S.C. chapter 37 applies, the holder may charge a reasonable fee, not to exceed the lesser of (i) $ 300 and the actual cost of any credit report required, or (ii) any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

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(iv) On loans to veterans whose entitlement is based on service in the Selected Reserve under the provisions of 38 U.S.C. 3701(b)(5), the funding fee shall be 2.75 percent of the total loan amount on loans for the purchase or construction of a home on which the veteran does not make a down payment, unless the veteran is using entitlement for a second or subsequent time, in which case the fee shall be 3 percent. On purchase or construction loans on which veterans whose entitlement is based on service in the Selected Reserve make a down payment of 5 percent or more, but less than 10 percent, the amount of the funding fee shall be 2.25 percent of the total loan amount. On purchase or construction loans on which such veterans make a down payment of 10 percent or more, the amount of the funding fee shall be 2 percent of the total loan amount.

(v) All or part of the fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the computed maximum loan amount, as appropriate. In computing the fee, the lender will disregard any amount included in the loan to enable the borrower to pay such fee.

(Authority: 38 U.S.C. 3729)

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 3714 of title 38 U.S. Code applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 3714, 3729(d))

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraph (e)(4) of this section who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. If payment of the fee described in paragraph (e)(1) of this section is made more than 30 days after loan closing, interest will be assessed at a rate set in conformity with the Department of Treasury's Fiscal Requirements Manual. This interest charge is in addition to the 4 percent late charge, but the late charge is not included in the amount on which interest is computed. This interest charge is to be calculated on a daily basis beginning on the date of closing, although the interest will be assessed only on funding fee payments received more than 30 days after closing.

(4) The lender is required to pay to the Secretary electronically through the Automated Clearing House (ACH) system the fees described in paragraphs (e)(1) and (e)(2) of this section and any late fees and interest due on them. This shall be paid to a collection agent by operator-assisted telephone, terminal entry, or CPU-to-CPU transmission. The collection agent will be identified by the Secretary. The lender shall provide the collection agent with the following: authorization for payment of the funding fee (including late fees and interest) along with the following information: VA lender ID number; four-digit personal identification number; dollar amount of debit; VA loan number; OJ (office of jurisdiction) code; closing date; loan amount; information about whether the payment includes a shortage, late charge, or interest; veteran name; loan type;
sale amount; downpayment; whether the veteran is a reservist; and whether this is a subsequent use of entitlement. For all transactions received prior to 8:15 p.m. on a workday, VA will be credited with the amount paid to the collection agent at the opening of business the next banking day.

(Authority: 38 U.S.C. 3729(a))

(5) The fees described in paragraph (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 3701(b) of title 38, United States Code.

(Authority: 38 U.S.C. 3729(b))

(The information collection requirements in this section have been approved by the Office of Management and Budget under control numbers 2900-0474 and 2900-0516.)


[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraphs (d)(1)(ix) and (d)(7)(iv), effective June 4, 1996; 62 FR 63277, 63278, Nov. 28, 1997, redesignated paragraph (e)(4) as paragraph (e)(5), added a new paragraph (e)(4) revised the parenthetical at the end of the section, effective Jan. 1, 1998.]

§ 36.4313 Advances and other charges.
(a) A holder may advance any amount reasonably necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments, ground or water rents, or premiums on fire or other casualty insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed or insured indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 3714 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 3714 applies must include a clause authorizing the collection of an assumption funding fee and an advance for this fee if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 3714)

(b) In addition to advances allowable under paragraph (a) of this section, the holder may charge against the proceeds of the sale of the security; against gross amounts collected; in any accounting to the Secretary after payment of a claim under the guaranty, in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to § 36.4321(a), or, in the computation of an insurance loss, any of the following items actually paid:

(1) Any expense which is reasonably necessary for preservation of the security,

(2) Court costs in a foreclosure or other proper judicial proceeding involving the security,

(3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security,

(4) Reasonable trustee's fees or commissions not in excess of those allowed by statute and in no event in excess of 5 percent of the unpaid indebtedness,

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $ 850 whichever is
less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b)(4) and (5) of this section) exceed $ 850.

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Secretary in connection with the claim,

(7) Reasonable and customary costs of property inspections,

(8) Any other expense or fee that is approved in advance by the Secretary.

(Authority: 38 U.S.C. 3720(a)(3))

(c) Any advances or charges enumerated in paragraph (a) or (b) of this section may be included as specified in the holder's accounting to the Secretary, but they are not chargeable to the debtor unless he or she otherwise be liable therefor.

(d) Advances of the type enumerated in paragraph (a) of this section and any other advances determined to be necessary and proper in order to preserve or protect the security may be authorized by employees designated in § 36.4342(b) in the case of any property constituting the security for a loan acquired by the Secretary or constituting the security for the unpaid balance of the purchase price owing to the Secretary on account of the sale of such property. Such advances shall be secured to the extent legal and practicable by a lien on the property.

(e) Notwithstanding the provisions of paragraph (a) or (b) of this section, holders of condominium loans guaranteed or insured under 38 U.S.C. 3710(a)(6) shall not pay those assessments or charges allocable to the condominium unit which are provided for in the instruments establishing the condominium form of ownership in the absence of the prior approval of the Secretary.


§ 36.4314 Extensions and reamortizations.

(a) Provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s), the terms of repayment of any loan may by written agreement between the holder and the debtor(s), be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Secretary is obtained. Except with the prior approval of the Secretary, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a partial prepayment pursuant to § 36.4310, the balance of the indebtedness may, by written agreement between the holder and the debtor(s), be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity, and provided the debtor(s) is (are) reasonable credit risk(s), as determined by the holder based upon review of the debtor's (s') creditworthiness, including a review of a current credit report(s) on the debtor(s).

(c) In the event an additional loan is proposed to be made pursuant to § 36.4351 for the repair, alteration, or improvement of real property on which there is an existing loan guaranteed or insured under 38 U.S.C. chapter 37, the terms of repayment of the prior loan may, by written agreement between the holder and the debtor, be recast to combine
the schedule of repayments on the two loans, provided the entire indebtedness is repayable within the permissible maximum maturity of the original loan.

(d) Unless the prior approval of the Secretary has been obtained, any extension or reamortization agreed to by a holder which relieves any obligor from liability will release the liability of the Secretary under the guaranty or insurance on the entire loan. However, if such release of liability of an obligor results through operation of law by reason of an extension or other act of forbearance, the liability of the Secretary as guarantor or insurer will not be affected thereby, provided the required lien is maintained and the title holder is and will remain liable for the payment of the indebtedness: And further provided, That if such extension or act of forbearance will result in the release of the veteran, all delinquent installments, plus any foreclosure expenses which may have been incurred, shall have been fully paid.

(e) The holder shall promptly forward to the Secretary an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed or insured loan, together with a copy(ies) of the credit report(s) obtained on the debtor(s).

(Authority: 38 U.S.C. 3703(c)(1))

§ 36.4315 Notice of default and acceptability of partial payments.

(a) Reporting of defaults. The holder of any guaranteed or insured loan shall give notice to the Secretary within 45 days after any debtor:
(1) Is in default by reason of nonpayment of any installment for a period of 60 days from the date of first uncured default (see § 36.4301(f)); or
(2) Is in default by failing to comply with any other covenant or obligation of such guaranteed or insured loan which failure persists for a continuing period of 90 days after demand for compliance therewith has been made, except that if the default is due to nonpayment of real estate taxes, the notice shall not be required until the failure to pay when due has persisted for a continuing period of 180 days.

(b) Partial payments. A partial payment is a remittance on a loan in default (as defined in § 36.4301(g)) of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered.

(1) Except as provided in paragraph (b)(2) of this section, or upon the express waiver of the Secretary, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.

(2) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:
(i) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;
(ii) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;
(iii) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a written repayment plan;
(iv) The payment is less than the amount agreed to in a written repayment plan;
(v) The amount tendered is in the form of a personal check and the holder has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;
(vi) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged;
(vii) Foreclosure has been commenced by the taking of the first action required for foreclosure under local law;
(viii) The holder's lien position would be jeopardized by acceptance of the partial payment.
(3) A failure by the holder to comply with the provisions of this paragraph may result in a partial or total loss of guaranty or insurance pursuant to § 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan.
(Authority: 38 U.S.C. 3703(c)(1))
[45 FR 31065, May 12, 1980]

§ 36.4316 Continued default.
(a) In the event any failure of the debtor to discharge the debtor's obligations under the loan continues for a period of 3 months, or for more than 1 month on an extended loan or on a term loan, the holder may at the holder's option then or thereafter give the notice prescribed in § 36.4317.
(b) The notice prescribed in § 36.4317 may be submitted prior to the time prescribed in paragraph (a) of this section in any case where any material prejudice to the rights of the holder or to the Secretary or hazard to the security warrants more prompt action.
(c) [Removed. See 61 FR 28057, 28058, June 4, 1996.]
(Authority: 38 U.S.C. 3732)
(Information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2900-0480)

[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which amended this section, became effective June 4, 1996.]

§ 36.4317 Notice of intention to foreclose.
(See also § 36.4319.) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Secretary of a notice of intention to take such action:
Provided, That
(a) Immediate action as required under 38 CFR 36.4346 (i), may be taken if the property to be affected thereby has been abandoned by the debtor or has been or may be otherwise subjected to extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment);
(b) Any right of a holder to repossess personal property may be exercised without prior notice to the Secretary; but notice of any such action taken shall be given by certified mail to the Secretary within ten days thereafter; and
(c) The notice required under this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include, but is not limited to:
(1) A search of the holder's automated and physical loan record systems to identify the name and current or last known address of the original veteran and any other liable obligors;
(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;
(3) Conducting the trace inquiry using an in-house credit reporting terminal;
(4) Obtaining the results of the inquiry;
(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and,
(6) Documentation of the holder's records.
(Approved by the Office of Management and Budget under Control Number 2900-0530)
[58 FR 29116, May 19, 1993]

§ 36.4318 Refunding of loans in default.
(a) Upon receiving a notice of default or a notice under § 36.4317, the Secretary may within 30 days thereafter require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan and the security therefore to the Secretary or to another designated by the Secretary upon receipt of payment in full of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4325.
(b) If the obligation is assigned or transferred to a third party pursuant to paragraph (a) of this section the Secretary may continue in effect the guaranty or insurance issued with respect to the previous loan in such manner as to cover the assignee or transferee.

[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which revised paragraph (a), became effective June 4, 1996.]

§ 36.4319 Legal proceedings.
(a) When the holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or in connection with the guaranteed or insured indebtedness, or involving title to, or other lien on, the security, such holder, within the time that would be
required if the Secretary were a party to the proceeding, shall deliver to the Secretary, by
mail or otherwise, by making such delivery to the loan guaranty officer at the office
which granted the guaranty or the insurance, or other office to which the holder has been
notified the file is transferred, a copy of every procedural paper filed on behalf of holder,
and shall also so deliver, as promptly as possible, a copy of each similar pleading served
on holder or filed in the cause by any other party thereto. Notice of, or motion for,
continuance and orders thereon are excepted from the foregoing.
(b) A copy of a notice of sale shall be similarly delivered by the holder, or the holder's
agent or trustee, to the Secretary at the VA Regional Office of jurisdiction at least 30
days prior to the scheduled liquidation sale, or within 5 days after the date of first
publication of the notice, whichever is later. A copy of any other notice of sale or
acquisition of the property served on the holder or advice of any sale of which the holder
has knowledge shall be similarly delivered to the Secretary, including any such notice of
a tax sale or other superior lien or judicial sale. Such notice shall be accompanied by a
statement of the account indebtedness and a copy of the liquidation appraisal request, if
not previously delivered.
(Authority: 38 U.S.C. 3732)
(c) The procedure prescribed in paragraphs (a) and (b) of this section shall not be
applicable in any proceeding to which the Secretary is a party, after the Secretary's
appearance shall have been entered therein by a duly authorized attorney.
(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings)
to which the Secretary is a party, original process and any other process prior to
appearance, proper to be served on the Secretary, shall be delivered to the loan guaranty
officer of the regional office of the VA having jurisdiction of the area in which the court
is situated. Within the time required by applicable law, or rule of court, the Secretary will
cause appropriate special or general appearance to be entered in the case by an authorized
attorney.
(Authority: 38 U.S.C. 3732)
(e) After appearance of the Secretary by attorney all process and notice otherwise proper
to serve on the Secretary before or after judgment, if served on the attorney of record,
shall have the same effect as if the Secretary were personally served within the
jurisdiction of the court.
(Authority: 38 U.S.C. 3732)
(f) If following a default, the holder does not bring appropriate action within 30 days after
requested in writing by the Secretary to do so, or does not prosecute such action with
reasonable diligence, the Secretary may at the Secretary's option fix a date beyond which
no further charges may be included in the computation of the indebtedness for the
purposes of accounting between the holder and the Secretary. The Secretary may also
intervene in, or begin and prosecute to completion any action or proceeding, in the
Secretary's name or in the name of the holder, which the Secretary deems necessary or
appropriate. The Secretary shall pay, in advance if necessary, any court costs or other
expenses incurred by the Secretary or properly taxed against the Secretary in any such
action to which the Secretary is a party, but may charge the same, and also a reasonable
amount for legal services, against the guaranteed or insured indebtedness, or the proceeds
of the sale of the security to the same extent as the holder (see § 36.4313 of this part), or
otherwise collect from the holder any such expenses incurred by the Secretary because of
§ 36.4320 Sale of security.

(a) Upon receipt by the Secretary of notice of a liquidation sale of any security for a guaranteed or insured loan, the Secretary shall determine the net value of the security and shall notify the holder of the net value and of the regulatory provision which will govern the disposition of the security.

(1) If the net value of the real property securing a guaranteed or insured loan exceeds the unguaranteed portion of the indebtedness, the Secretary shall specify in advance of the liquidation sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the following:

(i) The specified amount in such cases shall be the lesser of the net value of the property or the total indebtedness.

(ii) If a minimum amount for credit to the indebtedness has been specified in relation to a liquidation sale of real property, and:

(A) The holder acquires the property, or the rights to the property, at the sale for an amount not in excess of such specified amount, the holder shall credit to the indebtedness the amount specified. The holder then may retain the property or, not later than 15 days after the date of sale, advise the Secretary of the holder's election to convey or transfer the property, or the rights to the property, to the Secretary;

(B) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder may elect to convey the property to the Secretary under the terms of paragraph (a)(1)(ii)(A) of this section, unless a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section.

(C) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale;

(D) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified.

(iii) If a minimum amount has been specified by the Secretary, the Secretary's liability under loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (a)(1)(ii) of this section, not to exceed the Secretary's maximum liability as computed under § 35.4321 of this part.

(2) If the net value of the real property securing a guaranteed or insured loan does not exceed the unguaranteed portion of the indebtedness:

(i) The Secretary shall notify the holder that no minimum amount will be specified for credit to the indebtedness on account of the value of the security to be sold;
(ii) The Secretary may not accept conveyance or transfer of the property;
(iii) The holder shall credit against the indebtedness the net proceeds of the sale, and the Secretary's liability under loan guaranty shall be limited to the total indebtedness less the amount credited to the indebtedness not to exceed the Secretary's maximum liability as computed under § 36.4321 of this part; and
(iv) The liability of the Secretary shall not be subject to adjustment by reason of any subsequent disposition of the property by the holder.

(3) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, and:
(i) Such minimum bid exceeds an amount which has been specified by the Secretary under paragraph (a)(1) of this section; and
(ii) The holder acquires the property at the liquidation sale for an amount not exceeding the amount legally required; the holder may elect to convey the property to the Secretary pursuant to paragraph (a)(1)(ii)(A) of this section. The amount bid at the sale or the total indebtedness, whichever is less, shall govern instead of the specified amount and for the purpose of determining the Secretary's liability under loan guaranty.

(Authority: 38 U.S.C. 3732)

(b) The holder should not carry out a liquidation sale until the Secretary has furnished the notice required under paragraph (a) of this section. In the event the holder carries out a liquidation sale prior to receiving such notice, the holder shall credit against the indebtedness the greater of:
(1) The net proceeds of the sale; or
(2) The amount of the indebtedness or the net value of the property, whichever is less.

The provisions of paragraph (a)(1)(ii)(A) of this section, which extends to the holder the option of conveying or transferring the property to the Secretary, shall not be applicable, and the Secretary's liability under the loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (b) (1) or (2) of this section, not to exceed the Secretary's maximum liability as computed under § 36.4321 of this part.

(Authority: 38 U.S.C. 3732)

(c) When a debtor proposes to convey or transfer any real property to a holder to avoid foreclosure or other judicial, contractual, or statutory disposition of the obligation or of the security, the consent of the Secretary to the terms of such proposal shall be obtained in advance of such conveyance or transfer. In consenting to the terms of the debtor’s proposal the Secretary shall furnish the notice required under paragraph (a) of this section.

(Authority: 38 U.S.C. 3732)

(d) Upon receipt by the Secretary of notice of a judicial or statutory sale, or other public sale under power of sale contained in the loan instruments, to liquidate any personal property which is security for a guaranteed or insured loan, the Secretary may specify in advance of such sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold.

(1) If a minimum amount has been specified by the Secretary, and

(i) The holder is the successful bidder at the sale for an amount not in excess of such minimum amount, the holder shall sell the property pursuant to paragraph (d)(3) of this section and the amount realized from the resale of the property shall govern, instead of
the specified minimum amount, in the final accounting for determining the rights and liabilities of the holder and the Secretary,
(ii) A third party is the successful bidder at the sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale,
(iii) A third party is the successful bidder at the sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified,
(iv) The holder is the successful bidder at the sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale or the amount realized from the resale of the property pursuant to paragraph (d)(3) of this section, whichever is the greater, unless the bid in excess of the specified amount was made pursuant to paragraph (d)(4) of this section.
(2) If a minimum amount has not been specified by the Secretary under paragraph (d)(1) of this section, the holder shall credit against the indebtedness the net proceeds of the sale except as provided in paragraph (d)(4) of this section.
(3) If personal property has been repossessed or otherwise acquired by a holder and no public sale is proposed or required to be held to entitle the holder to effect a further disposition of such property, or if the holder is the successful bidder at the sale of personal property as provided in paragraph (d)(1) of this section, the holder shall sell the property within a reasonable time. The holder shall submit to the Secretary a written advice setting forth the price, terms, conditions and the expenses of the proposed sale at least 10 days in advance, and the Secretary shall either assent to such sale in which event the holder shall credit against the indebtedness the net proceeds of the sale or, upon agreement to indemnify the holder to the extent of any increased or resultant loss, the Secretary may specify the minimum net price for which the security may be sold. If such amount has been specified, the holder shall sell the personal property within a reasonable time in the open market for the best price obtainable: Provided, that the prior approval of the Secretary shall be obtained if the property is to be sold for a net amount less than the specified amount, or if the property is to be sold on terms other than all cash. The ultimate net amount realized by the holder from such sale shall be reported by the holder to the Secretary in an accounting which will determine their respective rights and liabilities.
(4) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, the holder may bid an amount not exceeding such amount legally required. If an amount has been specified by the Secretary and the holder is the successful bidder for an amount not exceeding the amount legally required, such specified amount shall govern for the purposes of this paragraph and for the purpose of computing the ultimate loss under the guaranty or insurance. In the event no amount is specified and the holder is the successful bidder for an amount not exceeding the amount legally required, the amount paid or payable by the Secretary under the guaranty shall not be subject to any adjustment by reason of such bid.
(Authority: 38 U.S.C. 3732)
(e) If the Secretary has specified an amount as provided in this section, and the holder learns of any material damage to the property occurring prior to the foreclosure sale or to the acceptance of a deed in lieu of foreclosure or prior to any other event to which such specified amount is applicable, the holder shall promptly advise the Secretary of such damage.
(f) The holder in accounting to the Secretary in connection with the disposition of any property in accordance with paragraph (a), (b), or (d) of this section, may include as a part of the indebtedness all actual expenses or costs of the proceedings, paid by the holder, within the limits defined in § 36.4313 of this part. In connection with the conveyance or transfer of property to the Secretary the holder may include in accounting to the Secretary the following expense items if actually paid by the holder, in addition to the consideration payable for the property under paragraph (g) of this section:
(Authority: 38 U.S.C. 3732)
(1) State and documentary stamp taxes as may be required.
(2) The customary cost of obtaining evidence of title in favor of the Secretary as specified in paragraph (h)(5) of this section but not including title evidence obtained incident to the making of the loan or any expenses incurred to clear title defects.
(3) Amount expended for taxes, special assessments, including such payments which are specified in paragraph (h)(4) of this section.
(4) Recording fees.
(5) Any other expenditures in connection with the property which are approved by the Secretary.

(g) In the event a holder elects to convey or transfer the property to the Secretary pursuant to paragraph (a), (b), or (c) of this section, the consideration to be paid by the Secretary in return for the property shall be the specified amount: Provided, That if a claim under the guaranty was previously paid, the consideration payable for the property shall be an amount equal to the indebtedness (less the amount previously paid on the guaranty) or the specified amount, whichever is less. If no claim under the guaranty was previously paid, the holder may, pursuant to § 36.4321(b) submit a claim within the maximum guaranty liability for the difference between the specified amount and an amount equal to the indebtedness. In the case of an insured loan, the holder may submit a claim for the difference between an amount equal to the indebtedness and the specified amount pursuant to § 36.4374.

(h) The conveyance or transfer of any property to the Secretary pursuant to paragraphs (a), (b), or (c) of this section shall be subject to the following provisions:
(1) If the holder's notice to the Secretary electing to convey or transfer the property precedes the acquisition of the property by the holder and the holder then acquires the property, the holder shall promptly after such acquisition advise the Secretary of the acquisition. Such advice, or the notice of election if given subsequent to acquisition, shall state the amount of the successful bid (if the property was acquired by the holder at public sale) and shall state the insurance coverage then in force, specifying for each policy, the name of the insurance company, the hazard covered, the amount, and the expiration date.
(2) The holder may cancel any insurance in force when the holder acquires the property, provided the holder has obtained the prior approval of the Secretary. Coincident with the notice of election to convey or transfer the property to the Secretary or with the acquisition of the property by the holder, following such notice, whichever is later, the holder shall obtain endorsements on all such insurance policies naming the Secretary as an assured, as his/her interest may appear. Such insurance policies shall be forwarded to the Secretary at the time of the conveyance or transfer of the property to the Secretary or as soon after that time as feasible.
(3) Occupancy of the property by anyone properly in possession by virtue of and during a period of redemption, or by anyone else unless under a claim of title which makes the title sought to be conveyed by the holder of less dignity or quality than that required by this section, shall not preclude the holder from conveying or transferring the property to the Secretary. Except with the prior approval of the Secretary, the holder shall not rent the property to a new tenant, nor extend the term of an existing tenancy on other than a month-to-month basis.

(4) Any taxes, special assessments or ground rents due and payable within 30 days after date of conveyance or transfer to the Secretary shall be paid by the holder if bills therefor are obtainable before such conveyance or transfer.

(5) Each conveyance or transfer of real property to the Secretary pursuant to this section shall be acceptable if the holder thereby conveys or warrants against the acts of the holder and those claiming under the holder (e.g., by special warranty deed) and if it vests in the Secretary or will entitle the Secretary to such title as is or would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated. Any title so acceptable will not be unacceptable to the Secretary by reason of any of the limitations on the quantum or quality of the property or title stated in § 36.4350(b) of this part:
Provided, That (i) at the time of conveyance or transfer to the Secretary there has been no breach of any conditions affording a right to the exercise of any reverter, except that title will not be unacceptable to the Secretary by reason of a violation of a restriction based on race, color, creed, or national origin, whether or not such restriction provides for reversion or forfeiture of title or a lien for liquidated damages in the event of a breach. (ii) With respect to any such limitations which came into existence subsequent to the making of the loan, full compliance was had with the requirements of § 36.4324 of this part. The acceptability of a conveyance or transfer pursuant to the requirements of this paragraph will be established by delivery to the Secretary of any of the following evidence of title issued by an institution or person satisfactory to the Secretary, in form satisfactory to him/her showing that title to the property of the quality specified in this paragraph is or will be vested in the Secretary:
(A) A title policy insuring the Secretary in an amount approximately equal to the consideration for the property, or a commitment for such title policy; or
(B) A certificate of record title; or
(C) An abstract of title accompanied by a legal opinion as to the quality of such title of record; or
(D) A Torrens or similar title certificate; or
(E) Such other evidence of title as the Secretary may approve.
In lieu of such title evidence, the Secretary will accept a conveyance or transfer with general warranty with respect to the title from a holder described in 38 U.S.C. 3702(d) or from a holder of financial responsibility satisfactory to the Secretary. In any case where the holder does not deliver evidence of title of the character specified in this paragraph, the holder to aid the Secretary in determination of acceptability of title shall without expense to the Secretary furnish such evidence of title, including survey, if any, as may have been obtained by the holder incident to the making of the loan or attendant to the foreclosure.
(6) Except with respect to matters covered by any covenants or warranties of the holder, the acceptance by the Secretary of a conveyance or transfer by the holder shall conclude the responsibility of the holder to the Secretary under the regulations of this subpart with respect to the title and in the event of the subsequent discovery of title defects, the Secretary shall have no recourse against the holder with respect to such title other than by reason of such covenants and warranties.

(7) As between the holder and the Secretary, the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall be governed by the provisions of this paragraph and paragraph (h)(10) of this section. Ordinary wear and tear excepted, the holder shall bear such risk of loss from the date of acquisition by the holder to the date such risk of loss is assumed by the Secretary. Such risk of loss is assumed by the Secretary from the date of receipt of the holder's election to convey or transfer the property to the Secretary or, in the event of receipt of notice of such election prior to acquisition, from the date of the Secretary's receipt of notice of acquisition by the holder:

Provided, That if custody over the property has not been delivered by the holder to the Secretary on the date when the Secretary otherwise would have assumed the risk of loss, the Secretary's assumption of the risk of loss will be deferred until such custody over the property is delivered, or until the property has been conveyed or transferred to the Secretary. The amount of any loss chargeable to the holder may be deducted from the amount payable by the Secretary at the time the property is transferred. In any case where pursuant to the VA regulations rejection of the title is legally proper, the Secretary may surrender custody of the property as of the date specified in the Secretary's notice to the holder. The Secretary's assumption of such risk shall terminate upon such surrender.

(8) The holder shall not be liable to the Secretary for any portion of the paid or unpaid taxes, special assessments, ground rents, insurance premiums, or other similar items.

(9) The Secretary shall be entitled to all rentals and other income collected from the property and to any insurance proceeds or refunds subsequent to the date of acquisition by the holder.

(10) In respect to a property which was the security for a condominium loan guaranteed or insured 38 U.S.C. 3710(a)(6) the responsibility for any loss due to damage to or destruction of the property or due to personal injury sustained in respect to such property shall in no event pass to the Secretary until the Secretary expressly assumes such responsibility or until conveyance of the property to the Secretary, whichever first occurs. The holder shall have the right to convey such property to the Secretary only if the property (including elements of the development or project owned in common with other unit owners) is undamaged by fire, earthquake, windstorm, flooding or boiler explosion. The absence of a right in the holder to convey such property which is so damaged shall not preclude a conveyance, if the Secretary agrees in a given case to such a conveyance upon completion of repairs within a specified period of time and such repairs are so completed and the conveyance is otherwise in order.

(i)(1) The terms "date of sale" or "date of acquisition" as used in this section are defined as the date of the event (e.g., sale, confirmation of sale when required under local practice, delivery of deed in case of voluntary conveyance, etc.) which fixes the rights of the parties in the property.

(2) The term "property" or "real property" as used in this section shall include
(i) A leasehold estate which at the time of closing the loan was not less duration than prescribed by § 36.4350(a)(2) of this part, and
(ii) The rights derived by the holder through a foreclosure sale of real estate whether or not such rights constitute an estate in real property under local law.
(j) Except as provided in paragraph (h)(6) of this section, the provisions of this section shall not be in derogation of any rights which the Secretary may have under § 36.4325 of this part. The Under Secretary for Benefits, or the Director, Loan Guaranty Service, may authorize any deviation from the provisions of this section, within the limitations prescribed in 38 U.S.C. Chapter 37, which may be necessary or desirable to accomplish the objectives of this section if such deviation is made necessary by reason of any laws or practice in any State or Territory or the District of Columbia: Provided, that no such deviation shall impair the rights of any holder not consenting to the deviation with respect to loans made or approved prior to the date the holder is notified of such action.

[PUBLISHER'S NOTE: UNITED STATES SUPREME COURT CASES SIGNIFICANTLY DISCUSSING SECTION -- United States v Shimer (1961) 367 US 374, 6 L Ed 2d 908, 81 S Ct 1554]

§ 36.4321 Computation of guaranty claims; Subsequent accounting.
(a) Subject to the limitation that the total amounts payable shall in no event exceed the amount originally guaranteed, the amount payable on a claim for the guaranty shall be the percentage of the loan originally guaranteed applied to the indebtedness computed as of the earliest of the following dates:
(1) The date of the liquidation sale; or,
(2) The cutoff date established under paragraph (f) of § 36.4319 of this part; or,
(3) The cutoff date established under paragraph (b) of this section.
Deposits or other credits or setoffs legally applicable to the indebtedness on the date of computation shall be applied in reduction of the indebtedness on which the claim is based. Any escrowed or earmarked funds not subject to superior claims of third persons must likewise be so applied.
(b) In any case in which there is a delay in the liquidation sale caused by:
(1) The holder of the loan extending forbearance in excess of 30 days at the request of the Secretary, the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date and such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date;
(2) The Secretary, including the Secretary's failure to provide the holder with advice as to the net value of the security within two working days prior to a scheduled liquidation sale but excluding forbearance exercised at the request of the Secretary, with respect to a holder which has complied with the provisions of § 36.4319(b) of this part, the cutoff
date for computation of the indebtedness shall be the date the liquidation sale would have taken place if there had been no such delay;
(3) A voluntary case commenced under Title 11, United States Code (relating to bankruptcy), the cutoff date for computation of the indebtedness shall be 30 days after the date the Secretary determines the liquidation sale would have taken place if there had been no such delay, provided: the net value of the real property securing the loan does not exceed the unguaranteed portion of the indebtedness as of the actual liquidation sale date and such net value will exceed the unguaranteed portion of the indebtedness as of the cutoff date.
(c) Adjustment of cutoff dates:
(1) Any cutoff date established under § 36.4319(f) of this part or paragraph (b) of this section will be adjusted by a period of months corresponding to the number of installment payments, if any, received by the holder and credited to the indebtedness after the cutoff date is established.
(2) When a cutoff date is established under paragraph (b)(2) of this section, the actual liquidation sale date will be used for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary; if an earlier cutoff date is in effect at the time delay in a liquidation sale is caused by the Secretary, such date will not be modified by application of the provisions of paragraph (b)(2) of this section, but will be extended by an interval corresponding to the delay in the liquidation sale caused by the Secretary for purposes of computing the indebtedness in any subsequent accounting between the holder and the Secretary.
(3) Any cutoff date established under § 36.4319 of this part or paragraph (b) of this section will be considered to be the liquidation sale date. Such date will be modified in accordance with paragraph (b) of this section if the provisions of that paragraph are applicable after such date has been established.
(Authority: 38 U.S.C. 501)
(d) Credits accruing from the proceeds of a sale or other disposition of the security subsequent to the date of computation, and prior to the submission of this claim, shall be reported to the Secretary incident to such submission, and the amount payable on the claim shall in no event exceed the remaining balance of the indebtedness.
(Authority: 38 U.S.C. 501)
(e) The claimant shall be deemed to have received as trustee for the benefit of the United States any amounts received on account of the indebtedness after the date of the claim, from the proceeds of a sale of the security or otherwise, to the extent such credits exceed the balance of the indebtedness unsatisfied by the payment of the guaranty. The claimant shall immediately pay such amounts to the Secretary to the extent of the debtor's liability to the Secretary as guarantor.
(Authority: 38 U.S.C. 501)
[54 FR 27163, June 28, 1989]

[PUBLISHER'S NOTE: UNITED STATES SUPREME COURT CASES SIGNIFICANTLY DISCUSSING SECTION -- United States v Shimer (1961) 367 US 374, 6 L Ed 2d 908, 81 S Ct 1554]

§ 36.4322 Computation of indebtedness.
In computing the indebtedness for the purpose of filing a claim for payment of a guaranty or for payment of an insured loss, or in the event of a transfer of the loan under § 36.4318 (a), or other accounting to the Secretary, the holder shall not be entitled to treat repayments theretofore made as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

[13 FR 7278, Nov. 27, 1948]

§ 36.4323 Subrogation and indemnity.

(a) The Secretary shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Secretary with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town or State, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof. The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Secretary may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment, and if any claim has been filed in bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran.

(Authority: 38 U.S.C. 3732)

(1) Prior to a liquidation sale, an official authorized to act for the Secretary under provisions of § 36.4342 of this part may approve a complete release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section provided such official determines:

(i) The loan default was caused by circumstances beyond the control of the obligor;

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the loan default;

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure; and, either
(iv) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all or part of the anticipated debt within six years of the liquidation sale while providing the necessities of life for himself or herself and his or her family; or,

(v) In consideration for a release of the Secretary's collection rights the obligor completes, or VA is enabled to authorize, an action which reduces the Government's claim liability sufficiently to offset the amount of the anticipated indebtedness which would otherwise be established pursuant to this paragraph and likely be collectable by VA after foreclosure in view of the obligor's financial situation; such actions would include termination of the loan by means of a deed in lieu of foreclosure, private sale of the property for less than the indebtedness with a reduced claim paid by VA for the balance due the loan holder or enabling VA to authorize the holder to elect a more expeditious foreclosure procedure when such an election would result in the legal release of the obligor's liability; or

(vi) The obligor being released is not the current titleholder to the property and there are no indications of fraud, misrepresentation, or bad faith on the obligor's part in obtaining the loan or disposing of the property or in connection with the loan default.

(2) Prior to a liquidation sale, an official authorized to act for the Secretary under provisions of section 4342 of this part may approve a partial release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section provided such official determines:

(i) The loan default was caused by circumstances beyond the control of the obligor;

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the loan default;

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure;

(iv) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all of the anticipated debt within six years of the liquidation sale while providing the necessities of life for himself or herself and his or her family; and,

(v) The obligor executes a written agreement acknowledging his or her liability to VA under this paragraph and executes a promissory note which provides for regular amortized monthly payments of an amount determined by VA in accordance with paragraph (e)(3) of this section including interest on the total amount payable at the rate in effect for Loan Guaranty liability accounts at the time of execution, or, the obligor agrees to other terms of repayment acceptable to VA including payment of a lump sum in settlement of his or her obligation under this paragraph;

(3) For purposes of this paragraph a review of an obligor's financial situation will take into consideration:

(i) The obligor's current and anticipated family income based on employment skills and experience;

(ii) The obligor's current short-term and long-term financial obligations, including the obligation to repay the Government which must be afforded consideration at least equal to his or her consumer debt obligations;

(iii) A current credit report on the obligor;

(iv) The obligor's assets and net worth; and,
(v) The required balance available for family support used in underwriting VA guaranteed loans in the area.

The amount of indebtedness established will be such that the obligor's financial situation permits repayment of the debt to the Government in regular monthly installments of principal plus interest over a five year period commencing within one year after the date the promissory note is executed, except in those cases in which a lump sum settlement appears to be in the best interest of the Government or in which it appears the obligor may reasonably expect significant changes in his or her financial situation which would permit higher payments to be made during later periods of the life of the note.

(4) Determinations made under paragraphs (e)(1) and (e)(2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectible debts owing to the United States. Such determinations are discretionary on the part of VA and shall not constitute a defense to any legal action to terminate the loan nor vest any appellate right in an obligor which would require further review of the case.

(Authority: 38 U.S.C. 501, 3703(c)(1), 5302)

(f) Whenever any veteran disposes of residential property securing a guaranteed or insured loan obtained by him or her under 38 U.S.C. chapter 37, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as may be deemed appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 3713. The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Secretary may require. Release of the veteran from liability to the Secretary will not impair or otherwise affect the Secretary's guaranty or insurance liability on the loan, or the liability of the veteran to the holder. Any release of liability granted to a veteran by the Secretary shall inure to the spouse of such veteran. The release of the veteran from liability to the Secretary will constitute the Secretary's prior approval to a release of the veteran from liability on the loan by the holder thereof.

(Authority: 38 U.S.C. 3713)

(g) If, on or after July 1, 1972, any veteran disposes of residential property securing a guaranteed or insured loan obtained under 38 U.S.C. Chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 3713 and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if he determines that:

(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time he or she acquired the property.

(h) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property,
§ 36.4324 Release of security.
(a) Except upon full payment of the indebtedness the holder shall not release a lien or other right in or to real property held as security for a guaranteed or insured loan, or grant a fee or other interest in such property, without the prior approval of the Secretary, unless in the opinion of the holder such release does not involve a decrease in the value of the security in excess of $2,500: Provided, That the aggregate of the reduction in the original value of the security resultant from such releases without the Secretary's prior approval does not exceed $2,500.
(b) Holder may release from the lien personal property including crops without the prior approval of the Secretary.
(c) Except upon full payment of the indebtedness or upon the prior approval of the Secretary, the holder shall not release a lien under paragraph (a) or (b) of this section unless the consideration received for the release is commensurate with the fair market value of the property released and the entire consideration is applied to the indebtedness, or if encumbrance on other property is accepted in lieu of that released it shall be the holder's duty to acquire such lien on property of substantially equal value which is reasonably capable of serving the purpose for which the property released was utilized.
(d) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.
(e) The holder shall notify the Secretary of any such release or substitution of security within 30 days after completion of such transaction.
(f) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of

the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:
(1) The proposed purchaser is creditworthy;
(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and,
(3) The payments on the loan are current.
Should these requirements be satisfied, the holder may also release the veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(Authority: 38 U.S.C. 3714)


[EFFECTIVE DATE NOTE: 67 FR 62646, 62647, Oct. 8, 2002, amended paragraph (e), effective Nov. 7, 2002.]  
[PUBLISHER'S NOTE: UNITED STATES SUPREME COURT CASES SIGNIFICANTLY DISCUSSING SECTION -- United States v Shimer (1961) 367 US 374, 6 L Ed 2d 908, 81 S Ct 1554]
the Secretary shall release the obligation of the Secretary as guarantor or insurer, except when such act or omission consists of (1) failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or (2) an election and appropriate prosecution of legally available effective remedies with respect to the repossesion or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4317 of this part and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates in such notice to the holder; or (3) the release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on the assuming veteran's account pursuant to 38 U.S.C. chapter 37; or (4) the release of an obligor or obligors as provided in § 36.4314(d) of this part; or, the release of an obligor, or obligors, incident to the sale of property securing the loan which the holder is authorized to approve under the provisions of 38 U.S.C. 3714.

(Authority: 38 U.S.C. 3714)


§ 36.4325 Partial or total loss of guaranty or insurance.

(a) Subject to the incontestable provisions of 38 U.S.C. 3721 as to loans guaranteed or insured on or subsequent to July 1, 1948, there shall be no liability on account of a guaranty or insurance, or any certificate or other evidence thereof, with respect to a transaction in which a signature to the note, the mortgage, or any other loan papers, or the application for guaranty or insurance is a forgery; or in which the certificate of discharge or the certificate of eligibility is counterfeited, or falsified, or is not issued by the Government.

(1) Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any wilful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty or the insurance credit, shall relieve the Secretary of liability, or, as to loans guaranteed or insured on, or subsequent to July 1, 1948, shall constitute a defense against liability on account of the guaranty or insurance of the loan in respect to which the wilful misrepresentation, or the fraud, is practiced: Provided, That if a misrepresentation, although material, is not made wilfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(b) In taking security required by 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans, a holder shall obtain the required lien on property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated: Provided, That a title will not be unacceptable by reason of any of
the limitations on the quantum or quality of the property or title stated in § 36.4350(b) and if such holder fails in this respect or fails to comply with 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans with respect to:
(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. chapter 37 or the regulations concerning guaranty or insurance of loans to veterans,
(2) Inclusion of power to substitute trustees (§ 36.4327),
(3) The procurement and maintenance of insurance coverage (§ 36.4326),
(4) Advice to Secretary as to default (§ 36.4315),
(5) Notice of intention to begin action (§ 36.4317),
(6) Notice to the Secretary in any suit or action, or notice of sale (§ 36.4319),
(7) The release, conveyance, substitution, or exchange of security (§ 36.4324),
(8) Lack of legal capacity of a party to the transaction incident to which the guaranty or the insurance is granted (§ 36.4328),
(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,
(10) The taking into consideration of limitations upon the quantum or quality of the estate or property (§ 36.4350(b)),
(11) Any other requirement of 38 U.S.C. chapter 37 or the regulations concerning guaranty or insurance of loans to veterans which does not by the terms of said chapter or the regulations concerning guaranty or insurance of loans to veterans result in relieving the Secretary of all liability with respect to the loan,
no claim on the guaranty or insurance shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure or misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty or insurance payment shall subordinate the holder's right to those of the Secretary.
(c) If after the payment of a guaranty or an insurance loss, or after a loan is transferred pursuant to § 36.4318 (a), the fraud, misrepresentation or failure to comply with the regulations in this subpart as provided in this section is discovered and the Secretary determines that an increased loss to the government resulted therefrom the transferor or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such misrepresentation or failure.

§ 36.4326 Hazard insurance.
The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality. All moneys received under such policies covering
payment of insured losses shall be applied to restoration of the security or to the loan balance. Flood insurance will be required on any building or personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot guarantee a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. [39 FR 7785, Feb. 28, 1974; 62 FR 5530, 5531, Feb. 6, 1997]

(42 U.S.C. 4012a, 4106(a))
[EFFECTIVE DATE NOTE: 62 FR 5530, 5531, Feb. 6, 1997, revised this section, effective Feb. 6, 1997.]

§ 36.4327 Substitution of trustees.
In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed or insured loan, if it names trustees, or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees, or other person with such power to sell, who shall succeed to all the rights, powers and duties of the trustees, or other person, originally designated. [13 FR 7279, Nov. 27, 1948]

§ 36.4328 Capacity of parties to contract.
Nothing in §§ 36.4300 to 36.4375, inclusive, shall be construed to relieve any lender of responsibility otherwise existing, for any loss caused by the lack of legal capacity of any person to contract, convey, or encumber, or caused by the existence of other legal disability or defects invalidating, or rendering unenforceable in whole or in part, either the loan obligation or the security therefor. [13 FR 7279, Nov. 27, 1948]

§ 36.4329 Geographical limits.
Any real property purchased, constructed, altered, improved, or repaired with the proceeds of a guaranteed or insured loan shall be situated within the United States which for purposes of 38 U.S.C. Chapter 37 is here defined as the several States, Territories and possessions, and the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands. [46 FR 43673, Aug. 31, 1981]

§ 36.4330 Maintenance of records.
(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall
be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The lender shall retain copies of all loan origination records on a VA-guaranteed loan for at least two years from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a lender or holder pertaining to loans guaranteed or insured by the Secretary.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0515)


[EFFECTIVE DATE NOTE: 63 FR 12001, 12004, March 12, 1998, revised this section, effective Apr. 13, 1998.]

§ 36.4332 Delivery of notice.
Any notice required by §§ 36.4300 to 36.4375 to be given the Secretary must be in writing or such other communications medium as may be approved by an official designated in § 36.4342 and delivered, by mail or otherwise, to the VA office at which the guaranty or insurance was issued, or to any changed address of which the holder has been given notice. Such notice must plainly identify the case by setting forth the name of the original veteran-obligor and the file number assigned to the case by the Secretary, if available, or otherwise the name and serial number of the veteran. If mailed, the notice shall be by certified mail when so provided by §§ 36.4300 to 36.4375. This paragraph does not apply to legal process.

[58 FR 29117, May 19, 1993]

§ 36.4333 Satisfaction of indebtedness.
Upon full satisfaction of a guaranteed loan by payment or otherwise it shall be the duty of the holder to cancel the endorsement, if any, of the Secretary; and forthwith inform the Secretary of such cancellation. In the event the Secretary's liability thereon is evidenced by an instrument separate from the instrument evidencing the debtor's obligation, the instrument evidencing the obligation of the Secretary shall be returned to the Department of Veterans Affairs office issuing same, or to the central office, with the holder's cancellation or endorsement of release thereon.
§ 36.4334 Incorporation by reference.
Regulations issued under 38 U.S.C. Chapter 37 and in effect on the date of any loan which is submitted and accepted or approved for a guaranty or for insurance thereunder, shall govern the rights, duties, and liabilities of the parties to such loan and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.
[24 FR 2655, Apr. 7, 1959]

§ 36.4335 Supplementary administrative action.
Notwithstanding any requirement, condition, or limitation stated in or imposed by the regulations concerning the guaranty or insurance of loans to veterans, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, is hereby authorized, if he or she finds the interests of the Government are not adversely affected, to relieve undue prejudice to a debtor, holder, or other person, which might otherwise result, provided no such action may be taken which would impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural (not substantive) nature, any employee designated in § 36.4342 is hereby authorized to grant similar relief if he or she finds the failure or error of the lender was due to misunderstanding or mistake and that the interests of the Government are not adversely affected. Provisions of the regulations considered to be of an administrative or procedural (nonsubstantive) nature are limited to the following:
(a) The requirement in § 36.4314(e) that a holder promptly forward an advice of the terms of any agreement effecting a reamortization or extension of a loan.
(b) The 45-day requirement in § 36.4315(a) concerning the giving of notice of default.
(c) The requirement in § 36.4317 that a holder give 30 days advance notice of its intention to foreclose.
(d) The requirement in § 36.4317(b) that a holder give notice of repossession of personal property within 10 days after such repossession has occurred.
(e) The requirement in § 36.4307(a) that a lender obtain in prior approval of the Secretary before closing a joint loan if the lender or class of lenders is eligible or has been approved by the Secretary to close loans on the automatic basis pursuant to 38 U.S.C. 3702(d).
(f) The requirements in § 36.4303(k) of this part concerning the giving of notice in assumption cases under 38 U.S.C. 3714.

[EFFECTIVE DATE NOTE: 63 FR 12001, 12004, March 12, 1998, amended this section, effective Apr. 13, 1998.]

§ 36.4336 Eligibility of loans; reasonable value requirements.
(a) Evidence of guaranty or insurance shall be issued in respect to a loan for any of the purposes specified in 38 U.S.C. 3710(a) only if:
(1) The proceeds of such loan have been used to pay for the property purchased, constructed, repaired, altered, or improved and;
(2)(i) Except as to refinancing loans pursuant to 38 U.S.C. 3710(a)(8), (a)(9)(B)(i), (a)(11), or (b)(7) and energy efficient mortgages pursuant to 38 U.S.C. 3710(d), the loan (including any scheduled deferred interest added to principal) does not exceed the reasonable value of the property or projected reasonable value of a new home which is security for a graduated payment mortgage loan, as appropriate, as determined by the Secretary, and
(ii) For the purpose of determining the reasonable value of a graduated payment mortgage loan to purchase a new home, the reasonable value of the property as of the time the loan is made shall be calculated to increase at a rate not in excess of 2.5 percent per year, but in no event may the projected value of the property exceed 115 percent of the initially established reasonable value, and
(Authority: 38 U.S.C. 3703(d)(2))
(3) The veteran has certified, in such form as the Secretary may prescribe, that the veteran has paid in cash from his or her own resources on account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.
(4) A loan guaranteed under 38 U.S.C. 3710(d) which includes the cost of energy efficient improvements may exceed the reasonable value of the property. The cost of the energy efficient improvements that may be financed may not exceed $3,000; provided, however, that up to $6,000 in energy efficient improvements may be financed if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficient improvements.
(Authority: 38 U.S.C. 3710)
(b) Notwithstanding that the aggregate of the loan amount in the case of loans for the purposes specified in paragraph (a) of this section, and the amount remaining unpaid on taxes, special assessments, prior mortgage indebtedness, or other obligations of any character secured by enforceable superior liens or a right to such lien existing as of the date the loan is closed exceeds the reasonable value of such property as of said date and that evidence of guaranty or insurance credit is issued in respect thereof, as between the holder and Secretary (for the purpose of computing the claim on the guaranty or insurance and for the purposes of §36.4320, and all accounting), the indebtedness which is the subject of the guaranty or insurance shall be deemed to have been reduced as of the date of the loan by a sum equal to such excess, less any amounts secured by liens released or paid on the obligations secured by such superior liens or rights by a holder or others without expense to or obligation on the debtor resulting from such payment, or release of lien or right; and all payments made on the loan shall be applied to the indebtedness as so reduced. Nothing in this paragraph affects any right or liability resulting from fraud or willful misrepresentation.
(Authority: 38 U.S.C. 501, 3703(c)(1); 38 U.S.C. 501, 3710, 3712)
1985; 60 FR 38262, July 26, 1995]
§ 36.4337 Underwriting standards, processing procedures, lender responsibility, and lender certification.

(a) Use of standards. The standards contained in paragraphs (c) through (j) of this section will be used to determine whether the veteran's present and anticipated income and expenses, and credit history are satisfactory. These standards do not apply to loans guaranteed pursuant to 38 U.S.C. 3710(a)(8) except for cases where the Secretary is required to approve the loan in advance under § 36.4306a.

(Authority: 38 U.S.C. 3703, 3710)

(b) Waiver of standards. Use of the standards in paragraphs (c) through (j) of this section for underwriting home loans will be waived only in extraordinary circumstances when
the Secretary determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.

(c) Methods. The two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income are debt-to-income ratio and residual income analysis. They are described in paragraphs (d) through (f) of this section. Ordinarily, to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file), the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent, the second level review and statement of justification are not required.

(4) In any case described by paragraphs (c)(1) and (c)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors, as set forth in paragraph (c)(5) of this section, justifying the approval of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean that the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on the criteria set forth in paragraph (g) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;
(ii) Conservative use of consumer credit;
(iii) Minimal consumer debt;
(iv) Long-term employment;
(v) Significant liquid assets;
(vi) Downpayment or the existence of equity in refinancing loans;
(vii) Little or no increase in shelter expense;
(viii) Military benefits;
(ix) Satisfactory homeownership experience;
(x) High residual income;
(xi) Low debt-to-income ratio;
(xii) Tax credits of a continuing nature, such as tax credits for child care; and
(xiii) Tax benefits of home ownership.
(6) The list in paragraph (c)(5) of this section is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(d) Debt-to-income ratio. A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) of the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; e.g., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent, the steps cited in paragraphs (c)(1) through (c)(6) of this section apply.

(e) Residual income guidelines. The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. All members of the household must be included in determining if the residual income is sufficient. They must be counted even if the veteran's spouse is not joining in title or on the note, or if there are any other individuals depending on the veteran for support, such as children from a spouse's prior marriage who are not the veteran's legal dependents. It is appropriate, however, to reduce the number of members of a household to be counted for residual income purposes if there is sufficient verified income not otherwise included in the loan analysis, such as child support being regularly received as discussed in paragraph (e)(4) of this section. In the case of a spouse not to be obligated on the note, verification that he/she has stable and reliable employment as discussed in paragraph (f)(3) of this section would allow not counting the spouse in determining the sufficiency of the residual income. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $79,999 and for loan amounts of $80,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher-than-average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA-guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets, such as cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example,
if an application indicates little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (c) through (j) of this section. The residual income guidelines are as follows:

(1) Table of residual incomes by region (for loan amounts of $ 79,999 and below):

<table>
<thead>
<tr>
<th>Family size fn*</th>
<th>Northeast</th>
<th>Midwest</th>
<th>South</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>390</td>
<td>382</td>
<td>382</td>
<td>425</td>
</tr>
<tr>
<td>2</td>
<td>654</td>
<td>641</td>
<td>641</td>
<td>713</td>
</tr>
<tr>
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<td>788</td>
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</tr>
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<td>888</td>
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</tr>
<tr>
<td>5</td>
<td>921</td>
<td>902</td>
<td>902</td>
<td>1,004</td>
</tr>
</tbody>
</table>

fn* For families with more than five members, add $ 75 for each additional member up to a family of seven. "Family" includes all members of the household.

(2) Table of residual incomes by region (for loan amounts of $ 80,000 and above):

<table>
<thead>
<tr>
<th>Family size fn*</th>
<th>Northeast</th>
<th>Midwest</th>
<th>South</th>
<th>West</th>
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</thead>
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<tr>
<td>1</td>
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<td>755</td>
<td>738</td>
<td>738</td>
<td>823</td>
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<td>3</td>
<td>909</td>
<td>889</td>
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<td>990</td>
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<td>4</td>
<td>1,025</td>
<td>1,003</td>
<td>1,003</td>
<td>1,117</td>
</tr>
<tr>
<td>5</td>
<td>1,062</td>
<td>1,039</td>
<td>1,039</td>
<td>1,158</td>
</tr>
</tbody>
</table>

fn* For families with more than five members, add $ 80 for each additional member up to a family of seven. "Family" includes all members of the household.

(4) Military adjustments. For loan applications involving an active-duty servicemember or military retiree, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraph (e) of this section.)

(f) Stability and reliability of income. Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(1) Verification. Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property states, if the spouse will not be contractually obligated on the loan, Regulation B (12 CFR part 202), promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, prohibits any request for, or consideration of, information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (f)(4) of this section). In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be considered when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling, or other training must be secured. Any periods of unemployment must be explained. Employment verifications and pay stubs must be no more than 120 days (180 days for new construction) old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.

(2) Active-duty, Reserve, or National Guard applicants. (i) In the case of an active-duty applicant, a military Leave & Earnings Statement is required and will be used instead of an employment verification. The statement must be no more than 120 days old (180 days for new construction) and must be the original or a lender-certified copy of the original. For loans closed automatically, this requirement is satisfied if the date of the Leave & Earnings Statement is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA.
(ii) For servicemembers within 12 months of release from active duty, or members of the Reserves or National Guard within 12 months of release, one of the following is also required:

(A) Documentation that the servicemember has in fact already reenlisted or extended his/her period of active duty or Reserve or National Guard service to a date beyond the 12-month period following the projected closing of the loan.

(B) Verification of a valid offer of local civilian employment following release from active duty. All data pertinent to sound underwriting procedures (date employment will begin, earnings, etc.) must be included.

(C) A statement from the servicemember that he/she intends to reenlist or extend his/her period of active duty or Reserve or National Guard service to a date beyond the 12 month period following the projected loan closing date, and a statement from the servicemember's commanding officer confirming that the servicemember is eligible to reenlist or extend his/her active duty or Reserve or National Guard service as indicated and that the commanding officer has no reason to believe that such reenlistment or extension will not be granted.

(D) Other unusually strong positive underwriting factors, such as a downpayment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only minimal income from the active duty servicemember or member of the Reserves or National Guard is needed to qualify.

(iii) Each active-duty member who applies for a loan must be counseled through the use of VA Form 26-0592, Counseling Checklist for Military Homebuyers. Lenders must submit a signed and dated VA Form 26-0592 with each prior approval loan application or automatic loan report involving a borrower on active duty.

(3) Income reliability. Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and, thus, should be properly considered in determining ability to meet the mortgage payments. If an employer puts N/A or otherwise declines to complete a verification of employment statement regarding the probability of continued employment, no further action is required of the lender. Reliability will be determined based on the duration of the borrower's current employment together with his or her overall documented employment history. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. Generally, the reliability of such income cannot be demonstrated unless the income has continued for 2 years. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement, must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income may, if properly verified for at least 12 months, be used to offset the payments due on debts and obligations of an intermediate term, i.e., 6 to 24 months. Such income must be described in the loan file. The amount of any pension or compensation and other income, such as dividends from stocks, interest from bonds,
savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset intermediate-term debts, as described in this paragraph. Also, the likely duration of certain military allowances cannot be determined and, therefore, will be used only to offset intermediate-term debts, as described in this paragraph. Such allowances are: Pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and, thus, should be added to the base pay. Income derived from service in the Reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue beyond 12 months. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset intermediate-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94-239, income from public assistance programs is used to qualify for a loan if it can be determined that the income will probably continue for 3 years or more.

(4) Tax-exempt income. Special consideration can be given to verified nontaxable income once it has been established that such income is likely to continue (and remain untaxed) into the foreseeable future. Such income includes certain military allowances, child support payments, workers' compensation benefits, disability retirement payments and certain types of public assistance payments. In such cases, current income tax tables may be used to determine an amount which can be prudently employed to adjust the borrower's actual income. This adjusted or "grossed up" income may be used to calculate the monthly debt-to-income ratio, provided the analysis is documented. Only the borrower's actual income may be used to calculate the residual income. Care should be exercised to ensure that the income is in fact tax-exempt.

(5) Alimony, child support, maintenance, workers' compensation, foster care payments. (i) If an applicant chooses to reveal income from alimony, child support or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681(b)) limits the permissible purposes for which credit reports may be ordered, in the absence of written
instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(ii) If the applicant chooses to reveal income related to workers' compensation, it will be considered as income to the extent it can be determined such income will continue.

(iii) Income received specifically for the care of any foster child(ren) may be counted as income if documented. Generally, however, such foster care income is to be used only to balance the expenses of caring for the foster child(ren) against any increased residual income requirements.

(6) Military quarters allowance. With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. A Department of Defense form, DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. The applicant's quarters allowance cannot be considered unless item b (Permanent) or d is completed on DD Form 1747, dated October 1990. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for on-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(7) Automobile (or similar) allowance. Generally, automobile allowances are paid to cover specific expenses related to an applicant's employment, and it is appropriate to use such income to offset a corresponding car payment. However, in some instances, such an allowance may exceed the car payment. With proper documentation, income from a car allowance which exceeds the car payment can be counted as effective income. Likewise, any other similar type of allowance which exceeds the specific expense involved may be added to gross income to the extent it is documented to exceed the actual expense.

(8) Commissions. When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment
of such commissions and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. Lenders should also obtain signed and dated individual income tax returns, plus applicable schedules, for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. The length of the veteran's employment in the type of occupation for which commissions are paid is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position. Generally, income from commissions is considered stable when the applicant has been receiving such income for at least 2 years. Less than 2 years of income from commissions cannot usually be considered stable. When an applicant has received income from commissions for less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development.

(9) Self-employment. Generally, income from self-employment is considered stable when the applicant has been in business for at least 2 years. Less than 2 years of income from self-employment cannot usually be considered stable unless the applicant has had previous related employment and/or extensive specialized training. When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development. The following documentation is required for all self-employed borrowers:

(i) A profit-and-loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and balance sheet based on the financial records. The financial statement must be sufficient for a loan underwriter to determine the necessary information for loan approval and an independent audit (on the veteran and/or the business) by a Certified Public Accountant will be required if necessary for such determination; and

(ii) Copies of signed individual income tax returns, plus all applicable schedules for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record, must be obtained. If the business is a corporation or partnership, copies of signed Federal business income tax returns for the previous two years plus all applicable schedules for the corporation or partnership must be obtained; and

(iii) If the business is a corporation or partnership, a list of all stockholders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanation as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(10) Recently discharged veterans. Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA-guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements.
for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(i) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(ii) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or an apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(iii) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(iv) To illustrate the provisions of paragraph (f)(10), it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between these extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(11) Employment of short duration. The provisions of paragraph (f)(7) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and
previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year as well as signed and dated copies of complete income tax returns, including all schedules for the past 2 years or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(12) Rental income -- (i) Multi-unit subject property. When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units or other collection activities. The amount of rental income to be used in the loan analysis will be based on 75 percent of the amount indicated on the lease or rental agreement, unless a greater percentage can be documented.

(ii) Rental of existing home. Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(iii) Other rental property. If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (f)(7) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(13) Taxes and other deductions. Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (f)(14) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those states with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet.
portion of IRS Form W-4, Employee’s Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(14) Mortgage credit certificates. (i) The Internal Revenue Code (26 U.S.C.) as amended by the Tax Reform Act of 1984, allows states and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(ii) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(iii) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30 percent x $600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12 x $180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 98-369) or $167 per month ($2,000/12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600-$167). This reduction should also be reflected when calculating Federal income tax.

(iv) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the example in paragraph (f)(14)(iii) of this section, the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500/12).

(g) Credit. The conclusion reached as to whether or not the veteran and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (12 CFR part 202), promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act, requires that lenders, in evaluating creditworthiness, shall consider, on the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which the applicant can demonstrate accurately reflects the applicant's creditworthiness. In other than community property states, if the spouse will not be contractually obligated on the loan, Regulation B prohibits any request for or consideration of information about the spouse concerning income, employment, assets or liabilities. In community property states, information concerning a spouse may be requested and considered in the same manner as that for the applicant.

(1) Adverse data. If the analysis develops any derogatory credit information and, despite such facts, it is determined that the veteran and spouse are satisfactory credit risks, the basis for the decision must be explained. If a veteran and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record...
for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. Such defenses are not applicable when the debt has been reduced to judgment. Where a collection account has been established, if it is determined that the borrower is a satisfactory credit risk, it is not mandatory that such an account be paid off in order for a loan to be approved. Court-ordered judgments, however, must be paid off before a new loan is approved.

(2) Bankruptcy. When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last one to two years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained credit subsequent to the bankruptcy and has met the credit payments in a satisfactory manner over a continued period; and
(ii) The bankruptcy was caused by circumstances beyond the control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. Divorce is not generally viewed as beyond the control of the borrower and/or spouse. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. If a borrower or spouse has been discharged in bankruptcy within the past 12 months, it will not generally be possible to determine that the borrower or spouse is a satisfactory credit risk.

(3) Petition under Chapter 13 of Bankruptcy Code. A petition under chapter 13 of the Bankruptcy Code (11 U.S.C.) filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled-down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may nevertheless be given if at least 12 months' worth of payments have been made satisfactorily and the Trustee or Bankruptcy Judge approves of the new credit.

(4) Foreclosures. (i) When the credit information shows that the veteran or spouse has had a foreclosure on a prior mortgage; e.g., a VA-guaranteed or HUD-insured mortgage, this will not in itself disqualify the borrower from obtaining the loan. Lenders and field station personnel should refer to the preceding guidelines on bankruptcies for cases involving foreclosures. As with a borrower who has been adjudicated bankrupt, it is necessary to develop complete information as to the facts and circumstances of the foreclosure.

(ii) When VA pays a claim on a VA-guaranteed loan as a result of a foreclosure, the original veteran may be required to repay any loss to the Government. In some instances
VA may waive the veteran's debt, in part or totally, based on the facts and circumstances of the case. However, guaranty entitlement cannot be restored unless the Government's loss has been repaid in full, regardless of whether or not the debt has been waived, compromised, or discharged in bankruptcy. Therefore, a veteran who is seeking a new VA loan after having experienced a foreclosure on a prior VA loan will in most cases have only remaining entitlement to apply to the new loan. The lender should assure that the veteran has sufficient entitlement for its secondary marketing purposes.

5) Federal debts. An applicant for a Federally-assisted loan will not be considered a satisfactory credit risk for such loan if the applicant is presently delinquent or in default on any debt to the Federal Government, e.g., a Small Business Administration loan, a U.S. Guaranteed Student loan, a debt to the Public Health Service, or where there is a judgment lien against the applicant's property for a debt owed to the Government. The applicant may not be approved for the loan until the delinquent account has been brought current or satisfactory arrangements have been made between the borrower and the Federal agency owed, or the judgment is paid or otherwise satisfied. Of course, the applicant must also be able to otherwise qualify for the loan from an income and remaining credit standpoint. Refinancing under VA's interest rate reduction refinancing provisions, however, is allowed even if the borrower is delinquent on the VA guaranteed mortgage being refinanced. Prior approval processing is required in such cases.

6) Absence of credit history. The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies that occurred over 3 years ago.

7) Consumer credit counseling plan. If a veteran, or veteran and spouse, have prior adverse credit and are participating in a Consumer Credit Counseling plan, they may be determined to be a satisfactory credit risk if they demonstrate 12 months' satisfactory payments and the counseling agency approves the new credit. If a veteran, or veteran and spouse, have good prior credit and are participating in a Consumer Credit Counseling plan, such participation is to be considered a neutral factor, or even a positive factor, in determining creditworthiness.

8) Re-establishment of satisfactory credit. In circumstances not involving bankruptcy, satisfactory credit is generally considered to be reestablished after the veteran, or veteran and spouse, have made satisfactory payments for 12 months after the date of the last derogatory credit item.

9) Long-term v. short-term debts. All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities, to be deducted from the total income in determining ability to meet...
the mortgage payments are accounts that, generally, are of a relatively long term, i.e., 10 months or over. Other accounts for terms of less than 10 months must, of course, be considered in determining ability to meet family expenses. Certainly, any severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $300 on an auto loan with a remaining balance of $1,500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $300 payments for the first, most critical months of the home loan.

(10) Requirements for verification. If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be dated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 120 days old (180 days for new construction) to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days (180 days for new construction) of the date the note is signed. For prior approval loans, this requirement will be considered satisfied if the date of the credit report or verification is within 120 days of the date of the application is received by VA. Of major significance are the applicant's rental history and outstanding or recently retired mortgages, if any, particularly prior VA loans. Lenders should be sure ratings on such accounts are obtained; a written explanation is required when ratings are not available. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled. When a pay stub or leave-and-earnings statement indicates an allotment, the lender must investigate the nature of the allotment(s) to determine whether the allotment is related to a debt. Debts assigned to an ex-spouse by a divorce decree will not generally be charged against a veteran-borrower.

(11) Job-related expenses. Known job-related expenses should be documented. This will include costs for any dependent care, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(12) Credit reports. Credit reports obtained by lenders on VA-guaranteed loan applications must be either a three-file Merged Credit Report (MCR) or a Residential
Mortgage Credit Report (RMCR). If used, the RMCR must meet the standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. All credit reports obtained by the lender must be submitted to VA.

(h) Borrower's personal and financial status. The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment (see § 36.4336(a)(3)) of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA.) Verifications must be no more than 120 days old (180 days for new construction) to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 120 days (180 days for new construction) of the date of the veteran's application to the lender. For prior approval loans, this requirement will be considered satisfied if the verification of employment is dated within 120 days of the date the application is received by VA. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(i) Estimated monthly shelter expenses. It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(j) Lender responsibility. (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.
(3) In cases where the real estate broker/agent or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party, such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (j)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (j)(3) and (j)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports, such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(k) Lender certification. Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in this section.

(1) Definitions. The definitions contained in part 42 of this title and the following definitions are applicable in this section.

(i) Another appropriate amount. In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(A) The materiality and importance of the false certification to the determination to issue the guaranty or to approve the assumption;
(B) The frequency and past pattern of such false certifications by the lender; and
(C) Any exculpatory or mitigating circumstances.

(ii) Complaint includes the assessment of liability served pursuant to this section.

(iii) Defendant means a lender named in the complaint.

(iv) Lender includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) Procedures for certification. (i) As a condition to VA issuance of a loan guaranty on all loans closed on or after October 27, 1994, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after November 17, 1997, the following certification shall accompany each loan closing or assumption package:

The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in
chapter 37 of title 38 United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief.

(ii) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(I) Assessment of liability. (1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) Hearing procedures. A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) Additional remedies. Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and part 44 of this title or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732.

(Approved by the Office of Management and Budget under control number 2900-0521)


(38 U.S.C. 3703, 3710)

[EFFECTIVE DATE NOTE: 64 FR 19906, 19910, Apr. 23, 1999, revised paragraph (a), effective June 7, 1999.]

§ 36.4338 Death or insolvency of holder.

(a) Immediately upon the death of the holder and without the necessity of request or other action by the debtor or the Secretary, all sums then standing as a credit balance in a trust,
or deposit, or other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the note shall, nevertheless, be treated as a setoff and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance: Provided, That any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at the holder's option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This paragraph shall be applicable whether the estate of the deceased holder is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of holder;
(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the holder, whether voluntary or involuntary;
(3) Appointment of a general or ancillary receiver for the holder's property; or in any case
(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraph (a) or (b) of this section, interest on the note and on the credit balance of the deposits mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid advances, if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a) of this section.

[13 FR 7279, Nov. 27, 1948, as amended at 40 FR 34593, Aug. 18, 1975]

§ 36.4339 Qualification for designated fee appraisers.
To qualify for approval as a designated fee appraiser, an applicant must show to the satisfaction of the Secretary that his or her character, experience, and the type of work in which he or she has had experience for at least 5 years qualifies the applicant to competently appraise and value within a prescribed area the type of property to which the approval relates.

[40 FR 34593, Aug. 18, 1975]

§ 36.4340 Restriction on designated fee appraisers.
(a) A designated fee appraiser shall not make an appraisal, excepting of alterations, improvements, or repairs to real property entailing a cost of not more than $ 3,500, if such appraiser is an officer, director, trustee, employer, or employee of the lender, contractor, or vendor.
(b) An appraisal made by a designated fee appraiser shall be subject to review and adjustment by the Secretary. The amount determined to be proper upon any such review or adjustment shall constitute the "reasonable value" for the purpose of determining the eligibility of the related loan.

§ 36.4342 Delegation of authority.
(a) Except as hereinafter provided, each employee of the Department of Veterans Affairs heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the guaranty or insurance of loans and the rights and liabilities arising therefrom, including but not limited to the adjudication and allowance, disallowance, and compromise of claims; the collection or compromise of amounts due, in money or other property; the extension, rearrangement, or acquisition of loans; the management and disposition of secured and unsecured notes and other property; and those functions expressly or impliedly embraced within paragraphs (2) to (6), inclusive, of 38 U.S.C. 3720(a). Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Secretary, evidence of guaranty or of insurance credits and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property, or, of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.
(b) Designated positions:
Under Secretary for Benefits
Director, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer
The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Under Secretary for Benefits, be redelegated.
(c) Nothing in this section shall be construed (1) to authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 501 or 3703(a)(2) or to sue, or enter appearance for and on behalf of the Secretary, or confess judgment against the Secretary in any court without the Secretary's prior authorization; or (2) to include the authority to exercise those powers delegated to the Under Secretary for Benefits, or the Director, Loan Guaranty Service, under §§ 36.4320(j), 36.4335 or 36.4343:
Provided, That, anything in the regulations concerning guaranty or insurance of loans to veterans to the contrary notwithstanding, any evidence of guaranty or insurance issued on or after July 1, 1948, by any of the employees designated in paragraph (b) of this section
or by any employee designated an authorized agent or a loan guaranty agent shall be deemed to have been issued by the Secretary, subject to the defenses reserved in 38 U.S.C. 3721.

(d) Each Regional Office, regional office and insurance center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours.

(e)(1) Authority is hereby delegated to the officers, designated in paragraph (e)(2) of this section, of the entity performing loan servicing functions under a contract with the Secretary to execute on behalf of the Secretary all documents necessary for the servicing and termination of a loan made or acquired by the Secretary pursuant to 38 U.S.C. chapter 37 (other than under subchapter vi of that chapter). Documents executed under this paragraph include but are not limited to: loan modification agreements, notices of default and other documents necessary for loan foreclosure or termination, notices of appointment or substitution of trustees under mortgages or deeds of trust, releases or satisfactions of mortgages or deeds of trust, acceptance of deeds-in-lieu of foreclosure, loan assumption agreements, loan assignments, deeds tendered upon satisfaction or conversion of an installment land sales contract, and documents related to filing, pursuing and settling claims with insurance companies relating to hazard coverage on properties securing loans being serviced.

(2) The designated officers are: Vice President, Assistant Vice President, and Assistant Secretary.

(3) The Director, Loan Guaranty Service, Washington, DC, shall maintain a log listing all persons authorized to execute documents pursuant to paragraph (e) of this section and the dates such persons held such authority, together with certified copies of resolutions of the board of directors of the entity authorizing such individuals to perform the functions specified in paragraph (e)(1) of this section. These records shall be available for public inspection and copying at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

(f)(1) Authority is hereby delegated to the officers, designated in paragraph (f)(2) of this section, of the entity performing property management and sales functions under a contract with the Secretary to execute on behalf of the Secretary all documents necessary for the management and sales of residential real property acquired by the Secretary pursuant to 38 U.S.C. chapter 37. Documents executed under this paragraph include but are not limited to: sales contracts, deeds, documents relating to removing adverse occupants, and any documents relating to sales closings. The authorization to execute deeds is limited to deeds other than general warranty deeds.

(2) The designated officers are: Senior Vice President, Vice President, Assistant Vice President, Assistant Secretary, Director, Senior Manager, and Regional Manager.

(3) The Director, Loan Guaranty Service, Washington, DC, shall maintain a log listing all persons authorized to execute documents pursuant to paragraph (f) of this section and the dates such persons held such authority, together with certified copies of resolutions of the
board of directors of the entity authorizing such individuals to perform the functions specified in paragraph (f)(1) of this section. These records shall be available for public inspection and copying at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

(Authority: 38 U.S.C. 501, 3720(a)(5))


[EFFECTIVE DATE NOTE: 69 FR 10618, 10619, Mar. 8, 2004, added paragraph (f) and removed the second authority citation, effective Mar. 8, 2004.]

§ 36.4343 Cooperative loans.

(a) Any loan, which is (1) related to an enterprise in which more than 10 individuals will participate; or (2) to be made for the purchase or construction of residential units in any housing development, cooperative or otherwise, the title to which development or to the individual units therein is not to be held directly by the veteran-participants, or which contemplates the ownership or maintenance of more than three units or of their major appurtenances in common, to be eligible for guaranty or insurance shall require prior approval of the Under Secretary for Benefits, or the Director, Loan Guaranty Service, who may issue such approval upon such conditions and limitations deemed appropriate, not inconsistent with the provisions of 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(b) The issuance of such approval with respect to a residential development under paragraph (a)(2) of this section also shall be subject to such conditions and stipulation as in the judgment of the approving officer are possible and proper to (1) afford reasonable and feasible protection to the rights of the Government as guarantor or insurer, and as subrogee, and to each veteran-participant against loss of his or her respective equity consequent upon the failure of other participants to discharge their obligations; (2) provide for a reasonable and workable plan for the operation and management of the project; (3) limit the personal liability of each veteran-participant to those sums allocable on a proper ratable basis to the purchase, cost, and maintenance of his or her individual unit or participating interest; (4) limit commercial features to those reasonably calculated to promote the economic soundness of the project and the living convenience of the participants, retaining the essential character of a residential project.

(c) No such project, development, or enterprise may be approved which involves an initial grouping of more than 500 veterans, or a cost of more than five million dollars, unless it is conclusively shown to the satisfaction of the approving officer that a greater number of veterans or dollar amount will assure substantial advantages to the veteran-participants which could not be achieved in a smaller project.

(d) When approved as in this section provided, and upon performance of the conditions indicated in the prior approval, proper guaranty certificate or certificates may be issued in connection with the loan or loans to be guaranteed on behalf of eligible veterans participating in the project, development or enterprise not to exceed in total amount the

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§ 36.4344 Lender Appraisal Processing Program.

(a) Delegation of authority to lenders to review appraisals and determine reasonable value.

(1) To be eligible for delegation of authority to review VA appraisals and determine the reasonable value of properties to be purchased with VA guaranteed loans, a lender must (i) have automatic processing authority under 38 U.S.C. 3702(d), and (ii) employ one or more staff appraisal reviewers acceptable to the Secretary.

(2) To qualify as a lender's staff appraisal reviewer an applicant must be a full-time member of the lender's permanent staff and may not be employed by, or perform services for, any other mortgagee. The individual must not engage in any private pursuits in which there will be, or appear to be, any conflict of interest between those pursuits and his/her duties, responsibilities, and performance as a Lender Appraisal Processing Program (LAPP) staff appraisal reviewer. Three years of experience is necessary to qualify as a lender's staff appraisal reviewer. That experience must demonstrate a knowledge of, and the ability to apply industry-accepted principles, methods, practices and techniques of appraising, and the ability to competently determine the value of property within a prescribed geographical area. The individual must demonstrate the ability to review the work of others and to recognize deviations from accepted appraisal principles, practices, and techniques, errors in computations, and unjustifiable and unsupported conclusions.

(3) Lenders that meet the requirements of 38 U.S.C. 3702(d), and have a staff appraisal reviewer determined acceptable by VA, will be authorized to review appraisals and make reasonable value determinations on properties that will be security for VA guaranteed loans. The lender's authorization will be subject to a one-year probationary period. Additionally, lenders must satisfy initial and subsequent VA office case review requirements prior to being allowed to determine reasonable value without VA involvement. The initial office case review requirement must be satisfied in the VA regional office in whose jurisdiction the lender's staff appraisal reviewer is located before the LAPP authority may be utilized by that lender in any other VA office's jurisdiction.

(4) To satisfy the initial office case review requirement, the first five cases of each lender staff appraisal reviewer involving properties in the regional office location where the staff appraisal reviewer is located will be processed by him or her up to the point where he or
she has made a reasonable value determination and fully drafted, but not issued, the
lender's notification of reasonable value letter to the veteran. At that point, and prior to
loan closing, each of the five cases will be submitted to the local VA office. After a staff
review of each case, VA will issue a Certificate of Reasonable Value, which the lender
may use in closing the loan automatically if it meets all other requirements of the VA. If
these five cases are found to be acceptable by VA, the lender's staff appraisal reviewer
will be allowed to fully process subsequent appraisals for properties located in that VA
office's jurisdiction without prior submission to VA and issuance by VA of a Certificate
of Reasonable Value. Lenders must also satisfy a subsequent VA office case review
requirement in each additional VA office location in which they desire to extend and
utilize this authority. Under this requirement, the lender must have first satisfied the
initial office case review requirement and then must submit to the additional VA office(s)
the first case each staff appraisal reviewer processes in the jurisdiction of that office. As
provided under the initial office case review requirement, VA office personnel will issue
a Certificate of Reasonable value for this case and subsequently determine the
acceptability of the lender's staff appraisal reviewer's processing. If VA finds this first
case to be acceptable, the lender's staff appraisal reviewer will be allowed to fully process
subsequent cases in that additional VA office's jurisdiction without prior submission to
VA. The initial and subsequent office case review requirements may be expanded by VA
if acceptable performance has not been demonstrated. After satisfaction of the initial and
subsequent office case review requirements, routine reviews of LAPP cases will be made
by VA staff based upon quality control procedures established by the Under Secretary for
Benefits. Such review will be made on a random sampling or performance related basis.
During the probationary period a high percentage of reviews will be made by VA staff.
(4) The following certification by the lender's nominated staff appraisal reviewer must be
provided with the lender's application for delegation of LAPP authority:
I hereby acknowledge and represent that by signing the Uniform Residential Appraisal
Report (URAR), FHLMC (Federal Home Loan Mortgage Corporation) Form 70/FNMA
(Federal Notice Mortgage Association) Form 1004, I am certifying, in all cases, that I
have personally reviewed the appraisal report. In doing so I have considered and utilized
recognized professional appraisal techniques, have found the appraisal report to have
been prepared in compliance with applicable VA requirements, and concur with the
recommendations of the fee appraiser, who was assigned by VA to the case. Furthermore,
in those cases where clarifications or corrections have been requested from the VA fee
appraiser there has been no pressure or influence exerted on that appraiser to remove or
change information that might be considered detrimental to the subject property, or VA's
interests, or to reach a predetermined value for that property. Signature of Staff Appraisal
Reviewer.
(5) Other certifications required from the lender will be specified with particularity in the
separate instructions issued by the Secretary, as noted in § 36.4344(b).
(b) Instructions for LAPP Procedures. The Secretary will publish separate instructions for
processing appraisals under the Lenders Appraisal Processing Program. Compliance with
these regulations and the separate instructions issued by the Secretary is deemed by VA
to be the minimum exercise of due diligence in processing LAPP cases. Due diligence is
considered by VA to represent that care, as is to be properly expected from, and
ordinarily exercised by, reasonable and prudent lenders who would be dependent on the property as security to protect its investment.

(c) VA minimum property requirements. Lenders are responsible for determining that the property meets VA minimum property requirements. The separate instructions issued by the Secretary will set forth the lender's ability to adjust, remove, or alter the fee appraiser's or fee compliance inspector's recommendations concerning VA minimum property requirements. Condominiums, planned-unit developments and leasehold estates must have been determined acceptable by VA. A condominium or planned-unit development which is acceptable to the Department of Housing and Urban Development or the Department of Agriculture may also be acceptable to VA.

(d) Adjustment of value recommendations. The amount of authority to upwardly adjust the fee appraiser's estimated market value during the lender staff appraisal reviewer's initial review of the appraisal report or to subsequently process an appeal of the lender's established reasonable value will be specified in the separate instructions issued by VA as noted in § 36.4344(b). The amount specified must not in any way be considered an administrative adjustment figure which may be applied indiscriminately and without valid basis or justification with the sole purpose of reaching an amount necessary to complete the sale or mortgage transaction.

(1) Adjustment during initial review. Any adjustment during the staff appraisal reviewer's initial review of the appraisal report must be fully and clearly justified in writing on the appraisal report form or, if necessary, on an addendum. The basis for the adjustment must be adequate and reasonable by professional appraisal standards. If real estate market or other valid data was utilized in arriving at the decision to make the adjustment, such data must be attached to the appraisal report. All adjustments, comments, corrections, justifications, etc., to the appraisal report must be made in a contrasting color, be clearly legible, and signed and dated by the staff appraisal reviewer.

(2) Processing appeals. The authority provided under 38 U.S.C. 3731(d) which permits a lender to obtain a VA fee panel appraiser's report which VA is obligated to consider in an appeal of the established reasonable value shall not apply to cases processed under the authority provided by this section. All appeals of VA fee appraisers' estimated market values or lenders' reasonable value determinations above the amount specified in the separate instructions issued by VA must be submitted, along with the lender's recommendations, if any, to VA for processing and final determination. Unless otherwise authorized in the separate instructions lenders must also submit appeals, regardless of the amount, to VA in all cases where the staff appraisal reviewer has made an adjustment during their initial review of the appraisal report to the fee appraiser's market value estimate. The fee appraiser's estimated market value or lender's reasonable value determination may be increased only when such increase is clearly warranted and fully supported by real estate market or other valid data considered adequate and reasonable by professional appraisal standards and the lender's staff appraisal reviewer clearly and fully justifies the reasoning and basis for the increase in writing on the appraisal report form or an addendum. The staff appraisal reviewer must date and sign the written justification and must cite within it the data used in arriving at the decision to make the increase. All such data shall be attached to the appraisal report form and any addendum.

(e) Notification. It will be the responsibility of the lender to notify the veteran borrower in writing of the determination of reasonable value and related conditions specific to the
property and to provide the veteran with a copy of the appraisal report. Any delay in processing the notification of value must be documented. Any delay of more than five work days between the date of the lender's receipt of the fee appraiser's report and date of the notification of value to the veteran, without reasonable and documented extenuating circumstances, will not be acceptable. A copy of the lender notification letter to the veteran and the appraisal report must be forwarded to the VA office of jurisdiction at the same time the veteran is notified. In addition, the original appraisal report, related appraisal documentation, and a copy of the reasonable value determination notification to the veteran must be submitted to the VA with the request for loan guaranty.

(f) Indemnification. When the Secretary has incurred a loss as a result of a payment of claim under guaranty and in which the Secretary determines an increase made by the lender under § 36.4344(d) or (f) was unwarranted, or arbitrary and capricious, the lender shall indemnify the Secretary to the extent the Secretary determines such loss was caused, or increased, by the increase in value.

(g) Affiliations. A lender affiliated with a real estate firm builder, land developer or escrow agent as a subsidiary division, investment or any other entity in which it has a financial interest or which it owns may not use this authority for any cases involving the affiliate unless the lender demonstrates to the Secretary's satisfaction that the lender and its affiliate(s) are essentially separate entities that operate independently of each other, free of all cross-influences (e.g., a formal corporate agreement exists which specifically sets forth this fact).

(h) Quality Control Plans. The lender must have an effective self-policing or quality control system to ensure the adequacy and quality of their LAPP staff appraisal reviewer's processing and, that its activities do not deviate from high standards of integrity. The quality control system must include frequent, periodic audits that specifically address the appraisal review activity. These audits may be performed by an independent party, or by the lender's independent internal audit division which reports directly to the firm's chief executive officer. The lender must agree to furnish findings and information under this system to VA on demand. While the quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques and the ability to prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. The basic elements of the system will be described in separate instructions issued by the Secretary. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction with the lender's application for LAPP authority.

(i) Fees. The Secretary may require mortgagees to pay an application fee and/or annual fees, including additional fees for each branch office authorized to process cases under the authority delegated under this section, in such amounts and at such times as the Secretary may require.

(j) Withdrawal of lender authority. The authority for a lender to determine reasonable value may be withdrawn by the Loan Guaranty Officer when proper cause exists. A lender's authority to make reasonable value determinations shall be withdrawn when the lender no longer meets the basic requirements for delegating the authority, or when it can be shown that the lender's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws,
or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the lender or the lender's staff has occurred. Such acts, practices or performance include, but are not limited to: Demonstrated technical incompetence (i.e., conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or LAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the lender's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for lender authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the lender's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of LAPP processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Office Director who shall make the determination as to whether the action should be sustained, modified or rescinded. The lender will be informed in writing of the decision.

(2) The lender has the right to appeal the Regional Office Director's decision to the Under Secretary for Benefits. In the event of such an appeal, the Under Secretary for Benefits will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the lender's submission of opposition raises a genuine dispute over facts material to the withdrawal of LAPP authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Under Secretary for Benefits will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Under Secretary for Benefits shall base the determination on the facts as found, together with any information and argument submitted by the lender.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Under Secretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(4) Withdrawal of the LAPP authority will require that VA make subsequent determinations of reasonable value for the lender. Consequently, VA staff will review
each appraisal report and issue a Certificate of Reasonable Value which can then be used by the lender to close loans on either the prior VA approval or automatic basis.

(5) Withdrawal by VA of the lender's LAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct by the lender.

(Authority: 38 U.S.C. 3731)

(Approved by the Office of Management and Budget under control number 2900-0513)

[55 FR 21019, May 22, 1990]

§ 36.4345 Waivers, consents, and approvals; when effective.

No waiver, consent, or approval required or authorized by the regulations concerning guaranty or insurance of loans to veterans shall be valid unless in writing signed by the Secretary or the subordinate officer to whom authority has been delegated by the Secretary.

[13 FR 7281, Nov. 27, 1948]

§ 36.4346 Servicing procedures for holders.

(a) Establishment of loan servicing program. The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) Procedures for providing information. (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required.

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) Statement for income tax purposes. Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) Change of servicing. Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice, the treatment of payments during the period of such transfer, and damages and costs for failure to comply with these requirements shall be governed by the pertinent provisions.
of the Real Estate Settlement Procedures Act as administered by the Department of Housing and Urban Development.

(e) Escrow accounts. A holder of a loan guaranteed or insured by the Secretary may collect periodic deposits from the borrower for taxes and/or insurance on the security and maintain a tax and insurance escrow account provided such a requirement is authorized under the terms of the security instruments. In maintaining such accounts, the holder shall comply with the pertinent provisions of the Real Estate Settlement Procedures Act.

(f) System for servicing delinquent loans. In addition to the requirements of the Real Estate Settlement Procedures Act, concerning the duties of the loan servicer to respond to borrower inquiries, to protect the borrower's credit rating during a payment dispute period, and to pay damages and costs for noncompliance, holders shall establish a system for servicing delinquent loans which ensures that prompt action is taken to collect amounts due from borrowers and minimize the number of loans in a default status. The holder's servicing system must include the following:

1. An accounting system which promptly alerts servicing personnel when a loan becomes delinquent;
2. A collection staff which is trained in techniques of loan servicing and counseling delinquent borrowers to advise borrowers how to cure delinquencies, protect their equity and credit rating and, if the default is insoluble, pursue alternatives to foreclosure;
3. Procedural guidelines for individual analysis of each delinquency;
4. Instructions and appropriate controls for sending delinquent notices, assessing late charges, handling partial payments, maintaining servicing histories and evaluating repayment proposals;
5. Management review procedures for evaluating efforts made to collect the delinquency and the response from the borrower before a decision is made to initiate action to liquidate a loan;
6. Procedures for reporting delinquencies of 90 days or more and loan terminations to major consumer credit bureaus as specified by the Secretary and for informing borrowers that such action will be taken; and
7. Controls to ensure that all notices required to be given to the Secretary on delinquent loans are provided timely and in such form as the Secretary shall require.

(g) Collection actions. (1) Holders shall employ collection techniques which provide flexibility to adapt to the individual needs and circumstances of each borrower. A variety of collection techniques may be used based on the holder's determination of the most effective means of contact with borrowers during various stages of delinquency. However, at a minimum the holder's collection procedures must include the following actions:

i. A written delinquency notice to the borrower(s) requesting immediate payment if a loan installment has not been received within 17 days after the due date. This notice must be mailed no later than the 20th day of the delinquency and state the amount of the payment and of any late charges that are due.

ii. An effort, concurrent with the written delinquency notice to establish contact with the borrower(s) by telephone. When talking with the borrower(s), the holder should attempt to determine why payment was not made and emphasize the importance of remitting loan installments as they come due.

iii. A letter to the borrower(s) if payment has not been received within 30 days after it is due and telephone contact could not be made. This letter should emphasize the
seriousness of the delinquency and the importance of taking prompt action to resolve the
default. It should also notify the borrower(s) that the loan is in default, state the total
amount due and advise the borrower(s) how to contact the holder to make arrangements
for curing the default.
(iv) In the event the holder has not established contact with the borrower(s) and has not
determined the financial circumstances of the borrower(s) or established a reason for the
default or obtained agreement to a repayment plan from the borrower(s), then a
face-to-face interview with the borrower(s) or a reasonable effort to arrange such a
meeting is required.
(2) The holder must provide a valid explanation of any failure to perform these collection
actions when reporting loan defaults to the Secretary. A pattern of such failure may be a
basis for sanctions under 38 CFR 44.205 and 44.305.
(h) Conducting interviews with delinquent borrowers. When personal contact with the
borrower(s) is established, the holder shall solicit sufficient information to properly
evaluate the prospects for curing the default and whether the granting of forbearance or
other relief assistance would be appropriate. At a minimum, the holder must make a
reasonable effort to establish the following:
(1) The reason for the default and whether the reason is a temporary or permanent
condition;
(2) The present income and employment of the borrower(s);
(3) The current monthly expenses of the borrower(s) including household and debt
obligations;
(4) The current mailing address and telephone number of the borrower(s); and
(5) A realistic and mutually satisfactory arrangement for curing the default.
(i) Property inspections. (1) The holder shall make an inspection of the property securing
the loan whenever it becomes aware that the physical condition of the security may be in
jeopardy. Unless a repayment agreement is in effect, a property inspection shall also be
made at the following times:
(i) Before the 60th day of delinquency or before initiating action to liquidate a loan,
whichever is earlier; and,
(ii) At least once each month after liquidation proceedings have been started unless
servicing information shows the property remains owner-occupied.
(2) Whenever a holder obtains information which indicates that the property securing the
loan is abandoned, it shall make appropriate arrangements to protect the property from
vandalism and the elements. Thereafter, the holder shall schedule inspections at least
monthly to prevent unnecessary deterioration due to vandalism, or neglect. With respect
to any loan more than 30 days delinquent, a property abandonment must be reported to
the Secretary and appropriate action initiated under § 36.4317(a) within 15 days after the
holder confirms the property is abandoned.
(j) Collection records. The holder shall maintain individual file records of collection
action on delinquent loans and make such records available to the Secretary for
inspection on request. Such collection records shall show:
(1) The dates and content of letters and notices which were mailed to the borrower(s);
(2) Dated summaries of each personal servicing contact and the result of same;
(3) The indicated reason(s) for default; and,
(4) The date and result of each property inspection.
(k) Reporting to the Secretary. A summary of collection efforts, the information obtained through such efforts and the holder's evaluation of the reason for the default and prospects for resolution of the default must be included in any notice provided to the Secretary pursuant to §§ 36.4315 and 36.4317.

(l) Quality control procedures. No later than 180 days after the effective date of this regulation, each loan holder shall establish internal controls to periodically assess the quality of the servicing performed on loans guaranteed by the Secretary and assure that all requirements of this section are being met. Those procedures must provide for a review of the holder's servicing activities at least annually and include an evaluation of delinquency and foreclosure rates on loans in its portfolio which are guaranteed by the Secretary. As part of its evaluation of delinquency and foreclosure rates, the holder shall:

1. Collect and maintain appropriate data on delinquency and foreclosure rates to enable the holder to evaluate effectiveness of its collection efforts;
2. Determine how its VA delinquency and foreclosure rates compare with rates in reports published by the industry, investors and others; and,
3. Analyze significant variances between its foreclosure and delinquency rates and those found in available reports and publications and take appropriate corrective action.

(m) Holders shall provide available statistical data on delinquency and foreclosure rates and their analysis of such data to the Secretary upon request.

(Approved by the Office of Management and Budget under Control Number 2900-0530)
[58 FR 29117, May 19, 1993; 61 FR 28057, 28058, June 4, 1996]

[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "44.205 and 44.305" and "36.4331" in paragraph (g)(2), became effective June 4, 1996.]

§ 36.4347 Minimum property and construction requirements.
No loan for the purchase or construction of residential property shall be eligible for guaranty or insurance unless such property complies or conforms with those standards of planning, construction, and general acceptability that may be applicable thereto and prescribed by the Secretary pursuant to 38 U.S.C. 3704(a).
[24 FR 2656, Apr. 7, 1959]

§ 36.4348 Authority to close loans on the automatic basis.
(a) Supervised lenders of the classes described in 38 U.S.C. 3702(d) (1) and (2) are authorized by statute to process VA guaranteed home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.
(b) Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must apply to the Secretary for authority to process loans on the automatic basis. Each of the minimum requirements listed below must be met by applicant lenders.
(1) Experience. The firm must meet one of the following experience requirements:
   (i) The firm must have been actively engaged in originating VA loans for at least two years, have a VA Lender ID number and have originated and closed a minimum of ten VA loans within the past two years, excluding interest rate reduction refinance loans
(IRRRLs), that have been properly documented and submitted in compliance with VA requirements and procedures; or

(ii) The firm must have a VA ID number and, if active for less than two years, have originated and closed at least 25 VA loans, excluding IRRRLs, that have been properly documented and submitted in compliance with VA requirements and procedures; or

(iii) Each principal officer of the firm, who is actively involved in managing origination functions, must have a minimum of two recent years' management experience in the origination of VA loans. This experience may be with the current or prior employer. For the purposes of this requirement, principal officer is defined as president or vice president; or

(iv) If the firm has been operating as an agent for a non-supervised automatic lender (sponsoring lender), the firm must submit documentation confirming that it has a VA Lender ID number and has originated a minimum of ten VA loans, excluding IRRRLs, over the past two years. If active for less than two years, the agent must have originated at least 25 VA loans. The required documentation is a copy of the VA letter approving the firm as an agent for the sponsoring lender; a copy of the corporate resolution, describing the functions the agent was to perform, submitted to VA by the sponsoring lender; and a letter from a senior officer of the sponsoring lender indicating the number of VA loans submitted by the agent each year and that the loans have been properly documented and submitted in compliance with VA requirements and procedures.

(2) Underwriter. A senior officer of the firm must nominate a full-time qualified employee(s) to act in the firm's behalf as underwriter(s) to personally review and make underwriting decisions on VA loans to be closed on the automatic basis.

(i) Nominees for underwriter must have a minimum of three years experience in processing, pre-underwriting or underwriting mortgage loans. At least one recent year of this experience must have included making underwriting decisions on VA loans. (Recent is defined as within the past three years.) A VA nomination and current resume, outlining the underwriter's specific experience with VA loans, must be submitted for each underwriter nominee.

(ii) Alternatively, if an underwriter does not have the experience outlined above, the underwriter must submit documentation verifying that he or she is a current Accredited Residential Underwriter (ARU) as designated by the Mortgage Bankers Association (MBA).

(iii) If an underwriter is not located in the lender's corporate office, then a senior officer must certify that the underwriter reports to and is supervised by an individual who is not a branch manager or other person with production responsibilities.

(iv) All VA-approved underwriters must attend a 1-day (eight-hour) training course on underwriter responsibilities, VA underwriting requirements, and VA administrative requirements, including the usage of VA forms, within 90 days of approval (if VA is unable to make such training available within 90 days, the underwriter must attend the first available training). Immediately upon approval of a VA underwriter, the office of jurisdiction will contact the underwriter to schedule this training at a VA regional office (VARO) of the underwriter's choice. This training is required for all newly approved VA underwriters, including those who qualified for approval based on an ARU designation, as well as VA-approved underwriters who have not underwritten VA-guaranteed loans in the past 24 months. Furthermore, and at the discretion of any VARO in whose
jurisdiction the lender is originating VA loans, VA-approved underwriters who consistently approve loans that do not meet VA credit standards may be required to retake this training.

(3) Underwriter Certification. The lender must certify that all underwriting decisions as to whether to accept or reject a VA loan will be made by a VA-approved underwriter. In addition each VA-approved underwriter will be required to certify on each VA loan that he or she approves that the loan has been personally reviewed and approved by the underwriter.

(4) Financial Requirements. Each application must include the most recent annual financial statement audited and certified by a certified public accountant (CPA). If the date of the annual financial statement precedes that of the application by more than six months, the lender must also attach a copy of its latest internal financial statement. Lenders are required to meet either the working capital or the minimum net worth financial requirement as defined below.

(i) Working Capital. A minimum of $50,000 in working capital must be demonstrated.
(A) Working capital is a measure of a firm's liquidity, or the ability to pay its short-term debts. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other liquid assets convertible into cash within a 1-year period. Current liabilities are defined as debts that must be paid within the same 1-year time frame.
(B) The VA determination of whether a lender has the required minimum working capital is based on the balance sheet of the lender's annual audited financial statement. Therefore, either the balance sheet must be classified to distinguish between current and fixed assets and between current and long-term liabilities or the information must be provided in a footnote to the statement.

(ii) Net Worth. Lenders must show evidence of a minimum of $250,000 in adjusted net worth. Net worth is a measure of a firm's solvency, or its ability to exist in the long run, quantified by the payment of long-term debts. Net worth as defined by generally accepted accounting principles (GAAP) is total assets minus total liabilities. Adjusted net worth for VA purposes is the same as the adjusted net worth required by the Department of Housing and Urban Development (HUD), net worth less certain unacceptable assets including:
(A) Any assets of the lender pledged to secure obligations of another person or entity.
(B) Any asset due from either officers or stockholders of the lender or related entities, in which the lender's officers or stockholders have a personal interest, unrelated to their position as an officer or stockholder.
(C) Any investment in related entities in which the lender's officers or stockholders have a personal interest unrelated to their position as an officer or stockholder.
(D) That portion of an investment in joint ventures, subsidiaries, affiliates and/or other related entities which is carried at a value greater than equity, as adjusted. "Equity as adjusted" means the book value of the related entity reduced by the amount of unacceptable assets carried by the related entity.
(E) All intangibles, such as goodwill, covenants not to compete, franchisee fees, organization costs, etc., except unamortized servicing costs carried at a value established by an arm's-length transaction and presented in accordance with generally accepted accounting principles.
(F) That portion of an asset not readily marketable and for which appraised values are very subjective, carried at a value in excess of a substantially discounted appraised value. Assets such as antiques, art work and gemstones are subject to this provision and should be carried at the lower of cost or market.

(G) Any asset that is principally used for the personal enjoyment of an officer or stockholder and not for normal business purposes. Adjusted net worth must be calculated by a CPA using an audited and certified balance sheet from the lender's latest financial statements. "Personal interest" as used in this section indicates a relationship between the lender and a person or entity in which that specified person (e.g., spouse, parent, grandparent, child, brother, sister, aunt, uncle or in-law) has a financial interest in or is employed in a management position by the lender.

(5) Lines of credit. The lender applicant must have one or more lines of credit aggregating at least $1 million. The identity of the source(s) of warehouse lines of credit must be submitted to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information. A line of credit must be unrestricted, that is, funds are available upon demand to close loans and are not dependent on prior investor approval. A letter from the company(ies) verifying the unrestricted line(s) of credit must be submitted with the application for automatic authority.

(6) Permanent investors. If the lender customarily sells loans it originates, it must have a minimum of two permanent investors. The names, addresses and telephone numbers of the permanent investors must be submitted with the application.

(7) Liaison. The lender applicant must designate an employee and an alternate to be the primary liaison with VA. The liaison officers should be thoroughly familiar with the lender's entire operation and be able to respond to any query from VA concerning a particular VA loan or the firm's automatic authority.

(8) Other considerations. All applications will also be reviewed in light of the following considerations:

(i) There must be no factors that indicate that the firm would not exercise the care and diligence required of a lender originating and closing VA loans on the automatic basis; and

(ii) In the event the firm, any member of the board of directors, or any principal officer has ever been debarred or suspended by any Federal agency or department, or any of its directors or officers has been a director or officer of any other lender or corporation that was so debarred or suspended, or if the lender applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must be submitted with the application for automatic authority.

(9) Quality Control System. In order to be approved as a non-supervised lender for automatic-processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its systems to VA on demand. The elements of the quality control system must include the following:

(i) Underwriting policies. Each office of the lender shall maintain copies of VA credit standards and all available VA underwriting guidelines.

(ii) Corrective measures. The system should ensure that effective corrective measures are taken promptly when deficiencies in loan origination's are identified by either the lender
or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) System integrity. The quality control system should be independent of the mortgage loan production function.

(iv) Scope. The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(v) Appraisal quality. For lenders approved for the Lender Appraisal Processing Program (LAPP), the quality control system must specifically contain provisions concerning the adequacy and quality of real property appraisals. While the lender's quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques so that they can select appropriate cases for review if discretionary sampling is used, and prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction.

(10) Courtesy closing. The lender-applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders, whether or not such lenders are themselves approved to close on an automatic basis without the express approval of VA. However, a lender with automatic authority may close loans for which information and supporting credit data have been developed on its behalf by a duly authorized agent.

(11) Probation. Lenders meeting these requirements will be approved to close VA loans on an automatic basis for a 1-year period. At the end of this period, the lender's quality of underwriting, the completeness of loan submissions, compliance with VA requirements and procedures, and the delinquency and foreclosure rates will be reviewed.

(12) Extensions of Automatic Authority. When a lender wants its automatic authority extended to another State, the request must be submitted, with the fee designated in paragraph (e)(5) of this section, to the VA regional office having jurisdiction in the State where the lender's corporate office is located.

(i) When a lender wants its automatic authority to include loans involving a real estate brokerage and/or a residential builder or developer in which it has a financial interest, owns, is owned by, or with which it is affiliated, the following documentation must be submitted:

(A) A corporate resolution from the lender and each affiliate indicating that they are separate entities operating independently of each other. The lender's corporate resolution must indicate that it will not give more favorable underwriting consideration to its affiliate's loans, and the affiliate's corporate resolution must indicate that it will not seek to influence the lender to give their loans more favorable underwriting consideration.

(B) Letters from permanent investors indicating the percentage of all VA loans based on the affiliate's production originated by the lender over a 1-year period that are past due 90 days or more. This delinquency ratio must be no higher than the national average for the same period for all mortgage loans.

(ii) When a lender wants its automatic authority extended to additional States, the lender must indicate how it plans to originate VA loans in those States. Unless a lender proposes a telemarketing plan, VA requires that a lender have a presence in the State, that is, a
branch office, an agent relationship, or that it is a reasonable distance from one of its offices in an adjacent State, i.e., 50 miles. If the request is based on an agency relationship, the documentation outlined in paragraph (b)(13) must be submitted with the request for extension.

(13) Use of Agents. A lender using an agent to perform a portion of the work involved in originating and closing a VA-guaranteed loan on an automatic basis must take full responsibility by certification for all acts, errors and omissions of the agent or other entity and its employees for the work performed. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent. Lenders requesting an agent must submit the following documentation to the VA regional office having jurisdiction for the lender's corporate office:

(i) A corporate resolution certifying that the lender takes full responsibility for all acts, errors and omissions of the agent that it is requesting. The corporate resolution must also identify the agent's name and address, and the geographic area in which the agent will be originating and/or closing VA loans; whether the agent is authorized to issue interest rate lock-in agreements on behalf of the lender; and outline the functions the agent is to perform. Alternatively, the lender may submit a blanket corporate resolution which sets forth the functions of any and all agents and identifies individual agents by name, address, and geographic area in separate letters which refer to the blanket resolution.

(ii) When the VA regional office having jurisdiction for the lender's corporate office acknowledges receipt of the lender's request in writing, the agent is thereby authorized to originate VA loans on the lender's behalf.

(Authority: 38 U.S.C. 501(a), 3702(d))

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report to VA the circumstances surrounding the deficiency and the remedial action to be taken to cure it. Failure to advise VA in a timely manner could result in a lender's loss of its approval to close VA loans on the automatic basis.

(Authority: 38 U.S.C. 501(a), 3702(d))

(d) Annual recertification. Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must be recertified annually for authority to process loans on the automatic basis. The following minimum annual recertification requirements must be met by each lender approved for automatic authority:

(1) Financial requirements. A lender must submit, within 120 days following the end of its fiscal year, an audited and certified financial statement with a classified balance sheet or a separate footnote for adjusted net worth to VA Central Office (264) for review. The same minimum financial requirements described in § 36.4348(b)(5) must be maintained and verified annually in order to be recertified for automatic authority.

(2) Processing annual lender data. The VA regional office having jurisdiction for the lender's corporate office will mail an annual notice to the lender requesting current information on the lender's personnel and operation. The lender is required to complete the form and return it with the appropriate annual renewal fees to the VA regional office.

(Authority: 38 U.S.C. 501(a), 3702(d))

(e) Lender fees. To participate as a VA automatic lender, non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) shall pay fees as follows:
(1) $500 for new applications;
(2) $200 for reinstatement of lapsed or terminated automatic authority;
(3) $100 for each underwriter approval;
(4) $100 for each agent approval;
(5) A minimum fee of $100 for any other VA administrative action pertaining to a lender's status as an automatic lender;
(6) $200 annually for certification of home offices; and
(7) $100 annually for each agent renewal.

(f) Supervised lenders of the classes described in paragraphs (d)(1) and (d)(2) of 38 U.S. Code 3702 participating in VA's Loan Guaranty Program shall pay fees as follows:
(1) $100 fee for each agent approval; and
(2) $100 annually for each agent renewal.

Authority: 38 U.S.C. 501(a) and 3703(c)(1)

(g) Lenders participating in VA's Lender Appraisal Processing Program shall pay a fee of $100 for approval of each staff appraisal reviewer.


[EFFECTIVE DATE NOTE: 63 FR 12001, 12004, March 12, 1998, amended this section, effective Apr. 13, 1998.]

§ 36.4349 Withdrawal of authority to close loans on the automatic basis.
(a)(1) As provided in 38 U.S.C. 3702(e), the authority of any lender to close loans on the automatic basis may be withdrawn by the Secretary at any time upon 30 days notice. The automatic processing authority of both supervised and nonsupervised lenders may be withdrawn for engaging in practices which are imprudent from a lending standpoint or which are prejudicial to the interests of veterans or the Government but are of a lesser degree than would warrant complete suspension or debarment of the lender from participation in the program.
(2) Automatic-processing authority may be withdrawn at any time for failure to meet basic qualifying and/or annual recertification criteria.
(i) Non-supervised lenders. (A) Automatic authority may be withdrawn for lack of a VA-approved underwriter, failure to maintain $50,000 in working capital or $250,000 in adjusted net worth, or failure to file required financial information.
(B) During the 1-year probationary period for newly approved lenders, automatic authority may be temporarily or permanently withdrawn for any of the reasons set forth in this section regardless of whether deficiencies previously have been brought to the attention of the probationary lender.
(ii) Supervised lenders. Automatic authority will be withdrawn for loss of status as an entity subject to examination and supervision by a Federal or State supervisory agency as required by 38 U.S.C. 3702(d).
(3) Automatic processing authority may also be withdrawn for any of the causes for debarment set forth at § 44.305 of this title.
(b) Authority to close loans on the automatic basis may also be temporarily withdrawn for a period of time under the following schedule.
(1) Withdrawal for 60 days:
(i) Automatic loan submissions show deficiencies in credit underwriting, such as use of unstable sources of income to qualify the borrower, ignoring significant adverse credit items affecting the applicant's creditworthiness, etc., after such deficiencies have been repeatedly called to the lender's attention;
(ii) Employment or deposit verifications are handcarried by applicants or otherwise improperly permitted to pass through the hands of a third party;
(iii) Automatic loan submissions are consistently incomplete after such deficiencies have been repeatedly called to the lender's attention by VA; or
(iv) There are continued instances of disregard of VA requirements after they have been called to the lender's attention.

(2) Withdrawal for 180 days:
(i) Loans are closed automatically which conflict with VA credit standards and which would not have been made by a lender acting prudently;
(ii) The lender fails to disclose to VA significant obligations or other information so material to the veteran's ability to repay the loan that undue risk to the Government results;
(iii) Employment or deposit verifications are allowed to be handcarried by applicant or otherwise mishandled, resulting in the submission of significant misinformation to VA;
(iv) Substantiated complaints are received that the lender misrepresented VA requirements to veterans to the detriment of their interests (e.g., veteran was dissuaded from seeking a lower interest rate based on lender's incorrect advice that such options were precluded by VA requirements);
(v) Closing documentation shows instances of improper charges to the veteran after the impropriety of such charges has been called to the lender's attention by VA, or refusal to refund such charges after notification by VA; or
(vi) There are other instances of lender actions which are prejudicial to the interests of veterans such as deliberate delays in scheduling loan closings.

(3) Withdrawal for a period of from one year to three years:
(i) The lender fails to properly disburse loans (e.g., loan disbursement checks returned due to insufficient funds);
(ii) There is involvement by the lender in the improper use of a veteran's entitlement (e.g., knowingly permitting the veteran to violate occupancy requirements, lender involvement in sale of veteran's entitlement, etc.).

(4) A continuation of actions that have led to previous withdrawal of automatic authority justifies withdrawal of automatic authority for the next longer period of time.

(5) Withdrawal of automatic processing authority does not prevent a lender from processing VA guaranteed loans on the prior approval basis.

(6) Action by VA to remove a lender's automatic authority does not prevent VA from also taking debarment or suspension action based on the same conduct by the lender.

(7) VA field facilities are authorized to withdraw automatic privileges for 60 days, based on any of the violations set forth in paragraphs (b)(1) through (b)(3) of this section, for nonsupervised lenders without operations in other stations' jurisdictions. All determinations regarding withdrawal of automatic authority for longer periods of time or multi-jurisdictional lenders must be made in Central Office.

(c) VA will provide 30 days notice of a withdrawal of automatic authority in order to enable the lender to either close or obtain prior approval for a loan on which processing
has begun. There is no right to a formal hearing to contest the withdrawal of automatic processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit in person, in writing, or through a representative, information and argument in opposition to the withdrawal.

(d) If the lender's submission in opposition raises a dispute over facts material to the withdrawal of automatic authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witnesses VA presents. The Under Secretary for Benefits will appoint a hearing officer or panel to conduct the hearing.

(e) A transcribed record of the proceedings shall be made available at cost to the lender, upon request, unless the requirement for a transcript is waived by mutual agreement.

(f) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Under Secretary for Benefits shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(g) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact will be prepared by the hearing officer or panel. The Under Secretary for Benefits shall base the decision on the facts as found, together with any information and argument submitted by the lender and any other information in the administrative record.

(Authority: 38 U.S.C. 501, 1803(c)(1))

(The information collection requirements in this section have been approved by the Office of Management and Budget under control numbers 2900-0574)


[EFFECTIVE DATE NOTE: 63 FR 12001, 12007, March 12, 1998, revised paragraph (a)(2) and added a parenthetical at the end of the section, effective Apr. 13, 1998.]

§ 36.4350 Estate of veteran in real property.

(a) The estate in the realty acquired by the veteran, wholly or partly with the proceeds of a guaranteed or insured loan, or owned by him and on which construction, or repairs, or alterations or improvements are to be made, shall be not less than:

1. A fee simple estate therein, legal or equitable; or
2. A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Under Secretary for Benefits, or the Director, Loan Guaranty Service, (i) that such type of leasehold is customary in the area where the property is located, (ii) that a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to and, (iii) that the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

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(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien; or
(4) A beneficial interest in a revocable Family Living Trust that ensures that the veteran, or veteran and spouse, have an equitable life estate, provided the lien attaches to any remainder interest and the trust arrangement is valid under State law.
The title to such estate shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section.
(b) Any such property or estate will not fail to comply with the requirements of paragraph (a) of this section by reason of the following:
(1) Encroachments;
(2) Easements;
(3) Servitudes;
(4) Reservations for water, timber, or subsurface rights;
(5) Sale and lease restrictions:
   (i) Except as to condominiums, the right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right was established by an instrument recorded prior to December 1, 1976, and by the terms thereof is exercisable only if:
      (A) An owner elects to sell,
      (B) The option price is not less than the price at which the then owner is willing to sell to another, and
      (C) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner of the then owner's election to sell, stating the price and the identity of the proposed vendee;
   (ii) A condominium estate established by the filing for record of the Master Deed, or other enabling document before December 1, 1976 will not fail to comply with the requirements of paragraph (a) of this section by reason of:
      (A) Prohibition against leasing a unit for a period of less than 6 months.
      (B) The existence of a right of first option to purchase or right to provide a substitute buyer reserved to the condominium association provided such option or right is exercisable only if:
         (1) An owner elects to sell,
         (2) The option price is not less than the price at which the then owner is willing to sell to another,
         (3) The terms and conditions under which the option price is to be paid are identical to or are not less favorable to the owner than the terms and conditions under which the owner was willing to sell to the owner's prospective buyer, and
         (4) Notice of the association's decision to exercise the option must be mailed to the owner by registered or certified mail within 30 days after notice is mailed by registered or certified mail to the address of the association last known to the owner of the owner's election to sell, stating the price, terms of sale, and the identity of the proposed vendee;
      (iii) Any property subject to a restriction on the owner's right to convey to any party of the owner's choice, which restriction is established by a document recorded on or after December 1, 1976, will not qualify as security for a guaranteed or insured loan. A prohibition or restriction on leasing an individual unit in a condominium will not cause
the condominium estate to fail to qualify as security for such loan, provided the restriction is in accordance with § 36.4358(c);
(iv) Notwithstanding the provisions of paragraphs (b)(5) (i), (ii), and (iii) of this section, a property shall not be considered ineligible pursuant to paragraph (a) of this section if:
(A) The veteran obtained the property under a State or local political subdivision program designed to assist low- or moderate-income purchasers, and as a condition the purchaser must agree to one or more of the following restrictions:
(1) If the property is resold within a time period as established by local law or ordinance, after the purchaser acquires title, the purchaser must first offer the property to the government housing agency, or a low- or moderate-income purchaser designated by such agency, provided the option to purchase is exercised within 90 days after notice by the purchaser to the agency of intention to sell;
(2) If the property is resold within a time period as established by local law or ordinance after the purchaser acquires title, a governmental agency may specify a maximum price which the veteran may receive for the property upon resale; or
(3) Such other restriction approved by the Secretary designed to insure either that a property acquired under such program again be made available to low- or moderate-income purchasers, or to prevent a private purchaser from obtaining a windfall profit on the resale of such property, while assuring that the purchaser has a reasonable opportunity to dispose of the property without undue difficulty at a reasonable price. The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Secretary. The veteran must be fully informed and consent in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis; or
(Authority: 38 U.S.C. 3703(c))
(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis;
(Authority: 38 U.S.C. 501, 3703(c)(1))
(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;
(7) Any other covenant, condition, restriction, or limitation approved by the Secretary in the particular case. Such approval shall be a condition precedent to the guaranty or insurance of the loan;
(8) [Redesignated as paragraph (b)(7). See 61 FR 28057, 28059, June 4, 1996.]
Provided, That the limitations on the quantum or quality of the estate or property that are
indicated in this paragraph, insofar as they may materially affect the value of the property
for the purpose for which it is used, are taken into account in the appraisal of reasonable
value required by 38 U.S.C. chapter 37.
(c) The following limitations on the quantum or quality of the estate or property shall be
deemed for the purposes of paragraph (b) of this section to have been taken into account
in the appraisal of residential property and determined by the Secretary as not materially
affecting the reasonable value of such property:
(1) Building or use restrictions. Provided, (i) no violation exists, (ii) the proposed use by
a veteran does not presage a violation of a condition affording a right of reverter, and (iii)
any right of future modification contained in the building or use restrictions is not
exercisable, by its own terms, until at least 10 years following the date of the loan.
(2) Violations of racial and creed restrictions. Violations of a restriction based on race,
color, creed, or national origin, whether or not such restriction provides for reversion or
forfeiture of title or a lien for liquidated damages in the event of a breach.
(3) Violations of building or use restrictions of record. Violations of building or use
restrictions of record which have existed for more than 1 year, are not the subject of
pending or threatened litigation, and which do not provide for a reversion or termination
of title, or condemnation by municipal authorities, or, a lien for liquidated damages which
may be superior to the lien of the guaranteed or insured mortgage.
(4) Easements. (i) Easements for public utilities along one or more of the property lines
and easements for drainage or irrigation ditches, provided the exercise of the rights
thereof do not interfere with the use of any of the buildings or improvements located on
the subject property.
(ii) Mutual easements for joint driveways located partly on the subject property and
partly on adjoining property, provided the agreement is recorded in the public records.
(iii) Easements for underground conduits which are in place and which do not extend
under any buildings in the subject property.
(5) Encroachments. (i) On the subject property by improvements on the adjoining
property where such encroachments do not exceed 1 foot within the subject boundaries,
provided such encroachments do not touch any buildings or interfere with the use or
enjoyment of any building or improvement on the subject property.
(ii) By hedges or removable fences belonging to subject or adjoining property.
(iii) Not exceeding 1 foot on adjoining property by driveways belonging to subject
property, provided there exists a clearance of at least 8 feet between the buildings on the
subject property and the property line affected by the encroachment.
(6) Variations of lot lines. Variations between the length of the subject property lines as
shown on the plot plan or other exhibits submitted to Department of Veterans Affairs and
as shown by the record or possession lines, provided such variations do not interfere with
the current use of any of the improvements on the subject property and do not involve a
deficiency of more than 2 percent with respect to the length of the front line or more than
5 percent with respect to the length of any other line.
(Authority: 38 U.S.C. 501, 3703(c), 3712(g))
4, 1968; 34 FR 11095, July 1, 1969; 41 FR 44039, Oct. 6, 1976; 44 FR 47338, Aug. 13,
§ 36.4351 Loans, first, second, or unsecured.
Loans for the purchase of real property or a leasehold estate as limited in the regulations concerning guaranty or insurance of loans to veterans, or for the alteration, improvement, or repair thereof, and for more than $1,500 and more than 40 percent of the reasonable value of such property or estate prior thereto shall be secured by a first lien on the property or estate. Loans for such alteration, improvement, or repairs for more than $1,500 but 40 percent or less of the prior reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed. Those for $1,500 or less need not be secured, and in lieu of the title examination the lender may accept a statement from the borrower that he or she has an interest in the property not less than that prescribed in § 36.4350(a).

[43 FR 51016, Nov. 2, 1978]

§ 36.4352 Tax, special assessment and other liens.
Tax liens, special assessment liens, and ground rents shall be disregarded with respect to any requirement that loans shall be secured by a lien of specified dignity. With the prior approval of the Secretary, Under Secretary for Benefits, or Director, Loan Guaranty Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or construction of a home is secured by a first lien the Secretary may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.

[40 FR 34594, Aug. 18, 1975; 61 FR 28057, 28059, June 4, 1996]

[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director," became effective June 4, 1996.]

§ 36.4353 Combination residential and business property.
If otherwise eligible, a loan for the purchase or construction of a combination of residential property and business property which the veteran proposes to occupy in part as a home will be eligible under 38 U.S.C. 3710, if the property is primarily for residential purposes and no more than one business unit is included in the property.
§ 36.4354 [Reserved]

§ 36.4355 Supplemental loans.
(a) Any loan for the alteration, repair, improvement, extension, replacement, or expansion of a home, with respect to which a guaranteed or insured obligation of the borrower is currently outstanding, may be reported for guaranty or insurance coverage, if such loan is made by the holder of the currently outstanding obligation, notwithstanding the fact no guaranty entitlement remains available to the borrower; Provided, That if no entitlement remains available the maximum amount payable on the revised guaranty shall not exceed the amount payable on the original guaranty on the date of closing the supplemental loan, and the percentage of guaranty shall be based upon the proportion the said maximum amount bears to the aggregate indebtedness, or, in the case of an insured loan, no additional credit to the holder's insurance account may be made: Provided further, That the prior approval of the Secretary shall be required if (1) The loan will be made by a lender who is not the holder of the currently guaranteed or insured obligation; or (2) The loan will be made by a lender not of a class specified in 38 U.S.C. 3702(d); or (3) An obligor liable on the currently outstanding obligation will be released from personal liability.
In any case in which the unpaid balance of the prior loan currently outstanding is combined or consolidated with the amount of the supplemental loan, the entire aggregate indebtedness shall be repayable in full within the maximum maturity currently prescribed by statute for the original loan. No supplemental loan for the repair, alteration, or improvement of residential property will be eligible for guaranty or insurance unless such repair, alteration, or improvement substantially protects or improves the basic livability or utility of the property involved.
(b) Such loans shall be secured as required in § 36.4351: Provided, That a lien of lesser dignity than therein specified will suffice if the lien obtained is immediately junior to the lien of the original guaranteed or insured obligation: Provided further, The liens of successive supplemental loans may be of lesser dignity so long as they are immediately junior to the lien of the last previous guaranteed or insured obligation having a lien of required dignity.
(c) Upon providing or extending guaranty or insurance coverage in respect to any such supplemental loan, the rights of the Secretary to the proceeds of the sale of security shall be subordinate to the right of the holder to satisfy therefrom the indebtedness outstanding on the original and supplemental loans.

§ 36.4356 Condominium loans -- general.
(a) Authority -- applicability of other loan guaranty regulations, 38 CFR Part 36. A loan to an eligible veteran to purchase a one-family residential unit in a condominium housing development or project shall be eligible for guaranty or insurance to the same extent and on the same terms as other loans under 38 U.S.C. 3710 provided the loan

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conforms to the provisions of chapter 37, title 38 U.S.C., except for sections 1811 (direct loans), and 1827 (structural defects). The loan must also conform to the otherwise applicable provisions of the regulations concerning the guaranty or insurance of loans to veterans. Sections 36.4353, 36.4355, and 36.4364 shall not be applicable.

(b) Definitions. On and after July 1, 1979, the following definitions shall be applicable to each condominium loan entitled to be guaranteed or insured, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested thereunder are impaired. Whenever used in 38 U.S.C. chapter 37 or the § 36.4300 series, unless the context otherwise requires, the terms defined in this paragraph shall have the meaning stated.

(1) Affiliate of declarant. Affiliate of declarant means any person or entity which controls, is controlled by, or is under common control with, a declarant.

(i) A person or entity shall be considered to control a declarant if that person or entity is a general partner, officer, director, or employee of the declarant who:

(a) Directly or indirectly or acting in concert with one or more persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of the declarant;

(b) Controls in any manner the election of a majority of the directors of the declarant; or

(c) Has contributed more than 20 percent of the capital of the declarant.

(ii) A person or entity shall be considered to be controlled by a declarant if the declarant is a general partner, officer, director, or employee of that person or entity who:

(a) Directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 20 percent of the voting shares of that person or entity;

(b) Controls in any manner the election of a majority of the directors of that person or entity; or

(c) Has contributed more than 20 percent of the capital of that person or entity.

(2) Condominium. Unless otherwise provided by State law, a condominium is a form of ownership in which the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements (restatement of § 36.4301, Condominium).

(3) Conversion condominium. Condominium projects not originally built and sold as condominiums but subsequently converted to the condominium form of ownership.

(4) Declarant. Any person who has executed a declaration or an amendment to a declaration to add additional real estate to the project or any successors or assigns of the declarant who offers to sell or sells units in the condominium project and who assumes declarant rights in the project including the right to: Add, convert or withdraw real estate from the condominium project; maintain sales offices, management offices and rental units; exercise easements through the common elements for the purpose of making improvements within the condominium; or exercise control of the owner's association.

Declarant is further defined as any sponsor of a project or affiliate of the declarant who is acting on behalf of or exercising the rights of the declarant.

(5) Existing -- declarant in control or marketing units. A condominium in which all onsite or offsite improvements were completed or the conversion was completed prior to appraisal by the Department of Veterans Affairs, but the declarant is in control of the
owners' association and/or is currently marketing units for initial transfer to individual unit owners.

(6) Existing -- resale. A condominium in which all onsite or offsite improvements were completed, or the conversion was completed prior to appraisal by the Department of Veterans Affairs, and the declarant is no longer in control of the owners' association and/or marketing units for initial transfer to individual unit owners.

(7) Expandable condominium. A project which may be increased in size by the declarant. An expandable condominium is constructed in phases (or stages). After each phase is completed and constituted, the common estates are merged. Each unit owner, thereby, gains an individual interest in all of the facilities of the common estate.

(8) Foreclosure. Foreclosure shall mean the termination of a lien by either judicial or nonjudicial procedures in accordance with local law or the voluntary transfer of property by a deed-in-lieu of foreclosure or similar procedures.

(9) High rise condominium. A condominium project which is a multi-story elevator building.

(10) Horizontal condominium. A condominium project in which generally no part of a living unit extends over or under another living unit.

(11) Low rise condominium. A condominium project in which all or a part of a living unit extends over or under another living unit, e.g., garden apartment or walk-up project.

(12) Proposed condominium. A condominium project that is to be constructed or is under construction. In the case of a condominium conversion, the declarant proposes to convert a building or buildings to the condominium form of ownership, or the declarant is in the process of converting the building or buildings to the condominium form of ownership.

(13) Series condominium. A number of adjoining but separately constituted condominiums. An association of owners is established for each project, and each association is responsible for maintenance and upkeep of the common elements in its own project. Cross-easements between the separate condominiums may be created to permit members of the separate condominiums to use the common areas of the other condominiums.

(c) Project approval. Prior to Department of Veterans Affairs guaranty of an individual unit loan in a condominium, the legal documentation establishing the condominium project or development must be approved by the Secretary.

(Authority: 38 U.S.C. 501(1), 1803(c)(1), (d)(3), 1810(a)(6))

§ 36.4357 Acceptable ownership arrangements and documentation.

(a) Types of condominium ownership. The following types of basic ownership arrangements are generally acceptable provided they are established in compliance with the applicable condominium law of the jurisdiction(s) in which the condominium is located:

(1) Ownership of units by individual owners coupled with an undivided interest in all common elements.

(2) Ownership of units by individual owners coupled with an undivided interest in general common elements and specified limited common elements.

(3) Individual ownership of units coupled with an undivided interest in the general common elements and/or limited common elements, with title to additional property for

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common use vested in an association of unit owners, with mandatory membership by unit owners or owners' associations. Any such arrangement must not be precluded by applicable State law.

(Authority: 38 U.S.C. 501, 3710(a)(6))

(b) Estate of unit owner. The legal estate of each unit owner must comply with the provisions of § 36.4350. The declaration or equivalent document shall allocate an undivided interest in the common elements to each unit. Such interest may be allocated equally to each unit, may be proportionate to that unit's relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.

(Authority: 38 U.S.C. 501(1), 1803(c)(1), (d)(3), 1810(a)(6))

(c) Condominium documentation -- (1) Compliance with applicable law. The declaration, bylaws and other enabling documentation shall conform to the laws governing the establishment and maintenance of condominium regimes within the jurisdiction in which the condominium is located, and to all other laws which apply to the condominium.

(2) Recodiration. The declaration and all amendments or modifications thereof shall be placed of record in the manner prescribed by the appropriate jurisdiction. If recording of plats, plans, or bylaws or equivalent documents and all amendments or modifications thereof is the prevailing practice or is required by law within the jurisdiction where the project is located, then such documents shall be placed of record. If the bylaws are not recorded, then covenants, restrictions and other matters requiring record notice should be contained in the declaration or equivalent document.

(3) Availability. The owner's association shall be required to make available to unit owners, lenders and the holders, insurers and guarantors of the first mortgage on any unit, current copies of the declaration, bylaws and other rules governing the condominium, and other books, records and financial statements of the owners' association. The owners' association also shall be required to make available to prospective purchasers current copies of the declaration, bylaws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. "Available" as used in this paragraph (c)(3) shall at least mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))

(d) Real property descriptions in the declaration -- (1) Clarity -- conformity with the law of the jurisdiction. The description of the units, common elements, any recreational facilities and other related amenities, and any limited common elements shall be clear and in conformity with the law of the jurisdiction where the project is located. Responsibility for maintenance and repair of all portions of the condominium shall be set forth clearly.

(2) Developmental plan -- proposed condominiums. The declaration or other legally enforceable and binding document must state in a reasonable manner the overall
development plan of the condominium, including building types, architectural style and the size of the units for those phases of the condominium which are required to be built. Under the applicable provisions of the declaration or such other legally enforceable and binding document, the development of the required portion of the condominium must be consistent with the overall plan, except that the declarant may reserve the right to change the overall plan or decide not to construct planned units or improvements to the common elements if the declaration sets forth the conditions required to be satisfied prior to the exercise of that right the time within which the right may be exercised, and any other limitations and criteria that would be necessary or appropriate under the particular circumstances. Such conditions, time restraints and other limitations must be reasonable in light of the overall plan for the condominium. In an expandable project, additional phases which are not required to be built may be described in the development plan in very general terms, or the declaration may provide that the declarant makes no assurances concerning the construction, building types, architectural style and size of the units, etc. of these phases. However, the minimum number of units to be built should be that which would be adequate to reasonably support the common elements. (See § 36.4360(a)(6).)

(Approved by the Office of Management and Budget under control number 2900-0448)
(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))

§ 36.4358 Rights and restrictions.
(a) Declarant's rights and restrictions -- (1) Disclosure and reasonableness of reserved rights. Any right reserved by the declarant must be reasonable and set forth in the declaration.
(2) Examples of reserved rights of declarant, sponsor, or affiliate of declarant which are usually unacceptable. Binding the owners' association either directly or indirectly to any of the following agreements is not acceptable unless the owner's association shall have a right of termination thereof which is exercisable without penalty at any time after transfer of control, upon not more than 90 days' notice to the other party thereto:
(i) Any management contract, employment contract or lease of recreational or parking areas or facilities;
(ii) Any contract or lease, including franchises and licenses, to which a declarant is a party.
The requirements of paragraphs (a)(2)(i) and (ii) of this section do not apply to acceptable ground leases.
(3) Examples of reserved rights which are usually acceptable. The following rights in the common elements may usually be reserved by the declarant for a reasonable period of time, subject to a concomitant obligation to restore:
(i) Easement over and upon the common elements and upon lands appurtenant to the condominium for the purpose of completing improvements for which provision is made in the declaration, but only if access thereto is otherwise not reasonably available.
(ii) Easement over and upon the common elements for the purpose of making repairs required pursuant to the declaration or contracts of sale made with unit purchasers.

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(iii) Right to maintain facilities in the common areas which are identified in the declaration and which are reasonably necessary to market the units. These may include sales and management offices, model units, parking areas, and advertising signs.  
(Authority: 38 U.S.C. 501, 3704(c)(1), 3710(a)(6))

(b) Owners' association's rights and restrictions -- (1) Right of entry upon units and limited common elements. The owners' association shall be granted a right of entry upon unit premises and any limited common elements to effect emergency repairs, and a reasonable right of entry thereupon to effect other repairs, improvements, replacement or maintenance as necessary.  
(2) Power to grant rights and restrictions in common elements. The owners' association should be granted other rights, such as the right to grant utility easements under, through or over the common elements, which are reasonably necessary to the ongoing development and operation of the project.  
(3) Responsibility for damage to common elements and units. A provision may be made in the declaration or bylaws for allocation of responsibility for damages resulting from the exercise of any of the above rights.  
(4) Assessments -- (i) Levy and collection. The declaration or its equivalent shall describe the authority of the owners' association to levy and enforce the collection of general and special assessments for common expenses and shall describe adequate remedies for failure to pay such common expenses. The common expenses assessed against any unit, with interest, late charges, costs and a reasonable attorney's fee shall be a lien upon such unit in accordance with applicable law. Each such assessment, together with interest, late charges, costs, and attorney's fee, shall also be the personal obligation of the person who was the owner of such unit at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law. Common expenses as used in this subdivision shall mean expenditures made or liabilities incurred by or on behalf of the owners' association, together with any assessments for the creation and maintenance of reserves.  
(ii) Reserves and working capital. There shall be in new or proposed condominium projects (including conversions) a provision for an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements, which fund shall be maintained out of regular assessments for common expenses. Additionally, a working capital fund must be established for the initial months of the project operations equal to at least a 2 months' estimated common area charge for each unit.  
(iii) Priority of lien. Any assessment lien must be subordinate to any Department of Veterans Affairs guaranteed mortgage except as provided in § 36.4352. A lien for common expense charges and assessments shall not be affected by any sale or transfer of a unit except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a unit from liability for, nor the unit so sold or transferred from the lien of, any common expense charges thereafter becoming due.  
(Authority: 38 U.S.C. 501, 3703(c)(1), (d)(3), 3710(a)(6))

(c) Unit owners' rights and restrictions -- (1) Obligation to pay expenses. The declaration or equivalent document shall establish a duty on each unit owner, including the declarant,
to pay a proportionate share of common expenses upon being assessed therefor by the owners' association. Such share may be allocated equally to each unit, may be proportionate to that unit's common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method chosen is equitable and reasonable for that condominium.

(2) Voting rights. The declaration or equivalent document shall allocate a portion of the votes in the association to each unit. Such portion may be allocated equally to each unit, may be proportionate to that unit's common expense liability, common element interest, relative size or value, or may be allocated according to any other specified criteria provided that the method is equitable and reasonable for that condominium. The declaration may provide different criteria for allocations of votes to the units on particular specified matters and may also provide different percentages of required unit owner approvals for such particular specified matters.

(3) Ingress and egress of unit owners. There may not be any restriction upon any unit owner's right of ingress and egress to his or her unit.

(4) Encroachments -- units and common elements -- (i) Easements for encroachments. In the event any portion of the common elements encroaches upon any unit or any unit encroaches upon the common elements or another unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The declaration may provide, however, reasonable limits on the extent of any easement created by the overlap of units, common elements, and limited common elements resulting from such encroachments; or (ii) Monuments as boundaries. If permitted by the governing law within the jurisdiction where the project is located, the existing physical boundaries of a unit or a common element or the physical boundaries of a unit or a common element reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed, plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats, plans or in the deed and those of the building. The declaration should provide reasonable limits on the extent of any such revised boundary(ies) created by the overlap of units, common elements, and limited common elements resulting from such encroachments.

(5) Right of first refusal. The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction if the declaration or similar document is recorded on or after December 1, 1976. If the declaration was recorded prior to December 1, 1976, the right of first refusal must comply with § 36.4350(b)(5)(ii); Provided, however, restrictions on the basis of age or restrictions established by a State, Territorial, or local government agency as part of a program for providing assistance to low- and moderate-income purchasers shall be governed by § 36.4350(b)(5)(iv).

(Authority: 38 U.S.C. 3703(c))

(6) Leasing restrictions. Except as provided in this paragraph, there shall be no prohibition or restriction on a condominium unit owner's right to lease his or her unit. The following restrictions are acceptable:

(i) A requirement that leases have a minimum initial term of up to 1 year, or
(ii) Age restrictions or restrictions imposed by State or local housing authorities which are allowable under § 36.4308(e) or § 36.4350(b)(5)(iv).

d) Rights of action. The owners' association and any aggrieved unit owner should be granted a right of action against unit owners for failure to comply with the provisions of the declaration, bylaws, or equivalent documents, or with decisions of the owners' association which are made pursuant to authority granted the owners' association in such documents. Unit owners should have similar rights of action against the owners' association.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))


§ 36.4359 Miscellaneous legal requirements.

(a) Declarant transfer of control of owners' association -- (1) Standards for transfer of control. The declarant shall relinquish all special rights, expressed or implied, through which the declarant may directly or indirectly control, direct, modify, or veto any action of the owners' association, its executive board, or a majority of unit owners, and control of the owners' association shall pass to the owners of units within the project, not later than the earlier of the following:

(i) 120 days after the date by which 75 percent of the units have been conveyed to unit purchasers, or

(ii) The last date of a specified period of time following the first conveyance to a unit purchaser; such period of time is to be reasonable for the particular project. The maximum acceptable period usually will be from 3 to 5 years for single-phased condominium regimes and 5 to 7 years for expandable condominiums.

(iii) On a case basis, modifications or variations of the requirements of paragraphs (a)(1)(i) and (ii) of this section will be acceptable, particularly in circumstances involving very large condominium developments.

(2) Declarant's unit votes after transfer of control. The requirements of paragraph (a)(1) of this section shall not affect the declarant's rights, as a unit owner, to exercise the votes allocated to units which declarant owns.

(3) Unit owners' participation in management. Declarants should provide for and foster early participation of unit owners in the management of the project.

(b) Taxes. Unless otherwise provided by State law, real estate taxes must be assessed and be lienable only against the individual units, together with their undivided interests in the common elements, and not against the multifamily structure. The owners' association usually owns no real estate, so it has no obligation concerning ad valorem taxes. Unless taxes are assessed only against the individual units, a tax lien could amount to more than the value of any particular unit in the structure.

(c) [Reserved]

(d) Policies for bylaws. The bylaws of the condominium should be sufficiently detailed for the successful governance of the condominium by unit owners. Among other things, such documents should contain adequate provisions for the election and removal of directors and officers.

(e) Insurance and related requirements -- (1) Insurance. The holder shall require hazard and flood insurance policies to be procured and maintained in accordance with § 36.4326.
Because of the nature of condominiums, additional types of insurance coverages -- such as tort liability insurance for injuries sustained on the premises, personal liability insurance for directors and officers managing association affairs, boiler insurance, etc. -- should be considered in appropriate circumstances.

(2) Fidelity bond coverage. The securing of appropriate fidelity bond coverage is recommended but not required, for any person or entity handling funds of the owners' association, including, but not limited to, employees of the professional managers. Such fidelity bonds should name the association as an obligee, and be written in an amount equal to at least the estimated maximum of funds, including reserve funds, in the custody of the owners' association or the management agent at any given time during the term of the fidelity bond. However, the bond should not be less than a sum equal to 3 months' aggregate assessments on all units plus reserve funds.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))


§ 36.4360 Documentation and related requirements -- flexible condominiums and condominiums with offsite facilities.

(a) Expandable condominiums. The following policies apply to condominium regimes which may be increased in size by the declarant:

(1) The declarant's right to expand the regime must be fully described in the declaration. The declaration must contain provisions adequate to ensure that future improvements to the condominium will be consistent with initial improvements in terms of quality of construction. The declarant must build each phase in accordance with an approved general plan for the total development (§ 36.4357(d)(2)) supported by detailed plats and plans of each phase prior to the construction of the particular phase.

(2) The reservation of a right to expand the condominium regime, the method of expansion and the result of an expansion must not affect the statutory validity of the condominium regime or the validity of title to the units.

(3) The declaration or equivalent document must contain a covenant that the condominium regime may not be amended or merged with a successor condominium regime without prior written approval of the Secretary. The declarant may have the proposed legal documentation to accomplish the merger reviewed prior to recordation. However, the Secretary's final approval of the merger will not be granted until the successor condominium has been legally established and construction completed. The declarant may add phases to an expandable condominium regime without the prior approval of the Secretary if the phasing implements a previously approved general plan for the total development. A copy of the amendment to the declaration or other annexation document which adds each phase must be submitted to the Secretary in accordance with § 36.4360a(b)(6).

(4) Liens arising in connection with the declarant's ownership of, and construction of improvements upon, the property to be added must not adversely affect the rights of existing unit owners, or the priority of first mortgages on units in the existing condominium property. All taxes, assessments, mechanic's liens, and other charges affecting such property, covering any period prior to the addition of the property, must be paid or otherwise satisfactorily provided for by the declarant.
(5) The declarant must purchase (at declarant's own expense) a general liability insurance policy in an amount not less than $1 million for each occurrence, to cover any liability which owners of previously sold units are exposed to as a result of further condominium project development.

(6) Each expandable project shall have a specified maximum number of units which will give each unit owner a minimum percentage of interest in the common elements. Each project shall also have a specified minimum number of units which will give each unit owner a maximum percentage of interest in the common elements. The minimum number of units to be built should be that which would be adequate to reasonably support the common elements. The maximum number of units to be built should be that which would not overload the capacity of the common facilities. The maximum possible percentage(s) and the minimum possible percentage(s) of undivided interest in the common elements for each type of unit must be stated in the declaration or equivalent document.

(7) The declaration or equivalent document shall set forth clearly the basis for reallocation of unit owner's ownership interests, common expense liabilities and voting rights in the event the number of units in the condominium is increased. Such reallocation shall be according to the applicable criteria set forth in §§ 36.4357(b) and 36.4358(c)(1) and (2).

(8) The declarant's right to expand the condominium must be for a reasonable period of time with a specific ending date. The maximum acceptable period will usually be from 5 to 7 years after the date of recording the declaration. On a case basis, longer periods of expansion rights will be acceptable, particularly in circumstances involving sizable condominium developments.

(b) Series projects. (1) Each phase in the series approach is to be considered as a separate project. A separate set of legal documents must be filed for each phase or project that relates to the condominium within its own boundary. The declaration for each phase must describe the particular project as a part of the whole development area, but subject only the one phase to the condominium regime. A separate unit ratio must be established that would relate each unit to all units of the particular condominium for purposes of ownership in the common areas, voting rights and assessment liability. A separate association may be created to govern the affairs of each condominium. Each phase is subject to a separate presale requirement.

(2) In the case of proposed projects, or projects under construction, the declaration should state the number of total units that the developer intends to build on other sections of the development area.

(c) Other flexible condominiums. Condominiums containing withdrawable real estate (contractable condominiums) and condominiums containing convertible real estate (portions of the condominium within which additional units or limited common elements, or both, may be created) will be considered acceptable provided the flexible condominium complies with the § 36.4300 series.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))

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§ 36.4360a Appraisal requirements.

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(a) Existing resale condominiums. Upon acceptance by the local office of the organizational documents, the project and unit(s) proposed as security for guaranteed financing shall be appraised to ensure that they meet MPR's (Minimum Property Requirements) and are safe, sanitary, and structurally sound. The Department of Veterans Affairs MPR's for existing construction apply to all existing resale condominiums including conversions, except that water, heating, ventilating, air conditioning and sewer service may be supplied from a central source. 

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6), (b)(5))

(b) Proposed condominiums or existing condominiums with declarant in control or marketing units --

(1) Low rise and high rise condominiums. Low rise and high rise condominiums shall comply with local building codes. Only the alterations, improvements, or repairs to low rise and high rise buildings proposed to be converted to the condominium form of ownership must comply with current local building codes, unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Department of Veterans Affairs objectives, a certification will be required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(2) Horizontal condominiums. Department of Veterans Affairs policies and procedures applicable to single-family residential construction shall also apply to horizontal condominiums. Proposed or existing (declarant in control or marketing units) horizontal condominium conversions shall comply with current local building codes for alterations and improvements or repairs made to convert the building to the condominium form of ownership unless local authorities require total code compliance on the entire structure when a building is being converted to the condominium form of ownership. In those areas where local standards are nonexistent, inferior to, or in conflict with Department of Veterans Affairs objectives, a certification will be required from a professional architect and/or registered engineer certifying that the plans and specifications conform to one of the national building codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion which are not being altered, improved or repaired must be appraised in accordance with paragraph (a) of this section.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(3) Unit completion. All units in the individual project or phase must be substantially completed except for customer preference items, such as interior finishes, appliances or equipment.

(4) Common element completion. All amenities of the condominium (to include offsite community facilities), that are to be considered in the unit value, must be bound legally to the condominium regime. All such amenities as well as the common elements of the project, must be substantially completed and available for use by the unit owners. In large multi-phase projects, the declarant should construct common elements in a manner consistent with the addition of units to support the entire development. The Secretary, in
appropriate cases, may approve the placement of adequate funds by the declarant in an escrow or otherwise earmarked account or accept a letter of credit or surety bond to assure completion of amenities and allow closing of VA-guaranteed (or insured) loans. Such funds must be adequate to assure completion of the amenities free and clear of all liens.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3710(a)(6))

(5) Information brochure/public offering statement. When units are being sold by the declarant (not applicable to resales), an information brochure/public offering statement must be given to veteran buyers prior to the time a downpayment is received and an agreement is signed, unless State law authorized receipt of the downpayment and delivery of the information brochure followed by a period in which purchasers may cancel the purchase agreement without penalty for a specified number of days. Information brochures must be written in simple terms to inform buyers that the association does not provide owner's contents and personal liability policies which are the owner's responsibility. In the event the development is expandable, series, etc., there must be full disclosure of the impact of the total development plan. In expandable, series or other projects with more than one phase, the information brochure must disclose fully later development rights, and the general plans of the declarant for additional phases. If the declarant makes no assurance concerning phases which are not required to be built, the declarant should state that no assurances are given concerning construction, unit sizes, building types, architectural styles, etc. In condominium conversions, the information brochure must list the major structural and mechanical components and the estimated remaining useful life of the components. A brief explanation must be furnished in the brochure explaining that certain major structural or mechanical components may require replacement within a specified time period. If the declarant has elected to place funds into a condominium reserve fund for replacement of a major component under the provisions of § 36.4360a(b)(7), the amount of the contribution into the reserve fund must be specified in the information brochure.

(6) Evidence of proper phasing. In an expandable or flexible condominium, evidence of the addition of each phase in accordance with a previously approved general plan of development must be submitted to the Secretary prior to the guaranty of the first loan in the added area.

(7) Additional condominium conversion requirements. (i) The declarant of a condominium project, which is (A) proposed, (B) under construction, or (C) an existing project with a declarant in control or marketing units not previously occupied, must furnish structural and mechanical common element component statements on the present condition of all accessible structural and mechanical components material to the use and enjoyment of the condominium. These statements must be completed by a registered professional engineer and/or architect prior to the guaranty of the first unit loan in the project. Each statement must also give an estimate of the expected useful life of the roof, elevators, heating and cooling, plumbing and electrical systems assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. In the alternative, the declarant may contribute an amount of funds to the condominium reserve fund equal to a minimum of 1/10 (one-tenth) of the estimated costs of replacement of a major structural or mechanical component (as determined by an independent registered professional architect or engineer) for each year
of estimated remaining useful life less than 10 years, e.g. 7 years remaining useful life
equals a 3/10 required declarant contribution to the reserve fund of the component's
estimated replacement cost. The noted statements and remaining useful life requirement
are not applicable to existing resale conversion projects when the declarant is no longer
marketing units and/or in control of the association. Expandable or series condominium
conversions require engineering and architectural statements on each stage or phase.
(ii) In declarant controlled projects, a statement(s) by the local authority(ies) of the
adequacy of offsite utilities servicing the site (e.g., sanitary or water) is required. If a
local authority(ies) declines to issue such a statement(s), a statement(s) may be obtained
from a registered professional engineer. If local authority(ies) declines to issue such a
statement(s), a statement(s) may be obtained from a registered professional engineer.
(c) Presale requirements -- (1) Proposed construction or existing declarant in control.
Bona fide agreements of sale must have been executed by purchasers other than the
declarant (who are obligated contractually to complete the purchase) of 70 percent of the
total number of units in the project. Lenders shall certify as to satisfaction of the presale
requirement prior to VA guaranty of the first unit loan. When a declarant can demonstrate
that a lower percentage would be justified, the Secretary, on an individual case basis, may
approve a presale requirement of less than 70 percent. Reduction of the 70 percent
presale requirement will be considered when:
(i) Strong initial sales demonstrate a ready market, or
(ii) The declarant will provide cash assets or acceptable bonds for payment of full
common area assessments to the owners' association until such assessments are assumed
by unit purchasers, or
(iii) Subsequent phases of an overall development are being undertaken in a proven
market area, or
(iv) Previous experience in similar projects in the same market area indicates strong
market acceptance, or
(v) The development is in a market area that has repeatedly indicated acceptance of such
projects.
(2) Multiphase -- proposed or existing declarant in control. The requirements of
paragraph (c)(1) of this section shall apply to each individual phase of a multiphase
development, taking into consideration that each individual phase must be capable of
self-support in the event that the developer does not complete all planned phases.
(d) Warranty. Except in condominium conversion projects, each CRV (Certificate of
Reasonable Value) issued by the Secretary relating to a proposed or existing not
previously occupied dwelling unit in a condominium project shall be subject to the
express condition that the builder, seller, or the real party in interest in the transaction
shall deliver to the veteran purchasing the dwelling unit with the aid of a guaranteed or
insured loan a warranty against defects for the unit and common elements. The unit shall
be warranted for 1 year from the date of settlement or the date of occupancy (whichever
first occurs). The common elements shall be warranted for 2 years from the date each of
the common elements is completed and available for use by the unit owners, or 2 years
from the date the first unit is conveyed to a unit owner other than the declarant,
whichever is later, in the particular phase of the condominium containing the common
element. For these purposes, defects shall be those items reasonably requiring the repair,
renovation, restoration, or replacement of any of the components constituting the unit or
common elements. Items of maintenance relating to the unit or common elements are not covered by the warranty. No certificate of guaranty or insurance credit shall be issued unless a copy of such warranty, duly receipted by the purchaser, is submitted with the loan papers.

(e) Ownership and operation of offsite facilities -- (1) Title requirements. Evidence must be presented that the offsite facility owned by an owners' association with mandatory membership by condominium unit owners or condominium unit owners' associations has been completed and conveyed free of encumbrances by the declarant for the benefit of the unit owners with title insured by an owner's title policy or other acceptable title evidence. Offsite facilities conveyed to a nonprofit corporation are the preferred method of offsite facilities ownership; however, the Secretary will consider other forms of ownership on an individual case basis.

(2) Mandatory membership. The declaration of the condominium (each condominium in a series development) and the legal documentation of the corporation or association which owns the offsite facility must provide the following:

(i) The owner of a condominium unit is automatically a member of the offsite facility corporation or association and that upon the sale of the unit, membership is transferred automatically to the new owner/purchaser. It is also acceptable if each condominium owners' association (in lieu of each individual unit owner) is automatically a member of the offsite facility corporation or association coupled with use rights for each of the unit owners or residents. If membership in an offsite owners' association is voluntary, no credit in the CRV valuation may be given for such offsite amenities.

(ii) Each member of the offsite facility corporation or association must be entitled to a representative vote at meetings of the offsite facility corporation or association. If the individual condominium owners' association is a member of the offsite facility corporation or association, each condominium owners' association must be entitled to a representative vote at meetings of the offsite facility corporation or association.

(iii) Each member must agree by acceptance of the unit deed to pay a share of the expenses of the offsite facility corporation or association as assessed by the corporation or association for upkeep, insurance, reserve fund for replacements, maintenance and operation of the offsite facility. The share of said expenses shall be determined equitably. Failure to pay such assessment must result in a lien against the individual unit in the same manner as unpaid assessments by the association of owners of the condominium. If each condominium owners' association is a member of the offsite facility in lieu of individual unit owners, failure of the condominium owners' association to pay its equitable assessment to the offsite facility must result in an enforceable lien.

(3) Declarant payment of offsite facility in a series project. Until the declarant has completed all of the intended condominium phases in a total condominium development or established each condominium regime by filing a separate declaration in a series development, the balance of the total sum of the expenses of the offsite facility not covered by the assessment against the unit owners should be assessed against and be payable by the declarant commencing on the first day of the first month after the first unit is conveyed to a homeowner in the first phase. If this balance is not paid, it must become a lien against those parcels of land in the development area which are owned by the declarant. The collection of such debt and enforcement of such lien may be by
foreclosure or such other remedies afforded the corporation or association under local law.

(f) Professional management. Many condominiums are small enough and their common areas so minimal that professional management is not necessary. VA does not have a requirement for professional management of condominiums. The powers given to the owners' association by the declaration and bylaws are fundamentally for "use control" and maintenance of the undivided interest all of the owners have in the common areas. These powers normally include management which may, if desired, be delegated to a professional manager. However, if the board of directors wants professional management, the management agreement must be terminable for cause upon 30 days' notice, and run for a reasonable period of from 1 to 3 years and be renewable for consent of the association and the management. (Management contracts negotiated by the declarant should not exceed 2 years.)

(g) Commercial areas. With respect to existing and proposed condominiums, commercial areas within condominium developments are acceptable, but such interests will be considered in value.

(Authority: 38 U.S.C. 501, 3703(c)(2), 3710(a)(6))

(Approved by the Office of Management and Budget under control number 2900-0448)


§ 36.4362 Requirement of construction warranty.

Each certificate of reasonable value issued by the Secretary relating to a proposed or newly constructed dwelling unit, except those covering one-family residential units in condominium housing developments or projects within the purview of §§ 36.4356 through 36.4360a, shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran constructing or purchasing such dwelling with the aid of a guaranteed or insured loan a warranty, in the form prescribed by the Secretary, that the property has been completed in substantial conformity with the plans and specifications upon which the Secretary based the valuation of the property, including any modifications thereof, or changes or variations therein, approved in writing by the Secretary, and no certificate of guaranty or insurance credit shall be issued unless a copy of such warranty duly receipted by the purchaser is submitted with the loan papers.

[40 FR 34595, Aug. 18, 1975, as amended at 44 FR 47343, Aug. 13, 1979]

§ 36.4363 Nondiscrimination and equal opportunity in housing certification requirements.

(a) Any request for a master certificate of reasonable value on proposed or existing construction, and any request for appraisal of individual existing housing not previously occupied, which is received on or after November 21, 1962, will not be assigned for appraisal prior to receipt of a certification from the builder, sponsor or other seller, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin.
(b) On requests for appraisal of individual proposed construction received on or after November 21, 1962, the prescribed nondiscrimination certification will be required if the builder is to sell the veteran the lot on which the dwelling is to be constructed, but will not be required if:
(1) The veteran owns the lot; or
(2) The lot is being acquired by the veteran from a seller other than the builder and there is no identity of interest between the builder and the seller of the lot.
(c) Each builder, sponsor or other seller requesting approval of site and subdivision planning shall be required to furnish a certification, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin. Site and subdivision analysis will not be commenced by the Department of Veterans Affairs prior to receipt of such certification.
(d) No commitment shall be issued and no loan shall be guaranteed or insured under 38 U.S.C. Chapter 37 unless the veteran certifies, in such form as the Secretary shall prescribe, that
(1) Neither he/she, nor anyone authorized to act for him/her, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, or national origin;
(2) He/she recognizes that any restrictive covenant on the property relating to race, color, religion, sex or national origin is illegal and void and any such covenant is specifically disclaimed; and
(3) He/she understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.


§ 36.4364 Correction of structural defects.
(a) The purpose of this section is to specify the types of assistance that the Secretary may render pursuant to 38 U.S.C. 1827 to an eligible borrower who has been unable to secure satisfactory correction of structural defects in a dwelling encumbered by a mortgage securing a guaranteed, insured or direct loan, and the terms and conditions under which such assistance will be rendered.
(b) A written application for assistance in the correction of structural defects shall be filed by a borrower under a guaranteed, insured or direct loan with the Director of the Department of Veterans Affairs office having loan jurisdiction over the area in which the dwelling is located. The application must be filed not later than 4 years after the date on which the first direct, guaranteed or insured mortgage loan on the dwelling was made, guaranteed or insured by the Secretary. A borrower under a direct, guaranteed or insured mortgage loan on the same dwelling which was made, guaranteed or insured subsequent to the first such loan shall be entitled to file an application if it is filed within 4 years of the date on which such first loan was made, guaranteed or insured by the Secretary.
(c) An applicant for assistance under this section must establish that:
(1) The applicant is the owner of a one- to four-family dwelling which was inspected during construction by the Department of Veterans Affairs or the Federal Housing Administration.

(2) The applicant is an original veteran-borrower on an outstanding guaranteed, insured or direct loan secured by a mortgage on such dwelling which was made, guaranteed or insured on or after May 8, 1968. The Secretary may, however, recognize an applicant who is not the original veteran-borrower but who contracted to assume such borrower's personal obligation thereunder, if the Secretary determines that such recognition would be in the best interests of the Government in the particular case.

(3) There exists in such dwelling a structural defect, not the result of fire, earthquake, flood, windstorm, or waste, which seriously affects the livability of the dwelling.

(4) The applicant has made reasonable efforts to obtain correction of such structural defect by the builder, seller, or other person or firm responsible for the construction of the dwelling.

(d) In those instances in which the Secretary determines that assistance under this section is appropriate and necessary the Secretary may take any of the following actions:

(1) Pay such amount as is reasonably necessary to correct the defect, or

(2) Pay the claim of the borrower for reimbursement of the borrower's expenses for correcting or obtaining correction of the defect, or

(3) Acquire title to the property upon terms acceptable to the borrower and the holder of the guaranteed or insured loan.

(e) To the extent of any expenditure made by the Secretary pursuant to paragraph (d) of this section the Secretary shall be subrogated to any legal rights the borrower or applicant described in paragraph (c)(2) of this section may have against the builder, seller, or other persons arising out of the structural defect or defects.

(f) The borrower shall not be entitled, as a matter of right, to receive the assistance in the correction of structural defects provided in this section. Any determination made by the Secretary in connection with a borrower's application for assistance shall be final and conclusive and shall not be subject to judicial or other review. Authority to act for the Secretary under this section is delegated to the Under Secretary for Benefits.

(g) For the purpose of this section, the term "structural defects seriously affecting livability" shall in no event be deemed to include (1) defects of any nature in a dwelling in respect to which the applicant for assistance under this section was the builder or general contractor, or (2) structural features, improvements, amenities, or equipment which were not taken into account in the Secretary's determination of reasonable value.


[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (f), became effective June 4, 1996.]

§ 36.4365 Advertising and Solicitation Requirements.

Any advertisement or solicitation in any form (e.g., written, electronic, oral) from a private lender concerning housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and
(b) Must not include information falsely stating or implying that the lender has an
exclusive right to make loans guaranteed or insured by VA.
[67 FR 9402, Mar. 1, 2002]

(38 U.S.C. 3703, 3704)
[EFFECTIVE DATE NOTE: 67 FR 9402, Mar. 1, 2002, added this section, effective Mar.
1, 2002.]
§ 36.4370 Insured loan and insurance account.
§ 36.4372 Transfer of insured loans.
§ 36.4373 Debits and credits to insurance account under § 36.4318.
§ 36.4374 Payment of insurance.
§ 36.4375 Reports of insured institutions.

§ 36.4370 Insured loan and insurance account.
(a) Loans otherwise eligible may be insured when purchased by a lender eligible under 38 U.S.C. 3703(a) if the purchaser (lender) submits with the loan report evidence of an agreement, general or special, made prior to the closing of the loan, to purchase such loan subject to its being insured.
(b) A current account shall be maintained in the name of each insured lender or purchaser. The account shall be credited with the appropriate amounts available for the payment of losses on insured loans made or purchased. The account shall be debited with appropriate amounts on account of transfers, purchases under § 36.4318, or payment of losses. The Secretary may on 6 months' notice close any lender's insurance account. Such account after expiration of the 6-month period shall be available only as to loans embraced therein.
(c) Amounts received or recovered by the Secretary or the holder with respect to a loan after payment of an insured claim thereon will not restore any amount to the holder's insurance account.

[13 FR 7281, Nov. 27, 1948, as amended at 24 FR 2657, Apr. 7, 1959]

§ 36.4372 Transfer of insured loans.
(a) In cases involving the transfer from one insured financial institution to another insured institution of loans which are transferred without recourse, guaranty, or repurchase agreement, if no payment on any loan included in the transfer is past due more than one calendar month at the time of transfer there shall be transferred from the insurance account of the transferee to the insurance account of the transferor an amount equal to the original percentage credited to the insurance account in respect to each loan being transferred applied to the unpaid balance of such loans, or to the purchase price, whichever is the lesser.
(b) Transfers between insurance accounts in a manner or under conditions not provided in paragraph (a) of this section must have the prior approval of the Secretary.
(c) Where loans are transferred with recourse or under a guaranty or repurchase agreement no insurance credit will be transferred or insurance account affected and no reports will be required.
(d) In all cases of transfer of loans from one insured financial institution to another insured institution, except as provided in paragraph (c) of this section, a report on a prescribed form executed by the parties and showing their agreement with regard to the transfer of insurance credits shall be made to the Secretary.

[13 FR 7281, Nov. 27, 1948]
§ 36.4373 Debits and credits to insurance account under § 36.4318.
In the event that an insured loan is transferred under the provisions of § 36.4318, there shall be charged to the insurance account of the transferor a sum equal to the amount paid by the transferor on account of the indebtedness less the current market value of the property transferred as security therefor as determined by an appraiser designated by the Secretary, or the amount chargeable to such insurance account in the event of a transfer under § 36.4372, whichever sum is the greater. The credit to the insurance account of the transferee will be computed in accordance with § 36.4372(a).
[13 FR 7281, Nov. 27, 1948]

§ 36.4374 Payment of insurance.
(a) Upon the continuance of a default for the period specified in § 36.4316, the[226 holder may proceed to establish the net loss, after giving the notice prescribed in § 36.4317 if security is available. The net loss shall be reported to the Secretary with proper claim, whereupon the holder shall be entitled to payment of the claim within the amount then available for such payment under the payee's related insurance account. Subject to the provisions of the paragraph (b) of this section and to § 36.4370(b) a supplemental claim for any balance of an insurance loss may be filed at any time within 5 years after the date of the original claim.
(b) The basis of the claim for an insured loss shall consist in the unrealized principal or the amount paid for the obligation, if less, plus unrealized interest to the date of claim or the date of sale whichever is earlier, and those expenses, if any, allowable under § 36.4313, but subject to proper credits because of payments, set-off, proceeds of security or otherwise, provided that if there is no liquidation of security the claim shall not include an accrual of interest for a period in excess of 6 months from the date of the first uncured default.
[13 FR 7742, Dec. 15, 1948]

§ 36.4375 Reports of insured institutions.
An insured financial institution shall make such reports respecting its insurance accounts as the Secretary may from time to time require, not more frequently than semiannually.
[13 FR 7281, Nov. 27, 1948]
§ 36.4390 Purpose.
§ 36.4391 Applicability.
§ 36.4392 Certification requirements.
§ 36.4393 Complaint and hearing procedure.

§ 36.4390 Purpose.
Sections 36.4390 through 36.4393 are promulgated to achieve the aims of the applicable provisions of Executive Orders 11246 and 11375 and the regulations of the Secretary of Labor with respect to federally assisted construction contracts.
[40 FR 34595, Aug. 18, 1975]

§ 36.4391 Applicability.
(a) For the purposes of the home loan guaranty and insurance and direct loan programs of the Department of Veterans Affairs, the term "applicant for Federal assistance" or "applicant" in Part III of Executive Order 11246, shall mean the builder, sponsor or developer of land to be improved by such builder, sponsor or developer for the purpose of constructing housing thereon for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. chapter 37, or the builder, sponsor or developer of housing to be constructed for sale to eligible veterans with financing which is to be guaranteed or insured or made under the provisions of 38 U.S.C. chapter 37.
(b) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are applicable to:
(1) Each Master Certificate of Reasonable Value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963;
(2) Each individual Certificate of Reasonable Value or extension or modification thereof relating to proposed construction issued on or after July 22, 1963, except as provided in paragraph (c)(2) of this section;
(3) Each Special Conditions Letter or modification thereof issued on or after July 22, 1963, in respect to site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon;
(4) Each direct loan fund reservation commitment or extension thereof issued to builders on or after July 22, 1963;
(c) The provisions of Executive Orders 11246 and 11375 and the rules and regulations of the Secretary of Labor are not applicable to:
(1) Grants under chapter 21, title 38, U.S.C.;
(2) Individual Certificates of Reasonable Value issued on or after July 22, 1963, if:
(i) The certificate relates to existing properties, either previously occupied or unoccupied;
or
(ii) The certificate relates to proposed construction and
(a) A veteran was named in the request for appraisal, or
(b) A veteran contracted for the construction or purchase of the home prior to issuance of the certificate, or
(c) The property was listed in the Schedule of Reasonable Values on an outstanding Master Certificate of Reasonable Value issued prior to July 22, 1963;
(3) Any contract or subcontract for construction work not exceeding $10,000;
(4) Any other contract or subcontract which is exempted or excepted by the regulations of the Secretary of Labor.

§ 36.4392 Certification requirements.
In any case in which §§ 36.4390 through 36.4393 are applicable, as set forth in § 36.4391, no action will be taken by the Department of Veterans Affairs on any request for appraisal relating to proposed construction, site approval of land to be improved by a builder, sponsor or developer for the construction of housing thereon, or for a direct loan fund reservation commitment unless the builder, sponsor or developer has furnished the Department of Veterans Affairs a signed certification in form as follows:
To induce the Department of Veterans Affairs to act on any request submitted by or on behalf of the undersigned for site approval of land to be improved for the construction of housing thereon to be financed with loans guaranteed, insured or made by the Department of Veterans Affairs, or for establishment by the Department of Veterans Affairs of reasonable value relating to proposed construction or for direct loan fund reservation commitments, the undersigned hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the rules and regulations of the Secretary of Labor relating to the land or housing included in its request to the Department of Veterans Affairs the following equal opportunity clause:
During the performance of this contract the contractor agrees as follows:
(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and
shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. Except in special cases and in subcontracts for the performance of construction work at the site of construction, the clause is not required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference the equal opportunity clause. The undersigned further agrees that it will be bound by the above equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government. The undersigned agrees that it will cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The undersigned further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon the contractors and
subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246.

In addition, the undersigned agrees that if it fails or refuses to comply with these undertakings such failure or refusal shall be a proper basis for cancellation by the Department of Veterans Affairs of any outstanding master certificates of reasonable value or individual certificates of reasonable value relating to proposed construction, except in respect to cases in which an eligible veteran has contracted to purchase a property included on such certificates, and for the rejection of future requests submitted by the undersigned or on his or her behalf for site approval, appraisal services, and direct loan fund reservation commitments until satisfactory assurance of future compliance has been received from the undersigned, and for referral of the case to the Department of Justice for appropriate legal proceedings.

[31 FR 8745, June 24, 1966, as amended at 40 FR 34596, Aug. 18, 1975]

§ 36.4393 Complaint and hearing procedure.

(a) Upon receipt of a written complaint signed by the complainant to the effect that any person, firm or entity has violated the undertakings referred to in § 36.4392, such person, firm or other entity shall be invited to discuss the matter in an informal hearing with the Director of the Department of Veterans Affairs regional office or center.

(b) If the existence of a violation is denied by the person, firm or other entity against which a complaint has been made, the Director or designee shall conduct such inquiries and hearings as may be deemed appropriate for the purpose of ascertaining the facts.

(c) If it is found that the person, firm or other entity against which a complaint has been made has not violated the undertakings referred to in § 36.4392, the parties shall be so notified.

(d) If it is found that there has been a violation of the undertakings referred to in § 36.4392, the person, firm or other entity in violation shall be requested to attend a conference for the purpose of discussing the matter. Failure or refusal to attend such a conference shall be proper basis for the application of sanctions.

(e) The conference arranged for discussing a violation shall be conducted in an informal manner and shall have as its primary objective the elimination of the violation. If the violation is eliminated and satisfactory assurances are received that the person, firm or other entity in violation will comply with the undertakings pursuant to § 36.4392 in the future, the parties concerned shall be so notified.

(f) Failure or refusal to comply and give satisfactory assurances of future compliance with the equal employment opportunity requirements shall be proper basis for applying sanctions. The sanctions shall be applied in accordance with the provisions of Executive Order 11246 as amended and the regulations of the Secretary of Labor.

(g) Upon written application, a complainant or a person, firm or other entity against which a complaint has been filed may apply to the Under Secretary for Benefits for a review of the action taken by a Director. Upon receiving such application, the Under Secretary for Benefits may designate a representative or representatives to conduct an informal hearing and to make a report of findings. The Under Secretary for Benefits may, after a review of such report, modify or reverse an action taken by a Director.
(h) Reinstatement of restricted persons, firms or other entities shall be within the
discretion of the Under Secretary for Benefits and under such terms as the Under
Secretary for Benefits may prescribe.
[29 FR 2862, Feb. 29, 1964, as amended at 40 FR 34596, Aug. 18, 1975; 61 FR 28057,
28059, June 4, 1996]

[EFFECTIVE DATE NOTE: 61 FR 28057, 28058, June 4, 1996, which substituted
"Under Secretary for Benefits" for "Chief Benefits Director" in paragraphs (g) and (h),
became effective June 4, 1996.]
ASSISTANCE TO CERTAIN DISABLED VETERANS IN ACQUIRING
SPECIALY ADAPTED HOUSING

§ 36.4400 Applicability.
§ 36.4401 Definitions.
§ 36.4402 Eligibility.
§ 36.4403 Joint ownership of housing unit.
§ 36.4404 Computation of cost.
§ 36.4405 Submission of proof to the Secretary.
§ 36.4406 Disbursement of benefit authorized.
§ 36.4407 Supplementary administrative action.
§ 36.4408 Delegation of authority.
§ 36.4409 Guaranteed or insured loans under 38 U.S.C. chapter 37.
§ 36.4410 Allocation of the funds of the grant.
§ 36.4411 Geographical limits.

§ 36.4400 Applicability.
References in the regulations pertaining to assistance to certain disabled veterans in acquiring specially adapted housing to 38 U.S.C. chapters 21 and 37, shall where applicable, be deemed to refer also to the prior corresponding provision of the law.

[24 FR 2657, Apr. 7, 1959]

§ 36.4401 Definitions.
Wherever used in 38 U.S.C. Chapter 21 or §§ 36.4401 through 36.4410, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated; namely:
(a) Secretary: The Secretary of Veterans Affairs or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.
(b) Chapter 21: chapter 21 of title 38, U.S.C.
(c) Movable facilities: Such exercising equipment and other aids as may be allowed or required by the Chief Medical Director or designee.
(d) Necessary land: Any plot of land the cost and area of which are not disproportionate to the type of improvements thereon and which is in keeping with the locality.
(e) Special fixtures and necessary adaptations. Construction features which are specially designed to overcome the physical limitations of the individual beneficiary and which are allowed or required by the Chief Medical Director or designee as necessary by nature of the qualifying disability.
(f) Housing unit: A family dwelling or unit approved by the Veterans Health Services and Research Administration as medically feasible for occupancy as a home by the individual beneficiary, including the land, improvements, and all appurtenances, together with such movable facilities or special features as are authorized under the definitions of those terms in §§ 36.4401 through 36.4410.
(g) Remodeling: Any alterations, repairs, or improvements necessary or desirable to the housing unit, as defined in §§ 36.4401 through 36.4410.
(h) Veteran's family. Persons related by blood, marriage, or adoption.
§ 36.4402 Eligibility.
(a) Eligibility, housing grants. No beneficiary shall be eligible for assistance under section 2101(a) of Chapter 21 for the purpose of reimbursing the veteran for the cost of an existing structure acquired by the veteran prior to applying for assistance or for constructing or remodeling a dwelling or for otherwise acquiring a suitable housing unit, unless it is determined pursuant to §§ 36.4401 through 36.4410 that:
(1) It is medically feasible for such beneficiary to reside in the existing or proposed housing unit and in the locality where such is or will be situated;
(2) The nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes;
(3) Such unit bears a proper relation to the veteran's present and anticipated income and expenses;
(4) The veteran has or will acquire an interest in the housing unit which is:
   (i) A fee simple estate, or
   (ii) A leasehold estate, the unexpired term of which, including renewals at the option of the lessee, is not less than 50 years, or
   (iii) An interest in a residential unit in a cooperative or a condominium type development which in the judgment of the Under Secretary for Benefits or the Director, Loan Guaranty Service, provides a right of occupancy for a period of not less than 50 years, or
   (iv) A beneficial interest in a revocable Family Living Trust that ensures that the veteran, or veteran and spouse, have an equitable life estate, provided the trust arrangement is valid under State law;
Provided, The title to such estate or interest is or shall be such as is acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community;
(5) The veteran has certified, in such form as the Secretary shall prescribe, that
   (i) Neither the veteran, nor anyone authorized to act for the veteran, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property acquired by this benefit to any person because of race, color, religion, sex, or national origin;
   (ii) The veteran recognizes that any restrictive covenant on the property relating to race, color, religion, sex, or national origin is illegal and void and any such covenant is specifically disclaimed;
   (iii) The veteran understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law; and
(6) The housing unit, if it is located or becomes located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, is or will be covered by flood insurance. The amount of flood insurance must be at least equal to the lesser of the full insurable value of the property or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The Secretary cannot approve any financial assistance for the
acquisition or construction of property located in an area identified by the Federal
Emergency Management Agency as having special flood hazards unless the community
in which such area is situated is then participating in the National Flood Insurance
Program.

(b) Eligibility, adaptations grants. No beneficiary shall be eligible for assistance under
section 2101(b) of chapter 21, for the cost of reasonably necessary adaptations to an
existing structure or for the inclusion of such adaptations in proposed construction or for
the purchase of a structure already including such adaptations unless it is determined
pursuant to §§ 36.4401 through 36.4410 of this part that:
(1) The veteran has not been declared eligible for assistance under section 2101(a) of
chapter 21;
(2) The veteran has not been provided the particular type of adaptation, improvement, or
structural alteration under section 1712(a) of title 38 U.S.C.;
(3) The veteran is or will be residing in and reasonably intends to continue residing in a
residence owned by such veteran or by a member of such veteran's family;
(4) The adaptations are reasonably necessary because of the veteran's disability; and
(5) If the veteran is the owner or part-owner of the housing unit, the veteran must comply
with paragraphs (a)(5) and (6) of this section.

(Authority: 38 U.S.C. 2101(b), 2104)
[46 FR 43673, Aug. 31, 1981, as amended at 56 FR 9862, March 8, 1991; 61 FR 28057,
28059, June 4, 1996; 62 FR 5530, 5531, Feb. 6, 1997]

(42 U.S.C. 4012a, 4106(a))
[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, amended paragraph
(a)(4)(iii) and added paragraph (a)(4)(iv), effective June 4, 1996; 62 FR 5530, 5531, Feb.
6, 1997, revised paragraph (a)(6), effective Feb. 6, 1997.]

§ 36.4403 Joint ownership of housing unit.
The construction or remodeling of a housing unit, or reimbursement to a veteran who has
acquired a suitable unit at the veteran's own expense pursuant to section 2101(a) of
chapter 21, shall be permissible notwithstanding that title to the home is or will be vested
in an eligible veteran and spouse. If an undivided interest is or will be owned by a person
other than the spouse of the veteran the cost of the unit to the veteran shall be computed
to be such part of the total cost of the unit as is proportionate to the undivided interest of
the veteran in the entire property, and the percentages and amounts prescribed in section
2101(a) of chapter 21 shall be calculated only upon such cost to the veteran.
[46 FR 43674, Aug. 31, 1981]

§ 36.4404 Computation of cost.
(a) Computation of cost of housing unit. Under section 2101(a) of chapter 21, for the
purpose of computing the amount of benefits payable to a veteran-beneficiary, there may
be included in the total cost to the veteran the following amount, not to exceed $ 48,000.
(1) The cost of the necessary land and the grading, landscaping, and improvement thereof
for use for residential purposes.
(2) The cost of the improvement erected thereon and the appurtenances thereto, including such heating, cooking, laundry, and refrigeration equipment as may be suitable to equip a housing unit for residential use.
(3) The cost of remodeling a housing unit.
(4) The cost of movable facilities and special fixtures.
(5) Reasonable architects' and attorneys' fees for services rendered to the veteran which are necessary to and are in connection with the transaction.
(6) Any charges for the customary necessary connections to or extensions of public facilities and improvements.
(7) Such other reasonable costs or expenses incurred in closing a loan or financing the acquisition of the housing and land, including unpaid taxes, ground rents, or assessments, which are normally required to be paid by a lienor or a purchaser.

(b) Computation of cost of adaptations. Under section 2101(b) of Chapter 21, for the purpose of computing the amount of benefits payable to a veteran-beneficiary, the assistance is limited to the lesser of:
(1) The actual cost, or in the case of a veteran acquiring a residence already adapted with special features, the fair market value of the adaptations, including installation costs, determined to be reasonably necessary, or
(2) $9,250.

(Authority: 38 U.S.C. 2102)

§ 36.4405 Submission of proof to the Secretary.
As a condition precedent to the grant the Secretary may require submission of such proof of costs and other matters as the Secretary may deem necessary.


§ 36.4406 Disbursement of benefit authorized.
After approval of an application for a grant, the Secretary shall decide upon a method of disbursement which in the Secretary's opinion is appropriate and advisable in the interest of the veteran and the Government and disburse the benefit payable accordingly. Disbursements may be made to the veteran or to third parties who have contracted with the veteran, or to an escrow agent under conditions imposed by the Secretary.


§ 36.4407 Supplementary administrative action.
Notwithstanding any requirement, condition, or limitation stated in or imposed by §§36.4401 through 36.4410, the Secretary, within the limitations and conditions prescribed in 38 U.S.C. chapters 3 and 21, may take such action as may be necessary or appropriate to relieve undue prejudice to a veteran or a third party contracting or dealing with such veteran which might otherwise result.
§ 36.4408 Delegation of authority.
(a) Except as hereinafter provided, each employee of the Department of Veterans Affairs heretofore or hereafter appointed to, or lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to assisting eligible veterans to acquire specially adapted housing.
(b) Designated positions:
Under Secretary for Benefits
Director, Loan Guaranty Service
Assistant Director for Construction and Valuation
Chief, Specially Adapted Housing Unit, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, VA Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer.
(c) Nothing in this section shall be construed to authorize any employee designated in paragraph (b) of this section to determine basic eligibility or medical feasibility, except as otherwise authorized.

§ 36.4409 Guaranteed or insured loans under 38 U.S.C. chapter 37.
In any case where, in addition to the benefits of chapter 21, the veteran will utilize the veteran's entitlement to the loan guaranty or insurance benefits of 38 U.S.C. chapter 37, the complete transaction must be in accord with applicable regulations promulgated thereunder excepting § 36.4306 thereof.

§ 36.4410 Allocation of the funds of the grant.
Any amount payable as a grant under section 2101(a), chapter 21 may be required by the Secretary to be utilized as the Secretary deems advisable for payment of any of the following costs or debts which are obligations of the veteran before any part of the grant may be paid to the veteran directly:
(a) Cost of necessary land,
(b) Cost of constructing, adapting, or remodeling a housing unit.
(c) Delinquent taxes secured by a lien on the housing unit,
(d) Reduction or retirement of any indebtedness incurred in connection with the purchase, construction, or remodeling of a housing unit on which the grant is made.
§ 36.4411 Geographical limits.
Any real property purchased, constructed, altered, improved, repaired, or specially adapted, in whole or in part, with the proceeds of any specially adapted housing grant, shall be situated in the United States, which, for purposes of 38 U.S.C. chapter 21, is defined as the several States, Territories, and possessions, including the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other area over which the United States may, at some future date, acquire sovereignty.
(Authority: 38 U.S.C. 501, 2101 (a) and (b))
[47 FR 29231, July 6, 1982]
DIRECT LOANS

§ 36.4500 Applicability.
§ 36.4501 Definitions.
§ 36.4502 Use of guaranty entitlement.
§ 36.4503 Amount and amortization.
§ 36.4504 Loan closing expenses.
§ 36.4505 Maturity of loan.
§ 36.4506 Recasting.
§ 36.4507 Refinancing of mortgage or other lien indebtedness.
§ 36.4508 Transfer of property by borrower.
§ 36.4509 Joint loans.
§ 36.4510 Prepayment, acceleration, and liquidation.
§ 36.4511 Advances after loan closing.
§ 36.4512 Taxes and insurance.
§ 36.4513 Foreclosure and liquidation.
§ 36.4514 Eligibility requirements.
§ 36.4515 Estate of veteran in real property.
§ 36.4516 Lien requirements.
§ 36.4517 Incorporation by reference.
§ 36.4518 Supplementary administrative action.
§ 36.4519 Eligible purposes and reasonable value requirements.
§ 36.4520 Delegation of authority.
§ 36.4521 Minimum property and construction requirements.
§ 36.4522 Waivers, consents, and approvals.
§ 36.4523 Geographical limits.
§ 36.4524 Sale of loans.
§ 36.4525 Requirement of a construction warranty.
§ 36.4526 Issuance of fund reservation commitments.
§ 36.4527 Direct housing loans to Native American veterans on trust lands.

§ 36.4500 Applicability.
(a) The regulations concerning direct loans to veterans shall be applicable to loans made by Department of Veterans Affairs pursuant to 38 U.S.C. 3711.
(b) Sections 36.4501, 36.4512, and 36.4527, which concern direct loans to Native American veterans shall be applicable to loans made by the Secretary pursuant to 38 U.S.C. 3761 through 3764.
(c) Title 38, U.S.C. chapter 37 is a continuation and restatement of the provisions of title III of the Servicemen's Readjustment Act of 1944, and may be considered to be an amendment to such title III. References in the regulations concerning direct loans to veterans to the sections or chapters of title 38, United States Code, shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.


(42 U.S.C. 4012a)
§ 36.4501 Definitions.

Wherever used in 38 U.S.C. 3711, 3762 or the regulations concerning direct loans to veterans, unless the context otherwise requires, the terms defined in this section shall have the meaning herein stated, namely:

Cost means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

Default means failure of a borrower to comply with the terms of a loan agreement.

Department of Veterans Affairs means the Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.

Dwelling means a building designed primarily for use as a home, consisting of one residential unit only and not containing any business unit.

Energy conservation improvement. An improvement to an existing dwelling or farm residence through the installation of a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system, or through application of a residential energy conservation measure as prescribed in 38 U.S.C. 3710(d) or by the Secretary.

Farm residence means a dwelling located on a farm which is to be occupied by the veteran as the veteran's home.

Guaranty means the obligation of the United States, incurred pursuant to 38 U.S.C. chapter 37, to repay a specified percentage of a loan upon the default of the primary debtor.

Home means a place of residence.

Improvement means any addition or alteration which enhances the utility of the property for residential purposes.

Indebtedness means the unpaid principal and interest plus any other sums a borrower is obligated to pay Department of Veterans Affairs under the terms of the loan instruments or of the regulations concerning direct loans to veterans.

Loan means a loan made to a veteran by Department of Veterans Affairs pursuant to the provisions of 38 U.S.C. 3711 or 3762 and the regulations concerning direct loans to veterans.

Meaningful interest means a leasehold estate or other interest in trust land and any improvements thereon which permits the use, occupancy and enjoyment of that land and any improvements by the grantee. This interest must be capable of being conveyed (1) as security for a loan made under 38 CFR 36.4527, (2) by the grantee to a third party subject to the approval of the tribal organization and the Secretary or designee, and (3) by the Secretary or other foreclosing mortgagee, subject to the provisions of a memorandum of understanding entered into by the Secretary or designee, the tribal organization, and the Bureau of Indian Affairs.

Native American means:

(1) An Indian, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d));

(2) A native Hawaiian, as defined in section 201(a)(7) of the Hawaiian Homes Commission Act of 1920, (Public Law 67-34, 42 Stat. 108);
(3) An Alaska Native within the meaning provided for the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and
(4) A Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.)
Native American veteran means any veteran who is a Native American.
Period of more than 180 days means 181 or more calendar days of continuous active duty.
Purchase price means the entire legal consideration paid or payable upon or on account of the sale of property, exclusive of acquisition costs, or for the cost of materials and labor to be applied thereto.
Reasonable value means that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as proper price or cost in the light of prevailing conditions.
Repairs means any alteration of existing realty which is necessary or advisable for protective, safety, or restorative purposes.
Secretary means the Secretary of Veterans Affairs, or any employee of the Department of Veterans Affairs authorized to act in the Secretary's stead.
Tribal organization has the same meaning given in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(1)) and includes the Department of Hawaiian Homelands, in the case of native Hawaiians, and such other organizations as the Secretary may prescribe.
Trust land means any land that:
(1) Is held in trust by the United States for Native Americans;
(2) Is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);
(3) Is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or
(4) Is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.
(Authority: 38 U.S.C. 3761-3764)

§ 36.4502 Use of guaranty entitlement.
The guaranty entitlement of the veteran obtaining a direct loan which is closed on or after February 1, 1988, shall be charged with the lessor of the loan amount or an amount which bears the same ratio to $36,000 as the amount of the loan bears to $33,000. The charge against entitlement of a veteran who obtained a direct loan which was closed prior to the aforesaid date, shall be the amount which would have been charged had the loan been closed subsequent to such date.
(Authority: 38 U.S.C. 3711 (d)(2)(A))
[55 FR 40657, Oct. 4, 1990]
§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after February 1, 1988, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veterans is entitled under 38 U.S.C. 3710 at the time the loan is made bears to $36,000. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of §36.4511. Except as to home improvement loans, loans made by VA shall bear interest at the rate of 7 1/2 percent per annum. Loans solely for the purposes of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 9 percent per annum.

(Authority: 38 U.S.C. 3711(d)(2)(A))

(b) Each loan shall be repayable on the basis of approximately equal monthly installments; except that in the case of loans made for any of the purposes described in clause (2), (3), or (4) of subsection (a) of 38 U.S.C. 3710, such loans may provide for repayment in quarterly, semiannual, or annual installments, provided that such plan of repayment corresponds to the present and anticipated income of the veteran.

(c) The first installment payment on a loan to construct, alter or improve a farm residence or other dwelling may be postponed for a period not exceeding 12 months from the date of the loan instruments. The first installment payment for a loan for the purchase of a dwelling or farm on which there is a farm residence may not be postponed more than 60 days from the date of loan closing: Provided, That if the loan is repayable in quarterly, semi-annual or annual installments, the first installment payment date may be postponed for not more than 12 months from the date of the loan instruments.

(d) The final installment on any loan shall not be in excess of two times the average of the preceding installments, except that on a construction loan the final installment may be for an amount not in excess of 5 percent of the original principal amount of the loan. The limitations imposed by this paragraph on the amount of the final installment shall not apply in the case of any loan extended or recast pursuant to §36.4505 or 36.4506.

(Authority: 38 U.S.C. 501, 3703(c)(1), 3711(d)(1), 3712 (f) and (g))


§ 36.4504 Loan closing expenses.

(a) Department of Veterans Affairs will designate a loan closer to represent the Department of Veterans Affairs at the closing and in advance thereof will agree with the loan closer upon the fee to be paid by the Department of Veterans Affairs for preparing the loan closing instruments and attending at the closing of the loan. The loan closer as such is neither an agent nor employee of the Department of Veterans Affairs.

(b) With respect to a loan made to a veteran-borrower pursuant to an application (VA Form 26-1802a, received by the Department of Veterans Affairs on or after March 3, 1966, the borrower shall pay the Department of Veterans Affairs the following:

(1) $50, or one percent (1%) of the loan amount, whichever is greater, which charge shall be in lieu of the loan closer's fee, credit report, and cost of appraisal: Provided, That
if the loan is to finance the cost of construction, repairs, alterations, or improvements necessitating disbursements of the loan proceeds as the construction or other work progresses, the charge to the veteran-borrower shall be two percent (2%) of the loan amount, but not less than $ 50 in any event.

(2)(i) A loan fee of one percent of the total loan amount. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property. In computing the fee, the Department of Veterans Affairs will disregard any amount included in the loan to enable the borrower to pay such fee. If all or part of the fee is included in the loan, the amount of the loan as increased may not exceed $ 33,000.

(Authority: 38 U.S.C. 3729(a))

(ii) The fee described in paragraph (b)(2)(i) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 3701(b)(2) of title 38 U.S.C.

(Authority: 38 U.S.C. 3729(b))

(iii) Collection of the loan fee described in this paragraph (b)(2) of this section shall not apply to loans closed prior to August 17, 1984, or to loans closed after September 30, 1987.

(Authority: 38 U.S.C. 3729(d))

(3) Costs or expenses normally paid by a purchaser or lienor incident to loan closing including but not limited to the following:

(i) Fee of Department of Veterans Affairs designated compliance inspector;

(ii) Recording fees and recording taxes or other charges incident to recordation;

(iii) That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and the initial deposit (lump-sum payment) for the tax and insurance account;

(iv) Hazard insurance as required by § 36.4512,

(v) Survey, if any;

(vi) Title examination and title evidence.

Charges or costs payable by the veteran-borrower, except as to the payment of the loan fee described in paragraph (b)(2)(i) of this section, shall be paid in cash and may not be paid out of the proceeds of the loan. No service or brokerage fee shall be charged against the veteran-borrower by any third party for procuring a direct loan or in connection therewith.

(c) With respect to a loan to construct, repair, alter, or improve a farm residence or other dwelling, the Department of Veterans Affairs may require the veteran to deposit with the Department of Veterans Affairs, or in an escrow satisfactory to the Department of Veterans Affairs, 10 percent of the estimated cost thereof or such alternative sum, in cash or its equivalent, as the Department of Veterans Affairs may determine to be necessary in order to afford adequate assurance that sufficient funds will be available, from the proceeds of the loan or from other sources, to assure completion of the construction, repair, alteration, or improvement in accordance with the plans and specifications upon which the Department of Veterans Affairs based its loan commitment.

(Authority: 38 U.S.C. 501, 3724, and 3729)
§ 36.4505 Maturity of loan.
(a) The maturity of a loan shall not exceed 25 years and 32 days. If the Department of
Veterans Affairs determines the income and expenses of a veteran-applicant under
customary credit standards would prevent the veteran from making the required loan
payments for a loan which matures in 25 years and 32 days, but the veteran would be able
to make the loan payments over a longer period of time, the loan may be made with a
maturity not in excess of 30 years and 32 days.
(b) Every loan shall be repayable within the estimated economic life of the property
securing the loan.
(c) Nothing in this section shall preclude extension of the loan pursuant to the provisions
of § 36.4506.
(Authority: 38 U.S.C. 3703 (c)(1), (d)(1))

§ 36.4506 Recasting.
In the event of default or to avoid imminent default, the Department of Veterans Affairs
may at any time enter into an agreement with the borrower which will permit the latter
temporarily to repay the obligation on a basis appropriate to the borrower's apparent
current ability to pay or may enter into an appropriate recasting or extension agreement:
Provided, That no such agreement shall extend the ultimate repayment of a loan beyond
the expiration of 30 years and 32 days from the date of the loan. Provided further, That
nothing in this section shall be deemed to limit the forbearance or indulgence which the
Secretary may extend in an individual case pursuant to the provisions of 38 U.S.C.
3720(f).
[46 FR 43675, Aug. 31, 1981]

§ 36.4507 Refinancing of mortgage or other lien indebtedness.
(a) Loans may be made for the purpose of refinancing (38 U.S.C. 3710(a)(5)) an existing
mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm
residence owned and occupied by an eligible veteran as the veteran's home, provided
that:
(1) The amount of the loan does not exceed the sum due the holder of the mortgage or
other lien indebtedness on such dwelling or farm residence, and also is not more than the
reasonable value of the dwelling or farm residence, and
(2) The loan is otherwise eligible.
(b) A refinancing loan for an amount which exceeds the sum due the holder of the
mortgage or other lien indebtedness (the excess proceeds to be paid to the veteran) may
also be made, Provided, That:
(1) The loan is otherwise eligible, and
(2) The issuance of a commitment to make any such loan for an amount which exceeds
eighty (80) percent of the reasonable value of the veteran's dwelling or farm residence
shall require, unless the Under Secretary for Benefits otherwise directs, the approval of the Director, Loan Guaranty Service.

(c) Nothing shall preclude making a loan pursuant to the provisions of 38 U.S.C. 3710(a)(5) to an eligible veteran having home loan guaranty entitlement to refinance a loan previously guaranteed insured or made by the Secretary which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as the veteran's home.

(Authority: 38 U.S.C. 3711)

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.


[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (b)(2), became effective June 4, 1996.]

§ 36.4508 Transfer of property by borrower.

(a) Direct loans for which commitments are made on or after March 1, 1988, are not assumable without the prior approval of the Department of Veterans Affairs or its authorized agent. The following shall apply:

(1) The Department of Veterans Affairs shall include in the mortgage or deed of trust and the promissory note or bond on any loan for which a commitment was made on or after March 1, 1988, the following warning in a conspicuous position in capital letters on the first page of the document in type at least 2 1/2 times larger than the regular type on such page: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT". Due to the difficulty in obtaining some commercial type sizes which are exactly 2 1/2 times larger in height than other sizes, minor deviations in size will be permitted based on commercially available type sizes nearest to 2 1/2 times the size of the print on the document.

(2) The instrument securing a direct loan for which a commitment is made on or after March 1, 1988, shall include:

(i) A provision that the Department of Veterans Affairs or other holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714. This option may not be exercised if the transfer is the result of:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
(D) The granting of a leasehold interest of three years or less not containing an option to purchase;
(E) A transfer to a relative resulting from the death of a borrower;
(F) A transfer where the spouse or children of the borrower become a joint owner of the property with the borrower;
(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability under 1813(a); or
(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) A provision that a funding fee equal to one-half of one percent of the loan balance as of the date of transfer shall be payable to the Department of Veterans Affairs or its authorized agent. Furthermore, this provision shall provide that if this fee is not paid it shall constitute an additional debt to that already secured by the instrument; and,
(iii) A provision authorizing an assumption processing charge, not to exceed the lesser of $300 and the actual cost of a credit report or any maximum prescribed by applicable State law.

(Authority: 38 U.S.C. 3714)

(b) Whenever any veteran disposes of residential property securing a direct loan obtained under 38 U.S.C. chapter 37, the Department of Veterans Affairs, upon application made by such borrower, shall issue to the borrower a release relieving the borrower of all further liability to the Department of Veterans Affairs on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Department of Veterans Affairs has determined, after such investigation as it deems appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 3713(a) or 1814, as appropriate. The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Department of Veterans Affairs may require. Any release of liability granted to a veteran by the Department of Veterans Affairs shall inure to the spouse of such veteran.

(c) If, on or after July 1, 1972, any veteran disposes of the property securing a direct loan obtained under 38 U.S.C. chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 3713(a) and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if the Secretary determines that:
(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and
(2) The original loan was current at the time such transferee acquired the property, and
(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time the transferee acquired the property.

(Approved by the Office of Management and Budget under control number 2900-0516)
§ 36.4509 Joint loans.
(a) No loan will be made unless an eligible veteran is the sole principal obligor, or such veteran and spouse or eligible veteran co-applicant are the principal obligors thereon, nor unless such veteran alone, or together with a spouse or eligible veteran co-applicant, acquire the entire fee simple or other permissible estate in the realty for the acquisition of which the loan was obtained. Nothing in this section shall preclude other parties from becoming liable as co-maker, endorser, guarantor, or surety.
(b) Notwithstanding that an applicant and spouse or other co-applicant are both eligible veterans and will be jointly and severally liable as borrowers, the original principal amount of the loan may not exceed the maximum permissible under § 36.4503(a). In any event the loan may not exceed $ 33,000.
[43 FR 60460, Dec. 28, 1978]

§ 36.4510 Prepayment, acceleration, and liquidation.
(a) Any credit on the loan not previously applied in satisfaction of matured installments, other than the gratuity credit required by prior provisions of law to be credited to principal, may be reapplied by the Department of Veterans Affairs at the request of the borrower for the purpose of curing or preventing a default.
(b) The Department of Veterans Affairs shall include in the instruments evidencing or securing the indebtedness provisions relating to the following:
(1) The right of the borrower to prepay at any time without premium or fee, the entire indebtedness or any part thereof: Provided, That any such prepayment, other than payment in full, may not be made in any amount less than the amount of one installment, or $ 100, whichever is less: And provided further, That any prepayment made on other than an installment due date will not be credited until the next following installment due date, but not later than 30 days after such prepayment.
(2) The right of the Department of Veterans Affairs to accelerate the maturity of the entire indebtedness in the event of default.
(3) The right of the Department of Veterans Affairs to foreclose or otherwise proceed to liquidate or acquire property which is the security for the loan in the event of the borrower's delinquency in the repayment of the obligation or in the event of default in any other provisions of the loan contract.
(c) The Department of Veterans Affairs shall have the right to accelerate the entire indebtedness and to foreclose or otherwise proceed to liquidate, or acquire the security for the loan, in the event the veteran is adjudged a bankrupt, or if the property has been abandoned by the borrower or subjected to waste or hazard, or in the event conditions exist which warrant the appointment of a receiver by court.
(d) [Removed. See 61 FR 28057, 28059, June 4, 1996.]

[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, which removed paragraph (d), became effective June 4, 1996.]

§ 36.4511 Advances after loan closing.
(a) The Department of Veterans Affairs may at any time advance any sum or sums as are reasonably necessary and proper for the maintenance, repair, alteration, or improvement of the security for a loan or for the payment of taxes, assessments, ground or water rights, or casualty insurance thereon: Provided, That no advance shall be made for alterations or improvements which are not necessary for the maintenance or repair of the security if such advance will increase the indebtedness to an amount in excess of $33,000.

(b) All sums disbursed incident to the making of advances under this section shall be added to the indebtedness. Department of Veterans Affairs may require any such advances to be secured ratably and on a parity with the principal indebtedness, or otherwise secured. The sum so advanced shall be evidenced by a supplemental note or otherwise as may be required by Department of Veterans Affairs.

(c) Department of Veterans Affairs may pay and charge against the indebtedness, or against the proceeds of the sale of any security therefor, any expense which is reasonably necessary for collection of the debt, protection, repossession, preservation, or liquidation of the security or of the lien thereon, including a reasonable amount for trustees' and legal fees.

(d) The Department of Veterans Affairs may treat as an advance and add to the mortgage balance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 3714 when this is not paid at the time of transfer.

(Authority: 38 U.S.C. 3714)


§ 36.4512 Taxes and insurance.

(a) In addition to the monthly installment payments of principal and interest payable under the terms of the loan agreement, the borrower will be required to make payments monthly to the Secretary in such amounts as may be determined by the Secretary from time to time to be necessary for the purpose of accumulating funds sufficient for the payment of taxes and assessments, ground rents, insurance premiums, and similar levies or charges on the security property. The borrower at loan closing shall pay in cash to the Secretary such sum as it estimates may be necessary as the initial deposit to the borrower's tax and insurance reserve account.

(Authority: 38 U.S.C. 3720)

(b) The borrower shall procure and maintain insurance of a type or types and in such amounts as may be required by the Secretary to protect the security against fire and other hazards. The Secretary cannot make a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. The Secretary shall not make, increase, extend, or renew a loan secured by a building or manufactured home that is located or to be located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, unless the building or manufactured home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of
coverage available for the particular type of property under the National Flood Insurance Act, as amended. The requirements of 38 CFR 36.4700 through 36.4709 shall apply to direct loans made pursuant to 38 U.S.C. 3711 and 3761 through 3764. All hazard and flood insurance shall be carried with a company or companies satisfactory to the Secretary and the policies and renewals thereof shall be held in the possession of the Secretary and contain a mortgagee loss payable clause in favor of and in a form satisfactory to the Secretary.
(Authority: 42 U.S.C. 4012a, 4106(a))

[EFFECTIVE DATE NOTE: 62 FR 5530, 5531, Feb. 6, 1997, revised this section, effective Feb. 6, 1997.]

§ 36.4513 Foreclosure and liquidation.
In the event of a foreclosure sale or other liquidation of the security for a loan, the Department of Veterans Affairs shall credit upon the indebtedness the greater of:
(a) The net proceeds of the sale, or
(b) The current market value of the property as determined by the Department of Veterans Affairs, less the costs and expenses of liquidation.
In no event shall the credit pursuant to paragraph (b) of this section exceed the amount of the gross indebtedness, nor shall such credit be less than the amount legally required to be credited to the indebtedness under local law. If a deed in lieu of foreclosure is accepted, the consideration will be a full and complete release of liability of the obligors, or such lesser amount as may be agreed upon between the obligors and the Department of Veterans Affairs.
[23 FR 2340, Apr. 10, 1958]

§ 36.4514 Eligibility requirements.
Prior to making a loan, or a commitment therefor, the Department of Veterans Affairs shall determine that:
(a) The applicant is an eligible veteran.
(b) The applicant has full capacity under local law to enter into binding contracts.
(c) The applicant is a satisfactory credit risk and has the ability to repay the obligation proposed to be incurred and that the proposed payments on such obligation bear a proper relationship to present and anticipated income and expenses as determined by use of the credit standards in § 36.4337 of this part.
(Authority: 38 U.S.C. 501)
(d) Private capital is not available in the area at an interest rate not in excess of the rate authorized for guaranteed home loans for a loan for which the veteran is qualified under 38 U.S.C. 3710.
(e) The applicant is unable to obtain a loan for such purpose from the Secretary of Agriculture, under the Bankhead-Jones Farm Tenant Act, as amended, or under the Housing Act of 1949.
(f) In respect to a loan application received on or after September 15, 1956, there has been compliance by the applicant with the certification requirements prescribed in 38 U.S.C. 3704(c).

(g) The applicant has certified, in such form as the Secretary shall prescribe, that
(1) Neither the applicant nor anyone authorized to act for the applicant, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, handicap, familial status, or national origin;
(2) The applicant recognizes that any restrictive conveyance on the property relating to race, color, religion, sex, handicap, familial status, or national origin is illegal and void and any such conveyance is specifically disclaimed; and
(3) The applicant understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.


§ 36.4515 Estate of veteran in real property.
(a) The estate in the realty acquired by the veteran, wholly or partly with the proceeds of a loan hereunder, or owned by the veteran and on which improvements on a farmhouse are to be financed by such loan, shall be not less than:
(1) A fee simple estate therein, legal or equitable; or
(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Under Secretary for Benefits, or the Director, Loan Guaranty Service, (i) that such type of leasehold is customary in the area where the property is located; (ii) that a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to and (iii) that the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or
(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien. The title to such estate shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section; or
(4) A beneficial interest in a revocable Family Living Trust that ensures that the veteran, or veteran and spouse, have an equitable life estate, provided the lien attaches to any remainder interest and the trust arrangement is valid under State law.

(b) Any such property or estate will not fail to comply with the requirements in paragraph (a) of this section by reason of the following:
(1) Encroachments;
(2) Easements;
(3) Servitudes;
(4) Reservations for water, timber, or subsurface rights;
(5) Right in any grantor or cotenant in the chain of title, or a successor of either, to
purchase for cash, which right by the terms thereof is exercisable only if:
(i) An owner elects to sell,
(ii) The option price is not less than the price at which the then owner is willing to sell to
another, and
(iii) Exercised within 30 days after notice is mailed by registered mail to the address of
optionee last known to the then owner, of the then owner's election to sell, stating the
price and the identity of the proposed vendee;
(6) Building and use restrictions whether or not enforceable by a reverter clause if there
has been no breach of the conditions affording a right to an exercise of the reverter;
(7) Any other covenant, condition, restriction, or limitation approved by the Department
of Veterans Affairs in the particular case.
(8) [Redesignated as paragraph (b)(7). See 61 FR 28057, 28059, June 4, 1996.]
The limitations on the quantum or quality of the estate or property that are indicated in
this paragraph, insofar as they may materially affect the value of the property for the
purpose for which it is used, shall be taken into account in the appraisal of reasonable
value.
29, 1963; 33 FR 18027, Dec. 4, 1968; 34 FR 11095, July 1, 1969; 45 FR 20472, Mar. 28,
1980; 56 FR 9862, Mar. 8, 1991; 61 FR 28057, 28059, June 4, 1996]

[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, which amended this
section, became effective June 4, 1996.]

§ 36.4516 Lien requirements.
(a) Loans for the purchase of a dwelling or for the purchase of a farm on which there is a
farm residence shall be secured by a first lien on the property or estate. Loans for the
construction of a farm residence or other dwelling shall also be secured by a first lien.
(b) Loans solely for the purpose of energy conservation improvements or other alterations,
improvements, or repairs shall be secured in the following manner:
(1) Loans for $1,500 or less need not be secured, and in lieu of the title examination a
statement may be accepted from the borrower that he or she has an interest in the
property not less than that prescribed in § 36.4515(a).
(2) Loans for more than $1,500 but 40 percent or less of the prior to the improved
reasonable value of the property shall be secured by a lien reasonable and customary in
the community for the type of alteration, improvement, or repair financed.
(3) Loans for more than $1,500 and for more than 40 percent of the prior to the improved
reasonable value of such property shall be secured by a first lien on the property or estate.
However, such a home improvement loan may be secured by a lien immediately
subordinate to the lien securing the previous loan extended by the Secretary, if the
Department of Veterans Affairs is the holder of all liens of superior priority on the
property.
(Authority: 38 U.S.C. 3711(d)(1))
(c) Tax liens, special assessment liens, and ground rent shall be disregarded with respect
to any requirement that loans shall be secured by a lien of specified dignity. With the
prior approval of the Secretary, Under Secretary for Benefits, or Director, Loan Guaranty
Service, liens retained by nongovernmental entities to secure assessments or charges for municipal type services and facilities clearly within the public purpose doctrine may be disregarded. In determining whether a loan for the purchase or construction of a home is secured by a first lien the Secretary may also disregard a superior lien created by a duly recorded covenant running with the realty in favor of a private entity to secure an obligation to such entity for the homeowner's share of the costs of the management, operation, or maintenance of property, services or programs within and for the benefit of the development or community in which the veteran's realty is located, if the Secretary determines that the interests of the veteran-borrower and of the Government will not be prejudiced by the operation of such covenant. In respect to any such superior lien to be created after June 6, 1969, the Secretary's determination must have been made prior to the recordation of the covenant.


[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (c), became effective June 4, 1996.]

§ 36.4517 Incorporation by reference.
The regulations concerning direct loans to veterans in effect on the date a loan is closed shall govern the rights, duties, and liabilities of the parties to such loan during the period the Department of Veterans Affairs is the holder thereof, and any provisions of the loan instruments inconsistent with such regulations are hereby amended and supplemented to conform thereto.

[15 FR 6290, Sept. 20, 1950]

§ 36.4518 Supplementary administrative action.
Notwithstanding any requirement condition, or limitation stated in or imposed by the regulations in this part concerning direct loans to veterans, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, may take such action as may be necessary or appropriate to relieve any undue prejudice to a debtor, or other person, which might otherwise result, provided such action shall not impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by any employee authorized to act under § 36.4520.

[23 FR 2340, Apr. 10, 1958; 61 FR 28057, 28059, June 4, 1996]

[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director," became effective June 4, 1996.]

§ 36.4519 Eligible purposes and reasonable value requirements.
(a) A loan may be made only for the purpose hereinafter set forth in this paragraph, and the loan may not exceed the reasonable value of the property as established by the Department of Veterans Affairs:
(1) To purchase or construct a dwelling to be owned and occupied by the veteran as a home;
(2) To purchase a farm on which there is a farm residence to be occupied by the veteran as a home;
(3) To construct on land owned by the veteran a farm residence to be occupied by the veteran as a home;
(4) To repair, alter, or improve a farm residence or other dwelling owned and occupied or to be reoccupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as his or her home;
(5) To make energy conservation improvements to a dwelling owned and occupied or to be occupied after the completion of major alterations, repairs, or improvements to the property, by the veteran as his or her home;
(6) To refinance (38 U.S.C. 3710(a)(5)) existing mortgage loans or other lines which are secured of record on a dwelling or farm residence owned and occupied or to be reoccupied after the completion of major alterations, repairs or improvements to the property, by the veteran as the veteran's home;

Provided, The veteran certifies, in such form as the Secretary may prescribe, that he or she has paid in cash from his or her own resources on account of such purchase, construction, alteration, repair, or improvement a sum equal to the difference, if any, between the purchase price or cost of the property and its reasonable value.

(b) In the case of a loan for the construction of a farm residence or other dwelling on land owned by the veteran, a portion of the loan proceeds may be expended to liquidate an indebtedness secured by a lien against such land, but only if the reasonable value of the land is equal to or in excess of the amount of the indebtedness secured by such lien and if the liquidation of such indebtedness will permit the loan to be secured by a first lien. Except as provided in § 36.4507, no portion of the proceeds of a loan for repairs, alterations or improvements to a farm residence or other dwelling may be expended to liquidate a prior lien against the property.

(c) No direct loan may be made for the purpose of an interest rate reduction refinancing loan pursuant to 38 U.S.C. 3710(a)(8).

(Authority: 38 U.S.C. 3711(b))


§ 36.4520 Delegation of authority.

(a) Except as hereinafter provided, each employee of the Department of Veterans Affairs heretofore or hereafter appointed to, or otherwise lawfully filling, any position designated in paragraph (b) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the making of loans and the rights and liabilities arising therefrom, including but not limited to the collection or compromise of amounts due, in money or other property, the extension, rearrangement, or sale of loans, the management and disposition of secured or unsecured notes and other property. In connection with direct loans made and held by the Department of Veterans Affairs, such designated employees may take any action which they are authorized to consent to or approve in respect to guaranteed or insured loans under the regulations prescribed therefor by the Secretary. Incidental to the
exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Secretary evidence of guaranty and such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property or of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(b) Designated positions:
Under Secretary for Benefits
Director, Loan Guaranty Service
Assistant Director for Construction and Valuation
Chief, Specially Adapted Housing Unit, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, VA Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer.

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Under Secretary for Benefits, be redelegated.

(c) Nothing in this section shall be construed to authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 501 or 3703(a)(2) or to sue or enter appearance for and on behalf of the Secretary or confess judgment against the Secretary in any court without the Secretary's prior authorization.

(d) Each Regional Office, regional office and insurance center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours.

§ 36.4521 Minimum property and construction requirements.

No loan for the purchase or construction of residential property shall be made unless such property complies or conforms with those standards of planning, construction, and general acceptability applicable thereto which have been prescribed by the Secretary.


[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, which substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraph (b), became effective June 4, 1996.]
§ 36.4522 Waivers, consents, and approvals.
No waiver, consent, or approval required or authorized by the regulations concerning direct loans to veterans shall be valid unless in writing signed by Department of Veterans Affairs.
[15 FR 6291, Sept. 20, 1950]

§ 36.4523 Geographical limits.
Any real property purchased, constructed, or improved with the proceeds of a loan under 38 U.S.C. 3711 shall be situated in the United States, which for purposes of 38 U.S.C. Chapter 37 is here defined as the several States, Territories, and possessions, and the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands: Provided. That no loan shall be made pursuant to 38 U.S.C. 3711 unless the real property is located in one of the areas designated from time to time by the Department of Veterans Affairs as an area in which private capital is not available under 38 U.S.C. chapter 37 to eligible veterans for financing of the purchase, construction, repairs, alterations, or improvement of a farm residence or other dwelling, as the case may be.
[46 FR 43675, Aug. 31, 1981]

§ 36.4524 Sale of loans.
In the event a direct loan is purchased from the Department of Veterans Affairs at any time pursuant to the provisions of 38 U.S.C. 3711(g), the Department of Veterans Affairs may issue a guaranty in connection therewith within the maximums applicable to loans guaranteed under 38 U.S.C. 3710 and such loans shall thereafter be subject to the applicable provisions of the regulations governing the guaranty or insurance of loans to veterans, and such part of the regulations concerning direct loans to veterans as may be inconsistent therewith or variant therefrom shall no longer govern the subsequent disposition of the rights and liabilities of any interested parties.
[24 FR 2659, Apr. 7, 1959]

§ 36.4525 Requirement of a construction warranty.
Any commitment to make a direct loan and any approval of a direct loan application issued or made on or after May 2, 1955, shall, if the purpose of the loan is to finance the construction of a dwelling or farmhouse or to finance the purchase of a newly constructed dwelling, be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran constructing or purchasing such dwelling with the aid of a direct loan a warranty, in the form prescribed by the Secretary, that the property has been completed in substantial conformity with the plans and specifications upon which the Secretary based the valuation of the property, including any modifications thereof, or changes or variations therein, approved in writing by the Secretary, and no direct loan shall be disbursed in full unless a copy of such warranty duly receipted by the purchaser is submitted to the Department of Veterans Affairs.
§ 36.4526 Issuance of fund reservation commitments.
(a) Any builder or sponsor proposing to construct one or more dwellings in an area designated as eligible for direct loans may apply for a commitment for the reservation of direct loan funds to be used for the making of loans to eligible veterans for the purchase or construction of such dwellings. Such commitment may be issued on such conditions as the Department of Veterans Affairs determines to be proper in the particular case and will be valid for a period of 3 months; Provided, That the Department of Veterans Affairs may, for good and sufficient reasons, extend the period of the commitment. No commitment shall be issued unless the builder or sponsor shall have paid an amount equivalent to 2 percent of the funds being reserved, which amount shall be nonrefundable. The commitment shall be nontransferable except with the written approval of the Department of Veterans Affairs.
(b) Notwithstanding that direct loan funds may be available for reservation when issuance of a reservation commitment is requested by a builder or sponsor, the Department of Veterans Affairs may withhold issuance of such commitment in any case in which it determines that the experience or technical qualifications of the builder in respect to home construction are not acceptable, or that other factors bearing on the likelihood of the success of the proposed project are such as to justify withholding issuance of a fund reservation commitment.
[23 FR 2340, Apr. 10, 1958]

§ 36.4527 Direct housing loans to Native American veterans on trust lands.
(a) The Secretary may make a direct housing loan to a Native American veteran if:
(1) The Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; or
(2) The tribal organization that has jurisdiction over the veteran has entered into a memorandum of understanding with any department or agency of the United States with respect to such loans and the memorandum complies with the requirements of paragraph (b) of this section.
(Authority: 38 U.S.C. 3762(a))
(3) The memorandum is in effect when the loan is made and will remain in effect until the maturity of the subject loan.
(b)(1) Subject to paragraph (b)(2) of this section, each memorandum of understanding entered into by the Secretary with a tribal organization shall provide for the following:
(i) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this section
(A) Holds, possesses, or acquires using the proceeds of the loan a meaningful interest in a lot and/or dwelling that is located on trust land; and
(B) Will purchase, construct, or improve a dwelling on the lot using the proceeds of the loan.
(ii) That each Native American veteran obtaining a direct loan under this section will convey to the Secretary by an appropriate instrument the interest referred to in paragraph (A) as security for the direct loan or, if the laws of the tribal organization do not allow the veteran to convey the meaningful interest to the Secretary, the memorandum of understanding may authorize the tribe to serve as Trustee for the Secretary for purposes of protecting the interest of the Secretary as lender.
(iii) That the tribal organization and each Native American veteran obtaining a direct loan under this section will permit the Secretary or his or her designee to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary or his or her designee determines may be necessary:
(A) To evaluate the advisability of the loan; and
(B) To monitor any purchase, construction, or improvements carried out using the proceeds of the loan.
(C) To protect the improvements from vandalism and the elements,
(D) To make property inspections in conjunction with loan servicing, financial counseling, foreclosure, acquisition, management, repair, and resale of the secured interest.
(iv) That the tribal organization has established standards and procedures that authorize the grantee to legally establish the interest conveyed by a Native American veteran pursuant to subsection (B) and terminate all interest of the veteran in the land and improvements, including:
(A) Procedures for foreclosing the loan in the event of a default;
(B) Procedures for acquiring possession of the veteran's interest in the property; and
(C) Procedures for the resale of the property interest and/or the dwelling purchased, constructed, or improved using the proceeds of the loan.
(v) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary and the tribal organization may negotiate in order to ensure that direct loans made under this section are made in a responsible and prudent manner.
(2) The Secretary, or his or her designee, may only enter into a memorandum of understanding with a tribal organization under this section if the Secretary, or designee, determines that the memorandum provides for standards and procedures necessary to reasonably protect the financial interests of the United States.
(c)(1) Except as otherwise provided in this paragraph, and notwithstanding the provisions of section 36.4503 of this title, the principal amount of any loan made under this section may not exceed $80,000. The original principal amount of any loan made under this section shall not exceed an amount which bears the same ratio to $80,000 as the amount of the guaranty to which the veteran would be entitled under 38 U.S.C. 3710 at the time the loan is made bears to $36,000.
(2) The Secretary may make loans which exceed the amount specified in paragraph (c)(1) of this section in geographic areas in which the Secretary has determined that housing costs are significantly higher than average housing costs nationwide. The Secretary shall determine the maximum loan amounts in such areas. The original principal amount of any such loan shall not exceed an amount which bears the same ratio to the maximum loan amount established by the Secretary as the amount of the guaranty to which the veteran would be entitled under 38 U.S.C. 3710 at the time the loan is made bears to $36,000.
(3) Loans made under this section shall bear interest at a rate determined by the Secretary after considering yields on comparable mortgages in the secondary market, including bid and ask prices on mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA).
(4) The minimum requirements for planning, construction, improvement, and general acceptability relating to any direct loan made under this section shall be consistent with the administrative property standards established for loans made or guaranteed under title 38, U.S.C., chapter 37.

d) Notwithstanding the provisions of § 36.4504(b), for loans made under this section, the Native American veteran-borrower shall pay the following loan closing costs to the parties indicated:

1. A loan fee of 1.25 percent of the total loan amount (2 percent for Reservists who qualify under the provisions of 38 U.S.C. 3701(b)(5)) to the Department of Veterans Affairs. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the maximum loan amount. In computing the fee, the Department of Veterans Affairs will disregard any amount included in the loan to enable the borrower to pay such fee.
2. The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in § 3701(b)(2) of title 38 U.S.C.
3. If the Secretary designates a third party to process the loan package on VA's behalf, a processing fee to that third party not to exceed $300 plus the actual cost of any credit report required.
4. Costs or expenses normally paid by a purchaser or mortgagee incident to loan closing including but not limited to the following:
   i. Fees of the Department of Veterans Affairs designated appraisers and compliance inspectors;
   ii. Recording fees or other charges incident to recordation;
   iii. That portion of assessments and other similar items for the current year chargeable to the borrower; and
   iv. Hazard insurance premiums, if such insurance is available.
5. Charges or costs payable by the Native American veteran-borrower, except for the loan fee described in paragraph (d)(1) of this section, shall be paid in cash and may not be paid out of the proceeds of the loan. No service or brokerage fee shall be charged against the Native American veteran-borrower by any third party for procuring a direct loan.

(e)(1) The credit underwriting standards of 38 CFR 36.4337 shall apply to loans made under this section except to the extent the Secretary determines that they should be modified on account of the purpose of the program to make available housing to Native American veterans living on trust lands.

(2) The Secretary shall determine the reasonable value of the leasehold or other property interest that will serve as security for a loan made under this section in accordance with §37.4519, of this chapter, unless the Secretary determines that such requirements are impractical to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

(f) In connection with the origination of any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction.

(g) Loans made under this section shall be amortized under a generally recognized plan which provides for equal monthly installments consisting of principal and interest, except
for the final installment, which may not be in excess of two times the regular monthly installment. The limitation on the amount of the final installment shall not apply in the case of any loan extended, ballooned and/or reamortized.

(h) The Secretary may:
(1) Take any action that the Secretary determines to be necessary for the custody, management, and protection of properties and the realization or sale of investments under the VA Native American Direct Loan Program;
(2) Determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;
(3) Employ, utilize, and compensate persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out necessary functions, including but not limited to loan processing and servicing activities, appraisals, and property inspections.

(i) Notwithstanding any requirement, condition, or limitation stated in or imposed by any provision of this regulation, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, may execute memoranda of understanding, make determinations concerning the maximum direct loan amount as provided in paragraph (c) of this section, and take such supplementary administrative action as may be necessary or appropriate to relieve any undue prejudice to a debtor, or other person, which might otherwise result, provided such action shall not impair the vested rights of any person affected thereby. If such a requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by any employee authorized to act under paragraph (j) of this section.

(j)(1) Except as hereinafter provided, each employee of the Department of Veterans Affairs appointed to, or otherwise lawfully filling, any position designated in paragraph (j)(2) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the making of loans and the rights and liabilities arising therefrom, including, but not limited to the collection or compromise of amounts due, in money or other property, the extension, rearrangement, or sale of loans, and the management and disposition of secured or unsecured notes and other property. In connection with direct loans made and held by the Department of Veterans Affairs, such designated employees may take any action which they are authorized to consent to or approve in respect to guaranteed loans under § 36.4342. Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Secretary such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property or of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.
(2) Designated positions:
Under Secretary for Benefits
Deputy Under Secretary for Benefits
Director, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer
The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Under Secretary for Benefits, be redelegated.

(3) Nothing in this section shall be construed to authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 501(a) or 3703(a)(2) or to sue or enter appearance for and on behalf of the Secretary or confess judgment against the Secretary in any court without the Secretary's prior authorization.

(4) Each Regional Office, Regional Office and Insurance Center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours.

[58 FR 59660, Nov. 10, 1993; 68 FR 6625, 6627, Feb. 10, 2003]

SALE OF LOANS, GUARANTEE OF PAYMENT

§ 36.4600 Sale of loans, guarantee of payment.
§ 36.4700 Authority, purpose, and scope.
§ 36.4701 Definitions.
§ 36.4702 Requirement to purchase flood insurance where available.
§ 36.4703 Exemptions.
§ 36.4704 Escrow requirement.
§ 36.4705 Required use of standard flood hazard determination form.
§ 36.4706 Forced placement of flood insurance.
§ 36.4707 Determination fees.
§ 36.4708 Notice of special flood hazards and availability of Federal disaster relief assistance.
§ 36.4709 Notice of servicer's identity.

Appendix A to Part 36 -- Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

§ 36.4600 Sale of loans, guarantee of payment.
(a) Whenever loans are sold by the Department of Veterans Affairs, they will be clearly identified as loans sold with or without recourse.
(b) The payment of all loans sold with recourse shall be guaranteed in accordance with the provisions of this section.
(c) Wherever the term "holder" appears in this section it shall mean the purchaser of a loan sold by the Secretary and any subsequent transferee or assignee of such loan. The holder of each loan sold subject to guaranty shall be deemed to have agreed with the Secretary as follows:
(Authority: 38 U.S.C. 501, 3720)
(1) To furnish the Secretary with notice of default within 60 days after a loan has become two full installments in default.
(Authority: 38 U.S.C. 501, 3720)
(2) To maintain on the real estate a lien of the dignity assigned or transferred to the purchaser by the Secretary.
(3) To maintain insurance in an amount sufficient to protect the security against risks or hazards to which it may be subjected to the extent customary in the locality, and to apply the proceeds of loss payments to the loan balance or the restoration of the security, as the holder may in the holder's discretion deem proper. Flood insurance will be required on any building or personal property securing a loan at any time during the term of the loan that such security is located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The notice requirements of 38 CFR 36.4709 shall apply to loans sold pursuant to this section.
(Authority: 42 U.S.C. 4012a, 4106(a))
(4) To obtain a consideration equal to the fair market value of any real estate released from the first lien securing the loan, except where the loan will be paid in full, and to apply the entire consideration in reduction of the principal balance of the loan.
(5) To maintain the tax and insurance account as provided for in the loan instruments and to pay accrued taxes, special assessments, ground or water rents and premiums on fire or other insurance properly chargeable to the tax and insurance account.
(6) To submit to the Secretary notice of any suit or action or other legal or equitable proceeding to which the holder is a party (including a copy of every procedural paper filed on behalf of the holder or served on the holder), brought on or in connection with a loan sold under this section or involving title to, or other lien on, the property securing the loan, within the time that would be required if the Secretary were a party to the proceeding.
(7) To submit to the Secretary for prior approval any proposal to recast or extend the repayment terms of the loan.
(8) To take no action to accelerate the indebtedness or terminate the debtor's interest in the property without the prior approval of the Secretary.
(9) To make advances only for the maintenance and repairs reasonably necessary for the preservation of the security, or for the payment of accrued taxes, special assessments, ground or water rents, premiums on fire or other insurance against loss or damage to the property, or for other purposes approved in advance by the Secretary.
(10) To furnish the Secretary prompt notice of the cancellation of any repurchase endorsement or notice on the note or bond upon the payment in full of any loan sold pursuant to this section or of the release of the Secretary from liability to repurchase the loan.
(11) To maintain adequate accounting records and to provide the Secretary with such data relating to the loan as the Secretary may request incident to the Secretary's determination of the amount payable in connection with a request for the repurchase of the loan.
(12) To service the loans properly in accordance with established practices.
(13) To permit the Secretary to inspect, examine or audit at reasonable times and places the records of loans which are subject to repurchase under this section.
(14) To sell any loan to the Secretary for the amount specified in paragraph (e)(1) of this section upon request of the Secretary if the loan is six (6) full installments or more in default.
(15) To dispose of partial payments in accordance with the provisions of this paragraph. A partial payment is a remittance on a loan in default of any amount less than the full amount due under the terms of the loan and security instruments at the time the remittance is tendered; a default is a failure of a borrower to comply with the terms of a loan agreement.
   (i) Except as provided in paragraph (c)(15)(ii) of this section, or upon the express waiver of the Secretary, the mortgage holder shall accept any partial payment and either apply it to the mortgagor's account or identify it with the mortgagor's account and hold it in a special account pending disposition. When partial payments held for disposition aggregate a full monthly installment, including escrow, they shall be applied to the mortgagor's account.
(ii) A partial payment may be returned to the mortgagor, within 10 calendar days from date of receipt of such payment, with a letter of explanation only if one or more of the following conditions exist:
(a) The property is wholly or partially tenant-occupied and rental payments are not being remitted to the holder for application to the loan account;
(b) The payment is less than one full monthly installment, including escrows and late charge, if applicable, unless the lesser payment amount has been agreed to under a written repayment plan;
(c) The payment is less than 50 percent of the total amount then due, unless the lesser payment amount has been agreed to under a written repayment plan;
(d) The payment is less than the amount agreed to in a written repayment plan;
(e) The amount tendered is in the form of personal check and the holder has previously notified the mortgagor in writing that only cash or certified remittances are acceptable;
(f) A delinquency of any amount has continued for at least 6 months since the account first became delinquent and no written repayment plan has been arranged.
(g) The loan has been submitted to the Department of Veterans Affairs for repurchase;
(h) The lien position of the security instrument would be jeopardized by acceptance of the partial payment.
(iii) A failure by the holder to comply with the provisions of this paragraph may result in a deduction from the repurchase price pursuant to paragraph (e)(1) of this section.

(Authority: 38 U.S.C. 3720)

NOTE: In any instance in which the holder desires Department of Veterans Affairs prior to approval to a proposed action the holder may submit the facts to the Loan Guranty Officer as provided in paragraph (i) of this section.

(16) To obtain and forward a current credit report(s) on the debtor(s) to the Secretary when requesting that the Secretary repurchase the loan.

(Authority: 38 U.S.C. 3703(c)(1) and 3720)

(d) The Secretary's guaranty liability under this section shall consist of and be limited solely to liability to repurchase the loan from the holder thereof whenever,
(1) The debtor is in default by reason of nonpayment of not less than two full installments and default has continued for three months or more on the date the holder submits its written request for repurchase by the Secretary; or
(2) The property securing the loan has been abandoned by the debtor; or
(3) The debtor has failed to comply with any other covenant or obligation of the loan contract and on the date of the holder's request for repurchase such failure has continued for more than 90 days after the holder's demand for compliance with the covenant or obligation, except that if the failure is due to nonpayment of real estate taxes the failure to pay when due has persisted for a continuing period of 180 days; or
(4) The Secretary determines, upon request of the holder to repurchase any loan, that such repurchase is in the best interests of the Government notwithstanding that the account is ineligible for repurchase under paragraphs (d) (1) through (3) of this section.

(e)(1) A cash payment shall be made to the holder upon the repurchase of a loan by the Secretary and shall be an amount equal to the price paid by the purchaser when the loan was sold by the Secretary, less repayments received by the holder which are properly applicable to the principal balance of the loan, plus any advances made for the purposes described in paragraph (c)(9) of this section, but no payments shall be made for accrued
unpaid interest, except that with respect to loans sold by the Secretary after July 15, 1970, payment will be made for unpaid accrued interest from the date of the first uncured default to the date of the claim for repurchase, but not in excess of interest for 120 days. If, however, there has been a failure of any holder to comply with the provisions of paragraph (c) of this section the Secretary shall be entitled to deduct from the repurchase price otherwise payable such amount as the Secretary determines to be necessary to restore the Secretary to the position the Secretary would have occupied upon repurchase of the loan in the absence of any such failure. Incident to the repurchase by the Secretary, the holder will pay to the Secretary an amount equal to the balance, if any, remaining in the tax and insurance account.

(2) The holder shall be deemed to have received as trustee for the benefit of the Secretary any amounts received on account of the loan indebtedness subsequent to submitting its request to repurchase and shall pay such amounts to the Department of Veterans Affairs upon the assignment and delivery of the note, bond and security instruments to the Department of Veterans Affairs.

(3) The holder may be reimbursed for the cost of a current credit report(s) on the debtor(s) which is (are) forwarded to the Secretary along with the request for repurchase and for any other costs or expenses incurred which are approved in advance by the Secretary as being necessary to protect the Government's interest.

(f) Notwithstanding any other provision of this section, the Secretary shall be released from liability and shall not be obligated to repurchase any loan in respect to which:

(1) An obligor has been released from personal liability by any act or omission of the holder without the prior approval of the Secretary, except that a holder shall not be under any duty to establish the debt as a valid claim against the assets of the estate of any deceased or bankrupt obligor when such failure will not impair the validity or effectiveness of the lien securing the loan; or

(2) The holder has instituted foreclosure action against the property securing the loan without the prior approval of the Secretary, and such action has proceeded to the point where the judicial sale or sale under the power in the deed of trust has been held or the owner's interest in the property has been terminated by the holder by strict foreclosure, acceptance of a voluntary deed, or by other liquidation action; or

(3) Any material alteration has been made to the note, bond, security instrument, or installment sale contract after sale and delivery of the instruments by the Secretary to the purchaser.

(g)(1) Each employee of the Department of Veterans Affairs heretofore or hereafter appointed to or lawfully filling, any position designated in paragraph (g)(2) of this section is hereby delegated authority within the limitations and conditions prescribed by law to exercise the powers and functions of the Secretary with respect to the sale, assignment, transfer, and repurchase of loans, including, but not limited to the offering of such loans for sale, the acceptance of purchase offers, the assignment or transfer of notes or bonds and security instruments evidencing the loans sold, granting the prior approval of the Secretary under this section, determining the eligibility of the loans for repurchase and to calculate and pay the sum due the holder upon repurchase of the loan by the Department of Veterans Affairs.

(2) Designated positions:
Under Secretary for Benefits
Director, Loan Guaranty Service.
Director, Medical and Regional Office Center.
Director, VA Center.
Loan Guaranty Officer.
Assistant Loan Guaranty Officer.

(h) No waiver, consent, or approval required or authorized by this section shall be valid unless in writing signed by an employee of the Department of Veterans Affairs authorized in this section to act for the Secretary.

(i) Whenever prior approval or consent of the Secretary is desired in respect to an action to be taken by a holder of a loan, the holder may address such request to the Loan Guaranty Officer in the Regional Office or Center having jurisdiction over the area in which the real estate security is located.

(j) Notwithstanding any requirement, condition, or limitation stated in or imposed by this section concerning the sale and repurchase of loans, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary may take such action as may be necessary or appropriate to relieve undue prejudice to a holder, debtor or other person, which might otherwise result, as long as such action shall not impair the vested rights of any person affected thereby. If such requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by an employee authorized to act under paragraph (g) of this section.

(k) This section will apply to all loans sold by the Department of Veterans Affairs after the effective date of this section which were originated or acquired by the Secretary of Veterans Affairs under chapter 37, title 38, U.S.C., or title III of the Servicemen's Readjustment Act of 1944, as amended, except that it shall not apply to direct loans sold pursuant to section 3711(g) of chapter 37, title 38, U.S.C.

(Authority: 38 U.S.C. 3703 (c)(1) and 3720)

(Information collection requirements contained in paragraphs (c) and (e) were approved by the Office of Management and Budget under control number 2900-0840.)


[EFFECTIVE DATE NOTE: 61 FR 28057, 28059, June 4, 1996, substituted "Under Secretary for Benefits" for "Chief Benefits Director" in paragraphs (g)(2) and (j), effective June 4, 1996; 62 FR 5530, 5532, Feb. 6, 1997, revised paragraph (c)(3), effective Feb. 6, 1997.]

§ 36.4700 Authority, purpose, and scope.

(a) Authority. Sections 36.4700 through 36.4709 of this part are issued pursuant to 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) Purpose. The purpose of sections 36.4700 through 36.4709 of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

(c) Scope. Sections 36.4700 through 36.4709 of this part, except for §§ 36.4705 and 36.4707, apply to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have
special flood hazards. Sections 36.4705 and 36.4707 apply to loans secured by buildings or mobile homes, regardless of location.

(42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128)
[EFFECTIVE DATE NOTE: 62 FR 5530, 5532, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4701 Definitions.
(b) Secretary means the Secretary of Veterans Affairs.
(c) Building means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.
(d) Community means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.
(e) Designated loan means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.
(f) Director of FEMA means the Director of the Federal Emergency Management Agency.
(g) Mobile home means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term mobile home does not include a recreational vehicle. For purposes of this part, the term mobile home means a mobile home on a permanent foundation. The term mobile home includes a manufactured home as that term is used in the NFIP.
(h) NFIP means the National Flood Insurance Program authorized under the Act.
(i) Residential improved real estate means real estate upon which a home or other residential building is located or to be located.
(j) Servicer means the person responsible for:
(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and
(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.
(k) Special flood hazard area means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128)
[EFFECTIVE DATE NOTE: 62 FR 5530, 5532, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4702 Requirement to purchase flood insurance where available.
In general. The Secretary shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located. [62 FR 5530, 5532, Feb. 6, 1997]

(42 U.S.C. 4012a)
[EFFECTIVE DATE NOTE: 62 FR 5530, 5532, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4703 Exemptions.
The flood insurance requirement prescribed by 38 CFR 36.4702 does not apply with respect to:
(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or
(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

(42 U.S.C. 4012a(c))
[EFFECTIVE DATE NOTE: 62 FR 5530, 5533, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4704 Escrow requirement.
If the Secretary requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after October 1, 1996, the Secretary shall also require the escrow of all premiums and fees for any flood insurance required under 38 CFR 36.4702. The Secretary, or a servicer acting on behalf of the Secretary, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the Secretary, or a servicer acting on behalf of the Secretary, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

(42 U.S.C. 4012a(d))
[EFFECTIVE DATE NOTE: 62 FR 5530, 5533, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]
§ 36.4705 Required use of standard flood hazard determination form.
(a) Use of form. The Secretary shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.
(b) Retention of form. The Secretary shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the Secretary owns the loan.

(42 U.S.C. 4104b)
[EFFECTIVE DATE NOTE: 62 FR 5530, 5533, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4706 Forced placement of flood insurance.
If the Secretary, or a servicer acting on behalf of the Secretary, determines at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under 38 CFR 36.4702, then the Secretary or a servicer acting on behalf of the Secretary, shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under 38 CFR 36.4702, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the Secretary or a servicer acting on behalf of the Secretary, shall purchase insurance on the borrower's behalf. The Secretary or a servicer acting on behalf of the Secretary, may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

(42 U.S.C. 4012a(e))
[EFFECTIVE DATE NOTE: 62 FR 5530, 5533, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4707 Determination fees.
(a) General. Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973 as amended (42 U.S.C. 4001-4129), the Secretary, or a servicer acting on behalf of the Secretary, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.
(b) Borrower fee. The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:
(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;
(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:
   (i) Affects the area in which the building or mobile home securing the loan is located; or
   (ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the Secretary or a servicer acting on behalf of the Secretary, on behalf of the borrower under 38 CFR 36.4706.

(c) Purchaser or transferee fee. The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.


(42 U.S.C. 4012a(h))

[EFFECTIVE DATE NOTE: 62 FR 5530, 5533, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4708 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) Notice requirement. When the Secretary makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the Secretary shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) Contents of notice. The written notice must include the following information:
   (1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;
   (2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));
   (3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and
   (4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally declared disaster.

(c) Timing of notice. The Secretary shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the Secretary provides notice to the borrower and in any event no later than the time the Secretary provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) Record of receipt. The Secretary shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the Secretary owns the loan.

(e) Alternate method of notice. Instead of providing the notice to the borrower required by paragraph (a) of this section, the Secretary may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or
lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The Secretary shall retain a record of the written assurance from the seller or lessor for the period of time the Secretary owns the loan.

(f) Use of prescribed form of notice. The Secretary will be considered to be in compliance with the requirement for notice to the borrower of this section by providing written notice to the borrower containing the language presented in appendix A to this part within a reasonable time before the completion of the transaction. The notice presented in appendix A to this part satisfies the borrower notice requirements of the Act. [62 FR 5530, 5533, Feb. 6, 1997]

(42 U.S.C. 4104a)
[EFFECTIVE DATE NOTE: 62 FR 5530, 5533, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

§ 36.4709 Notice of servicer's identity.

(a) Notice requirement. When the Secretary makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the Secretary shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the Secretary's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) Transfer of servicing rights. The Secretary shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.


(42 U.S.C. 4104a)
[EFFECTIVE DATE NOTE: 62 FR 5530, 5534, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]

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Appendix A to Part 36 -- Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance

We are giving you this notice to inform you that:
The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards. The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's Flood Insurance Rate Map or the Flood Hazard Boundary Map for the following community: ----. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

-- The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

. Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

. At a minimum, flood insurance purchased must cover the lesser of:
(1) the outstanding principal balance of the loan; or
(2) the maximum amount of coverage allowed for the type of property under the NFIP.

. Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

. Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

-- Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.


(42 U.S.C. 4104a)

[EFFECTIVE DATE NOTE: 62 FR 5530, 5534, Feb. 6, 1997, added this section, effective Feb. 6, 1997.]
PART 38 -- NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

§ 38.600 Definitions.
§ 38.601 Advisory Committee on Cemeteries and Memorials.
§ 38.602 Names for national cemeteries and features.
§ 38.603 Gifts and donations.
§ 38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.
§ 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.
§ 38.620 Persons eligible for burial.
§ 38.621 Disinterments.
§ 38.629 Outer burial receptacle allowance.
§ 38.630 Headstones and markers.
§ 38.631 Graves marked with a private headstone or marker.
§ 38.632 Headstone and marker application process.
§ 38.633 Group memorial monuments.
Authority: 38 U.S.C. 107, 501, 512, chapter 24, 7105, and as noted in specific sections.

§ 38.600 Definitions.
(a) [Reserved]
(b) Definitions. For purposes of §§ 38.617 and 38.618:
Appropriate State official means a State attorney general or other official with statewide responsibility for law enforcement or penal functions.
Clear and convincing evidence means that degree of proof which produces in the mind of the fact-finder a firm belief regarding the question at issue.
Convicted means a finding of guilt by a judgment or verdict or based on a plea of guilty, by a Federal or State criminal court.
Federal capital crime means an offense under Federal law for which the death penalty or life imprisonment may be imposed.
Interment means the burial of casketed remains or the placement or scattering of cremated remains.
Life imprisonment means a sentence of a Federal or State criminal court directing confinement in a penal institution for life.
Memorialization means any action taken to honor the memory of a deceased individual.
Personal representative means a family member or other individual who has identified himself or herself to the National Cemetery Administration cemetery director as the person responsible for making decisions concerning the interment of the remains of or memorialization of a deceased individual.
State capital crime means, under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which the death penalty or life imprisonment without parole may be imposed.
[70 FR 4768, Jan. 31, 2005]
§ 38.601 Advisory Committee on Cemeteries and Memorials.
Responsibilities in connection with Committee authorized by 38 U.S.C. chapter 24 are as follows:
(a) The Under Secretary for Memorial Affairs will schedule the frequency of meetings, make presentations before the Committee, participate when requested by the Committee, evaluate Committee reports and recommendations and make recommendations to the Secretary based on Committee actions.
(b) The Committee will evaluate and study cemeterial, memorial and burial benefits proposals or problems submitted by the Secretary or Under Secretary for Memorial Affairs, and make recommendations as to course of action or solution. Reports and recommendations will be submitted to the Secretary for transmission to Congress.
[70 FR 4768, Jan. 31, 2005]

§ 38.602 Names for national cemeteries and features.
(a) Responsibility. The Secretary is responsible for naming national cemeteries. The Under Secretary for Memorial Affairs, is responsible for naming activities and features therein, such as drives, walks, or special structures.
(b) Basis for names. The names of national cemetery activities may be based on physical and area characteristics, the nearest important city (town), or a historical characteristic related to the area. Newly constructed interior thoroughfares for vehicular traffic in national cemetery activities will be known as drives. To facilitate location of graves by visitors, drives will be named after cities, counties or States or after historically notable persons, places or events.

§ 38.603 Gifts and donations.
(a) Gifts and donations will be accepted only after it has been determined that the donor has a clear understanding that title thereto passes to, and is vested in, the United States, and that the donor relinquishes all control over the future use or disposition of the gift or donation, with the following exceptions:
(1) Carillons will be accepted with the condition that the donor will provide the maintenance and the operator or the mechanical means of operation. The time of operation and the maintenance will be coordinated with the superintendent of the national cemetery.
(2) Articles donated for a specific purpose and which are usable only for that purpose may be returned to the donor if the purpose for which the articles were donated cannot be accomplished.
(3) If the donor directs that the gift is donated for a particular use, those directions will be carried out insofar as they are proper and practicable and not in violation of Department of Veterans Affairs policy.
(4) When considered appropriate and not in conflict with the purpose of the national cemetery, the donor may be recognized by a suitable inscription on those gifts. In no case will the inscription give the impression that the gift is owned by, or that its future use is controlled by, the donor. Any tablet or plaque, containing an inscription will be of such size and design as will harmonize with the general nature and design of the gift.
(b) Officials and employees of the Department of Veterans Affairs will not solicit contributions from the public nor will they authorize the use of their names, the name of the Secretary, or the name of the Department of Veterans Affairs by an individual or organization in any campaign or drive for money or articles for the purpose of making a donation to the Department of Veterans Affairs. This restriction does not preclude discussion with the individual offering the gift relative to the appropriateness of the gift offered.

[70 FR 4768, Jan. 31, 2005]

§ 38.617 Prohibition of interment or memorialization of persons who have been convicted of Federal or State capital crimes.

(a) Prohibition. The interment in a national cemetery under the control of the National Cemetery Administration of the remains, or the memorialization, of any of the following persons is prohibited:

(1) Any person identified to the Secretary of Veterans Affairs by the United States Attorney General, prior to approval of interment or memorialization, as an individual who has been convicted of a Federal capital crime and sentenced to death or life imprisonment as a result of such crime.

(2) Any person identified to the Secretary of Veterans Affairs by an appropriate State official, prior to approval of interment or memorialization, as an individual who has been convicted of a State capital crime and sentenced to death or life imprisonment without parole as a result of such crime.

(3) Any person found under procedures specified in § 38.618 to have committed a Federal or State capital crime but have avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(b) Notice. The prohibition referred to in paragraph (a)(3) of this section is not contingent on receipt by the Secretary of Veterans Affairs or any other VA official of notice from any Federal or State official.

(c) Receipt of notification. The Under Secretary for Memorial Affairs is delegated authority to receive from the United States Attorney General and appropriate State officials on behalf of the Secretary of Veterans Affairs the notification of conviction of capital crimes referred to in paragraphs (a)(1) and (2) of this section.

(d) Decision where notification previously received. Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has received the notification referred to in paragraph (a)(1) or (2) of this section with regard to the deceased, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411.

(e) Inquiry. (1) Upon receipt of a request for interment or memorialization, where the Secretary of Veterans Affairs has not received the notification referred to in paragraph (a)(1) or (a)(2) of this section with regard to the deceased, but the cemetery director has reason to believe that the deceased may have been convicted of a Federal or State capital crime, the cemetery director will initiate an inquiry to either:

(i) The United States Attorney General, in the case of a Federal capital crime, requesting notification of whether the deceased has been convicted of a Federal capital crime for which the deceased was sentenced to death or life imprisonment; or
(ii) An appropriate State official, in the case of a State capital crime, requesting notification of whether the deceased has been convicted of a State capital crime for which the deceased was sentenced to death or life imprisonment without parole.
(2) The cemetery director will defer decision on whether to approve interment or memorialization until after a response is received from the Attorney General or appropriate State official.

(f) Decision after inquiry. Where an inquiry has been initiated under paragraph (e) of this section, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411 upon receipt of the notification requested under that paragraph, unless the cemetery director initiates an inquiry pursuant to § 38.618(a).

(g) Notice of decision. Written notice of a decision under paragraph (d) or (f) of this section will be provided by the cemetery director to the personal representative of the deceased, along with written notice of appellate rights in accordance with § 19.25 of this title. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§19.26 through 19.38 of this title.

[70 FR 4768, Jan. 31, 2005]

§ 38.618 Findings concerning commission of a capital crime where a person has not been convicted due to death or flight to avoid prosecution.

(a) Inquiry. With respect to a request for interment or memorialization, if a cemetery director has reason to believe that a deceased individual who is otherwise eligible for interment or memorialization may have committed a Federal or State capital crime, but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director, with the assistance of the VA regional counsel, as necessary, will initiate an inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information. After completion of this inquiry and any further measures required under paragraphs (c), (d), (e), and (f) of this section, the cemetery director will make a decision on the request for interment or memorialization in accordance with paragraph (b), (e), or (g) of this section.
(b) Decision approving request without a proceeding or termination of a claim by personal representative without a proceeding. (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there is no clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving the interment or memorialization.
(2) If the personal representative elects for burial at a location other than a VA national cemetery, or makes alternate arrangements for burial at a location other than a VA national cemetery, the request for interment or memorialization will be considered withdrawn and action on the request will be terminated.
(c) Initiation of a proceeding. (1) If, after conducting the inquiry described in paragraph (a) of this section, the cemetery director determines that there appears to be clear and
convincing evidence that the deceased has committed a Federal or State capital crime of which he or she was not convicted by reason of unavailability for trial due to death or flight to avoid prosecution, the cemetery director will provide the personal representative of the deceased with a written summary of the evidence of record and a written notice of procedural options.

(2) The notice of procedural options will inform the personal representative that he or she may, within 15 days of receipt of the notice:

(i) Request a hearing on the matter;
(ii) Submit a written statement, with or without supporting documentation, for inclusion in the record;
(iii) Waive a hearing and submission of a written statement and have the matter forwarded immediately to the Under Secretary for Memorial Affairs for a finding; or
(iv) Notify the cemetery director that the personal representative is withdrawing the request for interment or memorialization, thereby, closing the claim.

(3) The notice of procedural options will also inform the personal representative that, if he or she does not exercise one or more of the stated options within the prescribed period, the matter will be forwarded to the Under Secretary for Memorial Affairs for a finding based on the existing record.

(d) Hearing. If a hearing is requested, the Director, Memorial Services Network will conduct the hearing. The purpose of the hearing is to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime which would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing will be presented under oath, and the personal representative will have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing will have the authority to administer oaths. The hearing will be conducted in an informal manner and court rules of evidence will not apply. The hearing will be recorded on audiotape and, unless the personal representative waives transcription, a transcript of the hearing will be produced and included in the record.

(e) Decision of approval or referral for a finding after a proceeding. Following a hearing or the timely submission of a written statement, or in the event a hearing is waived or no hearing is requested and no written statement is submitted within the time specified:

(1) If the cemetery director determines that it has not been established by clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, and the deceased remains otherwise eligible, the cemetery director will make a decision approving interment or memorialization; or

(2) If the cemetery director believes that there is clear and convincing evidence that the deceased committed a Federal or State capital crime of which he or she was not convicted due to death or flight to avoid prosecution, the cemetery director will forward a request for a finding on that issue, together with the cemetery director's recommendation and a copy of the record to the Under Secretary for Memorial Affairs.

(f) Finding by the Under Secretary for Memorial Affairs. Upon receipt of a request from the cemetery director under paragraph (e) of this section, the Under Secretary for Memorial Affairs will make a finding concerning whether the deceased committed a Federal or State capital crime of which he or she was not convicted by reason of
unavailability for trial due to death or flight to avoid prosecution. The finding will be based on consideration of the cemetery director's recommendation and the record supplied by the cemetery director.

(1) A finding that the deceased committed a crime referred to in paragraph (f) of this section must be based on clear and convincing evidence.

(2) The cemetery director will be provided with written notification of the finding of the Under Secretary for Memorial Affairs.

(g) Decision after finding. Upon receipt of notification of the finding of the Under Secretary for Memorial Affairs, the cemetery director will make a decision on the request for interment or memorialization pursuant to 38 U.S.C. 2411. In making that decision, the cemetery director will be bound by the finding of the Under Secretary for Memorial Affairs.

(h) Notice of decision. The cemetery director will provide written notice of the finding of the Under Secretary for Memorial Affairs and of a decision under paragraph (b), (e)(1), or (g) of this section. With notice of any decision denying a request for interment or memorialization, the cemetery director will provide written notice of appellate rights to the personal representative of the deceased, in accordance with § 19.25 of this title. This will include notice of the opportunity to file a notice of disagreement with the decision of the cemetery director and the finding of the Under Secretary for Memorial Affairs. Action following receipt of a notice of disagreement with a denial of eligibility for interment or memorialization under this section will be in accordance with §§19.26 through 19.38 of this title.

[70 FR 4768, Jan. 31, 2005]

(70 FR 4768, Jan. 31, 2005)§ 38.620 Persons eligible for burial.

The following is a list of those individuals who are eligible for burial in a national cemetery:

(a) Any veteran (which for purposes of this section includes a person who died in the active military, naval, or air service).

(b) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while such member is hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(c) Any Member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while such member is--

(1) Attending an authorized training camp or on an authorized practice cruise;

(2) Performing authorized travel to or from that camp or cruise; or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while such member is--

(i) Attending that camp or on that cruise;

(ii) Performing that travel; or

(iii) Undergoing that hospitalization or treatment at the expense of the United States.

(Authority: 38 U.S.C. 512, 2411.)
(d) Any person who, during any war in which the United States is or has been engaged, served in the armed forces of any government allied with the United States during that war, whose last such service terminated honorably, and who was a citizen of the United States at the time of entry on such service and at the time of his or her death.

(e) The spouse, surviving spouse, minor child, or unmarried adult child of a person eligible under paragraph (a), (b), (c), (d), or (g) of this section. For purposes of this section--

(1) A surviving spouse includes a surviving spouse who had a subsequent remarriage;
(2) A minor child means an unmarried child under 21 years of age, or under 23 years of age if pursuing a full-time course of instruction at an approved educational institution; and
(3) An unmarried adult child means a child who became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 23 years of age if pursuing a full-time course of instruction at an approved educational institution.

(f) Such other persons or classes of persons as may be designated by the Secretary.

(g) Any person who at the time of death was entitled to retired pay under chapter 1223 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(h) Any person who:

(1) Was a citizen of the United States or an alien lawfully admitted for permanent residence in the United States at the time of their death; and
(2) Resided in the United States at the time of their death; and
(3) Either was a--

(i) Commonwealth Army veteran or member of the organized guerillas--a person who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including organized guerilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who died on or after November 1, 2000; or
(ii) New Philippine Scout--a person who enlisted between October 6, 1945, and June 30, 1947, with the Armed Forces of the United States with the consent of the Philippine government, pursuant to section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who died on or after December 16, 2003.

[70 FR 4768, Jan. 31, 2005]

(Authority: 38 U.S.C. 107, 501, 2402.)

§ 38.621 Disinterments.

(a) Interments of eligible decedents in national cemeteries are considered permanent and final. Disinterment will be permitted only for cogent reasons and with the prior written authorization of the National Cemetery Area Office Director or Cemetery Director responsible for the cemetery involved. Disinterment from a national cemetery will be approved only when all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate
family), give their written consent, or when a court order or State instrumentality of competent jurisdiction directs the disinterment. For purposes of this section, "immediate family members" are defined as surviving spouse, whether or not he or she is remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered "immediate family members."

(b) All requests for authority to disinter remains will be submitted on VA Form 40-4970, Request for Disinterment, and will include the following information:

(1) A full statement of reasons for the proposed disinterment.
(2) Notarized statement(s) by all living immediate family members of the decedent, and the person who initiated the interment (whether or not he or she is a member of the immediate family), that they consent to the proposed disinterment.
(3) A notarized statement, by the person requesting the disinterment that those who supplied affidavits comprise all the living immediate family members of the deceased.

(Authority: 38 U.S.C. 2404.)

(c) In lieu of the documents required in paragraph (b) of this section, an order of a court of competent jurisdiction will be considered.

(d) Any disinterment that may be authorized under this section must be accomplished without expense to the Government. (The reporting and recordkeeping requirements contained in paragraph (b) have been approved by the Office of Management and Budget under OMB control number 2900-0365)

[70 FR 4768, Jan. 31, 2005]

§ 38.629 Outer Burial Receptacle Allowance.

(a) Definitions--Outer burial receptacle. For purposes of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) Purpose. This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner.

(c) Second interments. In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the national cemetery director determines that the already interred casket will not be damaged.

(d) Payment of monetary allowance. VA will pay a monetary allowance for each burial in a VA national cemetery where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on and after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996 through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person privately purchased the outer burial receptacle (however, if a person who is not listed as the next of kin provides evidence that he or she
privately purchased the outer burial receptacle, the allowance will be paid instead to that person). No application is required to receive payment of a monetary allowance.

(e) Amount of the allowance. (1) For calendar year 2000 and each calendar year thereafter, the allowance will be the average cost, as determined by VA, of Government-furnished graveliners, less the administrative costs incurred by VA in processing and paying the allowance.

(i) The average cost of Government-furnished graveliners will be based upon the actual average cost to the Government of such graveliners during the most recent fiscal year ending prior to the start of the calendar year for which the amount of the allowance will be used. This average cost will be determined by taking VA's total cost during that fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation shall exclude both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners.

(ii) The administrative costs incurred by VA will consist of those costs that relate to processing and paying an allowance, as determined by VA, for the calendar year ending prior to the start of the calendar year for which the amount of the allowance will be used.

(2) For calendar year 2000 and each calendar year thereafter, the amount of the allowance for each calendar year will be published in the "Notices" section of the Federal Register. The Federal Register notice will also provide, as information, the determined average cost of Government-furnished graveliners and the determined amount of the administrative costs to be deducted.

(3) The published allowance amount for interments which occur during calendar year 2000 will also be used for payment of any allowances for interments which occurred during the period from October 9, 1996 through December 31, 1999.

[70 FR 4768, Jan. 31, 2005]

(Authority: 38 U.S.C. 2306(d).)

§ 38.630 Headstones and markers.

(a) Types of Government headstones and markers and inscriptions will be in accordance with policies approved by the Secretary.

(b) Inscriptions on Government headstones, markers, and private monuments will be in accordance with policies and specifications of the Under Secretary for Memorial Affairs.

(c) A memorial headstone or marker furnished for a deceased veteran by the Government may be erected in a private cemetery or in a national cemetery section established for this purpose. The headstones or markers for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words "In Memory Of" are mandatory.

[70 FR 4768, Jan. 31, 2005]

(Authority: 38 U.S.C. 501.)

§ 38.631 Graves marked with a private headstone or marker.

ccecc Discussion and Analysis in the Veterans Benefits Manual
(a) VA will furnish an appropriate Government marker for the grave of a decedent described in paragraph (b) of this section, but only if the individual requesting the marker certifies on VA Form 40-1330 that it will be placed on the grave for which it is requested or, if placement on the grave is impossible or impracticable, as close to the grave as possible within the grounds of the private cemetery where the grave is located.

(b) The decedent referred to in paragraph (a) of this section is one who:

(1) Died on or after September 11, 2001;
(2) Is buried in a private cemetery; and
(3) Was eligible for burial in a national cemetery, but is not an individual described in 38 U.S.C. 2402(4), (5), or (6).

c) VA will deliver the marker directly to the cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

d) VA will not pay the cost of installing a Government marker in a private cemetery.

e) The applicant must obtain certification on VA Form 40-1330 from a cemetery representative that the type and placement of the marker requested adheres to the policies and guidelines of the selected private cemetery.

(f) VA will furnish its full product line of Government markers for private cemeteries.

g) The authority to furnish a marker under this section expires on December 31, 2006.

[70 FR 4768, Jan. 31, 2005]

(Authority: 38 U.S.C. 501, 2306.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0222.)

§ 38.632 Headstone and marker application process.

(a) Headstones and markers for graves in national cemeteries shall be ordered from the Record of Interment (VA Form 40-4956) prepared by the national cemetery superintendent at the time of interment. No further application is required.

(b) Submission of VA Form 40-1330, Application for Headstone or Marker, is required for the purpose of:

(1) Ordering a Government headstone or marker for any unmarked grave of any eligible veteran buried in a private or local cemetery.
(2) Ordering a Government headstone or marker for any unmarked grave in a post cemetery of the Armed Forces.
(3) Ordering a Government memorial headstone or marker for placement in a national cemetery, in a private or local cemetery and any post cemetery of the Armed Forces.

[70 FR 4768, Jan. 31, 2005]

§ 38.633 Group memorial monuments.

(a) Definitions of terms. For the purpose of this section, the following definitions apply:

(1) Group--all the known and unknown dead who perished in a common military event.
(2) Memorial Monument--a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 38.630.
(3) Next of kin--recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including
half or stepbrothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) Documentary evidence—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., the American Battle Monuments Commission, to commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

[70 FR 4768, Jan. 31, 2005]

(Authority: 38 U.S.C. 501, 2403.)

PART 39 -- AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS' CEMETERIES

Subpart A -- General Provisions
Subpart B -- Grant Requirements and Procedures
Subpart C -- Award of Grant
Subpart D -- Standards and Requirements for Project
Subpart E -- Responsibilities, Inspections, and Reports Following Project Completion
Subpart F -- Forms

Subpart A -- General Provisions

§ 39.1 Purpose.
§ 39.2 Definitions.
§ 39.3 Decisionmakers, notifications, and additional information.
§ 39.4 Submissions of information and documents to VA.

§ 39.1 Purpose.
This part sets forth the mechanism for a State to obtain a grant to establish, expand, or improve veterans' cemeteries that are or will be owned by the State.
[47 FR 49395, Nov. 1, 1982; 69 FR 16344, 16346, Mar. 29, 2004]

(38 U.S.C. 501, 2408.)

§ 39.2 Definitions.
For the purpose of this part:
(a) Establishment means the process of site selection, land acquisition, design and planning, earthmoving, landscaping, construction and provision of initial operating equipment necessary to convert a tract of land to an operational veterans' cemetery.
(b) Expansion means an increase in the burial capacity or acreage of an existing cemetery through the addition of gravesites and other cemeterial facilities.
(c) Improvement means the enhancement of a cemetery through landscaping, nonrecurring maintenance, or addition of other features appropriate to cemeteries.
(d) Establishment, expansion and improvement include the installation of facilities necessary for the functioning of the cemetery, such as committal-service shelters, crypts (preplaced grave liners), and columbaria.
(e) Time-phased development plan means a detailed, narrative description of the proposed site's characteristics, schedule for development, and estimates of costs by phases of construction.
(f) Project means an undertaking to establish, expand, or improve a specific site for use as a State-owned veterans' cemetery.
(g) State means each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
(h) Veteran means a person who served in the active military, naval, or air service and who died while in service or was discharged or released under conditions other than dishonorable.
(i) Secretary means the Secretary of the United States Department of Veterans Affairs.
(j) VA means the United States Department of Veterans Affairs.
(k) State Cemetery Grants Service (SCGS) means the State Cemetery Grants Service within VA's National Cemetery Administration.
(Authority: 38 U.S.C. 101, 501, 2408.)

§ 39.3 Decisionmakers, notifications, and additional information.
Decisions required under this part will be made by the Director, State Cemetery Grants Service, National Cemetery Administration, unless otherwise specified in this part. The VA decisionmaker will provide written notice to affected States of approvals, denials, or requests for additional information under this part.
(Authority: 38 U.S.C. 501, 2408.)


§ 39.4 Submissions of information and documents to VA.
All information and documents required to be submitted to VA must be submitted, unless otherwise specified under this part, to the Director of State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.
(Authority: 38 U.S.C. 501, 2408.)
[47 FR 49395, Nov. 1, 1982; 69 FR 16344, 16347, Mar. 29, 2004]

Subpart B -- Grant Requirements and Procedures

§ 39.5 General requirements for a grant.
(a) In order to qualify for a grant, a State veterans' cemetery must be operated solely for the interment of veterans, their spouses, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.
(b) For a State to obtain a grant under this part for the establishment, expansion, or improvement of a State veterans' cemetery:
   (1) Its preapplication for the grant must be approved under § 39.6;
   (2) Its project must be ranked sufficiently high on the priority list in § 39.7 for the current fiscal year so that funds are available for the project;
   (3) Its plans and specifications for the project must be approved under § 39.8;
   (4) The State must meet the application requirements in § 39.10; and
   (5) Other requirements specified in §§ 39.9 and 39.13 must be satisfied.
(c) VA may approve under § 39.11 any application up to the amount of the grant requested once the requirements under paragraph (b) of this section have been satisfied, provided that sufficient funds are available. In determining whether sufficient funds are available, VA shall consider the project's priority ranking, the total amount of funds available for cemetery grant awards during the applicable fiscal year, and the prospects of higher ranking projects being ready for the award of a grant before the end of the applicable fiscal year.
(Authority: 38 U.S.C. 501, 2408.)
[47 FR 49395, Nov. 1, 1982; 69 FR 16344, 16347, Mar. 29, 2004]


§ 39.6 Preapplication requirements.
(a) A State seeking a grant for the establishment, expansion, or improvement of a veterans' cemetery must submit a preapplication if the State seeks more than $100,000.
(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State must submit each of the following:
   (1) Standard Form 424 ("Face Sheet") and Standard Form 424C ("Budget Information") signed by the authorized representative of the State. These forms document the amount of
the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) A program narrative describing the objectives of the project, the need for a grant, the method of accomplishment, the projected interment rate, and the results or benefits expected to be obtained from the assistance requested.

(3) If a site has been selected, a description of the geographic location of the project (i.e., a map showing the location of the project and all appropriate geographic boundaries, and any other supporting documentation, as needed).

(4) A design concept describing the major features of the project including the number and types of gravesites, such as columbarium niches.

(5) Any comments or recommendations made by the State's "Single Point of Contact" reviewing agency.

(c) In addition, the State must submit written assurance that:

(1) Any cemetery established, expanded, or improved through a grant will be used exclusively for the interment of eligible persons as set forth in § 39.5(a).

(2) Title to the site is or will be vested solely in the State.

(3) It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; i.e., legislation or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.

(4) Any cemetery established, expanded, or improved through a grant will be maintained and operated in accordance with the operational standards and measures of the National Cemetery Administration.

(5) It will assist VA in assuring that the grant complies with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

(6) It will obtain approval by VA of the final construction drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause it to be constructed, to completion in accordance with the application and approved plans and specifications; it will submit to the Director of the State Cemetery Grants Service, for prior approval, changes that alter the costs of the project, use of space, or functional layout; and it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program have been met.

(7) It will comply with the Federal requirements in 38 CFR parts 43 and 44 and submit Standard Form 424D ("Assurances -- Construction Programs").

(8) It will prepare an Environmental Assessment to determine whether an Environmental Impact Statement is necessary, and certify that funds are available to finance any costs related to preparation of the Environmental Assessment.

(d) The State must submit a copy of the legislation, as enacted into law, authorizing the establishment, maintenance and operation of the facility as a veterans' cemetery in accordance with 38 CFR 39.5(a).
(e) Upon receipt of a preapplication for a grant, including all necessary assurances and all required supporting documentation, VA shall determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State of any nonconformity. If the preapplication does conform, VA shall notify the State that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.7(d).

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 0348-0043, 0348-0041; 0348-0042.)

[47 FR 49395, Nov. 1, 1982; 69 FR 16344, 16347, Mar. 29, 2004]


§ 39.7 Priority list.

(a) The priority groups, with Priority Group 1 having the highest priority and Priority Group 4 the lowest priority, are:

1. Priority Group 1 -- Projects needed to avoid disruption in burial service that would otherwise occur at existing veterans' cemeteries within 4 years of the date of the preapplication. Such projects would include expansion projects as well as improvement projects (such as construction of additional or replacement facilities) when such improvements are required to continue interment operations.

2. Priority Group 2 -- Projects for the establishment of new veterans' cemeteries.

3. Priority Group 3 -- Expansion projects at existing veterans' cemeteries when a disruption in burial service due to the exhaustion of existing gravesites is not expected to occur within 4 years of the date of the preapplication.

4. Priority Group 4 -- Other improvement projects to cemetery infrastructure such as building expansion and upgrades to roads and irrigation systems that are not directly related to the development of new gravesites.

(b) Within Priority Groups 1, 2, and 3, highest priority will be given to projects in geographical locations with the greatest number of veterans who will benefit from the project as determined by VA. This prioritization system, based on veteran population data, will assist VA in maintaining and improving access to burial in a veterans cemetery to more veterans and their eligible family members. Within Priority Group 1, at the discretion of VA, higher priority may be given to a project that must be funded that fiscal year to avoid disruption in burial service.

(c) Within Priority Group 4, projects will be ranked in priority order based upon VA's determination of the relative importance and necessity to operations of the proposed improvements.

(d) By August 15 of each year, VA will make a list prioritizing the preapplications that were received on or before July 1 of that year and that were approved under § 39.6, ranking them in their order of priority for funding during the fiscal year that begins the following October 1. Preapplications from previous years will be re-prioritized each year.

(Authority: 38 U.S.C. 501, 2408.)
§ 39.8 Plan preparation.
The State must prepare plans and specifications in accordance with the requirements of this section for review by the SCGS. The plans and specifications must be approved by the SCGS prior to the State's solicitation for construction bids. Once SCGS grants approval, the State must obtain construction bids and determine the successful bidder prior to submission of the application. The State must establish procedures for determining that costs are reasonable, necessary and allocable in accordance with the provisions of Office of Management and Budget (OMB) Circular No. A-87. Once the preapplication and the project's plans and specifications have been approved, an application for assistance must be submitted in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by Office of Management and Budget Circular No. A-102, Revised.

(a) General. These requirements have been established for the guidance of the State agency and the design team to provide a standard for preparation of drawings, specifications and estimates.

(b) Technical requirements. The State should meet these technical requirements as soon as possible after VA approves the preapplication.

(1) Boundary and site survey. The State agency shall provide a survey of the site and furnish a legal description of the site. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan. If required, the survey shall show:

(i) The outline and location referenced to boundaries, of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads and streams, and other information as specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the drawings.
(ii) The point of beginning, bearing, distances, and interior angles. Closure computations shall be furnished with the survey and error of closure shall not exceed 1 foot for each 10,000 feet of lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change or direction between corners) shall be referenced with curve data (including measurement chord) and other data sufficient for replacement and such information shall be shown on the map. For boundaries of such nature, coordinates shall be given for all angles and other pertinent points.
(iii) The area of the parcel in acres or in square feet.
(iv) The location of all monuments.
(v) Delineation of 100-year floodplain and source.
(vi) The signature and certification of the Surveyor.

(2) Soil investigation. The State shall provide a soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements and utility service connections. A new soil investigation is not required if one was done for a previously approved project on the same site and information
contained is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report. Adequate investigation shall be made to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions. The following information will be covered in the report:

(i) Thickness, consistency, character, and estimated safe bearing value where needed for structural foundation design of the various strata encountered in each pit or boring.
(ii) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons, and effect on the subsoil.
(iii) The elevation of rock, if known, and the probability of encountering quicksand.
(iv) If the site is under laid with mines, the elevations and location of the tops of the mine workings relative to the site, or old workings located in the vicinity.

(3) Topographical survey. A topographical survey in 1-foot contour intervals shall be prepared for projects establishing new cemeteries and for significant expansion projects in previously undeveloped land.

(c) Master plan. A master plan showing the proposed layout of all facilities -- including buildings, roadways and burial sections -- on the selected site shall be prepared for all new cemetery establishment projects for approval by the SCGS. If the project is to be phased into different year programs, the phasing shall be indicated. The master plan shall analyze all factors affecting the design, including climate, soil conditions, site boundaries, topography, views, hydrology, environmental constraints, transportation access, etc. It should provide a discussion of alternate designs that were considered. In the case of an expansion or improvement project, the work contemplated should be consistent with the VA-approved master plan or a justification for the deviation should be provided.

(d) Preliminary or "design development" drawings. Following VA approval of the master plan, the State must submit design development drawings that show all current phase construction elements to be funded by the grant. The drawings must comply with the following requirements:

(1) Site development and environmental plans must include locations of structures, demolition, parking, roads, service areas, walks, plazas, memorial paths, other paved areas, landscape buffer and major groupings, interment areas (including quantity of gravesites in each area). A grading plan including existing and proposed contours at 1-foot intervals of the entire area affected by the site work must be submitted. A site plan of the immediate area around each building shall be drawn to a convenient scale and shall show the building floor plan, utility connections, walks, gates, walls or fences, flagpoles, drives, parking areas, indication of handicapped provisions, landscaping, north arrow and any other appropriate items.

(2) Floor plans of all levels at a convenient scale shall be double line drawings and shall show overall dimensions, construction materials, door swings, names and square feet for each space, toilet room fixtures and interior finish schedule.

(3) Elevations of the exteriors of all buildings shall be drawn to the same scale as the plan and shall include all material indications.

(4) Preliminary mechanical and electrical layout plans shall be drawn at a convenient scale and shall have an equipment and plumbing fixture schedule.

(e) Final construction drawings and specifications. Funds for the construction of any project being assisted under this program will not be released until VA approves the final
construction drawings and specifications. If VA approves them, VA shall send the State a written letter of approval indicating the project complies with the terms and conditions as prescribed by VA, but this does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

1. The State shall prepare final working drawings so that clear and distinct prints may be obtained. These drawings must be accurately dimensioned to include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for VA review and comment. The State shall prepare separate drawings for each of the following types of work: architectural, equipment, layout, structural, heating and ventilating, plumbing, and electrical.

2. Architectural drawings. The State shall submit drawings which include: All structures and other work to be removed; all floor plans if any new work is involved; all elevations, which are affected by the alterations; building sections; demolition drawings; all details to complete the proposed work and finish schedules; and fully dimensioned floor plans at 1/8" or 1/4" scale.

3. Equipment drawings. The State shall submit a list of all equipment to be provided under terms of the grant in the case of an establishment project. Large-scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment shall be included.

4. Layout drawings. The State shall submit a layout plan that shows:
   (i) All proposed features such as roads, buildings, walks, utility lines, burial layout, etc.
   (ii) Contours, scale, north arrow, legend showing existing trees.
   (iii) A graphic or keyed method of showing plant types as well as quantities of each plant.
   (iv) Plant list with the following: Key, quantity, botanical name, common name, size and remarks.
   (v) Typical tree and shrub planting details.
   (vi) Areas to be seeded or sodded.
   (vii) Areas to be mulched.
   (viii) Gravesite section layout with permanent section monument markers and lettering system.
   (ix) Individual gravesite layout and numbering system. If the cemetery is existing and the project is expansion or renovation, show available, occupied, obstructed and reserved gravesites.
   (x) Direction the headstone faces.

5. Structural drawings. The State shall submit complete foundation and framing plans and details, with general notes to include: Governing code, material strengths, live loads, wind loads, foundation design values, and seismic zone.

6. Mechanical drawings. The State shall submit:
   (i) Heating and ventilation drawings showing complete systems and details of air conditioning, heating, ventilation and exhaust; and
   (ii) Plumbing drawings showing sizes and elevations of soil and waste systems, sizes of all hot and cold water piping, drainage and vent systems, plumbing fixtures, and riser diagrams.

7. Electrical drawings. The State shall submit separate drawings for lighting and power, including drawings of:
(i) Service entrance, feeders and all characteristics;
(ii) All panel, breaker, switchboard and fixture schedules;
(iii) All lighting outlets, receptacles, switches, power outlets and circuits; and
(iv) Telephone layout, fire alarm systems and emergency lighting.
(8) Final specifications (to be used for bid purposes) shall be in completed format. Specifications shall include the invitations for bids, cover or title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and sections describing materials and workmanship in detail for each class of work.
(9) The State shall show in convenient form and detail the estimated total cost of the work to be performed under the contract including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work. Estimates shall also be provided for each building structure and other important features such as the assembly area and include burial facilities.


§ 39.9 Conferences.
(a) Predesign conference. A predesign conference is required for all major construction projects primarily to ensure that the State agency becomes oriented to VA procedures and requirements plus any technical comments pertaining to the project. These conferences will take place at an appropriate location near the proposed site and should include a site visit to ensure that all parties to the process, including NCA staff, are familiar with the site and its characteristics.
(b) Additional conferences. At any time, VA may recommend an additional conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss requirements for a grant with VA officials.

[69 FR 16344, 16350, Mar. 29, 2004]


§ 39.10 Application requirements.
(a) For a project to be considered for grant funding under this part, the State must submit an application (as opposed to a preapplication) consisting of the following:
(1) Standard Form 424 ("Face Sheet") with the box labeled "application" marked;
(2) Standard Form 424C ("Budget Information"), which documents the amount of funds requested based on the construction costs as estimated by the successful construction bid;
(3) A copy of itemized bid tabulations (If there are non-VA participating areas, these shall be itemized separately.); and
(4) Standard Form 424D ("Assurances -- Construction Program").
(Authority: 38 U.S.C. 501, 2408)
(b) Prior to submission of the application, the State must submit a copy of an
Environmental Assessment to determine if an Environmental Impact Statement is
necessary for compliance with section 102(2)(C) of the National Environmental Policy
Act of 1969, as amended (42 U.S.C. 4332). The Environmental Assessment must briefly
describe the project's possible beneficial and harmful effects on the following impact
categories:
(1) Transportation,
(2) Air quality,
(3) Noise,
(4) Solid waste,
(5) Utilities,
(6) Geology (Soils/Hydrology/Floodplains),
(7) Water quality,
(8) Land use,
(9) Vegetation, Wildlife, Aquatic, Ecology/Wetlands, etc.,
(10) Economic activities,
(11) Cultural resources,
(12) Aesthetics,
(13) Residential population,
(14) Community services and facilities,
(15) Community plans and projects, and
(16) Other.
(c) If an adverse environmental impact is anticipated, the State must explain what action
will be taken to minimize the impact. The assessment shall comply with the requirements
of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).
(The Office of Management and Budget has approved the information collection
requirements in this section under control numbers 0348-0043; 0348-0041; 0348-0042.)
[69 FR 16344, 16350, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16350, Mar. 29, 2004, added this section as
part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.11 Final review and approval of application.
Following VA approval of bid tabulations and cost estimates, the complete grant
application will be reviewed for approval in accordance with the requirements of § 39.5.
If the application is approved, the grant will be awarded by a Notification of Award of
Federal Grant Funds.
(Authority: 38 U.S.C. 501, 2408.)
[69 FR 16344, 16350, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16350, Mar. 29, 2004, added this section as
part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.12 Hearings.
(a) No application for a grant to establish, expand, or improve a State veterans' cemetery shall be disapproved until the applicant has been afforded an opportunity for a hearing.
(b) Whenever a hearing is requested under this section, notice of the hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available.

(Authority: 38 U.S.C. 501, 2408.)
[69 FR 16344, 16350, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16350, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.13 Amendments to application.
Any amendment of an application that changes the scope of the application or increases the cost of the grant requested, whether or not the application has already been approved, shall be subject to approval in the same manner as an original application.

(Authority: 38 U.S.C. 501, 2408.)
[69 FR 16344, 16350, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16350, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.14 Withdrawal of application.
A State representative may withdraw an application by submitting to VA a written document requesting withdrawal.

(Authority: 38 U.S.C. 501, 2408.)
[69 FR 16344, 16350, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16350, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]
Subpart C -- Award of Grant

§ 39.15 Amount of grant.
§ 39.16 Line item adjustment to grant.
§ 39.17 Payment of grant award.
§ 39.18 Recapture provisions.

§ 39.15 Amount of grant.
(a) The amount of a grant awarded under this part may not exceed 100 percent of the total cost of the project, but may be less than that amount.
(b) The total cost of a project under this part may include:
(1) Administration and design costs, e.g., architectural and engineering fees, inspection fees, and printing and advertising cost.
(2) The cost of cemetery features, e.g., entry features, flag plaza and assembly areas, columbarium, preplaced liners or crypts, irrigation, committal-service shelters, and administration/maintenance buildings.
(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State cemetery. This may include the cost of non-fixed equipment such as grounds maintenance equipment, burial equipment, and office equipment.
(4) In the case of an improvement or expansion grant, the cost of equipment necessary for operation of the State cemetery, but only if:
   (i) Included in the construction contract;
   (ii) Installed during construction; and
   (iii) Permanently affixed to a building or connected to the heating, ventilating, air conditioning, or other service distributed through a building via ducts, pipes, wires, or other connecting device, such as kitchen and intercommunication equipment, built-in cabinets, and equipment lifts.
(5) A contingency allowance not to exceed five percent of the total cost of the project for new construction or eight percent for renovation projects.
(c) The total cost of a project under this part may not include the cost of:
(1) Land acquisition;
(2) Building space that exceeds the space guidelines specified in this part;
(3) Improvements not on cemetery land, such as access roads or utilities;
(4) Maintenance or repair work;
(5) Office supplies or consumable goods (such as fuel and fertilizer) which are routinely used in a cemetery; or
(6) Fully enclosed, climate-controlled, committal-service facilities, freestanding chapels or chapels that are part of an administrative building or information center.
(d) VA shall certify approved applications to the Secretary of the Treasury in the amount of the grant, and shall designate the appropriation from which it shall be paid. Funds paid for the establishment, expansion, or improvement of a veterans' cemetery must be used solely for carrying out approved projects.
(Authority: 38 U.S.C. 501, 2408.)
[69 FR 16344, 16350, Mar. 29, 2004]
§ 39.16 Line item adjustment to grant.
After a grant has been awarded, upon request from the State representative, VA may approve a change in a line item (line items are identified in Standard Form 424C, which is set forth in § 39.26(c)) of up to 10 percent (increase or decrease) of the cost of the line item if the change would be within the scope or objective of the project and would not change the amount of the grant.
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0041.)
[69 FR 16344, 16351, Mar. 29, 2004]

§ 39.17 Payment of grant award.
The amount of the grant award will be paid to the State or, if designated by the State representative, the State veterans' cemetery for which such project is being carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of the project, as the Director of State Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved. As a condition for the final payment, the State representative must submit to VA the following:
(a) Standard Form 271 ("Outlay Report and Request for Reimbursement for Construction Programs") (The form is set forth at § 39.26(a)).
(b) A request in writing for the final architectural/engineering inspection, including the name and telephone number of the local point of contact for the project;
(c) The written statement "It is hereby agreed that the monetary commitment of the federal government will have been met and the project will be considered terminated upon payment of this voucher," and
(d) Evidence that the State has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and § 39.19, if applicable.
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0002.)
[69 FR 16344, 16351, Mar. 29, 2004]

§ 39.18 Recapture provisions.
(a) If a State which has received a grant to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as a veterans' cemetery in accordance with § 39.5(a), or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States
shall be entitled to recover from the State the total of all grants made to the State in connection with the establishment, expansion or improvement of such cemetery.

(b) If all funds from a grant have not been used by a State for the purpose for which the grant was made within 3 years after the VA has certified the approved application for such grant to the Department of the Treasury, the United States shall be entitled to recover any unused grant funds from the State.

(Authority: 38 U.S.C. 501, 2408.)

[69 FR 16344, 16351, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16351, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]
Subpart D -- Standards and Requirements for Project

§ 39.19 General requirements for site selection and construction of veterans' cemeteries.

§ 39.20 Site planning standards.

§ 39.21 Space criteria for support facilities.

§ 39.22 Architectural design standards.

§ 39.19 General requirements for site selection and construction of veterans’ cemeteries.

(a) The various codes, requirements, and recommendations of State and local authorities or technical and professional organizations, to the extent and manner in which those codes, requirements, and recommendations are referenced in this subpart, are applicable to grants for construction of veterans' cemeteries. Additional information concerning these codes, requirements, and recommendations may be obtained from the Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) The standards in §§ 39.19 through 39.22 constitute general design and construction criteria and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 2408.

(c) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. The standards contained in §§ 39.19 through 39.22 shall be followed where they exceed State or local codes and regulations. Departure will be permitted, however, when alternate standards are demonstrated to provide equivalent or better design criteria than the standards in these sections. Conversely, compliance is required with State and local codes where such requirements provide a standard higher than those in these sections. The additional cost, if any, in using standards that are higher than those of VA should be documented and justified in the application.

(d) The space criteria and area requirements referred to in these standards shall be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be necessary to meet the functional requirements of the project but are subject to approval by VA. Substantial deviation from the space or area standards shall be carefully considered and justified. Failing to meet the standards or exceeding them by more than 10 percent in the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. In those projects that unjustifiably exceed maximum space or area criteria, VA funding may be subject to proportionate reduction in proportion to the amount by which the space or area of the cemetery exceeds the maximum specified in these standards.

(Authority: 38 U.S.C. 501, 2408.)

[69 FR 16344, 16351, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16351, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.20 Site planning standards.
(a) Site selection -- (1) Location. The land should be located as close as possible to the densest veteran population in the area under consideration.

(2) Size. Sufficient acreage shall be available to provide gravesites for estimated needs for at least 20 years. More acreage should be provided where feasible. Acreage could vary depending on the State veteran population and national cemetery availability.

(3) Accessibility. The site should be readily accessible by highway. Offsite improvements shall not be funded by the grant.

(4) Topography. The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly or infirm visitors. The land shall not be subject to flooding.

(5) Water table. The water table should be lower than the maximum proposed depth of burial.

(6) Soil requirements. The soil should be free from rock, muck, unstable composition, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting turf and trees, with normal care and without the addition of topsoil.

(7) Utilities. Electricity and gas, if required, should be available. Offsite improvements shall not be funded by the grant.

(8) Water supply. An adequate supply of water should be available. Offsite improvements shall not be funded by the grant.

(9) Sewerage. An approved means to dispose of storm flow and sewage from the facility should be available. Offsite improvements shall not be funded by the grant.

(b) Site development requirements -- (1) General. The development plan shall provide for adequate hard surfaced roads, walks, parking areas, public rest rooms, flag circle, and a main gate.

(2) Parking. All parking facilities shall include provisions to accommodate the physically handicapped. A minimum of one space shall be set aside and identified with signage in each parking area with additional spaces provided in the ratio of 1 handicapped space to every 20 regular spaces. Handicapped spaces shall not be placed between two conventional diagonal or head-on parking spaces. Each of the handicapped parking spaces shall not be less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent conventional parking spaces and also on the outside of the end spaces. Parking is not provided for large numbers of people attending ceremonial events such as Memorial Day services.

(3) Roads. Roads should generally follow the topography of the cemetery, and allow pedestrian access to burial sections on both sides. Roads should generally not be used as "boundaries" outlining burial sections. Extensive bridging should be avoided. The grant program funding cannot be used to build access roads on property that is not part of the cemetery. Road widths shall be compatible with proposed traffic flows and volumes. Primary roads are generally 24 feet wide.

(4) Pavement design. The pavement section of all roads, service areas and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions and in accordance with local and State design criteria.

(5) Curbs. Bituminous roads may be provided with integral curbs and gutters constructed of portland cement concrete. Freestanding curbs may be substituted when the advantage
of using them is clearly indicated. All curbs shall have a "roll-type" cross section for vehicle and equipment access to lawn areas except as may be necessary for traffic control. The radii of curbs at road intersections shall not be less than 20 feet-0 inches. Curb ramps shall be provided to accommodate the physically handicapped and maintenance equipment. Curb ramps shall be provided at all intersections of roads and walks. The curb ramps shall not be less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Curb ramps shall have nonskid surfaces.

(6) Walks. Walks shall be designed with consideration for the physically handicapped and elderly. Walks and ramps designed on an incline shall have periodic level platforms. All walks, ramps and platforms shall have nonskid surfaces. Any walk shall be ramped if the slope exceeds 3 percent. Walks that have gradients from 2 to 3 percent shall be provided with level platforms at 200-foot intervals and at intersections with other walks. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides unless other protective devices are provided; every handrail shall have clearance of not less than 1 1/2 inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather.

(7) Steps. Exterior steps may be included in the site development as long as provisions are also provided for use by physically handicapped persons.

(8) Grading. Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(9) Landscaping. The landscaping plan should provide for a park-like setting of harmonious open spaces balanced with groves of indigenous and cultivated deciduous and evergreen trees. Shrubbery should be kept to a minimum. Steep slopes that are unsuitable for interment areas should be kept in their natural state.

(10) Surface drainage. Surface grades shall be determined in coordination with the architectural, structural and mechanical design of buildings and facilities so as to provide proper surface drainage.

(11) Burial areas. A site plan of the cemetery shall include a burial layout. If appropriate, the burial layout should reflect the phases of development in the various sections. The first phase of construction should contain sufficient burial sites to meet the foreseeable demand for at least 10 years. All applicable dimensions to roadways, fences, utilities or other structures shall be indicated on the layout.

(12) Gravesites. Gravesites shall be laid out in uniform pattern. There shall be a minimum of 10 feet from the edge of roads and drives and a minimum of 20 feet from the boundaries or fence lines. Maximum distance from the edge of a permanent road to any gravesite shall not be over 275 feet. Temporary roads may be provided to serve areas in phase developments.
(13) Monumentation. Each grave shall be marked with an appropriate marker and each cemetery shall maintain a register of burials setting forth the name of each person buried and the designation of the grave in which he/she is buried. Permanent gravesite control markers shall be installed based on a grid system throughout the burial area unless otherwise specified. This will facilitate the gravesite layout, placement of utility lines, and alignment of headstones.

(14) Entrance. The entrance should be an architectural or landscape feature that creates a sense of arrival.

(15) Memorial walkway. Each cemetery should have an area for the display of memorials donated by veterans groups and others. Such areas may take the form of a path or walkway and should provide a contemplative setting for visitors.

(16) Donation items. Family members and others often wish to donate items such as benches and trees. Acceptable items of donation should be specified in the cemetery plan. The plan should also designate appropriate locations for such items.

(17) Flag/assembly area. There shall be one primary flagpole for the United States flag. This flag shall be lighted. A turf assembly area should be developed for major gatherings such as Memorial Day. The assembly area may be focused on the flag. The area may also incorporate an architectural or a landscape feature that functions as a platform or backdrop for speakers.

(18) Site furnishings. Site furnishings include signage, trash receptacles, benches, and flower containers. These items should be coordinated and complement each other, the architectural design and the cemetery as a whole. They should be simple, durable, standardized and properly scaled.

(19) Carillons. The cemetery development plan should include a location for a carillon tower. Carillons are normally donated. They are not provided for in the grant.

[Authority: 38 U.S.C. 501, 2408.]

[69 FR 16344, 16351, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16351, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.21 Space criteria for support facilities.

These criteria are based on a projected average burial rate of one to six per day, staffing by position, and a defined complement of maintenance and service equipment. For cemeteries with less than one or more than six burials per day, support facilities are considered on an individual basis in accordance with § 39.19(d). In converting Net Square Feet (NSF) to Gross Square Feet (GSF), a conversion factor of 1.5 is the maximum allowed. The applicant shall, in support of the design, include the following as an attachment to the application: a list of all grounds maintenance supplies and equipment and the number of Full Time Employees (FTE) by job assignment for the next 10 years.

(a) Administrative building. The administrative building should be approximately 1,600 NSF in total, providing space, as needed, for the following functions:

(1) Cemetery director's office;

(2) Other offices (as needed);

(3) Administrative staff (lobby/office area);

(4) Operations (file/office/equipment/work area);
(5) Family/conference room;
(6) Military honors team;
(7) Refreshment unit;
(8) Housekeeping aide's closet; and
(9) Restroom facilities.

(b) Maintenance/service building. The maintenance/service building may be combined with the administrative building. The maintenance/service building should be approximately 2,200 NSF in total, providing heated and air conditioned space, as needed, for the following functions:
(1) Foreman's office;
(2) Lunch room;
(3) Kitchen unit;
(4) Toilet and locker room facilities;
(5) Housekeeping aide's closet; and
(6) Vehicle and equipment maintenance and storage.

(c) Vehicle and equipment storage. Approximately 275 NSF/Bay as needed. Not all types of vehicles and equipment require storage in heated space. Based on climatic conditions, it may be justified to rely completely on open structures rather than heated structures to protect the following types of vehicles and equipment: Dump Trucks, Pickup Trucks, Cemetery Automobiles, Gang and Circular Mowers.

(d) Interment/committal service shelter. One permanent shelter is authorized for every five interments per day. The shelter may include a covered area to provide seating for approximately 20 people and an uncovered paved area to provide space for approximately 50 additional people. The shelter may also include a small, enclosed equipment/storage area. Provisions must be made for the playing of Taps by recorded means.

(e) Public Information Center. One permanent Public Information Center is authorized per facility. A Public Information Center is used to provide orientation to visitors and funeral corteges. It should include the gravesite locator. The public restrooms may also be combined with this structure. Space determinations for separate structures for public restrooms shall be considered on an individual basis. The Public Information Center, including public restrooms, may be combined with the administrative building.

(f) Other interment structures. Space determinations for other support facilities such as columbaria, preplaced graveliners (or crypts), garden niches, etc., will be considered on an individual basis in accordance with § 39.19(d).

(Authority: 38 U.S.C. 501, 2408.)

[69 FR 16344, 16353, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16353, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.22 Architectural design standards.
The publications listed in this section are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the Office of...


(2) State and local codes. In addition to compliance with the standards set forth in this section, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State building codes, the recommendations contained in the 2003 edition of the NFPA 5000, Building Construction and Safety Code shall apply.

(3) Occupational safety and health standards. Applicable standards as contained in the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) must be observed.

(b) Mechanical requirements. The heating system, boilers, steam system, ventilation system and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations. Where no local or State codes are in force, the 2003 edition of the Uniform Mechanical Code shall apply.

(c) Plumbing requirements. Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth in this part. Where no local or State codes are in force, the 2003 edition of the Uniform Plumbing Code shall apply.

(d) Electrical requirements. The installation of electrical work and equipment shall comply with all local and State codes and laws applicable to electrical installations and the minimum general standards, as set forth in the NFPA 70, National Electrical Code, 2002 edition (NEC 2002 Code). The regulations of the local utility company shall govern service connections. Aluminum bus ways shall not be used as a conducting medium in the electrical distribution system.

(Authority: 38 U.S.C. 501, 2408.)

[69 FR 16344, 16353, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16353, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]
Subpart E -- Responsibilities, Inspections, and Reports Following Project Completion

§ 39.23 Responsibilities following project completion.
§ 39.24 State to retain control of operations.
§ 39.25 Inspections, audits, and reports.

§ 39.23 Responsibilities following project completion.
(a) States shall monitor use of the cemetery by various subgroups and minority groups, including women veterans. To the extent that under-utilization by any of these groups is determined to exist, a program shall be established to inform members of these groups about benefits available to them. The information regarding the benefits shall be available in a language other than English where a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs such service or information.
(b) State veterans' cemeteries established, expanded, or improved with assistance under the grant program shall be operated and maintained as follows:
(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to users.
(2) The cemetery shall be kept open for public use at reasonable hours based on the time of the year.
(c) VA, in coordination with the State, shall inspect the project at completion for compliance with the standards set forth in §§ 39.19 through 39.22 and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State veterans' cemetery. A copy of the inspection report shall be forwarded to the Director, State Cemetery Grants Service, giving the date and location the inspection was made and citing any deficiencies and corrective action taken or proposed.
(d) Failure of a State to comply with any of paragraphs (a) through (c) of this section shall be considered cause for the Department of Veterans Affairs to suspend any payments due the State on any or all projects until the situation involved is corrected.
(Authority: 38 U.S.C. 501, 2408; and issued under authority of the President by E.O. 13166, 65 FR 50121)
[69 FR 16344, 16354, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16354, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]

§ 39.24 State to retain control of operations.
Neither the Secretary nor any employee of the Department of Veterans Affairs shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans' cemetery established, expanded, or improved with assistance received under this program except as prescribed in this part.
(Authority: 38 U.S.C. 501, 2408.)
[69 FR 16344, 16354, Mar. 29, 2004]
§ 39.25 Inspections, audits, and reports.
(a) A State will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter).
(b) A State will make an annual report on VA Form 40-0241 ("State Cemetery Data") signed by the authorized representative of the State. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational information intended to answer questions about the status of the grant program.
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0559.)
[69 FR 16344, 16354, Mar. 29, 2004]
Subpart F -- Forms

§ 39.26 Forms.

§ 39.26 Forms.
All forms set forth in this part are available on the Internet at http://www.va.gov/forms.
(a) Standard Form 271 -- Outlay Report and Request for Reimbursement for Construction Programs

CLICK HERE TO VIEW FORM
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0002.)

(b) Standard Form 424 -- Application for Federal Assistance.

CLICK HERE TO VIEW FORM
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0041.)

(c) Standard Form 424C -- Instructions for the SF-424C.

CLICK HERE TO VIEW FORM
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0041.)

(d) Standard Form 424D -- Assurances -- Construction Programs.

CLICK HERE TO VIEW FORM
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348-0042.)

(e) VA Form 10-0148c -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions.

CLICK HERE TO VIEW FORM
(Authority: 38 U.S.C. 501, 2408.)
(f) VA Form 40-0241 -- State Cemetery Data.

CLICK HERE TO VIEW FORM
(Authority: 38 U.S.C. 501, 2408.)
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0559.)

[69 FR 16344, 16354, Mar. 29, 2004]

[EFFECTIVE DATE NOTE: 69 FR 16344, 16354, Mar. 29, 2004, added this section as part of the revision of Part 39, effective Apr. 28, 2004.]
PART 40 -- INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF VETERANS AFFAIRS PROGRAMS AND ACTIVITIES

§ 40.1 Purpose.
§ 40.2 Definitions.
§ 40.3 Programs and activities.
§ 40.4 General.
§ 40.5 Federal interagency coordination.
§ 40.6 Selection of programs and activities.
§ 40.7 Communicating with State and local officials concerning VA's programs and activities.
§ 40.8 Commenting on proposed Federal financial assistance and direct Federal development.
§ 40.9 Comment receipt and response to comments.
§ 40.10 Making efforts to accommodate intergovernmental concerns.
§ 40.11 Interstate.
§ 40.12 [Reserved]
§ 40.13 Waiver.

§ 40.1 Purpose.
(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance and direct Federal development.
(c) These regulations are intended to improve the internal management of the VA, and are not intended to create any right or benefit enforceable at law by a party against the VA or its officers.

(42 U.S.C. 4231(b))

§ 40.2 Definitions.
For the purposes of §§ 40.1 through 40.13, the following definitions apply:
(a) VA means the Department of Veterans Affairs.
(b) Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."
(c) Secretary means the Secretary of Veterans Affairs of the Department of Veterans Affairs or an official or employee of VA acting for the Secretary under delegation of authority.
(d) State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.
(e) Emergency means a sudden, urgent, unforeseen situation in which immediate action is needed to prevent or respond to significant harm to life or property. Harm to property would include damage to the environment.
(f) Unusual circumstances means the end of a fiscal year, a statutory deadline or any other circumstance making it impracticable for the agency to provide 60 days for comment.
(g) Affected means for purposes of interstate situations those States physically affected by the specific plans and projects.

( 42 U.S.C. 4231(b))

§ 40.3 Programs and activities.
The Secretary publishes in the Federal Register a list of VA's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

( 42 U.S.C. 4231(b))

§ 40.4 General.
(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, VA.
(b) If a State adopts a process under the order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:
(1) Uses the State process to determine official views of State and local elected officials;
(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;
(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;
(4) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and
(5) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.
§ 40.5 Federal interagency coordination.
The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and VA regarding programs and activities covered under these regulations.


(42 U.S.C. 4231(b))

§ 40.6 Selection of programs and activities.
(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 40.3 of this part, for intergovernmental review under these regulations. Each State, before selecting programs and activities shall consult with local elected officials.
(b) Each State that adopts a process shall notify the Secretary of the VA's programs and activities selected for that process.
(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with local elected officials regarding the change. The VA may establish deadlines by which States are required to inform the Secretary of changes in their program selections.
(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.


(42 U.S.C. 4231(b))

§ 40.7 Communicating with State and local officials concerning VA's programs and activities.
The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:
(a) The State has not adopted a process under the order; or
(b) The assistance or development involves a program or activity not selected for the State process.
This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which VA in its discretion deems appropriate.


(42 U.S.C. 4231(b))

§ 40.8 Commenting on proposed Federal financial assistance and direct Federal development.
(a) Except in unusual circumstances, the Secretary gives State processes or State, areawide, regional and local officials and entities at least 60 days from the date
established by the Secretary to comment on proposed direct Federal development or Federal financial assistance.
(b) This section also applies to comments in cases in which the review, coordination, and communication with VA have been delegated.
(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

(42 U.S.C. 4231(b))

§ 40.9 Comment receipt and response to comments.
(a) The Secretary follows the procedures in § 40.10 if:
(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and
(2) That office or official transmits a State process recommendation for a program selected under § 40.6.
(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.
(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.
(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to VA.
(d) If a program or activity is not selected for a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to VA. In addition, if a State process recommendation for a nonselected program or activity is transmitted to VA by the single point of contact, the Secretary follows the procedures of § 40.10 of this part.
(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 40.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the VA by a commenting party.

(42 U.S.C. 4231(b))

§ 40.10 Making efforts to accommodate intergovernmental concerns.
(a) If a State process provides a State process recommendation to VA through its single point of contact, the Secretary either:
(1) Accepts the recommendation;
(2) Reaches a mutually agreeable solution with the State process; or
(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or her discretion deems appropriate. The Secretary may also
supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:
(1) The VA will not implement its decision for at least ten days after the single point of contact receives the explanation; or
(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.
(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.


( 42 U.S.C. 4231(b))

§ 40.11 Interstate.
(a) The Secretary is responsible for:
(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
(2) Notifying appropriate officials and entities in States which have adopted a process and which select VA's program or activity.
(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the order or do not select VA's program or activity;
(4) Responding pursuant to § 40.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with VA have been delegated, or
(b) The Secretary uses the procedures in § 40.10 if a State process provides a State process recommendation to VA through a single point of contact.


( 42 U.S.C. 4231(b))

§ 40.12 [Reserved]

§ 40.13 Waiver.
In an emergency, the Secretary may waive any provision of these regulations.


( 42 U.S.C. 4231(b))
PART 41 -- AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

§ 41.1 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§§ 41.2 -- 41.4 [These sections were removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.6 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.10 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.11 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.12 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.13 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.14 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.15 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.16 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.17 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.18 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.19 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
§ 41.20 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

Subpart A -- General
Subpart B -- Audits
Subpart C -- Auditees
Subpart D -- Federal Agencies and Pass-Through Entities
Subpart E -- Auditors


§ 41.1 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§§ 41.2 -- 41.4 [These sections were removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

[NO TEXT IN ORIGINAL]
[50 FR 30937, July, 31, 1985]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52249, Sept. 1, 2005, removed these sections as part of the revision of Part 41, effective Oct. 3, 2005.]
§ 41.5 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.6 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.7 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.8 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.9 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.10 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.11 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.12 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.13 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.14 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.15 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.16 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.17 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.18 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.19 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]

§ 41.20 [This section was removed. See 70 FR 52248, 52249, Sept. 1, 2005.]
Subpart A -- General

§ 41.100 Purpose.
§ 41.105 Definitions.

§ 41.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52249, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52249, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.105 Definitions.

Audit finding means deficiencies which the auditor is required by § 41.510(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other clusters" are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an "other cluster," a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 41.400(d)(1) and § 41.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § 41.520, and, with the exception of R&D as described in § 41.200(c), whether a program-specific audit may be...
Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 41.400(a).

Compliance supplement refers to the Circular A-133 Compliance Supplement, included as Appendix B to Circular A-133, or such documents as OMB or its designee may issue to replace it. This document is available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Federal agency has the same meaning as the term agency in section 551(1) of title 5, United States Code.

Federal award means Federal financial assistance and Federal cost-reimbursement contracts that non-Federal entities receive directly from Federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors. Any audits of such vendors shall be covered by the terms and conditions of the contract. Contracts to operate Federal Government owned, contractor operated facilities (GOCOs) are excluded from the requirements of this part.

Federal awarding agency means the Federal agency that provides an award directly to the recipient.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance, but does not include amounts received as reimbursement for services rendered to individuals as described in § 41.205(h) and § 41.205(i).

Federal program means:

(1) All Federal awards to a non-Federal entity assigned a single number in the CFDA.

(2) When no CFDA number is assigned, all Federal awards from the same agency made for the same purpose should be combined and considered one program.
(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:

(i) Research and development (R&D);

(ii) Student financial aid (SFA); and

(iii) "Other clusters," as described in the definition of cluster of programs in this section.

GAGAS means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Generally accepted accounting principles has the meaning specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants (AICPA).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Internal control means a process, effected by an entity's management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(1) Effectiveness and efficiency of operations;

(2) Reliability of financial reporting; and

(3) Compliance with applicable laws and regulations.

Internal control pertaining to the compliance requirements for Federal programs (Internal control over Federal programs) means a process -- effected by an entity's management and other personnel -- designed to provide reasonable assurance regarding the achievement of the following objectives for Federal programs:

(1) Transactions are properly recorded and accounted for to:

(i) Permit the preparation of reliable financial statements and Federal reports;

(ii) Maintain accountability over assets; and

(iii) Demonstrate compliance with laws, regulations, and other compliance requirements;
(2) Transactions are executed in compliance with:

(i) Laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on a Federal program; and

(ii) Any other laws and regulations that are identified in the compliance supplement; and

(3) Funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity.

Local government means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 41.520 or a program identified as a major program by a Federal agency or pass-through entity in accordance with § 41.215(c).

Management decision means the evaluation by the Federal awarding agency or pass-through entity of the audit findings and corrective action plan and the issuance of a written decision as to what corrective action is necessary.

Non-Federal entity means a State, local government, or non-profit organization.

Non-profit organization means:

(1) Any corporation, trust, association, cooperative, or other organization that:

(i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(ii) Is not organized primarily for profit; and

(iii) Uses its net proceeds to maintain, improve, or expand its operations; and

(2) The term non-profit organization includes non-profit institutions of higher education and hospitals.

OMB means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency for
audit. When there is no direct funding, the Federal agency with the predominant indirect funding shall assume the oversight responsibilities. The duties of the oversight agency for audit are described in § 41.400(b). A Federal agency with oversight for an auditee may reassign oversight to another Federal agency, which provides substantial funding and agrees to be the oversight agency for audit. Within 30 days after any reassignment, both the old and the new oversight agency for audit shall notify the auditee, and, if known, the auditor of the reassignment.

Pass-through entity means a non-Federal entity that provides a Federal award to a subrecipient to carry out a Federal program.

Program-specific audit means an audit of one Federal program as provided for in § 41.200(c) and § 41.235.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds, including funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

Recipient means a non-Federal entity that expends Federal awards received directly from a Federal awarding agency to carry out a Federal program.

Research and development (R&D) means all research activities, both basic and applied, and all development activities that are performed by a non-Federal entity. Research is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. Development is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Single audit means an audit, which includes both the entity's financial statements, and the Federal awards as described in § 41.500.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any
instrumentality thereof, any multi-State, regional, or interstate entity, which has governmental functions, and any Indian tribe as defined in this section.

Student Financial Aid (SFA) includes those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070 et seq.) which is administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subrecipient means a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in § 41.210.

Types of compliance requirements refers to the types of compliance requirements listed in the compliance supplement. Examples include: Activities allowed or unallowed; allowable costs/cost principles; cash management; eligibility; matching, level of effort, earmarking; and, reporting.

Vendor means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in § 41.210.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52249, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52249, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]
Subpart B – Audits

§ 41.200 Audit requirements.
§ 41.205 Basis for determining Federal awards expended.
§ 41.210 Subrecipient and vendor determinations.
§ 41.215 Relation to other audit requirements.
§ 41.220 Frequency of audits.
§ 41.225 Sanctions.
§ 41.230 Audit costs.
§ 41.235 Program-specific audits.

§ 41.200 Audit requirements.

(a) Audit required. Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of this part. Guidance on determining Federal awards expended is provided in § 41.205.

(b) Single audit. Non-Federal entities that expend $500,000 or more in a year in Federal awards shall have a single audit conducted in accordance with § 41.500 except when they elect to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 41.235. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) Exemption when Federal awards expended are less than $500,000. Non-Federal entities that expend less than $500,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in § 41.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

(e) Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52251, Sept. 1, 2005]
§ 41.205 Basis for determining Federal awards expended.

(a) Determining Federal awards expended. The determination of when an award is expended should be based on when the activity related to the award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with laws, regulations, and the provisions of contracts or grant agreements, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(b) Loan and loan guarantees (loans). Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines shall be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the fiscal year; plus

(2) Balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) Loan and loan guarantees (loans) at institutions of higher education. When loans are made to students of an institution of higher education but the institution does not make the loans, then only the value of loans made during the year shall be considered Federal awards expended in that year. The balance of loans for previous years is not included as Federal awards expended because the lender accounts for the prior balances.

(d) Prior loan and loan guarantees (loans). Loans, the proceeds of which were received and expended in prior-years, are not considered Federal awards expended under this part when the laws, regulations, and the provisions of contracts or grant agreements pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) Endowment funds. The cumulative balance of Federal awards for endowment funds, which are federally restricted, are considered awards expended in each year in which the
funds are still restricted.

(f) Free rent. Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of an award to carry out a Federal program shall be included in determining Federal awards expended and subject to audit under this part.

(g) Valuing non-cash assistance. Federal non-cash assistance, such as free rent, food stamps, food commodities, donated property, or donated surplus property, shall be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) Medicare. Medicare payments to a non-Federal entity for providing patient care services to Medicare eligible individuals are not considered Federal awards expended under this part.

(i) Medicaid. Medicaid payments to a subrecipient for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended under this part unless a State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) Certain loans provided by the National Credit Union Administration. For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured institutions are not considered Federal awards expended.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52251, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52251, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.210 Subrecipient and vendor determinations.

(a) General. An auditee may be a recipient, a subrecipient, and a vendor. Federal awards expended as a recipient or a subrecipient would be subject to audit under this part. The payments received for goods or services provided as a vendor would not be considered Federal awards. The guidance in paragraphs (b) and (c) of this section should be considered in determining whether payments constitute a Federal award or a payment for goods and services.

(b) Federal award. Characteristics indicative of a Federal award received by a subrecipient are when the organization:
(1) Determines who is eligible to receive what Federal financial assistance;

(2) Has its performance measured against whether the objectives of the Federal program are met;

(3) Has responsibility for programmatic decision making;

(4) Has responsibility for adherence to applicable Federal program compliance requirements; and

(5) Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.

c) Payment for goods and services. Characteristics indicative of a payment for goods and services received by a vendor are when the organization:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program.

d) Use of judgment in making determination. There may be unusual circumstances or exceptions to the listed characteristics. In making the determination of whether a subrecipient or vendor relationship exists, the substance of the relationship is more important than the form of the agreement. It is not expected that all of the characteristics will be present and judgment should be used in determining whether an entity is a subrecipient or vendor.

e) For-profit subrecipient. Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract, and post-award audits.

f) Compliance responsibility for vendors. In most cases, the auditee's compliance responsibility for vendors is only to ensure that the procurement, receipt, and payment for goods and services comply with laws, regulations, and the provisions of contracts or grant agreements. Program compliance requirements normally do not pass through to
vendors. However, the auditee is responsible for ensuring compliance for vendor transactions, which are structured such that the vendor is responsible for program compliance or the vendor's records must be reviewed to determine program compliance. Also, when these vendor transactions relate to a major program, the scope of the audit shall include determining whether these transactions are in compliance with laws, regulations, and the provisions of contracts or grant agreements.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52251, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52251, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.215 Relation to other audit requirements.

(a) Audit under this part in lieu of other audits. An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards. To the extent this audit meets a Federal agency's needs, it shall rely upon and use such audits. The provisions of this part neither limit the authority of Federal agencies, including their Inspectors General, or GAO to conduct or arrange for additional audits (e.g., financial audits, performance audits, evaluations, inspections, or reviews) nor authorize any auditee to constrain Federal agencies from carrying out additional audits. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors.

(b) Federal agency to pay for additional audits. A Federal agency that conducts or contracts for additional audits shall, consistent with other applicable laws and regulations, arrange for funding the full cost of such additional audits.

(c) Request for a program to be audited as a major program. A Federal agency may request an auditee to have a particular Federal program audited as a major program in lieu of the Federal agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such request by informing the Federal agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 41.520 and, if not, the estimated incremental cost. The Federal agency shall then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal agency request, and the Federal agency agrees to pay the full incremental costs, then the auditee shall have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
§ 41.220 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part shall be performed annually. Any biennial audit shall cover both years within the biennial period.

(a) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period under audit.

(b) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this Part biennially.

(Authority: Pub. L. 104-156; 110 Stat. 1396)

§ 41.225 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with this part. In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities shall take appropriate action using sanctions such as:

(a) Withholding a percentage of Federal awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs;

(c) Suspending Federal awards until the audit is conducted; or
(d) Terminating the Federal award.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52252, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52252, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.230 Audit costs.

(a) Allowable costs. Unless prohibited by law, the cost of audits made in accordance with the provisions of this part is allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

(b) Unallowable costs. A non-Federal entity shall not charge the following to a Federal award:

(1) The cost of any audit under the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 et seq.) not conducted in accordance with this part.

(2) The cost of auditing a non-Federal entity, which has Federal awards, expended of less than $500,000 per year and is thereby exempted under §41.200(d) of this chapter from having an audit conducted under this part. However, this does not prohibit a pass-through entity from charging Federal awards for the cost of limited scope audits to monitor its subrecipients in accordance with §41.400(d)(3), provided the subrecipient does not have a single audit. For purposes of this part, limited scope audits only include agreed-upon procedures engagements conducted in accordance with either the AICPA's generally accepted auditing standards or attestation standards, that are paid for and arranged by a pass-through entity and address only one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and, reporting.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52252, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52252, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]
§ 41.235 Program-specific audits.

(a) Program-specific audit guide available. In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal control, compliance requirements, suggested audit procedures, and audit reporting requirements. The auditor should contact the Office of Inspector General of the Federal agency to determine whether such a guide is available. When a current program-specific audit guide is available, the auditor shall follow GAGAS and the guide when performing a program-specific audit.

(b) Program-specific audit guide not available. (1) When a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee shall prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 41.315(b), and a corrective action plan consistent with the requirements of § 41.315(c).

(3) The auditor shall:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal control and perform tests of internal control over the Federal program consistent with the requirements § 41.500(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on the Federal program consistent with the requirements of § 41.500(d) for a major program; and

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding in accordance with the requirements of § 41.500(e).

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in conformity with the stated
(i) A report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the tests;

(ii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 41.505(d)(1) and findings and questioned costs consistent with the requirements of § 41.505(d)(3).

(c) Report submission for program-specific audits. (1) The audit shall be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. (However, for fiscal years beginning on or before June 30, 1998, the audit shall be completed and the required reporting shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or 13 months after the end of the audit period, unless a different period is specified in a program-specific audit guide.) Unless restricted by law or regulation, the auditee shall make report copies available for public inspection.

(2) When a program-specific audit guide is available, the auditee shall submit to the Federal clearinghouse designated by OMB the data collection form prepared in accordance with § 41.320(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide to be retained as an archival copy. Also, the auditee shall submit to the Federal awarding agency or pass-through entity the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit shall consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 41.320(b), as applicable to a program-specific audit, and one copy of this reporting package shall be submitted to the Federal clearinghouse designated by OMB to be retained as an archival copy. Also, when the schedule of findings and questioned costs disclosed audit findings or the summary schedule of prior audit findings reported the status of any audit findings, the auditee shall submit one copy of the reporting package to the Federal clearinghouse on behalf of the Federal awarding agency, or directly to the pass-through entity in the case of a subrecipient. Instead of submitting the reporting package to the pass-through entity, when a subrecipient is not required to submit a reporting package to the
pass-through entity, the subrecipient shall provide written notification to the pass-through entity, consistent with the requirements of § 41.320(e)(2). A subrecipient may submit a copy of the reporting package to the pass-through entity to comply with this notification requirement.

(d) Other sections of this part may apply. Program-specific audits are subject to § 41.100 through § 41.215(b), § 41.220 through § 41.230, § 41.300 through § 41.305, § 41.315, § 41.320(f) through § 41.320(j), § 41.400 through § 41.405, § 41.510 through § 41.515, and other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program laws and regulations.

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Subpart C -- Auditees

§ 41.300 Auditee responsibilities.
§ 41.305 Auditor selection.
§ 41.310 Financial statements.
§ 41.315 Audit findings follow-up.
§ 41.320 Report submission.

§ 41.300 Auditee responsibilities.

The auditee shall:

(a) Identify, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

(b) Maintain internal control over Federal programs that provides reasonable assurance that the auditee is managing Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a material effect on each of its Federal programs.

(c) Comply with laws, regulations, and the provisions of contracts or grant agreements related to each of its Federal programs.

(d) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 41.310.

(e) Ensure that the audits required by this part are properly performed and submitted when due. When extensions to the report submission due date required by § 41.320(a) are granted by the cognizant or oversight agency for audit, promptly notify the Federal clearinghouse designated by OMB and each pass-through entity providing Federal awards of the extension.

(f) Follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 41.315(b) and § 41.315(c), respectively.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52254, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52254, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]
§ 41.305 Auditor selection.

(a) Auditor procurement. In procuring audit services, auditees shall follow the procurement standards prescribed by part 43 of this chapter, OMB Circular A-110 (codified at 2 CFR part 215), "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," or the FAR (48 CFR part 42), as applicable (OMB Circulars are available from the Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503). Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in part 43 of this chapter, OMB Circular A-110 (codified at 2 CFR part 215), or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

(b) Restriction on auditor preparing indirect cost proposals. An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) Use of Federal auditors. Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52254, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52254, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.310 Financial statements.

(a) Financial statements. The auditee shall prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements shall be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, organization-wide financial statements may also include departments, agencies,
and other organizational units that have separate audits in accordance with § 41.500(a) and prepare separate financial statements.

(b) Schedule of expenditures of Federal awards. The auditee shall also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple award years, the auditee may list the amount of Federal awards expended for each award year separately. At a minimum, the schedule shall:

(1) List individual Federal programs by Federal agency. For Federal programs included in a cluster of programs, list individual Federal programs within a cluster of programs. For R&D, total Federal awards expended shall be shown either by individual award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity shall be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available.

(4) Include notes that describe the significant accounting policies used in preparing the schedule.

(5) To the extent practical, pass-through entities should identify in the schedule the total amount provided to subrecipients from each Federal program.

(6) Include, in either the schedule or a note to the schedule, the value of the Federal awards expended in the form of non-cash assistance, the amount of insurance in effect during the year, and loans or loan guarantees outstanding at year-end. While not required, it is preferable to present this information in the schedule.

(Authority: Pub. L. 104-156; 110 Stat. 1396)  
[70 FR 52248, 52254, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52254, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.315 Audit findings follow-up.
(a) General. The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee shall prepare a summary schedule of prior audit findings. The auditee shall also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan shall include the reference numbers the auditor assigns to audit findings under § 41.510(c). Since the summary schedule may include audit findings from multiple years, it shall include the fiscal year in which the finding initially occurred.

(b) Summary schedule of prior audit findings. The summary schedule of prior audit findings shall report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(4) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule shall describe the planned corrective action as well as any partial corrective action taken.

(3) When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule shall provide an explanation.

(4) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position shall be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the Federal clearinghouse;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) Corrective action plan. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan shall include an
explanation and specific reasons.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52254, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52254, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.320 Report submission.

(a) General. The audit shall be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section shall be submitted within the earlier of 30 days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audit. Unless restricted by law or regulation, the auditee shall make copies available for public inspection.

(b) Data Collection. (1) The auditee shall submit a data collection form, which states whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The form shall be approved by OMB, available from the Federal clearinghouse designated by OMB, and include data elements similar to those presented in this paragraph. A senior level representative of the auditee (e.g., State controller, director of finance, chief executive officer, or chief financial officer) shall sign a statement to be included as part of the form certifying that: the auditee complied with the requirements of this part, the form was prepared in accordance with this part (and the instructions accompanying the form), and the information included in the form, in its entirety, are accurate and complete.

(2) The data collection form shall include the following data elements:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.

(iii) A statement as to whether the audit disclosed any noncompliance, which is material to the financial statements of the auditee.

(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses.
(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion).

(vi) A list of the Federal awarding agencies, which will receive a copy of the reporting package pursuant to § 41.320(d)(2).

(vii) A yes or no statement as to whether the auditee qualified as a low-risk auditee under § 41.530.

(viii) The dollar threshold used to distinguish between Type A and Type B programs as defined in § 41.520(b).

(ix) The Catalog of Federal Domestic Assistance (CFDA) number for each Federal program, as applicable.

(x) The name of each Federal program and identification of each major program. Individual programs within a cluster of programs should be listed in the same level of detail as they are listed in the schedule of expenditures of Federal awards.

(xi) The amount of expenditures in the schedule of expenditures of Federal awards associated with each Federal program.

(xii) For each Federal program, a yes or no statement as to whether there are audit findings in each of the following types of compliance requirements and the total amount of any questioned costs:

(A) Activities allowed or unallowed.

(B) Allowable costs/cost principles.

(C) Cash management.

(D) Davis-Bacon Act.

(E) Eligibility.

(F) Equipment and real property management.

(G) Matching, level of effort, earmarking.

(H) Period of availability of Federal funds.

(I) Procurement and suspension and debarment.

(J) Program income.
(K) Real property acquisition and relocation assistance.

(L) Reporting.

(M) Subrecipient monitoring.

(N) Special tests and provisions.

(xiii) Auditee name, employer identification number(s), name and title of certifying official, telephone number, signature, and date.

(xiv) Auditor name, name and title of contact person, auditor address, auditor telephone number, signature, and date.

(xv) Whether the auditee has either a cognizant or oversight agency for audit.

(xvi) The name of the cognizant or oversight agency for audit determined in accordance with § 41.400(a) and § 41.400(b), respectively.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor shall complete the applicable sections of the form. The auditor shall sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the data elements prescribed by OMB.

(c) Reporting package. The reporting package shall include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 41.310(a) and § 41.310(b), respectively;

(2) Summary schedule of prior audit findings discussed in § 41.315(b);

(3) Auditor's report(s) discussed in § 41.505; and

(4) Corrective action plan discussed in § 41.315(c).

(d) Submission to clearinghouse. All auditees shall submit to the Federal clearinghouse designated by OMB the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section for:

(1) The Federal clearinghouse to retain as an archival copy; and

(2) Each Federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the Federal awarding agency
provided directly or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the Federal awarding agency provided directly.

(e) Additional submission by subrecipients. (1) In addition to the requirements discussed in paragraph (d) of this section, auditees that are also subrecipients shall submit to each pass-through entity one copy of the reporting package described in paragraph (c) of this section for each pass-through entity when the schedule of findings and questioned costs disclosed audit findings relating to Federal awards that the pass-through entity provided or the summary schedule of prior audit findings reported the status of any audit findings relating to Federal awards that the pass-through entity provided.

(2) When a subrecipient is not required to submit a reporting package to a pass-through entity pursuant to paragraph (e)(1) of this section, the subrecipient shall provide written notification to the pass-through entity that: an audit of the subrecipient was conducted in accordance with this part (including the period covered by the audit and the name, amount, and CFDA number of the Federal award(s) provided by the pass-through entity); the schedule of findings and questioned costs disclosed no audit findings relating to the Federal award(s) that the pass-through entity provided; and, the summary schedule of prior audit findings did not report on the status of any audit findings relating to the Federal award(s) that the pass-through entity provided. A subrecipient may submit a copy of the reporting package described in paragraph (c) of this section to a pass-through entity to comply with this notification requirement.

(f) Requests for report copies. In response to requests by a Federal agency or pass-through entity, auditees shall submit the appropriate copies of the reporting package described in paragraph (c) of this section and, if requested, a copy of any management letters issued by the auditor.

(g) Report retention requirements. Auditees shall keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the Federal clearinghouse designated by OMB. Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt.

(h) Clearinghouse responsibilities. The Federal clearinghouse designated by OMB shall distribute the reporting packages received in accordance with paragraph (d)(2) of this section and § 41.235(c)(3) to applicable Federal awarding agencies, maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees which have not submitted the required data collection forms and reporting packages.

(i) Clearinghouse address. The address of the Federal clearinghouse currently designated by OMB is Federal Audit Clearinghouse, Bureau of the Census, 1201 E. 10th Street, Jeffersonville, IN 47132.
(j) Electronic filing. Nothing in this part shall preclude electronic submissions to the Federal clearinghouse in such manner as may be approved by OMB. With OMB approval, the Federal clearinghouse may pilot test methods of electronic submissions.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52255, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52255, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]
§ 41.400 Responsibilities.
§ 41.405 Management decision.

§ 41.400 Responsibilities.

(a) Cognizant agency for audit responsibilities. Recipients expending more than $50 million a year in Federal awards shall have a cognizant agency for audit. The designated cognizant agency for audit shall be the Federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB makes a specific cognizant agency for audit assignment. The determination of the predominant amount of direct funding shall be based upon direct Federal awards expended in the recipient's fiscal years ending in 2004, 2009, 2014, and every fifth year thereafter. For example, audit cognizance for periods ending in 2006 through 2010 will be determined based on Federal awards expended in 2004. (However, for 2001 through 2005, cognizant agency for audit is determined based on the predominant amount of direct Federal awards expended in the recipient's fiscal year ending in 2000). Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency which provides substantial direct funding and agrees to be the cognizant agency for audit. Within 30 days after any reassignment, both the old and the new cognizant agency for audit shall notify the auditee, and, if known, the auditor of the reassignment. The cognizant agency for audit shall:

(1) Provide technical audit advice and liaison to auditees and auditors.

(2) Consider auditee requests for extensions to the report submission due date required by § 41.320(a). The cognizant agency for audit may grant extensions for good cause.

(3) Obtain or conduct quality control reviews of selected audits made by non-Federal auditors, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor of irregularities or illegal acts, as required by GAGAS or laws and regulations.

(5) Advise the auditor and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee shall work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit shall notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors shall be referred to appropriate State licensing agencies and professional bodies for disciplinary action.

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(6) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part.

(7) Coordinate a management decision for audit findings that affect the Federal programs of more than one agency.

(8) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(9) For biennial audits permitted under § 41.220, consider auditee requests to qualify as a low-risk auditee under § 41.530(a).

(b) Oversight agency for audit responsibilities. An auditee, which does not have a designated cognizant agency for audit, will be under the general oversight of the Federal agency determined in accordance with § 41.105. The oversight agency for audit:

(1) Shall provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) Federal awarding agency responsibilities. The Federal awarding agency shall perform the following for the Federal awards it makes:

(1) Identify Federal awards made by informing each recipient of the CFDA title and number, award name and number, award year, and if the award is for R&D. When some of this information is not available, the Federal agency shall provide information necessary to clearly describe the Federal award.

(2) Advise recipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements.

(3) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(4) Provide technical advice and counsel to auditees and auditors as requested.

(5) Issue a management decision on audit findings within six months after receipt of the audit report and ensure that the recipient takes appropriate and timely corrective action.

(6) Assign a person responsible for providing annual updates of the compliance supplement to OMB.
(d) Pass-through entity responsibilities. A pass-through entity shall perform the following for the Federal awards it makes:

1. Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

2. Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

3. Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

4. Ensure that subrecipients expending $ 500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

5. Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

6. Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

7. Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52256, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52256, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.405 Management decision.

(a) General. The management decision shall clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor
assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee.

(b) Federal agency. As provided in § 41.400(a)(7), the cognizant agency for audit shall be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 41.400(c)(5), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to recipients. Alternate arrangements may be made on a case-by-case basis by agreement among the Federal agencies concerned.

(c) Pass-through entity. As provided in § 41.400(d)(5), the pass-through entity shall be responsible for making the management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) Time requirements. The entity responsible for making the management decision shall do so within six months of receipt of the audit report. Corrective action should be initiated within six months after receipt of the audit report and proceed as rapidly as possible.

(e) Reference numbers. Management decisions shall include the reference numbers the auditor assigned to each audit finding in accordance with § 41.510(c).

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52257, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52257, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]
Subpart E -- Auditors

§ 41.500 Scope of audit.
§ 41.505 Audit reporting.
§ 41.510 Audit findings.
§ 41.515 Audit working papers.
§ 41.520 Major program determination.
§ 41.525 Criteria for Federal program risk.
§ 41.530 Criteria for a low-risk auditee.
Appendix A to Part 41 -- Data Collection Form (Form SF-SAC)
Appendix B to Part 41 -- OMB Circular A-133 Compliance Supplement

§ 41.500 Scope of audit.

(a) General. The audit shall be conducted in accordance with GAGAS. The audit shall cover the entire operations of the auditee; or, at the option of the auditee, such audit shall include a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered Federal awards during such fiscal year, provided that each such audit shall encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which shall be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards shall be for the same fiscal year.

(b) Financial statements. The auditor shall determine whether the financial statements of the auditee are presented fairly in all material respects in conformity with generally accepted accounting principles. The auditor shall also determine whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the auditee's financial statements taken as a whole.

(c) Internal control. (1) In addition to the requirements of GAGAS, the auditor shall perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk for major programs.

(2) Except as provided in paragraph (c)(3) of this section, the auditor shall:

(i) Plan the testing of internal control over major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(2)(i) of this section.

(3) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the
planning and performing of testing described in paragraph (c)(2) of this section are not required for those compliance requirements. However, the auditor shall report a reportable condition (including whether any such condition is a material weakness) in accordance with § 41.510, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) Compliance. (1) In addition to the requirements of GAGAS, the auditor shall determine whether the auditee has complied with laws, regulations, and the provisions of contracts or grant agreements that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor shall determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor should use the types of compliance requirements contained in the compliance supplement as guidance for identifying the types of compliance requirements to test, and determine the requirements governing the Federal program by reviewing the provisions of contracts and grant agreements and the laws and regulations referred to in such contracts and grant agreements.

(4) The compliance testing shall include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient evidence to support an opinion on compliance.

(e) Audit follow-up. The auditor shall follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 41.315(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor shall perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) Data Collection Form. As required in § 41.320(b)(3), the auditor shall complete and sign specified sections of the data collection form.

(Authority: Pub. L. 104-156; 110 Stat. 1396) [70 FR 52248, 52257, Sept. 1, 2005]
§ 41.505 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) shall state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) A report on internal control related to the financial statements and major programs. This report shall describe the scope of testing of internal control and the results of the tests, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements. This report shall also include an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on each major program, and, where applicable, refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs, which shall include the following three components:

(1) A summary of the auditor's results, which shall include:

(i) The type of report the auditor issued on the financial statements of the auditee (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses;

(iii) A statement as to whether the audit disclosed any noncompliance, which is material to the financial statements of the auditee;
(iv) Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit and whether any such conditions were material weaknesses;

(v) The type of report the auditor issued on compliance for major programs (i.e., unqualified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings, which the auditor is required to report under § 41.510(a);

(vii) An identification of major programs;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 41.520(b); and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 41.530.

(2) Findings relating to the financial statements, which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which shall include audit findings as defined in § 41.510(a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) which relate to the same issue should be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings which relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, should be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(Required: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52258, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52258, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.510 Audit findings.
(a) Audit findings reported. The auditor shall report the following as audit findings in a schedule of findings and questioned costs:

(1) Reportable conditions in internal control over major programs. The auditor's determination of whether a deficiency in internal control is a reportable condition for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement. The auditor shall identify reportable conditions, which are individually or cumulatively material weaknesses.

(2) Material noncompliance with the provisions of laws, regulations, contracts, or grant agreements related to a major program. The auditor's determination of whether a noncompliance with the provisions of laws, regulations, contracts, or grant agreements is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program or an audit objective identified in the compliance supplement.

(3) Known questioned costs, which are greater than $10,000, for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor shall also report known questioned costs when likely questioned costs are greater than $10,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor shall include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs, which are greater than $10,000, for a Federal program, which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program, which is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program which is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $10,000, then the auditor shall report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for major programs is other than an unqualified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to make an additional reporting when the auditor confirms that the fraud was reported outside of the auditor's reports under the direct
(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 41.315(b) materially misrepresents the status of any prior audit finding.

(b) Audit finding detail. Audit findings shall be presented in sufficient detail for the auditee to prepare a corrective action plan and take corrective action and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information shall be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award number, is not available, the auditor shall provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including statutory, regulatory, or other citation.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) Identification of questioned costs and how they were computed.

(5) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified shall be related to the universe and the number of cases examined and be quantified in terms of dollar value.

(6) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action.

(7) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(8) Views of responsible officials of the auditee when there is disagreement with the audit findings, to the extent practical.

(c) Reference numbers. Each audit finding in the schedule of findings and questioned costs shall include a reference number to allow for easy referencing of the audit findings during follow-up.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
§ 41.515 Audit working papers.

(a) Retention of working papers. The auditor shall retain working papers and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, or pass-through entity to extend the retention period. When the auditor is aware that the Federal awarding agency, pass-through entity, or auditee is contesting an audit finding, the auditor shall contact the parties contesting the audit finding for guidance prior to destruction of the working papers and reports.

(b) Access to working papers. Audit working papers shall be made available upon request to the cognizant or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to working papers includes the right of Federal agencies to obtain copies of working papers, as is reasonable and necessary.

(Authority: Pub. L. 104-156; 110 Stat. 1396)

§ 41.520 Major program determination.

(a) General. The auditor shall use a risk-based approach to determine which Federal programs are major programs. This risk-based approach shall include consideration of: Current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (i) of this section shall be followed.

(b) Step 1. (1) The auditor shall identify the larger Federal programs, which shall be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the larger of:
(i) $300,000 or three percent (.03) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $300,000 but are less than or equal to $100 million.

(ii) $3 million or three-tenths of one percent (.003) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $100 million but are less than or equal to $10 billion.

(iii) $30 million or 15 hundredths of one percent (.0015) of total Federal awards expended in the case of an auditee for which total Federal awards expended exceed $10 billion.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section shall be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) should not result in the exclusion of other programs as Type A programs. When a Federal program providing loans significantly affects the number or size of Type A programs, the auditor shall consider this Federal program as a Type A program and exclude its values in determining other Type A programs.

(4) For biennial audits permitted under § 41.220, the determination of Type A and Type B programs shall be based upon the Federal awards expended during the two-year period.

(c) Step 2. (1) The auditor shall identify Type A programs, which are low-risk. For a Type A program to be considered low-risk, it shall have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, it shall have had no audit findings under § 41.510(a). However, the auditor may use judgment and consider that audit findings from questioned costs under § 41.510(a)(3) and § 41.510(a)(4), fraud under § 41.510(a)(6), and audit follow-up for the summary schedule of prior audit findings under § 41.510(a)(7) do not preclude the Type A program from being low-risk. The auditor shall consider: the criteria in § 41.525(c), § 41.525(d)(1), § 41.525(d)(2), and § 41.525(d)(3); the results of audit follow-up; whether any changes in personnel or systems affecting a Type A program have significantly increased risk; and apply professional judgment in determining whether a Type A program is low-risk.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program at certain recipients may not be considered low-risk. For example, it may be necessary for a large Type A program to be audited as major each year at particular recipients to allow the Federal agency to comply with the Government Management Reform Act of 1994 (31 U.S.C. 3515). The Federal agency shall notify the recipient and, if known, the auditor at least 180 days prior to the end of the fiscal year to be audited of OMB's approval.
(d) Step 3. (1) The auditor shall identify Type B programs, which are high-risk, using professional judgment and the criteria in § 41.525. However, should the auditor select Option 2 under Step 4 (paragraph (e)(2)(i)(B) of this section), the auditor is not required to identify more high-risk Type B programs than the number of low-risk Type A programs. Except for known reportable conditions in internal control or compliance problems as discussed in § 41.525(b)(1), § 41.525(b)(2), and § 41.525(c)(1), a single criteria in § 41.525 would seldom cause a Type B program to be considered high-risk.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed the larger of:

(i) $100,000 or three-tenths of one percent (.003) of total Federal awards expended when the auditee has less than or equal to $100 million in total Federal awards expended.

(ii) $300,000 or three-hundredths of one percent (.0003) of total Federal awards expended when the auditee has more than $100 million in total Federal awards expended.

(e) Step 4. At a minimum, the auditor shall audit all of the following as major programs:

(1) All Type A programs, except the auditor may exclude any Type A programs identified as low-risk under Step 2 (paragraph (c)(1) of this section).

(2) (i) High-risk Type B programs as identified under either of the following two options:

(A) Option 1. At least one half of the Type B programs identified as high-risk under Step 3 (paragraph (d) of this section), except this paragraph (e)(2)(i)(A) does not require the auditor to audit more high-risk Type B programs than the number of low-risk Type A programs identified as low-risk under Step 2.

(B) Option 2. One high-risk Type B program for each Type A program identified as low-risk under Step 2.

(ii) When identifying which high-risk Type B programs to audit as major under either Option 1 or 2 in paragraph (e)(2)(i)(A) or (B) of this section, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This paragraph (e)(3) may require the auditor to audit more programs as major than the number of Type A programs.

(f) Percentage of coverage rule. The auditor shall audit as major programs Federal programs with Federal awards expended that, in the aggregate, encompass at least 50 percent of total Federal awards expended. If the auditee meets the criteria in § 41.530 for a low-risk auditee, the auditor need only audit as major programs Federal programs with
Federal awards expended that, in the aggregate, encompass at least 25 percent of total Federal awards expended.

(g) Documentation of risk. The auditor shall document in the working papers the risk analysis process used in determining major programs.

(h) Auditor's judgment. When the major program determination was performed and documented in accordance with this part, the auditor's judgment in applying the risk-based approach to determine major programs shall be presumed correct. Challenges by Federal agencies and pass-through entities shall only be for clearly improper use of the guidance in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

(i) Deviation from use of risk criteria. For first-year audits, the auditor may elect to determine major programs as all Type A programs plus any Type B programs as necessary to meet the percentage of coverage rule discussed in paragraph (f) of this section. Under this option, the auditor would not be required to perform the procedures discussed in paragraphs (c), (d), and (e) of this section.

1. A first-year audit is the first year the entity is audited under this part or the first year of a change of auditors.

2. To ensure that a frequent change of auditors would not preclude audit of high-risk Type B programs, this election for first-year audits may not be used by an auditee more than once in every three years.

Authority: Pub. L. 104-156; 110 Stat. 1396
[70 FR 52248, 52259, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52259, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.525 Criteria for Federal program risk.

(a) General. The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring, which could be material to the Federal program. The auditor shall use auditor judgment and consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) Current and prior audit experience. (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control
environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and regulations and the provisions of contracts and grant agreements and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor shall consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(iii) The extent to which computer processing is used to administer Federal programs, as well as the complexity of that processing, should be considered by the auditor in assessing risk. New and recently modified computer systems may also indicate risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) Oversight exercised by Federal agencies and pass-through entities. (1) Oversight exercised by Federal agencies or pass-through entities could indicate risk. For example, recent monitoring or other reviews performed by an oversight entity, which disclosed no significant problems, would indicate lower risk. However, monitoring which disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs, which are higher risk. OMB plans to provide this identification in the compliance supplement.

(d) Inherent risk of the Federal program. (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have a high-risk for time and effort reporting, but otherwise be at low-risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, laws, regulations, or the provisions of contracts or grant agreements...
agreements may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

Authority: Pub. L. 104-156; 110 Stat. 1396
70 FR 52248, 52260, Sept. 1, 2005

[EFFECTIVE DATE NOTE: 70 FR 52248, 52260, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

§ 41.530 Criteria for a low-risk auditee.

An auditee, which meets all of the following conditions for each of the preceding two years (or, in the case of biennial audits, preceding two audit periods), shall qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 41.520:

(a) Single audits were performed on an annual basis in accordance with the provisions of this part. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee, unless agreed to in advance by the cognizant or oversight agency for audit.

(b) The auditor's opinions on the financial statements and the schedule of expenditures of Federal awards were unqualified. However, the cognizant or oversight agency for audit may judge that an opinion qualification does not affect the management of Federal awards and provide a waiver.

(c) There were no deficiencies in internal control, which were identified as material weaknesses under the requirements of GAGAS. However, the cognizant or oversight agency for audit may judge that any identified material weaknesses do not affect the management of Federal awards and provide a waiver.

(d) None of the Federal programs had audit findings from any of the following in either of the preceding two years (or, in the case of biennial audits, preceding two audit periods) in which they were classified as Type A programs:

(1) Internal control deficiencies which were identified as material weaknesses;

(2) Noncompliance with the provisions of laws, regulations, contracts, or grant agreements which have a material effect on the Type A program; or

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(3) Known or likely questioned costs that exceed five percent of the total Federal awards expended for a Type A program during the year.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52261, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52261, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]
Appendix A to Part 41 -- Data Collection Form (Form SF-SAC)

Note: Data Collection Form SF-SAC and instructions for its completion may be obtained from the following Web page: http://harvester.census.gov/faq/collect/sfsac-01.pdf. It is also available from the address provided in § 41.320(i).

[70 FR 52248, 52261, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52261, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]

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Appendix B to Part 41 -- OMB Circular A-133 Compliance Supplement

[70 FR 52248, 52261, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52261, Sept. 1, 2005, added this section as part of the revision of Part 41, effective Oct. 3, 2005.]
PART 42 -- STANDARDS IMPLEMENTING THE PROGRAM
FRAUD CIVIL REMEDIES ACT

§ 42.1 Basis and purpose.
§ 42.2 Definitions.
§ 42.3 Basis for civil penalties and assessments.
§ 42.4 Investigation.
§ 42.5 Review by the reviewing official.
§ 42.6 Prerequisites for issuing a complaint.
§ 42.7 Complaint.
§ 42.8 Service of complaint.
§ 42.9 Answer.
§ 42.10 Default upon failure to file an answer.
§ 42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).
§ 42.12 Notice of hearing.
§ 42.13 Parties to the hearing.
§ 42.14 Separation of functions.
§ 42.15 Ex parte contacts.
§ 42.16 Disqualification of reviewing official or ALJ.
§ 42.17 Rights of parties.
§ 42.18 Authority of the ALJ.
§ 42.19 Prehearing conferences.
§ 42.20 Disclosure of documents.
§ 42.21 Discovery.
§ 42.22 Exchange of witness lists, statements and exhibits.
§ 42.23 Subpoenas for attendance at hearing.
§ 42.24 Protective order.
§ 42.25 Fees.
§ 42.26 Form, filing and service of papers.
§ 42.27 Computation of time.
§ 42.28 Motions.
§ 42.29 Sanctions.
§ 42.30 The hearing and burden of proof.
§ 42.31 Determining the amount of penalties and assessments.
§ 42.32 Location of hearing.
§ 42.33 Witnesses.
§ 42.34 Evidence.
§ 42.35 The record.
§ 42.36 Post-hearing briefs.
§ 42.37 Initial decision.
§ 42.38 Reconsideration of initial decision.
§ 42.39 Appeal to the Secretary of Veterans Affairs.
§ 42.40 Stays ordered by the Department of Justice.
§ 42.41 Stay pending appeal.
§ 42.42 Judicial review.
§ 42.43 Collection of civil penalties and assessments.
§ 42.44 Right to administrative offset.
§ 42.45 Deposit in Treasury of United States.
§ 42.46 Compromise and settlement.
§ 42.47 Limitations.

§ 42.1 Basis and purpose.
(a) Basis. This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, secs. 6101-6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801-3812. Section 3809 of title 31 U.S.C., requires each authority head, such as the Secretary of Veterans Affairs, to promulgate regulations necessary to implement the provisions of the statute.

(b) Purpose. This part:
(1) Establishes and provides the only administrative procedures and actions for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and
(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

[53 FR 16710, May 11, 1988]


§ 42.2 Definitions.
For the purposes of this part, the following definitions apply:
ALJ means an Administrative Law Judge in the Department of Veterans Affairs pursuant to 5 U.S.C. 3105 or detailed to the Department of Veterans Affairs pursuant to 5 U.S.C. 3344.
Benefit means, in the context of the statute, anything of value, including, but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.
Claim means any request, demand, or submission --
(a) Made to the Department of Veterans Affairs for property, services, or money (including money representing grants, loans, insurance, or benefits);
(b) Made to a recipient of property, services, or money from the Department of Veterans Affairs or to a party to a contract with the Department of Veterans Affairs --
(1) For property or services if the United States --
(i) Provided the property or services;
(ii) Provided any portion of the funds for the purchase of the property or services; or
(iii) Will reimburse the recipient or party for the purchase of the property or services; or
(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States --
(i) Provided any portion of the money requested or demanded; or
(ii) Will reimburse the recipient or party for any portion of the money paid on the request or demand;
(iii) Made to the Department of Veterans Affairs which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under §42.7 of this part.

Defendant means any person alleged in a complaint under §42.7 of this part to be liable for a civil penalty or assessment under §42.3 of this part.

Government means the United States Government.

Individual means a natural person.

Initial Decision means the written decision of the ALJ required by §42.10 or §42.37 of this part, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Veterans Affairs or an officer or employee of the Office of the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Knows or has reason to know means that a person, with respect to a claim or statement --
(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or
(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association or private organization and includes the plural of that term.

Representative means any person designated by a party in writing.

Reviewing official means the General Counsel of the Department of Veterans Affairs or designee who is --
(a) Not subject to supervision by, or required to report to, the investigating official;
(b) Not employed in the organization unit of the Department of Veterans Affairs in which the investigating official is employed; and
(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

Secretary means the Secretary of Veterans Affairs.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made --
(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or
(b) With respect to (including relating to eligibility for) --
(1) A contract with, or a bid or proposal for a contract with; or
(2) A grant, loan, or benefit from, the Department of Veterans Affairs, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under the contract or for the grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under the contract or for the grant, loan, or benefit.

§ 42.3 **Basis for civil penalties and assessments.**

(a) Claims. (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know--
   (i) Is false, fictitious, or fraudulent;
   (ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
   (iii) Includes or is supported by any written statement that--
      (A) Omits a material fact;
      (B) Is false, fictitious, or fraudulent as a result of such omission; and
      (C) Is a statement in which the person making the statement has a duty to include the material fact; or
   (iv) Is for payment for the provision of property or services which the person has not provided as claimed,
   shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 for each claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Department of Veterans Affairs, or to a recipient or party when such claim is actually made to an agency, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Department of Veterans Affairs, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of the claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages by the Government because of the claim.

(b) Statements. (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that --
   (i) The person knows or has reason to know --
      (A) Asserts a material fact which is false, fictitious, or fraudulent; or
      (B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; and
   (ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,
   shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 for each statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement, except that a certification or affirmation of the truthfulness and accuracy of the contents of a statement is not a separate statement.

(3) A statement shall be considered made to the Department of Veterans Affairs when the statement is actually made to an agent, fiscal intermediary, or other entity, including any
State or political subdivision thereof, acting for or on behalf of the Department of Veterans Affairs.

(c) Applications for certain benefits. (1) In the case of any claim or statement made by an individual relating to any of the benefits listed in paragraph (c)(2) of this section received by the individual, the individual may be held liable for penalties and assessments under this section only if such claim or statement is made by the individual in making application for such benefits with respect to any element required to establish the individual's initial eligibility to receive or continue to receive the benefits.

(2) For purposes of paragraph (c) of this section, the term benefits means benefits under chapters 11, 13, 15, 17, and 21 of title 38 which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(3) For purposes of this paragraph, the term application shall include, but is not limited to, any report or statement made or submitted by or for applicant or recipient of a benefit under chapters 11, 13, or 15 of title 38, United States Code, to establish eligibility or to remain eligible for the benefit.

(4) This paragraph is not applicable to an individual receiving benefits in a fiduciary capacity in behalf of an individual eligible for any of the benefits listed in paragraph (c)(2) of this section.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each person making the claim or statement may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made a payment (including transferred property or provided services), an assessment may be imposed against any of these persons or jointly and severally against any combination of these persons.

[53 FR 16710, May 11, 1988; 61 FR 56449, Nov. 1, 1996]


(31 U.S.C. 3802)

[EFFECTIVE DATE NOTE: 61 FR 56449, Nov. 1, 1996, which substituted "$ 5,500" for "$ 5,000" in the concluding text of paragraph (a)(1)(iv) and paragraph (b)(1), and added an authority citation at the end of the section, became effective Nov. 1, 1996.]

§ 42.4 Investigation.

(a) All allegations of liability under § 42.3 shall be promptly referred to the investigating official.

(b) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted--

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving the subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the
documents sought have been produced, or that the documents are not available and the reasons therefor, or that the documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(c) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of the investigation to the reviewing official.

(d) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(e) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.


§ 42.5 Review by the reviewing official.

(a) The report of the investigating official will be examined by the reviewing official to determine if there is adequate evidence to believe a person is liable under § 42.3 of this part. The review will be completed within 90 days.

(b) If, based on the report of the investigating official under § 42.4(b) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 42.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 42.7 of this part.

(c) The notice shall include--

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 42.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(d) If the reviewing official finds that there is not adequate evidence that a person is liable, the reviewing official will inform the department or office of the Department of Veterans Affairs concerned with the claim or statement and the investigating official.


§ 42.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 42.7 of this part only if--

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and
(2) In the case of allegations of liability under § 42.3 of this part with respect to a claim, the reviewing official determines that, with respect to the claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services, or both, demanded or requested in violation of § 42.3(a) of this part does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.


§ 42.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 42.8 of this part.

(b) The complaint shall state--

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from the claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 42.10 of this part.

(c) The reviewing official shall serve the defendant with a copy of these regulations at the same time as service of the complaint.


§ 42.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by--

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or
§ 42.9 Answer.
(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.
(b) In the answer, the defendant--
(1) Shall admit or deny each of the allegations of liability made in the complaint;
(2) Shall state any defense on which the defendant intends to rely;
(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and
(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.
(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 42.11 of this part. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. 53 FR 16710, May 11, 1988.


§ 42.10 Default upon failure to file an answer.
(a) If the defendant does not file an answer within the time prescribed in § 42.9(a) of this part, the reviewing official may refer the complaint to the ALJ.
(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 42.8 of this part, a notice that an initial decision will be issued under this section.
(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 42.3 of this part, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.
(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.
(e) If, before the initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.
(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if the decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under §42.38 of this part.

(h) The defendant may appeal to the Secretary the decision denying a motion to reopen by filing a notice of appeal with the Secretary within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Secretary decides the issue.

(i) If the defendant files a timely notice of appeal with the Secretary, the ALJ shall forward the record of the proceeding to the Secretary.

(j) The Secretary shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Secretary decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Secretary shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Secretary decides that the defendant's failure to file a timely answer is not excused, the Secretary shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision. 53 FR 16710, May 11, 1988.


§ 42.11 Referral of complaint and answer to the Administrative Law Judge (ALJ).

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.


§ 42.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by §42.8 of this part. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) The notice shall include--

(1) The tentative time and place, and the nature of the hearing;
(2) The legal authority and jurisdiction under which the hearing is to be held;
(3) The matters of fact and law to be asserted;
(4) A description of the procedures for the conduct of the hearing;
(5) The name, address, and telephone number of the representative of the Government and the defendant, if any; and
(6) Other matters the ALJ deems appropriate.

§ 42.13 Parties to the hearing.
(a) The parties to the hearing shall be the defendant and the Department of Veterans Affairs.
(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.


§ 42.14 Separation of functions.
(a) The investigating official, the reviewing official, and any employee or agent of the Department of Veterans Affairs who takes part in investigating, preparing, or presenting a particular case may not, in the case or a factually related case--
(1) Participate in the hearing as the ALJ;
(2) Participate or advise in the initial decision or the review of the initial decision by the Secretary, except as a witness or a representative in public proceedings; or
(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.
(b) The ALJ shall not be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.
(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Department of Veterans Affairs, including in the offices of either the investigating official or the reviewing official.


§ 42.15 Ex parte contacts.
No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.


§ 42.16 Disqualification of reviewing official or ALJ.
(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.
(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. The motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.
(c) The motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.
(d) The affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's
discovery of the facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of the motion and affidavit, the ALJ shall proceed no further in the case until the ALJ resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Secretary may determine the matter only as part of the review of the initial decision upon appeal, if any.


§ 42.17 Rights of parties.
Except as otherwise limited by this part, all parties may--
(a) Be accompanied, represented, and advised by a representative;
(b) Participate in any conference held by the ALJ;
(c) Conduct discovery;
(d) Agree to stipulations of fact or law, which shall be made part of the record;
(e) Present evidence relevant to the issue at the hearing;
(f) Present and cross-examine witnesses;
(g) Present oral arguments at the hearing as permitted by the ALJ; and
(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.


§ 42.18 Authority of the ALJ.
(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.
(b) The ALJ has the authority to--
(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;
(2) Continue or recess the hearing in whole or in part for a reasonable period of time;
(3) Hold conference to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
(4) Administer oaths and affirmations;
(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at deposition or at hearings;
(6) Rule on motions and other procedural matters;
(7) Regulate the scope and timing of discovery;
(8) Regulate the course of the hearing and the conduct of representatives and parties;
(9) Examine witnesses;
(10) Receive, rule on, exclude, or limit evidence;
(11) Upon motion of a party, take official notice of facts;
(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;
(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and
(14) Exercise any other authority as is necessary to carry out the responsibilities of the ALJ under this part.
(c) The ALJ does not have the authority to find invalid Federal statutes or regulations.

§ 42.19 Prehearing conferences.
(a) The ALJ may schedule prehearing conferences as appropriate.
(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.
(c) The ALJ may use prehearing conferences to discuss the following:
(1) Simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
(4) Whether the parties can agree to submission of the case on a stipulated record;
(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;
(6) Limitation of the number of witnesses;
(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
(8) Discovery;
(9) The time and place for the hearing; and
(10) Other matters that may tend to expedite the fair and just disposition of the proceedings.
(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 42.20 Disclosure of documents.
(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 42.4(b) of this part are based, unless the documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of the documents.
(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document

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that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.
(c) The notice sent to the Attorney General from the reviewing official as described in § 42.5 of this part is not discoverable under any circumstances.
(d) The defendant may file a motion to compel disclosure of the documents subject to the provision of this section. The motion may only be filed with the ALJ following the filing of an answer pursuant to § 42.9 of this part.


§ 42.21 Discovery.
(a) The following types of discovery are authorized:
(1) Requests for production of documents for inspection and copying;
(2) Requests for admissions of the authenticity of any relevant document or the truth of any relevant fact;
(3) Written interrogatories; and
(4) Depositions.
(b) For the purpose of this section and §§ 42.22 and 42.23 of this part, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.
(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.
(d) Motions for discovery. (1) A party seeking discovery may file a motion with the ALJ. The motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.
(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 42.24 of this part.
(3) The ALJ may grant a motion for discovery only if the ALJ finds that the discovery sought--
   (i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;
   (ii) Is not unduly costly or burdensome;
   (iii) Will not unduly delay the proceeding; and
   (iv) Does not seek privileged information.
(4) The burden of showing that discovery should be allowed is on the party seeking discovery.
(5) The ALJ may grant discovery subject to a protective order under § 42.24 of this part.
(e) Depositions. (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.
(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 42.8 of this part.
(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.
(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.
§ 42.22 Exchange of witness lists, statements and exhibits.
(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 42.33(b) of this part. At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.
(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.
(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.


§ 42.23 Subpoenas for attendance at hearing.
(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.
(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.
(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. The request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit the witnesses to be found.
(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.
(e) The party seeking the subpoena shall serve it in the manner prescribed in § 42.8 of this part. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.
(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.
(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
   (1) That the discovery not be had;
   (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
   (3) That discovery may be had only through a method of discovery other than that requested;
   (4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;
   (5) That discovery be conducted with no one present except persons designated by the ALJ;
   (6) That the contents of discovery or evidence be sealed;
   (7) That a deposition after being sealed be opened only by order of the ALJ;
   (8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation only be disclosed in a designated way; or
   (9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.


§ 42.25 Fees.
The party requesting a subpoena shall pay the cost of the fees and mileage of any witnesses subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Department of Veterans Affairs, a check for witness fees and mileage need not accompany the subpoena.


§ 42.26 Form, filing and service of papers.
(a) Form. (1) Documents filed with the ALJ shall include an original and two copies.
   (2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g. motion to quash subpoena).
   (3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.
(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(b) Service. A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 42.8 of this part shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon the representative in lieu of the actual party.

(c) Proof of service. A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.


§ 42.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the date following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.


§ 42.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any part may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.


§ 42.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for--
(1) Failing to comply with an order, rule, or procedure governing the proceeding;
(2) Failing to prosecute or defend an action; or
(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct
of the hearing.
(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e)
of this section, shall reasonably relate to the severity and nature of the failure or
misconduct.
(c) When a party fails to comply with an order, including an order for taking a deposition,
the production of evidence within the party's control, or a request for admission, the ALJ
may--
(1) Draw an inference in favor of the requesting party with regard to the information
sought;
(2) In the case of requests for admission, deem each matter of which an admission is
requested to be admitted;
(3) Prohibit the party failing to comply with the order from introducing evidence
concerning, or otherwise relying upon, testimony relating to the information sought; and
(4) Strike any part of the pleadings or other submissions of the party failing to comply
with the request.
(d) If a party fails to prosecute or defend an action under this part commenced by service
of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision
imposing penalties and assessments.
(e) The ALJ may refuse to consider any motion, request, response, brief or other
document which is not filed in a timely fashion.


§ 42.30 The hearing and burden of proof.
(a) The ALJ shall conduct a hearing on the record in order to determine whether the
defendant is liable for a civil penalty or assessment under § 42.3 of this part and, if so, the
appropriate amount of any civil penalty or assessment considering any aggravating or
mitigating factors.
(b) The Department of Veterans Affairs shall prove defendant's liability and any
aggravating factors by a preponderance of the evidence.
(c) The defendant shall prove any affirmative defenses and any mitigating factors by a
preponderance of the evidence.
(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good
cause shown.


§ 42.31 Determining the amount of penalties and assessments.
(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and
the Secretary of Veterans Affairs, upon appeal, should evaluate any circumstances that
mitigate or aggravate the violation and should articulate in their opinions the reasons that
support the penalties and assessments they impose. Because of the intangible costs of
fraud, the expense of investigating the conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Secretary or Veterans Affairs in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

1. The number of false, fictitious, or fraudulent claims or statements;
2. The time period over which the claims or statements were made;
3. The degree of the defendant's culpability with respect to the misconduct;
4. The amount of money or the value of the property, services, or benefit falsely claimed;
5. The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;
6. The relationship of the amount imposed as civil penalties to the amount of the Government's loss;
7. The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of the programs;
8. Whether the defendant has engaged in a pattern of the same or similar misconduct;
9. Whether the defendant attempted to conceal the misconduct;
10. The degree to which the defendant has involved others in the misconduct or in concealing it;
11. Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;
12. Whether the defendant cooperated in or obstructed an investigation of the misconduct;
13. Whether the defendant assisted in identifying or prosecuting other wrongdoers;
14. The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;
15. Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and
16. The need to deter the defendant and others from engaging in the same or similar misconduct.


§ 42.32 Location of hearing.
(a) The hearing may be held--
(1) In any judicial district of the United States in which the defendant resides or transacts business;
(2) In any judicial district of the United States in which the claim or statement in issue was made; or
(3) Any place as may be agreed upon by the defendant and the ALJ.
(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.
(c) The hearing shall be held at a place and time ordered by the ALJ.


§ 42.33 Witnesses.
(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.
(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 42.22(a) of this part.
(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:
(1) Make the interrogation and presentation effective for the ascertainment of the truth,
(2) Avoid needless consumption of time, and
(3) Protect witnesses from harassment or undue embarrassment.
(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.
(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of the direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.
(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize the exclusion of:
(1) A party who is an individual;
(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or
(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.


§ 42.34 Evidence.
(a) The ALJ shall determine the admissibility of evidence.
(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.
(c) The ALJ shall exclude irrelevant and immaterial evidence.
(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.
(e) Although relevant, evidence may be excluded if it is privileged under Federal law.
(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.
(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.
(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 42.24 of this part.


§ 42.35 The record.
(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.
(b) The transcription of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary of Veterans Affairs.
(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 42.24 of this part.


§ 42.36 Post-hearing briefs.
The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing the briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.


§ 42.37 Initial decision.
(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.
(b) The findings of fact shall include a finding on each of the following issues:
(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 42.3 of this part;
(2) If the person is liable for penalties or assessments, the appropriate amount of the penalties or assessments considering any mitigating or aggravating factors that the ALJ finds in the case, such as those described in § 42.31 of this part.

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(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Secretary. If the ALJ fails to meet the deadline contained in this paragraph, the ALJ shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Secretary, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Secretary and shall be final and binding on the parties 30 days after it is issued by the ALJ.


§ 42.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the mailing in the absence of contrary proof.

(b) Every motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion shall be accompanied by a supporting brief.

(c) Responses to the motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Secretary and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Secretary in accordance with § 42.39 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Secretary and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Secretary in accordance with § 42.39 of this part.


§ 42.39 Appeal to the Secretary of Veterans Affairs.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal the decision to the Secretary of Veterans Affairs by filing a notice of appeal with the Secretary in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 42.8
of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Secretary may extend the initial 30 day period for an additional 30 days if the defendant files with the Secretary a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Secretary, and the time for filing motions for reconsideration under § 42.38 of this part has expired, the ALJ shall forward the record of the proceeding to the Secretary.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Secretary.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Secretary shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Secretary that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present the evidence at the hearing, the Secretary shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Secretary may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Secretary shall promptly serve each party to the appeal with a copy of the decision of the Secretary and a statement describing the right of any person to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Secretary serves the defendant with a copy of the Secretary's decision, a determination that a defendant is liable under § 42.3 of this part is final and is not subject to judicial review.


§ 42.40 Stays ordered by the Department of Justice.
If at any time the Attorney General or Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to the claim or statement, the Secretary shall stay the process immediately. The Secretary may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 42.41 Stay pending appeal.
(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Secretary.
(b) No administrative stay is available following a final decision of the Secretary.

§ 42.42 Judicial review.
Section 3805 of title 31 U.S.C., authorizes judicial review by an appropriate United States District Court of a final decision of the Secretary imposing penalties or assessments under this part and specifies the procedures for the review.

§ 42.43 Collection of civil penalties and assessments.
Sections 3806 and 3808(b) of title 31 U.S.C., authorizes actions for collection of civil penalties and assessments imposed under this part and specify the procedures for the action.

§ 42.44 Right to administrative offset.
The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 42.42 or § 42.43 of this part, or any amount agreed upon in a compromise or settlement under § 42.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 42.45 Deposit in Treasury of United States.
All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(b).

§ 42.46 Compromise and settlement.
(a) Parties may make offers of compromise or settlement at any time.
(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.
(c) The Secretary has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 42.42 of this part or during the pendency of any action to collect penalties and assessments under § 42.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 42.42 of this part, or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Secretary, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Secretary, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.


§ 42.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 42.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 42.10(b) of this part shall be deemed a notice of hearing of purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.


PART 43 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

SUBPART A -- GENERAL
SUBPART B -- PRE-AWARD REQUIREMENTS
SUBPART C -- POST-AWARD REQUIREMENTS
SUBPART D -- AFTER-THE-GRANT REQUIREMENTS

SUBPART A -- GENERAL

§ 43.1 Purpose and scope of this part.
§ 43.2 Scope of subpart.
§ 43.3 Definitions.
§ 43.4 Applicability.
§ 43.5 Effect on other issuances.
§ 43.6 Additions and exceptions

§ 43.1 Purpose and scope of this part.
This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 43.2 Scope of subpart.
This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 43.3 Definitions.
As used in this part:
Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:
(1) Goods and other tangible property received;
(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and
(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.
Accrued income means the sum of:
(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and
(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.
Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.
Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.
Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.
Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.
Contract means (except as used in the definitions for grant and subgrant in this section and except where qualified by Federal) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.
Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.
Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.
Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
Expenditure report means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).
Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.
Government means a State or local government or a federally recognized Indian tribal government.
Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.
Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.
Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.
Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period. OMB means the United States Office of Management and Budget. Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments. Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred. Prior approval means documentation evidencing consent prior to incurring specific cost. Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment. Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions. State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937. Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part. Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Supplies means all tangible personal property other than equipment as defined in this part. Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.
Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. Termination does not include:
(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;
(2) Withdrawal of the unobligated balance as of the expiration of a grant;
(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or
(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.
Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.
Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been paid. Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 43.4 Applicability.
(a) General. Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 43.6, or:
(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.
(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, subtitle D, Chapter 2, Section 583--the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of Title V, Mental Health Service for the Homeless Block Grant).
(3) Entitlement grants to carry out the following programs of the Social Security Act:
(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);
(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);
(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);
(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act);
and
(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:
(i) School Lunch (section 4 of the Act),
(ii) Commodity Assistance (section 6 of the Act),
(iii) Special Meal Assistance (section 11 of the Act),
(iv) Summer Food Service for Children (section 13 of the Act), and
(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:
(i) Special Milk (section 3 of the Act), and
(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments to States at per diem rates for veterans receiving care in recognized State homes.

(Authority: 38 U.S.C. 1741-1743)

(b) Entitlement programs. Entitlement programs enumerated above in § 43.4(a) (3)-(8) are subject to subpart E.

[53 FR 8073 and 8087, Mar. 11, 1988, as amended at 53 FR 8073, Mar. 11, 1988]

(38 U.S.C. 1741-1743)

§ 43.5 Effect on other issuances.
All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 43.6.


§ 43.6 Additions and exceptions
(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.
(b) Exceptions for classes of grants or grantees may be authorized only by OMB.
(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.
§ 43.10 Forms for applying for grants.
(a) Scope. (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.
(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.
(b) Authorized forms and instructions for governmental organizations. (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.
(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.
(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.
(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 43.11 State plans.
(a) Scope. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.
(b) Requirements. A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.
(c) Assurances. In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:
(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,
(2) Repeat the assurance language in the statutes or regulations, or
(3) Develop its own language to the extent permitted by law.
(d) Amendments. A State will amend a plan whenever necessary to reflect:
(1) New or revised Federal statutes or regulations or
(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 43.12 Special grant or subgrant conditions for 'high-risk' grantees.
(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:
(1) Has a history of unsatisfactory performance, or
(2) Is not financially stable, or
(3) Has a management system which does not meet the management standards set forth in this part, or
(4) Has not conformed to terms and conditions of previous awards, or
(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.
(b) Special conditions or restrictions may include:
(1) Payment on a reimbursement basis;
(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
(3) Requiring additional, more detailed financial reports;
(4) Additional project monitoring;
(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
(6) Establishing additional prior approvals.
(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:
(1) The nature of the special conditions/restrictions;
(2) The reason(s) for imposing them;
(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and
(4) The method of requesting reconsideration of the conditions/restrictions imposed.
SUBPART C -- POST-AWARD REQUIREMENTS

FINANCIAL ADMINISTRATION
CHANGES, PROPERTY, AND SUBAWARDS
REPORTS, RECORDS, RETENTION, AND ENFORCEMENT
FINANCIAL ADMINISTRATION

§ 43.20 Standards for financial management systems.
§ 43.21 Payment.
§ 43.22 Allowable costs.
§ 43.23 Period of availability of funds.
§ 43.24 Matching or cost sharing.
§ 43.25 Program income.
§ 43.26 Non-Federal audit.

§ 43.20 Standards for financial management systems.
(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to--
(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and
(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
(b) The financial management systems of other grantees and subgrantees must meet the following standards:
(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
(6) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.
(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.


§ 43.21 Payment.

(a) Scope. This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.
(f) Effect of program income, refunds, and audit recoveries on payment. (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.
(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.
(g) Withholding payments. (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless--
(i) The grantee or subgrantee has failed to comply with grant award conditions or
(ii) The grantee or subgrantee is indebted to the United States.
(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 43.43(c).
(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.
(h) Cash depositories. (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.
(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.
(i) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses. 53 FR 8073 and 8087, Mar. 11, 1988.

§ 43.22 Allowable costs.
(a) Limitation on use of funds. Grant funds may be used only for:
(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and
(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.
(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.
§ 43.23 Period of availability of funds.
(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.
(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 43.24 Matching or cost sharing.
(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:
(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.
(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.
(b) Qualifications and exceptions--(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.
(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.
(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.
(4) Costs financed by program income. Costs financed by program income, as defined in § 43.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 43.25(g).)

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions. (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:
(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or
(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services--(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate...
of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space. (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.
(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:
(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.
(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:
(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.
(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 43.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 43.25 Program income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. During the grant period is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 43.34.)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of § § 43.31 and 43.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.
(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise. 53 FR 8073 and 8087, Mar. 11, 1988.

§ 43.26 Non-Federal audit.
(a) Basic Rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.
(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:
(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractors has complied with laws and regulations affecting the expenditure of Federal funds;
(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;
(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;
(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and
(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.
(c) Auditor selection. In arranging for audit services, § 43.36 shall be followed.

[EFFECTIVE DATE NOTE: 62 FR 45943, Aug. 29, 1997, revised paragraph (a), the introductory text of paragraph (b), and paragraph (b)(1), effective Sept. 29, 1997.]
§ 43.30 Changes
§ 43.31 Real property.
§ 43.32 Equipment.
§ 43.33 Supplies.
§ 43.34 Copyrights.
§ 43.35 Subawards to debarred and suspended parties.
§ 43.36 Procurement
§ 43.37 Subgrants.

§ 43.30 Changes
(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.
(b) Relation to cost principles. The applicable cost principles (see § 43.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.
(c) Budget changes-- (1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:
   (i) Any revision which would result in the need for additional funding.
   (ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $ 100,000.
   (iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).
(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.
(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.
(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:
   (1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).
   (2) Need to extend the period of availability of funds.
   (3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.
(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 43.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) Requesting prior approval. (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 43.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.


§ 43.31 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.
(3) Transfer of title. Transfer title to the awarding agency or to a third-party
designated/approved by the awarding agency. The grantee or subgrantee shall be paid an
amount calculated by applying the grantee or subgrantee's percentage of participation in
the purchase of the real property to the current fair market value of the property.

§ 43.32 Equipment.
(a) Title. Subject to the obligations and conditions set forth in this section, title to
equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or
subgrantee respectively.
(b) States. A State will use, manage, and dispose of equipment acquired under a grant by
the State in accordance with State laws and procedures. Other grantees and subgrantees
will follow paragraphs (c) through (e) of this section.
(c) Use. (1) Equipment shall be used by the grantee or subgrantee in the program or
project for which it was acquired as long as needed, whether or not the project or
program continues to be supported by Federal funds. When no longer needed for the
original program or project, the equipment may be used in other activities currently or
previously supported by a Federal agency.
(2) The grantee or subgrantee shall also make equipment available for use on other
projects or programs currently or previously supported by the Federal Government,
providing such use will not interfere with the work on the projects or program for which
it was originally acquired. First preference for other use shall be given to other programs
or projects supported by the awarding agency. User fees should be considered if
appropriate.
(3) Notwithstanding the encouragement in § 43.25(a) to earn program income, the
grantee or subgrantee must not use equipment acquired with grant funds to provide
services for a fee to compete unfairly with private companies that provide equivalent
services, unless specifically permitted or contemplated by Federal statute.
(4) When acquiring replacement equipment, the grantee or subgrantee may use the
equipment to be replaced as a trade-in or sell the property and use the proceeds to offset
the cost of the replacement property, subject to the approval of the awarding agency.
(d) Management requirements. Procedures for managing equipment (including
replacement equipment), whether acquired in whole or in part with grant funds, until
disposition takes place will, as a minimum, meet the following requirements:
(1) Property records must be maintained that include a description of the property, a
serial number or other identification number, the source of property, who holds title, the
acquisition date, and cost of the property, percentage of Federal participation in the cost
of the property, the location, use and condition of the property, and any ultimate
disposition data including the date of disposal and sale price of the property.
(2) A physical inventory of the property must be taken and the results reconciled with the
property records at least once every two years.
(3) A control system must be developed to ensure adequate safeguards to prevent loss,
damage, or theft of the property. Any loss, damage, or theft shall be investigated.
(4) Adequate maintenance procedures must be developed to keep the property in good
condition.
(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 43.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.


§ 43.33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.
§ 43.34 Copyrights.
The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 43.35 Subawards to debarred and suspended parties.
Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 43.36 Procurement
(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.
(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
(i) The employee, officer or agent,
(ii) Any member of his immediate family,
(iii) His or her partner, or
(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.
Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only --

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrannte of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrannte unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with
the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of
protests by the Federal agency will be limited to:
(i) Violations of Federal law or regulations and the standards of this section (violations of
State or local law will be under the jurisdiction of State or local authorities) and
(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a
complaint or protest. Protests received by the Federal agency other than those specified
above will be referred to the grantee or subgrantee.
(c) Competition. (1) All procurement transactions will be conducted in a manner
providing full and open competition consistent with the standards of § 43.36. Some of the
situations considered to be restrictive of competition include but are not limited to:
(i) Placing unreasonable requirements on firms in order for them to qualify to do
business,
(ii) Requiring unnecessary experience and excessive bonding,
(iii) Noncompetitive pricing practices between firms or between affiliated companies,
(iv) Noncompetitive awards to consultants that are on retainer contracts,
(v) Organizational conflicts of interest,
(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be
offered and describing the performance of other relevant requirements of the procurement,
and
(vii) Any arbitrary action in the procurement process.
(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the
use of statutorily or administratively imposed in-State or local geographical preferences
in the evaluation of bids or proposals, except in those cases where applicable Federal
statutes expressly mandate or encourage geographic preference. Nothing in this section
preempts State licensing laws. When contracting for architectural and engineering (A/E)
services, geographic location may be a selection criteria provided its application leaves
an appropriate number of qualified firms, given the nature and size of the project, to
compete for the contract.
(3) Grantees will have written selection procedures for procurement transactions. These
procedures will ensure that all solicitations:
(i) Incorporate a clear and accurate description of the technical requirements for the
material, product, or service to be procured. Such description shall not, in competitive
procurements, contain features which unduly restrict competition. The description may
include a statement of the qualitative nature of the material, product or service to be
procured, and when necessary, shall set forth those minimum essential characteristics and
standards to which it must conform if it is to satisfy its intended use. Detailed product
specifications should be avoided if at all possible. When it is impractical or uneconomical
to make a clear and accurate description of the technical requirements, a "brand name or
equal" description may be used as a means to define the performance or other salient
requirements of a procurement. The specific features of the named brand which must be
met by offerors shall be clearly stated; and
(ii) Identify all requirements which the offerors must fulfill and all other factors to be
used in evaluating bids or proposals.
(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or
products which are used in acquiring goods and services are current and include enough
qualified sources to ensure maximum open and free competition. Also, grantees and
subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 43.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;
(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
(C) The awarding agency authorizes noncompetitive proposals; or
(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting,
and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 43.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its
system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of
(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

§ 43.37 Subgrants.

(a) States. States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with Section 43.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:
(1) Ensure that every subgrant includes a provision for compliance with this part;
(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and
(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.
(c) Exceptions. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:
(1) Section 43.10;
(2) Section 43.11;
(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 43.21; and
(4) Section 43.50.
REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 43.40 Monitoring and reporting program performance.
§ 43.41 Financial reporting.
§ 43.42 Retention and access requirements for records.
§ 43.43 Enforcement.
§ 43.44 Termination for convenience.

§ 43.40 Monitoring and reporting program performance.
(a) Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.
(b) Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.
   (1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.
   (2) Performance reports will contain, for each grant, brief information on the following:
      (i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.
      (ii) The reasons for slippage if established objectives were not met.
      (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
   (3) Grantees will not be required to submit more than the original and two copies of performance reports.
   (4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.
   (c) Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.
   (d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported
activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) Waivers, extensions. (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.


§ 43.41 Financial reporting.

(a) General. (1) Except as provided in paragraphs (a)(2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report--(1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 43.41(e)(2)(iii) of this section.

(2) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires
accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand. (3) Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) Federal Cash Transactions Report--(1) Form. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement--(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 43.41(b)(3).

(e) Outlay report and request for reimbursement for construction programs. (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs.
Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 43.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 43.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 43.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 43.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 43.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 43.41(b)(2).


§ 43.42 Retention and access requirements for records.

(a) Applicability. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 43.36(i)(10).

(b) Length of retention period. (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period--(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or
renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records--(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.


§ 43.43 Enforcement.

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:
(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
(4) Withhold further awards for the program, or
(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.
(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 43.35).

§ 43.44 Termination for convenience.
Except as provided in § 43.43 awards may be terminated in whole or in part only as follows:
(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 43.43 or paragraph (a) of this section.

§ 43.50 Closeout.
§ 43.51 Later disallowances and adjustments.
§ 43.52 Collection of amounts due.

§ 43.50 Closeout.
(a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.
(b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:
   (1) Final performance or progress report.
   (2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)
   (3) Final request for payment (SF-270) (if applicable).
   (4) Invention disclosure (if applicable).
   (5) Federally-owned property report:
      In accordance with § 43.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.
   (c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.
   (d) Cash adjustments. (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.
      (2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 43.51 Later disallowances and adjustments.
The closeout of a grant does not affect:
(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;
(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
(c) Records retention as required in § 43.42;
(d) Property management requirements in § 43.31 and § 43.32; and
(e) Audit requirements in § 43.26.
§ 43.52 Collection of amounts due.
(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:
(1) Making an administrative offset against other requests for reimbursements,
(2) Withholding advance payments otherwise due to the grantee, or
(3) Other action permitted by law.
(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.
PART 44 -- GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

§ 44.25 How is this part organized?
§ 44.50 How is this part written?
§ 44.75 Do terms in this part have special meanings?
Subpart A -- General
Subpart B -- Covered Transactions
Subpart C -- Responsibilities of Participants Regarding Transactions
Subpart D -- Responsibilities of Department of Veterans Affairs Officials Regarding Transactions
Subpart E -- Excluded Parties List System
Subpart F -- General Principles Relating to Suspension and Debarment Actions
Subpart G -- Suspension
Subpart H -- Debarment
Subpart I -- Definitions
Subpart J -- Limited Denial of Participation
Appendix to Part 44 -- Covered Transactions


§ 44.25 How is this part organized?
(a) This part is subdivided into ten subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities, as shown in the following table:

<table>
<thead>
<tr>
<th>In sub-part . .</th>
<th>You will find provisions related to . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>general information about this rule.</td>
</tr>
<tr>
<td>B</td>
<td>the types of Department of Veterans Affairs transactions that are covered by the Governmentwide nonprocurement suspension and debarment system.</td>
</tr>
<tr>
<td>C</td>
<td>the responsibilities of persons who participate in covered transactions.</td>
</tr>
<tr>
<td>D</td>
<td>the responsibilities of Department of Veterans Affairs officials who are authorized to enter into covered transactions.</td>
</tr>
<tr>
<td>E</td>
<td>the responsibilities of Federal agencies for the Excluded Parties List System (Disseminated by the General Services Administration).</td>
</tr>
<tr>
<td>F</td>
<td>the general principles governing suspension, debarment, voluntary exclusion and settlement.</td>
</tr>
<tr>
<td>G</td>
<td>suspension actions.</td>
</tr>
<tr>
<td>H</td>
<td>debarment actions.</td>
</tr>
<tr>
<td>I</td>
<td>definitions of terms used in this part.</td>
</tr>
<tr>
<td>J [Reserved]</td>
<td></td>
</tr>
</tbody>
</table>

(b) The following table shows which subparts may be of special interest to you, depending on who you are:

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If you are . . . See subpart(s) . . .

(1) a participant or principal in a nonprocurement transaction
(2) a respondent in a suspension action
(3) a respondent in a debarment action
(4) a suspending official
(5) a debarring official
(6) a (n) Department of Veterans Affairs official authorized to enter into a covered transaction
(7) Reserved J.

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.50 How is this part written?
(a) This part uses a "plain language" format to make it easier for the general public and business community to use. The section headings and text, often in the form of questions and answers, must be read together.
(b) Pronouns used within this part, such as "I" and "you," change from subpart to subpart depending on the audience being addressed. The pronoun "we" always is the Department of Veterans Affairs.
(c) The "Covered Transactions" diagram in the appendix to this part shows the levels or "tiers" at which the Department of Veterans Affairs enforces an exclusion under this part.

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.75 Do terms in this part have special meanings?
This part uses terms throughout the text that have special meaning. Those terms are defined in Subpart I of this part. For example, three important terms are --
(a) Exclusion or excluded, which refers only to discretionary actions taken by a suspending or debarring official under this part or the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4);
(b) Disqualification or disqualified, which refers to prohibitions under specific statutes, executive orders (other than Executive Order 12549 and Executive Order 12689), or other authorities. Disqualifications frequently are not subject to the discretion of an agency official, may have a different scope than exclusions, or have special conditions that apply to the disqualification; and
(c) Ineligibility or ineligible, which generally refers to a person who is either excluded or disqualified.

[68 FR 66534, 66618, Nov. 26, 2003]

Subpart A -- General

§ 44.100 What does this part do?
§ 44.105 Does this part apply to me?
§ 44.110 What is the purpose of the nonprocurement debarment and suspension system?
§ 44.115 How does an exclusion restrict a person's involvement in covered transactions?
§ 44.120 May we grant an exception to let an excluded person participate in a covered transaction?
§ 44.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
§ 44.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
§ 44.135 May the Department of Veterans Affairs exclude a person who is not currently participating in a nonprocurement transaction?
§ 44.140 How do I know if a person is excluded?
§ 44.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?

§ 44.100 What does this part do?
This part adopts a governmentwide system of debarment and suspension for Department of Veterans Affairs nonprocurement activities. It also provides for reciprocal exclusion of persons who have been excluded under the Federal Acquisition Regulation, and provides for the consolidated listing of all persons who are excluded, or disqualified by statute, executive order, or other legal authority. This part satisfies the requirements in section 3 of Executive Order 12549, "Debarment and Suspension" (3 CFR 1986 Comp., p. 189), Executive Order 12689, "Debarment and Suspension" (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).
[53 FR 19195 and 19204, May 26, 1988; 60 FR 33059, June 26, 1995; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.105 Does this part apply to me?
Portions of this part (see table at § 44.25(b)) apply to you if you are a(n) --
(a) Person who has been, is, or may reasonably be expected to be, a participant or principal in a covered transaction;
(b) Respondent (a person against whom the Department of Veterans Affairs has initiated a debarment or suspension action);
(c) Department of Veterans Affairs debarring or suspending official; or
(d) Department of Veterans Affairs official who is authorized to enter into covered transactions with non-Federal parties.
§ 44.110 What is the purpose of the nonprocurement debarment and suspension system?
(a) To protect the public interest, the Federal Government ensures the integrity of Federal programs by conducting business only with responsible persons.
(b) A Federal agency uses the nonprocurement debarment and suspension system to exclude from Federal programs persons who are not presently responsible.
(c) An exclusion is a serious action that a Federal agency may take only to protect the public interest. A Federal agency may not exclude a person or commodity for the purposes of punishment.

§ 44.115 How does an exclusion restrict a person's involvement in covered transactions?
With the exceptions stated in §§ 44.120, 44.315, and 44.420, a person who is excluded by the Department of Veterans Affairs or any other Federal agency may not:
(a) Be a participant in a(n) Department of Veterans Affairs transaction that is a covered transaction under subpart B of this part;
(b) Be a participant in a transaction of any other Federal agency that is a covered transaction under that agency's regulation for debarment and suspension; or
(c) Act as a principal of a person participating in one of those covered transactions.

§ 44.120 May we grant an exception to let an excluded person participate in a covered transaction?
(a) The Secretary may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.
(b) An exception granted by one agency for an excluded person does not extend to the covered transactions of another agency.
§ 44.125 Does an exclusion under the nonprocurement system affect a person's eligibility for Federal procurement contracts?
If any Federal agency excludes a person under its nonprocurement common rule on or after August 25, 1995, the excluded person is also ineligible to participate in Federal procurement transactions under the FAR. Therefore, an exclusion under this part has reciprocal effect in Federal procurement transactions.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.130 Does exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
If any Federal agency excludes a person under the FAR on or after August 25, 1995, the excluded person is also ineligible to participate in nonprocurement covered transactions under this part. Therefore, an exclusion under the FAR has reciprocal effect in Federal nonprocurement transactions.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.135 May the Department of Veterans Affairs exclude a person who is not currently participating in a nonprocurement transaction?
Given a cause that justifies an exclusion under this part, we may exclude any person who has been involved, is currently involved, or may reasonably be expected to be involved in a covered transaction.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.140 How do I know if a person is excluded?
Check the Excluded Parties List System (EPLS) to determine whether a person is excluded. The General Services Administration (GSA) maintains the EPLS and makes it available, as detailed in subpart E of this part. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.145 Does this part address persons who are disqualified, as well as those who are excluded from nonprocurement transactions?
Except if provided for in Subpart J of this part, this part --
(a) Addresses disqualified persons only to --
(1) Provide for their inclusion in the EPLS; and
(2) State responsibilities of Federal agencies and participants to check for disqualified persons before entering into covered transactions.

(b) Does not specify the --

(1) Department of Veterans Affairs transactions for which a disqualified person is ineligible. Those transactions vary on a case-by-case basis, because they depend on the language of the specific statute, Executive order, or regulation that caused the disqualification;

(2) Entities to which the disqualification applies; or

(3) Process that the agency uses to disqualify a person. Unlike exclusion, disqualification is frequently not a discretionary action that a Federal agency takes.

[68 FR 66534, 66618, Nov. 26, 2003]

Subpart B -- Covered Transactions

§ 44.200 What is a covered transaction?
§ 44.205 Why is it important to know if a particular transaction is a covered transaction?
§ 44.210 Which nonprocurement transactions are covered transactions?
§ 44.215 Which nonprocurement transactions are not covered transactions?
§ 44.220 Are any procurement contracts included as covered transactions?
§ 44.225 How do I know if a transaction in which I may participate is a covered transaction?

§ 44.200 What is a covered transaction?
A covered transaction is a nonprocurement or procurement transaction that is subject to the prohibitions of this part. It may be a transaction at --
(a) The primary tier, between a Federal agency and a person (see appendix to this part); or
(b) A lower tier, between a participant in a covered transaction and another person.
[53 FR 19195 and 19204, May 26, 1988; 60 FR 33059, June 26, 1995; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.205 Why is it important to know if a particular transaction is a covered transaction?
The importance of a covered transaction depends upon who you are.
(a) As a participant in the transaction, you have the responsibilities laid out in Subpart C of this part. Those include responsibilities to the person or Federal agency at the next higher tier from whom you received the transaction, if any. They also include responsibilities if you subsequently enter into other covered transactions with persons at the next lower tier.
(b) As a Federal official who enters into a primary tier transaction, you have the responsibilities laid out in subpart D of this part.
(c) As an excluded person, you may not be a participant or principal in the transaction unless --
(1) The person who entered into the transaction with you allows you to continue your involvement in a transaction that predates your exclusion, as permitted under § 44.310 or § 44.415; or
(2) A(n) Department of Veterans Affairs official obtains an exception from the Secretary to allow you to be involved in the transaction, as permitted under § 44.120.
[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.210 Which nonprocurement transactions are covered transactions?
All nonprocurement transactions, as defined in § 44.970, are covered transactions unless listed in § 44.215. (See appendix to this part.)
[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.215 Which nonprocurement transactions are not covered transactions?
The following types of nonprocurement transactions are not covered transactions:
(a) A direct award to --
(1) A foreign government or foreign governmental entity;
(2) A public international organization;
(3) An entity owned (in whole or in part) or controlled by a foreign government; or
(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.
(b) A benefit to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted). For example, if a person receives social security benefits under the Supplemental Security Income provisions of the Social Security Act, 42 U.S.C. 1301 et seq., those benefits are not covered transactions and, therefore, are not affected if the person is excluded.
(c) Federal employment.
(d) A transaction that the Department of Veterans Affairs needs to respond to a national or agency-recognized emergency or disaster.
(e) A permit, license, certificate, or similar instrument issued as a means to regulate public health, safety, or the environment, unless the Department of Veterans Affairs specifically designates it to be a covered transaction.
(f) An incidental benefit that results from ordinary governmental operations.
(g) Any other transaction if the application of an exclusion to the transaction is prohibited by law.
[53 FR 19195 and 19204, May 26, 1988; 60 FR 33059, June 26, 1995; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.220 Are any procurement contracts included as covered transactions?
(a) Covered transactions under this part --
(1) Do not include any procurement contracts awarded directly by a Federal agency; but
(2) Do include some procurement contracts awarded by non-Federal participants in nonprocurement covered transactions (see appendix to this part).
(b) Specifically, a contract for goods or services is a covered transaction if any of the following applies:
(1) The contract is awarded by a participant in a nonprocurement transaction that is covered under § 44.210, and the amount of the contract is expected to equal or exceed $ 25,000.
(2) The contract requires the consent of a(n) Department of Veterans Affairs official. In that case, the contract, regardless of the amount, always is a covered transaction, and it does not matter who awarded it. For example, it could be a subcontract awarded by a contractor at a tier below a nonprocurement transaction, as shown in the appendix to this part.

(3) The contract is for federally-required audit services.

[53 FR 19195 and 19204, May 26, 1988; 60 FR 33059, June 26, 1995; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.225 How do I know if a transaction in which I may participate is a covered transaction?
As a participant in a transaction, you will know that it is a covered transaction because the agency regulations governing the transaction, the appropriate agency official, or participant at the next higher tier who enters into the transaction with you, will tell you that you must comply with applicable portions of this part.

[53 FR 19195 and 19204, May 26, 1988; 60 FR 33059, June 26, 1995; 68 FR 66534, 66618, Nov. 26, 2003]

Subpart C -- Responsibilities of Participants Regarding Transactions

Doing Business With Other Persons
Disclosing Information -- Primary Tier Participants
Disclosing Information -- Lower Tier Participants
Doing Business With Other Persons

§ 44.300 What must I do before I enter into a covered transaction with another person at the next lower tier?
§ 44.305 May I enter into a covered transaction with an excluded or disqualified person?
§ 44.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
§ 44.315 May I use the services of an excluded person as a principal under a covered transaction?
§ 44.320 Must I verify that principals of my covered transactions are eligible to participate?
§ 44.325 What happens if I do business with an excluded person in a covered transaction?
§ 44.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

§ 44.300 What must I do before I enter into a covered transaction with another person at the next lower tier?

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:
(a) Checking the EPLS; or
(b) Collecting a certification from that person if allowed by this rule; or
(c) Adding a clause or condition to the covered transaction with that person.
[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.305 May I enter into a covered transaction with an excluded or disqualified person?

(a) You as a participant may not enter into a covered transaction with an excluded person, unless the Department of Veterans Affairs grants an exception under § 44.120.
(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you have obtained an exception under the disqualifying statute, Executive order, or regulation.


§ 44.310 What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?
(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Department of Veterans Affairs grants an exception under § 44.120.

[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.315 May I use the services of an excluded person as a principal under a covered transaction?
(a) You as a participant may continue to use the services of an excluded person as a principal under a covered transaction if you were using the services of that person in the transaction before the person was excluded. However, you are not required to continue using that person's services as a principal. You should make a decision about whether to discontinue that person's services only after a thorough review to ensure that the action is proper and appropriate.

(b) You may not begin to use the services of an excluded person as a principal under a covered transaction unless the Department of Veterans Affairs grants an exception under § 44.120.

[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]


§ 44.320 Must I verify that principals of my covered transactions are eligible to participate?
Yes, you as a participant are responsible for determining whether any of your principals of your covered transactions is excluded or disqualified from participating in the transaction. You may decide the method and frequency by which you do so. You may, but you are not required to, check the EPLS.


§ 44.325 What happens if I do business with an excluded person in a covered transaction?
If as a participant you knowingly do business with an excluded person, we may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]
§ 44.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?
Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to --
(a) Comply with this subpart as a condition of participation in the transaction. You may do so using any method(s), unless § 44.440 requires you to use specific methods.
(b) Pass the requirement to comply with this subpart to each person with whom the participant enters into a covered transaction at the next lower tier.
[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.335 What information must I provide before entering into a covered transaction with the Department of Veterans Affairs?
Before you enter into a covered transaction at the primary tier, you as the participant must notify the Department of Veterans Affairs office that is entering into the transaction with you, if you know that you or any of the principals for that covered transaction:
(a) Are presently excluded or disqualified;
(b) Have been convicted within the preceding three years of any of the offenses listed in § 44.800(a) or had a civil judgment rendered against you for one of those offenses within that time period;
(c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in § 44.800(a); or
(d) Have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.340 If I disclose unfavorable information required under § 44.335, will I be prevented from participating in the transaction?
As a primary tier participant, your disclosure of unfavorable information about yourself or a principal under § 44.335 will not necessarily cause us to deny your participation in the covered transaction. We will consider the information when we determine whether to enter into the covered transaction. We also will consider any additional information or explanation that you elect to submit with the disclosed information.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.345 What happens if I fail to disclose information required under § 44.335?
If we later determine that you failed to disclose information under § 44.335 that you knew at the time you entered into the covered transaction, we may --
(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or
§ 44.350 What must I do if I learn of the information required under § 44.335 after entering into a covered transaction with the Department of Veterans Affairs?

At any time after you enter into a covered transaction, you must give immediate written notice to the Department of Veterans Affairs office with which you entered into the transaction if you learn either that --

(a) You failed to disclose information earlier, as required by § 44.335; or
(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 44.335.

[68 FR 66534, 66618, Nov. 26, 2003]

Disclosing Information -- Lower Tier Participants

§ 44.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
§ 44.360 What happens if I fail to disclose the information required under § 44.355?
§ 44.365 What must I do if I learn of information required under § 44.355 after entering into a covered transaction with a higher tier participant?

§ 44.355 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
Before you enter into a covered transaction with a person at the next higher tier, you as a lower tier participant must notify that person if you know that you or any of the principals are presently excluded or disqualified.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.360 What happens if I fail to disclose the information required under § 44.355?
If we later determine that you failed to tell the person at the higher tier that you were excluded or disqualified at the time you entered into the covered transaction with that person, we may pursue any available remedies, including suspension and debarment.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.365 What must I do if I learn of information required under § 44.355 after entering into a covered transaction with a higher tier participant?
At any time after you enter into a lower tier covered transaction with a person at a higher tier, you must provide immediate written notice to that person if you learn either that --
(a) You failed to disclose information earlier, as required by § 44.355; or
(b) Due to changed circumstances, you or any of the principals for the transaction now meet any of the criteria in § 44.355.
[68 FR 66534, 66618, Nov. 26, 2003]


________________________
Subpart D -- Responsibilities of Department of Veterans Affairs Officials Regarding Transactions

§ 44.400 May I enter into a transaction with an excluded or disqualified person?
(a) You as an agency official may not enter into a covered transaction with an excluded person unless you obtain an exception under § 44.120.
(b) You may not enter into any transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 44.405 May I enter into a covered transaction with a participant if a principal of the transaction is excluded?
As an agency official, you may not enter into a covered transaction with a participant if you know that a principal of the transaction is excluded, unless you obtain an exception under § 44.120.

§ 44.410 May I approve a participant's use of the services of an excluded person?

§ 44.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?

§ 44.420 May I approve a transaction with an excluded or disqualified person at a lower tier?

§ 44.425 When do I check to see if a person is excluded or disqualified?

§ 44.430 How do I check to see if a person is excluded or disqualified?

§ 44.435 What must I require of a primary tier participant?

§ 44.440 What method do I use to communicate those requirements to participants?

§ 44.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

§ 44.450 What action may I take if a primary tier participant fails to disclose the information required under § 44.335?

§ 44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.355 to the next higher tier?
§ 44.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
(a) You as an agency official may continue covered transactions with an excluded person, or under which an excluded person is a principal, if the transactions were in existence when the person was excluded. You are not required to continue the transactions, however, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper.
(b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, or under which an excluded person is a principal, unless you obtain an exception under § 44.120.

§ 44.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
If a transaction at a lower tier is subject to your approval, you as an agency official may not approve --
(a) A covered transaction with a person who is currently excluded, unless you obtain an exception under § 44.120; or
(b) A transaction with a person who is disqualified from that transaction, unless you obtain a waiver or exception under the statute, Executive order, or regulation that is the basis for the person's disqualification.

§ 44.425 When do I check to see if a person is excluded or disqualified?
As an agency official, you must check to see if a person is excluded or disqualified before you --
(a) Enter into a primary tier covered transaction;
(b) Approve a principal in a primary tier covered transaction;
(c) Approve a lower tier participant if agency approval of the lower tier participant is required; or
(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

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§ 44.430 How do I check to see if a person is excluded or disqualified?
You check to see if a person is excluded or disqualified in two ways:
(a) You as an agency official must check the EPLS when you take any action listed in § 44.425.
(b) You must review information that a participant gives you, as required by § 44.335, about its status or the status of the principals of a transaction.

§ 44.435 What must I require of a primary tier participant?
You as an agency official must require each participant in a primary tier covered transaction to --
(a) Comply with subpart C of this part as a condition of participation in the transaction; and
(b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

§ 44.440 What method do I use to communicate those requirements to participants?
To communicate the requirement, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower-tier covered transactions.

§ 44.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.
§ 44.450 What action may I take if a primary tier participant fails to disclose the information required under § 44.335?

If you as an agency official determine that a participant failed to disclose information, as required by § 44.335, at the time it entered into a covered transaction with you, you may --

(a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or
(b) Pursue any other available remedies, including suspension and debarment.

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.455 What may I do if a lower tier participant fails to disclose the information required under § 44.355 to the next higher tier?

If you as an agency official determine that a lower tier participant failed to disclose information, as required by § 44.355, at the time it entered into a covered transaction with a participant at the next higher tier, you may pursue any remedies available to you, including the initiation of a suspension or debarment action.

[68 FR 66534, 66618, Nov. 26, 2003]

Subpart E -- Excluded Parties List System

§ 44.500 What is the purpose of the Excluded Parties List System (EPLS)?

The EPLS is a widely available source of the most current information about persons who are excluded or disqualified from covered transactions.

[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]

§ 44.505 Who uses the EPLS?

(a) Federal agency officials use the EPLS to determine whether to enter into a transaction with a person, as required under § 44.430.
(b) Participants also may, but are not required to, use the EPLS to determine if --
   (1) Principals of their transactions are excluded or disqualified, as required under § 44.320; or
   (2) Persons with whom they are entering into covered transactions at the next lower tier are excluded or disqualified.
(c) The EPLS is available to the general public.

[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]

§ 44.510 Who maintains the EPLS?

In accordance with the OMB guidelines, the General Services Administration (GSA) maintains the EPLS. When a Federal agency takes an action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into the EPLS.

[53 FR 19195 and 19204, May 26, 1988; 68 FR 66534, 66618, Nov. 26, 2003]

§ 44.515 What specific information is in the EPLS?

(a) At a minimum, the EPLS indicates --
(1) The full name (where available) and address of each excluded or disqualified person, in alphabetical order, with cross references if more than one name is involved in a single action;
(2) The type of action;
(3) The cause for the action;
(4) The scope of the action;
(5) Any termination date for the action;
(6) The agency and name and telephone number of the agency point of contact for the action; and
(7) The Dun and Bradstreet Number (DUNS), or other similar code approved by the GSA, of the excluded or disqualified person, if available.
(b)(1) The database for the EPLS includes a field for the Taxpayer Identification Number (TIN) (the social security number (SSN) for an individual) of an excluded or disqualified person.
(2) Agencies disclose the SSN of an individual to verify the identity of an individual, only if permitted under the Privacy Act of 1974 and, if appropriate, the Computer Matching and Privacy Protection Act of 1988, as codified in 5 U.S.C. 552(a).

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.520 Who places the information into the EPLS?
Federal officials who take actions to exclude persons under this part or officials who are responsible for identifying disqualified persons must enter the following information about those persons into the EPLS:
(a) Information required by § 44.515(a);
(b) The Taxpayer Identification Number (TIN) of the excluded or disqualified person, including the social security number (SSN) for an individual, if the number is available and may be disclosed under law;
(c) Information about an excluded or disqualified person, generally within five working days, after --
(1) Taking an exclusion action;
(2) Modifying or rescinding an exclusion action;
(3) Finding that a person is disqualified; or
(4) Finding that there has been a change in the status of a person who is listed as disqualified.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.525 Whom do I ask if I have questions about a person in the EPLS?
If you have questions about a person in the EPLS, ask the point of contact for the Federal agency that placed the person's name into the EPLS. You may find the agency point of contact from the EPLS.
§ 44.530 Where can I find the EPLS?
(a) You may access the EPLS through the Internet, currently at http://epls.arnet.gov.
(b) As of November 26, 2003, you may also subscribe to a printed version. However, we anticipate discontinuing the printed version. Until it is discontinued, you may obtain the printed version by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238.
Subpart F -- General Principles Relating to Suspension and Debarment Actions

§ 44.600 How do suspension and debarment actions start?

When we receive information from any source concerning a cause for suspension or debarment, we will promptly report and investigate it. We refer the question of whether to suspend or debar you to our suspending or debarring official for consideration, if appropriate.


§ 44.605 How does suspension differ from debarment?

Suspension differs from debarment in that --

A suspending official . . . . A debarring official . . . .
(a) Imposes suspension as a    Imposes debarment for a specified
temporary status of ineligibility period as a final determination
for procurement and    that a person is not presently
nonprocurement transactions,     responsible.
pending completion of an investigation or legal proceedings
(b) Must -- Must conclude, based on a
(1) Have adequate evidence that    preponderance of the evidence,
there may be a cause for    that the person has engaged in
debarment of a person; and    conduct that warrants debarment.
(2) Conclude that immediate    action is necessary to protect
the Federal interest
(c) Usually imposes the    Imposes debarment after giving
suspension first, and then    the respondent notice of the
§ 44.610 What procedures does the Department of Veterans Affairs use in suspension and debarment actions?
In deciding whether to suspend or debar you, we handle the actions as informally as practicable, consistent with principles of fundamental fairness.
(a) For suspension actions, we use the procedures in this subpart and subpart G of this part.
(b) For debarment actions, we use the procedures in this subpart and subpart H of this part.

[EFFECTIVE DATE NOTE: 68 FR 66534, 66618, Nov. 26, 2003]

§ 44.615 How does the Department of Veterans Affairs notify a person of a suspension or debarment action?
(a) The suspending or debarring official sends a written notice to the last known street address, facsimile number, or e-mail address of--
(1) You or your identified counsel; or
(2) Your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers.
(b) The notice is effective if sent to any of these persons.

[EFFECTIVE DATE NOTE: 68 FR 66534, 66618, Nov. 26, 2003]

§ 44.620 Do Federal agencies coordinate suspension and debarment actions?
Yes, when more than one Federal agency has an interest in a suspension or debarment, the agencies may consider designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their suspension and debarment actions.

[EFFECTIVE DATE NOTE: 68 FR 66534, 66618, Nov. 26, 2003]

§ 44.625 What is the scope of a suspension or debarment action?
If you are suspended or debarred, the suspension or debarment is effective as follows:
(a) Your suspension or debarment constitutes suspension or debarment of all of your divisions and other organizational elements from all covered transactions, unless the suspension or debarment decision is limited --
(1) By its terms to one or more specifically identified individuals, divisions, or other organizational elements; or
(2) To specific types of transactions.
(b) Any affiliate of a participant may be included in a suspension or debarment action if the suspending or debarring official --
(1) Officially names the affiliate in the notice; and
(2) Gives the affiliate an opportunity to contest the action.


§ 44.630 May the Department of Veterans Affairs impute the conduct of one person to another?
For purposes of actions taken under this rule, we may impute conduct as follows:
(a) Conduct imputed from an individual to an organization. We may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.
(b) Conduct imputed from an organization to an individual, or between individuals. We may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed either participated in, had knowledge of, or reason to know of the improper conduct.
(c) Conduct imputed from one organization to another organization. We may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval or acquiescence.


§ 44.635 May the Department of Veterans Affairs settle a debarment or suspension action?
Yes, we may settle a debarment or suspension action at any time if it is in the best interest of the Federal Government.
§ 44.640 May a settlement include a voluntary exclusion?
Yes, if we enter into a settlement with you in which you agree to be excluded, it is called a voluntary exclusion and has governmentwide effect.

§ 44.645 Do other Federal agencies know if the Department of Veterans Affairs agrees to a voluntary exclusion?
(a) Yes, we enter information regarding a voluntary exclusion into the EPLS.
(b) Also, any agency or person may contact us to find out the details of a voluntary exclusion.
Subpart G -- Suspension

§ 44.700 When may the suspending official issue a suspension?
§ 44.705 What does the suspending official consider in issuing a suspension?
§ 44.710 When does a suspension take effect?
§ 44.715 What notice does the suspending official give me if I am suspended?
§ 44.720 How may I contest a suspension?
§ 44.725 How much time do I have to contest a suspension?
§ 44.730 What information must I provide to the suspending official if I contest a suspension?
§ 44.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
§ 44.740 Are suspension proceedings formal?
§ 44.745 How is fact-finding conducted?
§ 44.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
§ 44.755 When will I know whether the suspension is continued or terminated?
§ 44.760 How long may my suspension last?

§ 44.700 When may the suspending official issue a suspension?
Suspension is a serious action. Using the procedures of this subpart and subpart F of this part, the suspending official may impose suspension only when that official determines that --
(a) There exists an indictment for, or other adequate evidence to suspect, an offense listed under § 44.800(a), or
(b) There exists adequate evidence to suspect any other cause for debarment listed under § 44.800(b) through (d); and
(c) Immediate action is necessary to protect the public interest.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.705 What does the suspending official consider in issuing a suspension?
(a) In determining the adequacy of the evidence to support the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. During this assessment, the suspending official may examine the basic documents, including grants, cooperative agreements, loan authorizations, contracts, and other relevant documents.
(b) An indictment, conviction, civil judgment, or other official findings by Federal, State, or local bodies that determine factual and/or legal matters, constitutes adequate evidence for purposes of suspension actions.
(c) In deciding whether immediate action is needed to protect the public interest, the suspending official has wide discretion. For example, the suspending official may infer the necessity for immediate action to protect the public interest either from the nature of

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§ 44.710 When does a suspension take effect?
A suspension is effective when the suspending official signs the decision to suspend. 
[58 FR 60385, Nov. 16, 1993; 68 FR 66534, 66618, Nov. 26, 2003]

§ 44.715 What notice does the suspending official give me if I am suspended?
After deciding to suspend you, the suspending official promptly sends you a Notice of Suspension advising you --
(a) That you have been suspended;
(b) That your suspension is based on --
(1) An indictment;
(2) A conviction;
(3) Other adequate evidence that you have committed irregularities which seriously reflect on the propriety of further Federal Government dealings with you; or
(4) Conduct of another person that has been imputed to you, or your affiliation with a suspended or debarred person;
(c) Of any other irregularities in terms sufficient to put you on notice without disclosing the Federal Government's evidence;
(d) Of the cause(s) upon which we relied under § 44.700 for imposing suspension;
(e) That your suspension is for a temporary period pending the completion of an investigation or resulting legal or debarment proceedings;
(f) Of the applicable provisions of this subpart, Subpart F of this part, and any other Department of Veteran Affairs procedures governing suspension decision making; and
(g) Of the governmentwide effect of your suspension from procurement and nonprocurement programs and activities.
[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.720 How may I contest a suspension?
If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.
[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.725 How much time do I have to contest a suspension?
(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.
(b) We consider the notice to be received by you --
(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;
(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or
(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.730 What information must I provide to the suspending official if I contest a suspension?
(a) In addition to any information and argument in opposition, as a respondent your submission to the suspending official must identify --
(1) Specific facts that contradict the statements contained in the Notice of Suspension. A general denial is insufficient to raise a genuine dispute over facts material to the suspension;
(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, state, or local agencies, including administrative agreements that affect only those agencies;
(3) All criminal and civil proceedings not included in the Notice of Suspension that grew out of facts relevant to the cause(s) stated in the notice; and
(4) All of your affiliates.
(b) If you fail to disclose this information, or provide false information, the Department of Veteran Affairs may seek further criminal, civil or administrative action against you, as appropriate.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that --
(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;
(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;
(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or
(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.
(b) You will have an opportunity to challenge the facts if the suspending official determines that --
(1) The conditions in paragraph (a) of this section do not exist; and
(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.
(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.740 Are suspension proceedings formal?
(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.
(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.745 How is fact-finding conducted?
(a) If fact-finding is conducted --
(1) You may present witnesses and other evidence, and confront any witness presented; and
(2) The fact-finder must prepare written findings of fact for the record.
(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of Veteran Affairs agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.
[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
(a) The suspending official bases the decision on all information contained in the official record. The record includes --
(1) All information in support of the suspending official's initial decision to suspend you;
(2) Any further information and argument presented in support of, or opposition to, the suspension; and
(3) Any transcribed record of fact-finding proceedings.
(b) The suspending official may refer disputed material facts to another official for findings of fact. The suspending official may reject any resulting findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.755 When will I know whether the suspension is continued or terminated?
The suspending official must make a written decision whether to continue, modify, or terminate your suspension within 45 days of closing the official record. The official record closes upon the suspending official's receipt of final submissions, information and findings of fact, if any. The suspending official may extend that period for good cause.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.760 How long may my suspension last?
(a) If legal or debarment proceedings are initiated at the time of, or during your suspension, the suspension may continue until the conclusion of those proceedings. However, if proceedings are not initiated, a suspension may not exceed 12 months.
(b) The suspending official may extend the 12 month limit under paragraph (a) of this section for an additional 6 months if an office of a U.S. Assistant Attorney General, U.S. Attorney, or other responsible prosecuting official requests an extension in writing. In no event may a suspension exceed 18 months without initiating proceedings under paragraph (a) of this section.
(c) The suspending official must notify the appropriate officials under paragraph (b) of this section of an impending termination of a suspension at least 30 days before the 12 month period expires to allow the officials an opportunity to request an extension.
[68 FR 66534, 66618, Nov. 26, 2003]

Subpart H -- Debarment

§ 44.800 What are the causes for debarment?

We may debar a person for --
(a) Conviction of or civil judgment for --
(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;
(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or
(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;
(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as --
(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;
(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or
(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;
(c) Any of the following causes:
(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;
(2) Knowingly doing business with an ineligible person, except as permitted under § 44.120;
(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;
(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 44.640 or of any settlement of a debarment or suspension action; or
(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or
(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.805 What notice does the debarring official give me if I am proposed for debarment?
After consideration of the causes in § 44.800 of this subpart, if the debarring official proposes to debar you, the official sends you a Notice of Proposed Debarment, pursuant to § 44.615, advising you --
(a) That the debarring official is considering debarring you;
(b) Of the reasons for proposing to debar you in terms sufficient to put you on notice of the conduct or transactions upon which the proposed debarment is based;
(c) Of the cause(s) under § 44.800 upon which the debarring official relied for proposing your debarment;
(d) Of the applicable provisions of this subpart, Subpart F of this part, and any other Department of Veteran Affairs procedures governing debarment; and
(e) Of the governmentwide effect of a debarment from procurement and nonprocurement programs and activities.

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.810 When does a debarment take effect?
A debarment is not effective until the debarring official issues a decision. The debarring official does not issue a decision until the respondent has had an opportunity to contest the proposed debarment.

[68 FR 66534, 66618, Nov. 26, 2003]

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§ 44.815 How may I contest a proposed debarment?
If you as a respondent wish to contest a proposed debarment, you or your representative must provide the debarring official with information in opposition to the proposed debarment. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.
[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.820 How much time do I have to contest a proposed debarment?
(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the debarring official within 30 days after you receive the Notice of Proposed Debarment.
(b) We consider the Notice of Proposed Debarment to be received by you --
(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;
(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or
(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.
[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.825 What information must I provide to the debarring official if I contest a proposed debarment?
(a) In addition to any information and argument in opposition, as a respondent your submission to the debarring official must identify --
(1) Specific facts that contradict the statements contained in the Notice of Proposed Debarment. Include any information about any of the factors listed in § 44.860. A general denial is insufficient to raise a genuine dispute over facts material to the debarment;
(2) All existing, proposed, or prior exclusions under regulations implementing E.O. 12549 and all similar actions taken by Federal, State, or local agencies, including administrative agreements that affect only those agencies;
(3) All criminal and civil proceedings not included in the Notice of Proposed Debarment that grew out of facts relevant to the cause(s) stated in the notice; and
(4) All of your affiliates.
(b) If you fail to disclose this information, or provide false information, the Department of Veteran Affairs may seek further criminal, civil or administrative action against you, as appropriate.
[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.830 Under what conditions do I get an additional opportunity to challenge the facts on which a proposed debarment is based?

(a) You as a respondent will not have an additional opportunity to challenge the facts if the debarring official determines that --

1. Your debarment is based upon a conviction or civil judgment;
2. Your presentation in opposition contains only general denials to information contained in the Notice of Proposed Debarment; or
3. The issues raised in your presentation in opposition to the proposed debarment are not factual in nature, or are not material to the debarring official's decision whether to debar.

(b) You will have an additional opportunity to challenge the facts if the debarring official determines that --

1. The conditions in paragraph (a) of this section do not exist; and
2. Your presentation in opposition raises a genuine dispute over facts material to the proposed debarment.

(c) If you have an opportunity to challenge disputed material facts under this section, the debarring official or designee must conduct additional proceedings to resolve those facts.

[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.835 Are debarment proceedings formal?

(a) Debarment proceedings are conducted in a fair and informal manner. The debarring official may use flexible procedures to allow you as a respondent to present matters in opposition. In so doing, the debarring official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base the decision whether to debar.

(b) You or your representative must submit any documentary evidence you want the debarring official to consider.

[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.840 How is fact-finding conducted?

(a) If fact-finding is conducted --

1. You may present witnesses and other evidence, and confront any witness presented; and
2. The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of Veterans Affairs agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.845 What does the debarring official consider in deciding whether to debar me?
(a) The debarring official may debar you for any of the causes in § 44.800. However, the official need not debar you even if a cause for debarment exists. The official may consider the seriousness of your acts or omissions and the mitigating or aggravating factors set forth at § 44.860.
(b) The debarring official bases the decision on all information contained in the official record. The record includes --
(1) All information in support of the debarring official's proposed debarment;
(2) Any further information and argument presented in support of, or in opposition to, the proposed debarment; and
(3) Any transcribed record of fact-finding proceedings.
(c) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any resultant findings, in whole or in part, only after specifically determining them to be arbitrary, capricious, or clearly erroneous.

§ 44.850 What is the standard of proof in a debarment action?
(a) In any debarment action, we must establish the cause for debarment by a preponderance of the evidence.
(b) If the proposed debarment is based upon a conviction or civil judgment, the standard of proof is met.

§ 44.855 Who has the burden of proof in a debarment action?
(a) We have the burden to prove that a cause for debarment exists.
(b) Once a cause for debarment is established, you as a respondent have the burden of demonstrating to the satisfaction of the debarring official that you are presently responsible and that debarment is not necessary.

§ 44.860 What factors may influence the debarring official's decision?
This section lists the mitigating and aggravating factors that the debarring official may consider in determining whether to debar you and the length of your debarment period. The debarring official may consider other factors if appropriate in light of the circumstances of a particular case. The existence or nonexistence of any factor, such as
one of those set forth in this section, is not necessarily determinative of your present responsibility. In making a debarment decision, the debarring official may consider the following factors:
(a) The actual or potential harm or impact that results or may result from the wrongdoing.
(b) The frequency of incidents and/or duration of the wrongdoing.
(c) Whether there is a pattern or prior history of wrongdoing. For example, if you have been found by another Federal agency or a State agency to have engaged in wrongdoing similar to that found in the debarment action, the existence of this fact may be used by the debarring official in determining that you have a pattern or prior history of wrongdoing.
(d) Whether you are or have been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this part.
(e) Whether you have entered into an administrative agreement with a Federal agency or a State or local government that is not governmentwide but is based on conduct similar to one or more of the causes for debarment specified in this part.
(f) Whether and to what extent you planned, initiated, or carried out the wrongdoing.
(g) Whether you have accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for debarment.
(h) Whether you have paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and have made or agreed to make full restitution.
(i) Whether you have cooperated fully with the government agencies during the investigation and any court or administrative action. In determining the extent of cooperation, the debarring official may consider when the cooperation began and whether you disclosed all pertinent information known to you.
(j) Whether the wrongdoing was pervasive within your organization.
(k) The kind of positions held by the individuals involved in the wrongdoing.
(l) Whether your organization took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.
(m) Whether your principals tolerated the offense.
(n) Whether you brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.
(o) Whether you have fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.
(p) Whether you had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.
(q) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.
(r) Whether you have had adequate time to eliminate the circumstances within your organization that led to the cause for the debarment.
(s) Other factors that are appropriate to the circumstances of a particular case.
[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.865 How long may my debarment last?
(a) If the debarring official decides to debar you, your period of debarment will be based on the seriousness of the cause(s) upon which your debarment is based. Generally, debarment should not exceed three years. However, if circumstances warrant, the debarring official may impose a longer period of debarment.
(b) In determining the period of debarment, the debarring official may consider the factors in § 44.860. If a suspension has preceded your debarment, the debarring official must consider the time you were suspended.
(c) If the debarment is for a violation of the provisions of the Drug-Free Workplace Act of 1988, your period of debarment may not exceed five years.

§ 44.870 When do I know if the debarring official debars me?
(a) The debarring official must make a written decision whether to debar within 45 days of closing the official record. The official record closes upon the debarring official's receipt of final submissions, information and findings of fact, if any. The debarring official may extend that period for good cause.
(b) The debarring official sends you written notice, pursuant to § 44.615 that the official decided, either --
(1) Not to debar you; or
(2) To debar you. In this event, the notice:
(i) Refers to the Notice of Proposed Debarment;
(ii) Specifies the reasons for your debarment;
(iii) States the period of your debarment, including the effective dates; and
(iv) Advises you that your debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception.

§ 44.875 May I ask the debarring official to reconsider a decision to debar me?
Yes, as a debarred person you may ask the debarring official to reconsider the debarment decision or to reduce the time period or scope of the debarment. However, you must put your request in writing and support it with documentation.
§ 44.880 What factors may influence the debarring official during reconsideration?
The debarring official may reduce or terminate your debarment based on --
(a) Newly discovered material evidence;
(b) A reversal of the conviction or civil judgment upon which your debarment was based;
(c) A bona fide change in ownership or management;
(d) Elimination of other causes for which the debarment was imposed; or
(e) Other reasons the debarring official finds appropriate.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.885 May the debarring official extend a debarment?
(a) Yes, the debarring official may extend a debarment for an additional period, if that official determines that an extension is necessary to protect the public interest.
(b) However, the debarring official may not extend a debarment solely on the basis of the facts and circumstances upon which the initial debarment action was based.
(c) If the debarring official decides that a debarment for an additional period is necessary, the debarring official must follow the applicable procedures in this subpart, and subpart F of this part, to extend the debarment.
[68 FR 66534, 66618, Nov. 26, 2003]

Subpart I -- Definitions

§ 44.900 Adequate evidence.
§ 44.905 Affiliate.
§ 44.910 Agency.
§ 44.915 Agent or representative.
§ 44.920 Civil judgment.
§ 44.925 Conviction.
§ 44.930 Debarment.
§ 44.935 Debarring official.
§ 44.940 Disqualified.
§ 44.945 Excluded or exclusion.
§ 44.950 Excluded Parties List System
§ 44.955 Indictment.
§ 44.960 Ineligible or ineligibility.
§ 44.965 Legal proceedings.
§ 44.970 Nonprocurement transaction.
§ 44.975 Notice.
§ 44.980 Participant.
§ 44.985 Person.
§ 44.990 Preponderance of the evidence.
§ 44.995 Principal.
§ 44.1000 Respondent.
§ 44.1005 State.
§ 44.1010 Suspending official.
§ 44.1015 Suspension.
§ 44.1020 Voluntary exclusion or voluntarily excluded.

§ 44.900 Adequate evidence.
Adequate evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.905 Affiliate.
Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways we use to determine control include, but are not limited to --
(a) Interlocking management or ownership;
(b) Identity of interests among family members;
(c) Shared facilities and equipment;
(d) Common use of employees; or
(e) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.910 Agency.
Agency means any United States executive department, military department, defense agency, or any other agency of the executive branch. Other agencies of the Federal government are not considered "agencies" for the purposes of this part unless they issue regulations adopting the governmentwide Debarment and Suspension system under Executive orders 12549 and 12689.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.915 Agent or representative.
Agent or representative means any person who acts on behalf of, or who is authorized to commit, a participant in a covered transaction.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.920 Civil judgment.
Civil judgment means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-3812).
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.925 Conviction.
Conviction means --
(a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or
(b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.
[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.930 Debarment.
Debarment means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred.
[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.935 Debarring official.
(a) Debarring official means an agency official who is authorized to impose debarment. A debarring official is either --
(1) The agency head; or
(2) An official designated by the agency head.
(b) For the Department of Veterans Affairs the debarring official is:
(1) For the Veterans Health Administration, the Under Secretary for Health;
(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.
[68 FR 66534, 66618, 66619, Nov. 26, 2003]

§ 44.940 Disqualified.
Disqualified means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under --
(a) The Davis-Bacon Act (40 U.S.C. 276(a));
(b) The equal employment opportunity acts and Executive orders; or
[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.945 Excluded or exclusion.
Excluded or exclusion means --
(a) That a person or commodity is prohibited from being a participant in covered transactions, whether the person has been suspended; debarred; proposed for debarment under 48 CFR part 9, subpart 9.4; voluntarily excluded; or
(b) The act of excluding a person.
§ 44.950 Excluded Parties List System
Excluded Parties List System (EPLS) means the list maintained and disseminated by the General Services Administration (GSA) containing the names and other information about persons who are ineligible. The EPLS system includes the printed version entitled, "List of Parties Excluded or Disqualified from Federal Procurement and Nonprocurement Programs," so long as published.

[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.955 Indictment.
Indictment means an indictment for a criminal offense. A presentment, information, or other filing by a competent authority charging a criminal offense shall be given the same effect as an indictment.

[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.960 Ineligible or ineligibility.
Ineligible or ineligibility means that a person or commodity is prohibited from covered transactions because of an exclusion or disqualification.

[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.965 Legal proceedings.
Legal proceedings means any criminal proceeding or any civil judicial proceeding, including a proceeding under the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812), to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term also includes appeals from those proceedings.

[68 FR 66534, 66618, Nov. 26, 2003]

§ 44.970 Nonprocurement transaction.
(a) Nonprocurement transaction means any transaction, regardless of type (except procurement contracts), including, but not limited to the following:
(1) Grants.
(2) Cooperative agreements.
(3) Scholarships.
(4) Fellowships.
(5) Contracts of assistance.
(6) Loans.
(7) Loan guarantees.
(8) Subsidies.
(9) Insurances.
(10) Payments for specified uses.
(11) Donation agreements.
(b) A nonprocurement transaction at any tier does not require the transfer of Federal funds.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.975 Notice.
Notice means a written communication served in person, sent by certified mail or its equivalent, or sent electronically by e-mail or facsimile. (See § 44.615.)
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.980 Participant.
Participant means any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.985 Person.
Person means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.
[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.990 Preponderance of the evidence.
Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.
[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.995 Principal.
Principal means --
(a) An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or
(b) A consultant or other person, whether or not employed by the participant or paid with Federal funds, who --
(1) Is in a position to handle Federal funds;
(2) Is in a position to influence or control the use of those funds; or,
(3) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.
(c) In the Department of Veterans Affairs loan guaranty program, principals include, but are not limited to the following:
(1) Loan officers.
(2) Loan solicitors.
(3) Loan processors.
(4) Loan servicers.
(5) Loan supervisors.
(6) Mortgage brokers.
(7) Office managers.
(8) Staff appraisers and inspectors.
(9) Fee appraisers and inspectors.
(10) Underwriters.
(11) Bonding companies.
(12) Real estate agents and brokers.
(13) Management and marketing agents.
(14) Accountants, consultants, investments bankers, architects, engineers, attorneys, and others in a business relationship with participants in connection with a covered transaction under the Department of Veterans Affairs loan guaranty program.
(15) Contractors involved in the construction, improvement or repair of properties financed with Department of Veterans Affairs guaranteed loans.
(16) Closing Agents.
[68 FR 66534, 66618, 66619, Nov. 26, 2003]

§ 44.1000 Respondent.
Respondent means a person against whom an agency has initiated a debarment or suspension action.
[68 FR 66534, 66618, Nov. 26, 2003]
§ 44.1005 State.
(a) State means --
(1) Any of the states of the United States;
(2) The District of Columbia;
(3) The Commonwealth of Puerto Rico;
(4) Any territory or possession of the United States; or
(5) Any agency or instrumentality of a state.
(b) For purposes of this part, State does not include institutions of higher education, hospitals, or units of local government.

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.1010 Suspending official.
(a) Suspending official means an agency official who is authorized to impose suspension. The suspending official is either:
(1) The agency head; or
(2) An official designated by the agency head.
(b) For the Department of Veterans Affairs the suspending official is:
(1) For the Veterans Health Administration, the Under Secretary for Health;
(2) For the Veterans Benefits Administration, the Under Secretary for Benefits; and
(3) For the National Cemetery Administration, the Deputy Under Secretary for Operations.

[68 FR 66534, 66618, 66619, Nov. 26, 2003]

[EFFECTIVE DATE NOTE: 68 FR 66534, 66618, 66619, Nov. 26, 2003, revised Part 44, and added paragraph (b), effective Nov. 26, 2003.]

§ 44.1015 Suspension.
Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.

[68 FR 66534, 66618, Nov. 26, 2003]


§ 44.1020 Voluntary exclusion or voluntarily excluded.
(a) Voluntary exclusion means a person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect.
(b) Voluntarily excluded means the status of a person who has agreed to a voluntary exclusion.

[68 FR 66534, 66618, Nov. 26, 2003]
Subpart J -- Limited Denial of Participation

§ 44.1100 General.
Field Facility Directors are authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except lenders and manufactured home manufacturers. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

§ 44.1105 Cause for a limited denial of participation.
(a) Causes. A limited denial of participation shall be based upon adequate evidence of any of the following causes:
(1) Irregularities in a participant's or contractor's performance in the VA loan guaranty program;
(2) Denial of participation in programs administered by the Department of Housing and Urban Development or the Department of Agriculture, Rural Housing Service;
(3) Failure to satisfy contractual obligations or to proceed in accordance with contract specifications;
(4) Failure to proceed in accordance with VA requirements or to comply with VA regulations;
(5) Construction deficiencies deemed by VA to be the participant's responsibility;
(6) Falsely certifying in connection with any VA program, whether or not the certification was made directly to VA;
(7) Commission of an offense or other cause listed in § 44.800;
(8) Violation of any law, regulation, or procedure relating to the application for guaranty, or to the performance of the obligations incurred pursuant to a commitment to guaranty;
(9) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department;
(10) Imposition of a limited denial of participation by any other VA field facility;
(b) Indictment. A criminal indictment or information shall constitute adequate evidence for the purpose of limited denial of participation actions.
(c) Limited denial of participation. Imposition of a limited denial of participation by a VA field facility shall, at the discretion of any other VA field facility, constitute adequate evidence for a concurrent limited denial of participation. Where such a
§ 44.1110 Scope and period of a limited denial of participation.
(a) Scope and period. The scope of a limited denial of participation shall be as follows:
(1) A limited denial of participation extends only to participation in the VA Loan Guaranty Program and shall be effective only within the geographic jurisdiction of the office or offices imposing it.
(2) The sanction may be imposed for a period not to exceed 12 months except for unresolved construction deficiencies. In cases involving construction deficiencies, the builder may be excluded for either a period not to exceed 12 months or for an indeterminate period which ends when the deficiency has been corrected or otherwise resolved in a manner acceptable to VA.
(b) Effectiveness. The sanction shall be effective immediately upon issuance and shall remain effective for the prescribed period. If the cause for the limited denial of participation is resolved before the expiration of the prescribed period, the official who imposed the sanction may terminate it. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.
(c) Affiliates. An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is capable of meeting VA requirements and is currently a responsible entity and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 44.1111 Notice.
(a) Generally. A limited denial of participation shall be initiated by advising a participant or contractor, and any specifically named affiliate, by certified mail, return receipt requested:
(1) That the sanction is effective as of the date of the notice;
(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;
(3) Of the cause(s) relied upon under § 44.1105 for imposing the sanction;
(4) Of the right to request in writing, within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held within 10 business days of receipt of the request;
(5) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.
(b) Notification of action. After 30 days, if no conference has been requested, the official imposing the limited denial of participation will notify VA Central Office of the
action taken and of the fact that no conference has been requested. If a conference is requested within the 30-day period, VA Central Office need not be notified unless a decision to affirm all or a portion of the remaining period of exclusion is issued. VA Central Office will notify all VA field offices of sanctions imposed and still in effect under this subpart.

[71 FR 27203, May 10, 2006]

§ 44.1112 Conference.
Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 44.1113. Although formal rules of procedure do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is made to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of the notice of decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

[71 FR 27203, May 10, 2006]

§ 44.1113 Appeal.
Where the decision is made to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Under Secretary for Benefits, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at §§ 44.825 through 44.855. Where a limited denial of participation is followed by a suspension or debarment, the limited denial of participation shall be superseded and the appeal shall be heard solely as an appeal of the suspension or debarment.

[71 FR 27203, May 10, 2006]
Appendix to Part 44 -- Covered Transactions

[PUBLISHER'S NOTE: In the graphic below, § -.220 refers to § 44.220.]
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[68 FR 66534, 66618, Nov. 26, 2003]


PART 45 -- NEW RESTRICTIONS ON LOBBYING

SUBPART A -- GENERAL
SUBPART B -- ACTIVITIES BY OWN EMPLOYEES
SUBPART C -- ACTIVITIES BY OTHER THAN OWN EMPLOYEES
SUBPART D -- PENALTIES AND ENFORCEMENT
SUBPART E -- EXEMPTIONS
SUBPART F -- AGENCY REPORTS
§ 45.100 Conditions on use of funds.

No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.


§ 45.105 Definitions.

For purposes of this part:

(a) Agency, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) Covered Federal action means any of the following Federal actions:

(1) The awarding of any Federal contract;
(2) The making of any Federal grant;
(3) The making of any Federal loan;
(4) The entering into of any cooperative agreement; and,
(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

c) Federal contract means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

d) Federal cooperative agreement means a cooperative agreement entered into by an agency.

e) Federal grant means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

f) Federal loan means a loan made by an agency. The term does not include loan guarantee or loan insurance.

g) Indian tribe and tribal organization have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

h) Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

i) Loan guarantee and loan insurance means an agency's guarantee or insurance of a loan made by a person.

j) Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

k) Officer or employee of an agency includes the following individuals who are employed by an agency:
   (1) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
   (2) A member of the uniformed services as defined in section 101(3), title 37, U.S.C.;
   (3) A special Government employee as defined in section 202, title 18, U.S.C.; and,
   (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S.C., appendix 2.

l) Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is
operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) Recipient includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.


§ 45.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.
(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:
(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:
(1) A subcontract exceeding $100,000 at any tier under a Federal contract;
(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;
(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,
(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,
Shall file a certification, and a disclosure form, if required, to the next tier above.
(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.
(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S.C.
(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.
(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either Subpart B or C.

SUBPART B -- ACTIVITIES BY OWN EMPLOYEES

§ 45.200 Agency and legislative liaison.
§ 45.205 Professional and technical services.
§ 45.210 Reporting.

§ 45.200 Agency and legislative liaison.
(a) The prohibition on the use of appropriated funds, in § 45.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.
(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:
   (1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,
   (2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
   (1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
   (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,
   (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507 and other subsequent amendments.
(e) Only those activities expressly authorized by this section are allowable under this section.


§ 45.205 Professional and technical services.
(a) The prohibition on the use of appropriated funds, in § 45.100(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting
requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.


§ 45.210 Reporting.
No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.


§ 45.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 45.100(a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 45.110(a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.


§ 45.400 Penalties.
§ 45.405 Penalty procedures.
§ 45.410 Enforcement.

§ 45.400 Penalties.
(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.
(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.
(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.
(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.
(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.


§ 45.405 Penalty procedures.
Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.


§ 45.410 Enforcement.
The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

§ 45.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.


SUBPART F -- AGENCY REPORTS

§ 45.600 Semi-annual compilation.
§ 45.605 Inspector General report.

APPENDIX A TO PART 45 -- CERTIFICATION REGARDING LOBBYING
APPENDIX B TO PART 45 -- DISCLOSURE FORM TO REPORT LOBBYING

§ 45.600 Semi-annual compilation.
(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.
(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.
(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.
(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.
(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.
(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.
(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.
(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.


§ 45.605 Inspector General report.
(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with
submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.


APPENDIX A TO PART 45 -- CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.


APPENDIX B TO PART 45 -- DISCLOSURE FORM TO REPORT LOBBYING

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PART 46 -- POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK

Subpart A -- General Provisions
Subpart B -- National Practitioner Data Bank Reporting
Subpart C -- National Practitioner Data Bank Inquiries
Subpart D -- Miscellaneous

Subpart A -- General Provisions

§ 46.1 Definitions.
§ 46.2 Purpose.

§ 46.1 Definitions.
(b) Claim of medical malpractice means a written claim or demand for payment based on an act or omission of a physician, dentist, or other health care practitioner in furnishing (or failing to furnish) health care services, and includes the filing of a complaint or administrative tort claim under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671-2680.
(c) Clinical privileges means privileges granted by a health care entity to individuals to furnish health care.
(d) Dentist means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or dentistry by a State (or any individual who holds himself or herself out to be so authorized).
(e) Director means the duly appointed director of a Department of Veterans Affairs health care facility or any individual with authorization to act for that person in the director's absence.
(f) Gross negligence is materially worse than substandard care, and consists of an entire absence of care, or an absence of even slight care or diligence; it implies a thoughtless disregard of consequences or indifference to the rights of others.
(g) Health care facility means a hospital, domiciliary, outpatient clinic, or any other entity that provides health care services.
(h) Other health care practitioner means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services.
(i) Physician means a doctor of medicine or osteopathy authorized to practice medicine or surgery by a State (or any individual who holds himself or herself out to be so authorized).
(j) Professional review action means a recommendation by a professional review panel (with at least a majority vote) to affect adversely the clinical privileges of a physician or dentist taken as a result of a professional review activity based on the competence or professional conduct of an individual physician or dentist in cases in which such conduct affects or could affect adversely the health or welfare of a patient, or patients. An action is not considered to be based on the competence or professional conduct of a physician or dentist, if the action is primarily based on:
(1) A physician's or dentist's association with, administrative supervision of, delegation of authority to, support for, or training of, a member or members of a particular class of health care practitioner or professional, or
(2) Any other matter that does not relate to the competence or professional conduct of a physician or dentist in his/her practice at a Department of Veterans Affairs health care facility.
(k) Professional review activity means an activity with respect to an individual physician or dentist to establish a recommendation regarding:
(1) Whether the physician or dentist may have clinical privileges with respect to the medical staff of the facility;
(2) The scope or conditions of such privileges or appointment; or
(3) Change or modification of such privileges.
(l) State means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territories or possessions of the United States.
(m) State Licensing Board means, with respect to a physician, dentist, or other health care practitioner in a State, the agency of the State, which is primarily responsible for the licensing of the physician, dentist, or practitioner to furnish health care services.
(n) Willful professional misconduct means worse than mere substandard care, and contemplates the intentional doing of something with knowledge that it is likely to result in serious injuries or in reckless disregard of its probable consequences.


§ 46.2 Purpose.
The National Practitioner Data Bank, authorized by the Act and administered by the Department of Health and Human Services, was established for the purpose of collecting and releasing certain information concerning physicians, dentists, and other health care practitioners. The Act mandates that the Department of Health and Human Services seek to enter into a Memorandum of Understanding with the Department of Veterans Affairs (VA) for the purpose of having VA participate in the National Practitioner Data Bank. Such a Memorandum of Understanding has been established. Pursuant to the Memorandum of Understanding, VA will obtain information from the Data Bank concerning physicians, dentists, and other health care practitioners who provide or seek to provide health care services at VA facilities and also report information regarding malpractice payments and adverse clinical privileges actions to the Data Bank. This part essentially restates or interprets provisions of that Memorandum of Understanding and constitutes the policy of VA for participation in the National Practitioner Data Bank.


Subpart B -- National Practitioner Data Bank Reporting

§ 46.3 Malpractice payment reporting.
§ 46.4 Clinical privileges actions reporting.

§ 46.3 Malpractice payment reporting.
(a) VA will file a report with the National Practitioner Data Bank, in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice. The report will identify the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made. It is intended that the report be filed within 30 days of the date payment is made. This may not be possible in all cases; e.g., sometimes notification of payment is delayed, and sometimes the malpractice payment review process cannot be completed within the timeframe. The report will provide the following information:
(1) With respect to the physician, dentist, or other licensed health care practitioner for whose benefit the payment is made --
   (i) Name;
   (ii) Work address;
   (iii) Home address, if known;
   (iv) Social Security number, if known, and if obtained in accordance with section 7 of the Privacy Act of 1974;
   (v) Date of birth;
   (vi) Name of each professional school attended and year of graduation;
   (vii) For each professional license: the license number, the field of licensure, and the State in which the license is held;
   (viii) Drug Enforcement Administration registration number, if applicable and known;
   (ix) Name of each health care entity with which affiliated, if known.
(2) With respect to the reporting VA entity --
   (i) Name and address of the reporting entity;
   (ii) Name, title and telephone number of the responsible official submitting the report on behalf of the Federal government; and
   (iii) Relationship of the entity to the physician, dentist, or other health care practitioner being reported.
(3) With respect to the judgment or settlement resulting in the payment-
   (i) Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body and the case number;
   (ii) Date or dates on which the act(s) or omission(s), which gave rise to the action or claim occurred;
   (iii) Date of judgment or settlement;
   (iv) Amount paid, date of payment, and whether payment is for a judgment or a settlement;
   (v) Description and amount of judgment or settlement and any conditions attached thereto, including terms of payment;
(vi) A description of the acts or omissions and injuries or illnesses upon which the action or claim was based; and
(vii) Classification of the acts or omissions in accordance with a reporting code adopted by the Secretary of Health and Human Services.

(b) Payment will be considered to have been made for the benefit of a physician, dentist, or other licensed health care practitioner only if (at least a majority of) a malpractice payment review panel concludes that payment was related to substandard care, professional incompetence, or professional misconduct on the part of the physician, dentist, or other licensed health care practitioner. For purposes of this part, a panel shall have a minimum of three individuals appointed by the Director, Medical-Legal Affairs (including at least one member of the profession/occupation of the practitioner(s) whose actions are under review). The conclusions of the panel shall, at a minimum, be based on review of documents pertinent to the care that led to the claim. These documents include the medical records of the patient whose care led to the claim, any report of an administrative investigation board appointed to investigate the care, and the opinion of any consultant which the panel may request in its discretion. These documents do not include those generated primarily for consideration or litigation of the claim of malpractice. In addition, to the extent practicable, the documents shall include written statements of the individual(s) involved in the care which led to the claim. The practitioner(s) whose actions are under review will receive a written notice, hand-delivered or sent to the practitioner's last known address (return receipt requested), from the VA facility director at the time the VA facility director receives the Notice of Payment. That notice from the VA facility director will indicate that VA is considering whether to report the practitioner to the National Practitioner Data Bank because of a specified malpractice payment made, and provide the practitioner the opportunity, within 60 days of receipt, to submit a written statement concerning the care that led to the claim. Inability to notify or non-response from the identified practitioner(s) will not preclude completion of the review and reporting process. The panel, at its discretion, may request additional information from the practitioner or the VA facility where the incident occurred. The review panel's notification to the VA facility Director shall include the acts or omissions considered, the reporting conclusion, and the rationale for the conclusion.

(c) Attending staff (including contract employees, such as scarce medical specialists providing care pursuant to a contract under 38 U.S.C. 7409) are responsible for actions of licensed trainees assigned under their supervision. Notwithstanding the provisions of paragraph (b) of this section, actions of a licensed trainee (intern or resident) acting within the scope of his or her training program that otherwise would warrant reporting for substandard care, professional incompetence, or professional misconduct under the provisions of paragraph (b) of this section, will be reported only if the panel, by at least a majority, concludes that such actions constitute gross negligence or willful professional misconduct. For purposes of paragraph (b) of this section, payment will be considered to be made for the benefit of a physician, dentist, or other health care practitioner, in their supervisory capacity, if the panel concludes, by at least a majority, that the physician, dentist or other health care practitioner was acting in a supervisory capacity; that the payment was related to substandard care, professional incompetence, or professional misconduct of the trainee and not the supervisor; and that the trainee did not commit gross negligence or willful professional misconduct. Such report will note that the
physician, dentist, or other health care practitioner is being reported in a supervisory capacity.

Note to paragraph (c): Licensed trainees acting outside the scope of their training program (e.g. acting as admitting officer of the day) will be reported under the provisions of paragraph (b) of this section.

(d) The Director of the facility at which the claim arose has the primary responsibility for submitting the report to the National Practitioner Data Bank and for providing a copy to the practitioner, to the State Licensing Board in each State where the practitioner holds a license, and to the State Licensing Board in which the facility is located. However, the Chief Patient Care Services Officer is also authorized to submit the report to the National Practitioner Data Bank and provide copies to the practitioner and State Licensing Boards in cases where the Chief Patient Care Services Officer deems it appropriate to do so. The Director of the facility also shall provide to the practitioner a copy of the review panel's notification to the Director.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0621.)


§ 46.4 Clinical privileges actions reporting.
(a) VA will file an adverse action report with the National Practitioner Data Bank in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any of the following actions:
(1) An action of a Director after consideration of a professional review action that, for a period longer than 30 days, adversely affects (by reducing, restricting, suspending, revoking, or failing to renew) the clinical privileges of a physician or dentist relating to possible incompetence or improper professional conduct.
(2) Acceptance of the surrender of clinical privileges, including the surrender of clinical privileges inherent in resignation or retirement, or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding whether or not the individual remains in VA service.
(b) The report specified in paragraph (a) of this section will provide the following information --
(1) With respect to the physician or dentist:
   (i) Name;
   (ii) Work address;
   (iii) Home address, if known;
   (iv) Social Security number, if known (and if obtained in accordance with section 7 of the Privacy Act of 1974);
   (v) Date of birth;
   (vi) Name of each professional school attended and year of graduation;
   (vii) For each professional license: the license number, the field of licensure, and the name of the State in which the license is held;
   (viii) Drug Enforcement Administration registration number, if applicable and known;
(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender; and
(x) Action taken, date action was made final, length of action and effective date of the action.

(2) With respect to the VA facility --
(i) Name and address of the reporting facility; and
(ii) Name, title, and telephone number of the responsible official submitting the report.
(c) A copy of the report referred to in paragraph (a) of this section will also be filed with the
State Licensing Board in the State(s) in which the practitioner is licensed and in which
the facility is located. It is intended that the report be filed within 15 days of the
date the action is made final, that is, subsequent to any internal (to the facility) appeal.
(d) As soon as practicable after it is determined that a report shall be filed with the
National Practitioner Data Bank and State Licensing Boards under paragraphs (a)(2) and
(c) of this section, VA shall provide written notice to the practitioner that a report will be
filed with the National Practitioner Data Bank with a copy to the State Licensing Board
in each State in which the practitioner is licensed and in the State in which the facility is
located.


[EFFECTIVE DATE NOTE: 67 FR 19678, 19681, Apr. 23, 2002, revised Part 46,
effective May 23, 2002.]
Subpart C -- National Practitioner Data Bank Inquiries

§ 46.5 National Practitioner Data Bank inquiries.

§ 46.5 National Practitioner Data Bank inquiries.
VA will request information from the National Practitioner Data Bank, in accordance with the regulations published at 45 CFR part 60, subpart C, as applicable, concerning a physician, dentist, or other licensed health care practitioner as follows:
(a) At the time a physician, dentist, or other health care practitioner applies for a position at VA Central Office, any of its regional offices, or on the medical staff, or for clinical privileges at a VA hospital or other health care entity operated under the auspice of VA;
(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on the medical staff or who has clinical privileges at a VA hospital or other health care entity operated under the auspice of VA; and
(c) At other times pursuant to VA policy and needs and consistent with the Act and Department of Health and Human Services Regulations (45 CFR part 60).

Subpart D -- Miscellaneous

§ 46.6 Medical quality assurance records confidentiality.
§ 46.7 Prohibitions concerning negotiations.
§ 46.8 Independent contractors.

§ 46.6 Medical quality assurance records confidentiality.
Note that medical quality assurance records that are confidential and privileged under the provisions of 38 U.S.C. 5705 may not be used as evidence for reporting individuals to the National Practitioner Data Bank.


§ 46.7 Prohibitions concerning negotiations.
Reporting under this part (including the submission of copies) may not be the subject of negotiation in any settlement agreement, employee action, legal proceedings, or any other negotiated settlement.
[67 FR 19678, 19682, Apr. 23, 2002]

[EFFECTIVE DATE NOTE: 67 FR 19678, 19682, Apr. 23, 2002, added this section as part of the revision of Part 46, effective May 23, 2002.]

§ 46.8 Independent contractors.
Independent contractors acting on behalf of the Department of Veterans Affairs are subject to the National Practitioner Data Bank reporting provisions of this part. In the following circumstances, VA will provide the contractor with notice that a report of a clinical privileges action will be filed with the National Practitioner Data Bank with a copy with the State Licensing Board in the State(s) in which the contractor is licensed and in which the facility is located: where VA terminates a contract for possible incompetence or improper professional conduct, thereby automatically revoking the contractor's clinical privileges, or where the contractor terminates the contract, thereby surrendering clinical privileges, either while under investigation relating to possible incompetence or improper professional conduct or in return for not conducting such an investigation or proceeding.
[67 FR 19678, 19682, Apr. 23, 2002]

(38 U.S.C. 5705)
[EFFECTIVE DATE NOTE: 67 FR 19678, 19682, Apr. 23, 2002, added this section as part of the revision of Part 46, effective May 23, 2002.]
PART 47 – POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS TO STATE LICENSING BOARDS

§ 47.1 Definitions.
§ 47.2 Reporting to State Licensing Boards.

§ 47.1 Definitions.
(a) Dentist means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or medical dentistry by a State (or any individual who, without authority, holds himself or herself out to be so authorized).
(b) Other health care professional means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).
(c) Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or any individual who, without authority, holds himself or herself out to be so authorized).
(d) State means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territories or possessions of the United States.
(e) State Licensing Board means, with respect to a physician, dentist or other health care practitioner in a State, the agency of the State which is primarily responsible for the licensing of the physician, dentist or practitioner to provide health care services.
(f) Generally accepted standards of clinical practice means reasonable competence in the clinical aspects of one's responsibilities, as well as the moral and ethical behavior necessary to carry out those responsibilities.
(g) Separated licensed health care professional means a licensed health care professional who is no longer on VA rolls, regardless of whether the individual left voluntarily or involuntarily and regardless of the reason why the individual left.
(h) Currently employed licensed health care professional means a licensed health care professional who is on VA rolls.
(i) On VA rolls means on VA rolls, regardless of the status of the professional, such as full-time, part-time, contract service, fee-basis, or without compensation.
[58 FR 48455, Sept. 16, 1993; 63 FR 23664, 23665, Apr. 30, 1998]

[EFFECTIVE DATE NOTE: 63 FR 23664, 23665, Apr. 30, 1998, revised this section, effective June 1, 1998.]

§ 47.2 Reporting to State Licensing Boards.
It is the policy of VA to report to State Licensing Boards any currently employed licensed health care professional or separated licensed health care professional whose clinical practice during VA employment so significantly failed to meet generally
accepted standards of clinical practice as to raise reasonable concern for the safety of patients. The following are examples of actions that meet the criteria for reporting:
(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability; errors in transcribing, administering or documenting medication; inability to perform clinical procedures considered basic to the performance of one's occupation; performing procedures not included in one's clinical privileges in other than emergency situations;
(b) Patient neglect or abandonment;
(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment;
(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;
(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;
(f) Falsification of credentials;
(g) Falsification of medical records or prescriptions;
(h) Theft of drugs;
(i) Inappropriate dispensing of drugs;
(j) Unethical behavior or moral turpitude;
(k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and
(l) Violation of research ethics.
[58 FR 48456, Sept. 16, 1993; redesignated and revised at 63 FR 23664, 23665, Apr. 30, 1998]

[EFFECTIVE DATE NOTE: 63 FR 23664, 23665, Apr. 30, 1998, redesignated and revised this section, effective June 1, 1998.]
[CROSS REFERENCE: This section was formerly §47.3.]
PART 48 -- GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Subpart A -- Purpose and Coverage
Subpart B -- Requirements for Recipients Other Than Individuals
Subpart C -- Requirements for Recipients Who Are Individuals
Subpart D -- Responsibilities of Department of Veteran Affairs Awarding Officials
Subpart E -- Violations of this Part and Consequences
Subpart F -- Definitions
Subpart A -- Purpose and Coverage

§ 48.100 What does this part do?
§ 48.105 Does this part apply to me?
§ 48.110 Are any of my Federal assistance awards exempt from this part?
§ 48.115 Does this part affect the Federal contracts that I receive?

§ 48.100 What does this part do?
This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.105 Does this part apply to me?
(a) Portions of this part apply to you if you are either --
(1) A recipient of an assistance award from the Department of Veteran Affairs; or
(2) A(n) Department of Veteran Affairs awarding official. (See definitions of award and recipient in §§ 48.605 and 48.660, respectively.)
(b) The following table shows the subparts that apply to you:

<table>
<thead>
<tr>
<th>If you are . . .</th>
<th>see subparts . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) A recipient who is not an individual</td>
<td>A, B and E.</td>
</tr>
<tr>
<td>(2) A recipient who is an individual</td>
<td>A, C and E.</td>
</tr>
<tr>
<td>(3) A(n) Department of Veteran Affairs awarding official</td>
<td>A, D and E.</td>
</tr>
</tbody>
</table>

[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.110 Are any of my Federal assistance awards exempt from this part?
This part does not apply to any award that the Secretary determines that the application of this part would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.115 Does this part affect the Federal contracts that I receive?
It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 48.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free
Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

[68 FR 66534, 66619, Nov. 26, 2003]

Subpart B -- Requirements for Recipients Other Than Individuals

§ 48.200 What must I do to comply with this part?
§ 48.205 What must I include in my drug-free workplace statement?
§ 48.210 To whom must I distribute my drug-free workplace statement?
§ 48.215 What must I include in my drug-free awareness program?
§ 48.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
§ 48.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
§ 48.230 How and when must I identify workplaces?

§ 48.200 What must I do to comply with this part?
There are two general requirements if you are a recipient other than an individual.
(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to --
(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 48.205 through 48.220); and
(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 48.225).
(b) Second, you must identify all known workplaces under your Federal awards (see § 48.230).
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.205 What must I include in my drug-free workplace statement?
You must publish a statement that --
(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;
(b) Specifies the actions that you will take against employees for violating that prohibition; and
(c) Lets each employee know that, as a condition of employment under any award, he or she:
(1) Will abide by the terms of the statement; and
(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.
[68 FR 66534, 66619, Nov. 26, 2003]

§ 48.210 To whom must I distribute my drug-free workplace statement?
You must require that a copy of the statement described in § 48.205 be given to each employee who will be engaged in the performance of any Federal award.
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.215 What must I include in my drug-free awareness program?
You must establish an ongoing drug-free awareness program to inform employees about --
(a) The dangers of drug abuse in the workplace;
(b) Your policy of maintaining a drug-free workplace;
(c) Any available drug counseling, rehabilitation, and employee assistance programs; and
(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
If you are a new recipient that does not already have a policy statement as described in § 48.205 and an ongoing awareness program as described in § 48.215, you must publish the statement and establish the program by the time given in the following table:

<table>
<thead>
<tr>
<th>If . . .</th>
<th>then you . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) The performance period of the award is less than 30 days</td>
<td>you must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed.</td>
</tr>
<tr>
<td>(b) The performance period of the award is 30 days or more</td>
<td>you must have the policy statement and program in place within 30 days after award.</td>
</tr>
<tr>
<td>(c) You believe there are extraordinary circumstances that will require more than 30 days</td>
<td>you may ask the Department of Veteran Affairs awarding official to give you additional time, if any, to be given is at the discretion of the awarding official.</td>
</tr>
</tbody>
</table>

[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
There are two actions you must take if an employee is convicted of a drug violation in the workplace:
(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 48.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must --
(1) Be in writing;
(2) Include the employee's position title;
(3) Include the identification number(s) of each affected award;
(4) Be sent within ten calendar days after you learn of the conviction; and
(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.
(b) Second, within 30 calendar days of learning about an employee's conviction, you must either --
(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or
(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.230 How and when must I identify workplaces?
(a) You must identify all known workplaces under each Department of Veteran Affairs award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces --
(1) To the Department of Veteran Affairs official that is making the award, either at the time of application or upon award; or
(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by Department of Veteran Affairs officials or their designated representatives.
(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
(c) If you identified workplaces to the Department of Veteran Affairs awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the Department of Veteran Affairs awarding official.

[68 FR 66534, 66619, Nov. 26, 2003]

Subpart C -- Requirements for Recipients Who Are Individuals

§ 48.300 What must I do to comply with this part if I am an individual recipient?
§ 48.301 [Reserved]

§ 48.300 What must I do to comply with this part if I am an individual recipient?
As a condition of receiving a(n) Department of Veteran Affairs award, if you are an individual recipient, you must agree that --
(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and
(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:
   (1) In writing.
   (2) Within 10 calendar days of the conviction.
   (3) To the Department of Veteran Affairs awarding official or other designee for each award that you currently have, unless § 48.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.301 [Reserved]
Subpart D -- Responsibilities of Department of Veteran Affairs Awarding Officials

§ 48.400 What are my responsibilities as a(n) Department of Veteran Affairs awarding official?

As a(n) Department of Veteran Affairs awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in --
(a) Subpart B of this part, if the recipient is not an individual; or
(b) Subpart C of this part, if the recipient is an individual.
[68 FR 66534, 66619, Nov. 26, 2003]

Subpart E -- Violations of this Part and Consequences

§ 48.500 How are violations of this part determined for recipients other than individuals?

A recipient other than an individual is in violation of the requirements of this part if the Secretary determines, in writing, that --
(a) The recipient has violated the requirements of subpart B of this part; or
(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.
[68 FR 66534, 66619, Nov. 26, 2003]

§ 48.505 How are violations of this part determined for recipients who are individuals?

An individual recipient is in violation of the requirements of this part if the Secretary determines, in writing, that --
(a) The recipient has violated the requirements of subpart C of this part; or
(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
[68 FR 66534, 66619, Nov. 26, 2003]

§ 48.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated this part, as described in § 48.500 or § 48.505, the Department of Veteran Affairs may take one or more of the following actions --
(a) Suspension of payments under the award;
(b) Suspension or termination of the award; and
(c) Suspension or debarment of the recipient under 38 CFR part 44, for a period not to exceed five years.
[68 FR 66534, 66619, 66620, Nov. 26, 2003]
§ 48.515 Are there any exceptions to those actions?
The Secretary may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official. [68 FR 66534, 66619, Nov. 26, 2003]
Subpart F -- Definitions

§ 48.605 Award.
§ 48.610 Controlled substance.
§ 48.615 Conviction.
§ 48.620 Cooperative agreement.
§ 48.625 Criminal drug statute.
§ 48.630 Debarment.
§ 48.635 Drug-free workplace.
§ 48.640 Employee.
§ 48.645 Federal agency or agency.
§ 48.650 Grant.
§ 48.655 Individual.
§ 48.660 Recipient.
§ 48.665 State.
§ 48.670 Suspension.

§ 48.605 Award.
Award means an award of financial assistance by the Department of Veteran Affairs or other Federal agency directly to a recipient.
(a) The term award includes:
(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.
(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule 38 CFR part 43 that implements OMB Circular A-102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.
(b) The term award does not include:
(1) Technical assistance that provides services instead of money.
(2) Loans.
(3) Loan guarantees.
(4) Interest subsidies.
(5) Insurance.
(6) Direct appropriations.
(7) Veterans' benefits to individuals (i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).
[68 FR 66534, 66619, 66620, Nov. 26, 2003]

[EFFECTIVE DATE NOTE: 68 FR 66534, 66619, 66620, Nov. 26, 2003, added Part 48, and amended this section, effective Nov. 26, 2003.]

§ 48.610 Controlled substance.
Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.
§ 48.615 Conviction.
Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

§ 48.620 Cooperative agreement.
Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 48.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

§ 48.625 Criminal drug statute.
Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

§ 48.630 Debarment.
Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

§ 48.635 Drug-free workplace.
Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.640 Employee.  
(a) Employee means the employee of a recipient directly engaged in the performance of work under the award, including --  
(1) All direct charge employees;  
(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and  
(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.  
(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces).
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.645 Federal agency or agency.  
Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.
[68 FR 66534, 66619, Nov. 26, 2003]


§ 48.650 Grant.  
Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship --  
(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and  
(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.
[68 FR 66534, 66619, Nov. 26, 2003]
§ 48.655 Individual.
Individual means a natural person.
[68 FR 66534, 66619, Nov. 26, 2003]

§ 48.660 Recipient.
Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency) or legal entity, however organized, that receives an award directly from a Federal agency.
[68 FR 66534, 66619, Nov. 26, 2003]

§ 48.665 State.
State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
[68 FR 66534, 66619, Nov. 26, 2003]

§ 48.670 Suspension.
Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Government-wide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.
[68 FR 66534, 66619, Nov. 26, 2003]
PART 49 -- UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A -- General
Subpart B -- Pre-Award Requirements
Subpart C -- Post-Award Requirements
Subpart D -- After-the-Award Requirements

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Subpart A -- General

§ 49.1 Purpose.
§ 49.2 Definitions.
§ 49.3 Effect on other issuances.
§ 49.4 Deviations.
§ 49.5 Subawards.

§ 49.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §§ 49.4, and 49.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52262, Sept. 1, 2005]


§ 49.2 Definitions.

(a) Accrued expenditures means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) Accrued income means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and
(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) Acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) Award means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) Closeout means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) Contract means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

(j) Date of completion means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) Disallowed costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy,
lower limits may be established.

(m) Excess property means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) Exempt property means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) Federal awarding agency means the Federal agency that provides an award to the recipient.

(p) Federal funds authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) Federal share of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) Funding period means the period of time when Federal funding is available for obligation by the recipient.

(s) Intangible property and debt instruments means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) Obligations means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) Outlays or expenditures means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors,
subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) Prior approval means written approval by an authorized official evidencing prior consent.

(x) Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 49.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) Project period means the period established in the award document during which Federal sponsorship begins and ends.

(aa) Property means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) Recipient means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and
development centers.

(dd) Research and development means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) Small awards means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) ($ 100,000).

(ff) Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance, which is excluded from the definition of "award" in paragraph (e) of this section.

(gg) Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) Supplies means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR 401.2(d)

(ii) Suspension means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(jj) Termination means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or
program.

(II) Unliquidated obligations, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) Unobligated balance means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) Unrecovered indirect cost means the difference between the amount awarded and the amount, which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) Working capital advance means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52262, Sept. 1, 2005]


§ 49.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 49.4.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52264, Sept. 1, 2005]


§ 49.4 Deviations.
The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements, which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52264, Sept. 1, 2005]


§ 49.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations in part 43 of this chapter.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52264, Sept. 1, 2005]

Subpart B -- Pre-Award Requirements

§ 49.10 Purpose.
§ 49.11 Pre-award policies.
§ 49.12 Forms for applying for Federal assistance.
§ 49.13 Debarment and suspension.
§ 49.14 Special award conditions.
§ 49.15 Metric system of measurement.
§ 49.16 Resource Conservation and Recovery Act (RCRA).
§ 49.17 Certifications and representations.

§ 49.10 Purpose.

Sections 49.11 through 49.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52264, Sept. 1, 2005]


§ 49.11 Pre-award policies.

(a) Use of grants and cooperative agreements, and contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public notice and priority setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
§ 49.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

(Authority: Pub. L. 104-156; 110 Stat. 1396)

§ 49.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with part 44 of this chapter, which restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
§ 49.14 Special award conditions.

If an applicant or recipient has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

(Authority: Pub. L. 104-156; 110 Stat. 1396)

§ 49.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

(Authority: Pub. L. 104-156; 110 Stat. 1396)
§ 49.16 Resource Conservation and Recovery Act (RCRA).

Under the RCRA (Pub. L. 94-580, codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52265, Sept. 1, 2005]


§ 49.17 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52265, Sept. 1, 2005]

Subpart C -- Post-Award Requirements

Financial and Program Management
Property Standards
Procurement Standards
Reports and Records
Termination and Enforcement
**Financial and Program Management**

§ 49.20 Purpose of financial and program management.

§ 49.21 Standards for financial management systems.

§ 49.22 Payment.

§ 49.23 Cost sharing or matching.

§ 49.24 Program income.

§ 49.25 Revision of budget and program plans.

§ 49.26 Non-Federal audits.

§ 49.27 Allowable costs.

§ 49.28 Period of availability of funds.

§ 49.29 Conditional exemptions.

§ 49.20 Purpose of financial and program management.

Sections 49.21 through 49.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

(Authority: Pub. L. 104-156; 110 Stat. 1396)

[70 FR 52248, 52265, Sept. 1, 2005]


§ 49.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 49.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income
and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described in paragraphs (a) through (d) of this section, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52265, Sept. 1, 2005]

§ 49.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 49.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.
(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless either of the following conditions apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use
women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless any of the following conditions apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF-270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF-270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52265, Sept. 1, 2005]

§ 49.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of the following.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's
organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if either of the following conditions apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.
(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52266, Sept. 1, 2005]


§ 49.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically.
unless the awarding agency indicates in the terms and conditions another alternative on
the award or the recipient is subject to special award conditions, as indicated in § 49.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award
provide otherwise, recipients shall have no obligation to the Federal Government
regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of
the award, costs incident to the generation of program income may be deducted from
gross income to determine program income, provided these costs have not been charged
to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the
requirements of the Property Standards (See §§ 49.30 through 49.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award
provide otherwise, recipients shall have no obligation to the Federal Government with
respect to program income earned from license fees and royalties for copyrighted
material, patents, patent applications, trademarks, and inventions produced under an
award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions
made under an experimental, developmental, or research award.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52267, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52267, Sept. 1, 2005, added Part 49, effective
Oct. 3, 2005.]

§ 49.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved
during the award process. It may include either the Federal and non-Federal share, or
only the Federal share, depending upon Federal awarding agency requirements. It shall be
related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and
request prior approvals for budget and program plan revisions, in accordance with this
section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal
awarding agencies for one or more of the following program or budget related reasons.
(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.


(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A-21 and A-122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using
unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever any of the following conditions apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 49.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any
fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5,000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

Authority: Pub. L. 104-156; 110 Stat. 1396
[70 FR 52248, 52268, Sept. 1, 2005]

§ 49.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

Authority: Pub. L. 104-156; 110 Stat. 1396
§ 49.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52269, Sept. 1, 2005]


§ 49.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52269, Sept. 1, 2005]

§ 49.29 Conditional exemptions.

(a) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and part 43 of this chapter.

(c) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: Funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52269, Sept. 1, 2005]

Property Standards

§ 49.30 Purpose of property standards.
§ 49.31 Insurance coverage.
§ 49.32 Real property.
§ 49.33 Federally-owned and exempt property.
§ 49.34 Equipment.
§ 49.35 Supplies and other expendable property.
§ 49.36 Intangible property.
§ 49.37 Property trust relationship.

§ 49.30 Purpose of property standards.

Sections 49.31 through 49.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 49.31 through 49.37.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52269, Sept. 1, 2005]


§ 49.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52269, Sept. 1, 2005]

§ 49.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52269, Sept. 1, 2005]
§ 49.33 Federally-owned and exempt property.

(a) Federally-owned property. (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52270, Sept. 1, 2005]


§ 49.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as
the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency, which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.
(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the
agency’s requirements. If no requirement exists within that agency, the availability of the
equipment shall be reported to the General Services Administration by the Federal
awarding agency to determine whether a requirement for the equipment exists in other
Federal agencies. The Federal awarding agency shall issue instructions to the recipient no
later than 120 calendar days after the recipient's request and the following procedures
shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days
after the recipient's request, the recipient shall sell the equipment and reimburse the
Federal awarding agency an amount computed by applying to the sales proceeds the
percentage of Federal participation in the cost of the original project or program.
However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be
reimbursed by the Federal Government by an amount which is computed by applying the
percentage of the recipient's participation in the cost of the original project or program to
the current fair market value of the equipment, plus any reasonable shipping or interim
storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall
be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal
Government or to a third party named by the Federal Government when such third party
is otherwise eligible under existing statutes. Such transfer shall be subject to the
following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made
known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar
days after receipt of a final inventory. The final inventory shall list all equipment
acquired with grant funds and federally-owned equipment. If the Federal awarding
agency fails to issue disposition instructions within the 120 calendar day period, the
recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment
shall be subject to the provisions for federally-owned equipment.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52270, Sept. 1, 2005]

[EFFECTIVE DATE NOTE: 70 FR 52248, 52270, Sept. 1, 2005, added Part 49, effective
Oct. 3, 2005.]
§ 49.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52271, Sept. 1, 2005]


§ 49.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to an FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 522(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the Federal Government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the
originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 49.34(g).

(Authority: Pub. L. 104-156; 110 Stat. 1396)  
[70 FR 52248, 52271, Sept. 1, 2005]  


§ 49.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

(Authority: Pub. L. 104-156; 110 Stat. 1396)  
[70 FR 52248, 52272, Sept. 1, 2005]  

Procurement Standards

§ 49.40 Purpose of procurement standards.
§ 49.41 Recipient responsibilities.
§ 49.42 Codes of conduct.
§ 49.43 Competition.
§ 49.44 Procurement procedures.
§ 49.45 Cost and price analysis.
§ 49.46 Procurement records.
§ 49.47 Contract administration.
§ 49.48 Contract provisions.

§ 49.40 Purpose of procurement standards.
Sections 49.41 through 49.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52272, Sept. 1, 2005]


§ 49.41 Recipient responsibilities.
The standards contained in §§ 49.41 through 49.48 do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52272, Sept. 1, 2005]
§ 49.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52272, Sept. 1, 2005]

§ 49.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
§ 49.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that all of the following conditions apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

   (i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features, which unduly restrict competition.

   (ii) Requirements, which the bidder/offeror must fulfill, and all other factors to be used in evaluating bids or proposals.

   (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

   (iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

   (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

   (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.
(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $ 25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.
(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52272, Sept. 1, 2005]


§ 49.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52273, Sept. 1, 2005]


§ 49.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.
§ 49.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52273, Sept. 1, 2005]


§ 49.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and
payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52273, Sept. 1, 2005]

§ 49.50 Purpose of reports and records.
§ 49.51 Monitoring and reporting program performance.
§ 49.52 Financial reporting.
§ 49.53 Retention and access requirements for records.

§ 49.50 Purpose of reports and records.

Sections 49.51 through 49.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52274, Sept. 1, 2005]


§ 49.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 49.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 49.51(f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.
(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52274, Sept. 1, 2005]


§ 49.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF-269 or SF-269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project.
when the SF-270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.


(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $ 1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed $ 25,000 per recipient, provided that such advances are monitored through other forms contained in this section;
(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 49.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52274, Sept. 1, 2005]


§ 49.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or
annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 49.53(g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable.
(such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(Authority: Pub. L. 104-156; 110 Stat. 1396)  
[70 FR 52248, 52275, Sept. 1, 2005]  

Termination and Enforcement

§ 49.60 Purpose of termination and enforcement.
§ 49.61 Termination.
§ 49.62 Enforcement.

§ 49.60 Purpose of termination and enforcement.

Sections 49.61 and 49.62 set forth uniform suspension, termination and enforcement procedures.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52275, Sept. 1, 2005]


§ 49.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (a)(2) or (a)(3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 49.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
§ 49.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 49.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination, which are necessary and not reasonably avoidable, are allowable if the following conditions apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 49.13).

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52276, Sept. 1, 2005]

Subpart D -- After-the-Award Requirements

§ 49.70 Purpose.
§ 49.71 Closeout procedures.
§ 49.72 Subsequent adjustments and continuing responsibilities.
§ 49.73 Collection of amounts due.
Appendix A to Part 49 -- Contract Provisions

§ 49.70 Purpose.

Sections 49.71 through 49.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52276, Sept. 1, 2005]


§ 49.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 49.31 through 49.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(Authority: Pub. L. 104-156, OMB Circular A-110) [70 FR 52248, 52276, Sept. 1, 2005]


§ 49.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 49.26.

(4) Property management requirements in §§ 49.31 through 49.37.

(5) Records retention as required in § 49.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 49.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

(Authority: Pub. L. 104-156; 110 Stat. 1396) [70 FR 52248, 52276, Sept. 1, 2005]

§ 49.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by any of the following methods.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

(Authority: Pub. L. 104-156; 110 Stat. 1396)
[70 FR 52248, 52276, Sept. 1, 2005]

Appendix A to Part 49 -- Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:


2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) -- All contracts and subgrants in excess of $ 2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) -- When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $ 2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) -- Where applicable, all contracts awarded by recipients in excess of $ 2000 for construction contracts and in excess of $ 2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard
work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions, which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. Rights to Inventions Made Under a Contract or Agreement -- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended -- Contracts and subcontracts of amounts in excess of $ 100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).


8. Debarment and Suspension (E.O.s 12549 and 12689) -- No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

[70 FR 52248, 52277, Sept. 1, 2005]

PART 51 -- PER DIEM FOR NURSING HOME CARE OF
VETERANS IN STATE HOMES

Subpart A -- General
Subpart B -- Obtaining Per Diem for Nursing Home Care in State Homes
Subpart C -- Per Diem Payments
Subpart D -- Standards
Subpart A -- General

§ 51.1 Purpose.
§ 51.2 Definitions.

§ 51.1 Purpose.
This part sets forth the mechanism for paying per diem to State homes providing nursing home care to eligible veterans and is intended to ensure that veterans receive high quality care in State homes.
[65 FR 962, 968, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 968, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.2 Definitions.
For purposes of this part:
Clinical nurse specialist means a licensed professional nurse with a master's degree in nursing with a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing and at least 2 years of successful clinical practice in the specialized area of nursing practice following this academic preparation.
Facility means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of nursing home care or a building or any part of a building which VA has recognized as a State home for the provision of nursing home care.
Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses' Association.
Nursing home care means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services.
Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.
Physician assistant means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and other clinical tasks under appropriate physician supervision which is approved by the primary care physician.
Primary physician or primary care physician means a designated generalist physician responsible for providing, directing and coordinating all health care that is indicated for the residents.
State means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
State home means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are
incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the State home also provides domiciliary and/or nursing home care. VA means the U.S. Department of Veterans Affairs.
[65 FR 962, 968, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 968, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]
Subpart B -- Obtaining Per Diem for Nursing Home Care in State Homes

§ 51.10 Per diem based on recognition and certification.
§ 51.20 Application for recognition based on certification.
§ 51.30 Recognition and certification.
§ 51.31 Automatic recognition.

§ 51.10 Per diem based on recognition and certification.
VA will pay per diem to a State for providing nursing home care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility and facility management meet the standards of subpart D of this part. Also, after recognition has been granted, VA will continue to pay per diem to a State for providing nursing home care to eligible veterans in such a facility for a temporary period based on a certification that the facility and facility management provisionally meet the standards of subpart D.
[65 FR 962, 969, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 969, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.20 Application for recognition based on certification.
To apply for recognition and certification of a State home for nursing home care, a State must:
(a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Headquarters, 810 Vermont Avenue, NW., Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;
(b) Allow VA to survey the facility as set forth in § 51.30(c); and
(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.
[65 FR 962, 969, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 969, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.30 Recognition and certification.
(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction regarding whether, based on a VA survey, the facility and facility management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the facility, the State official authorized to oversee operations of the
State home, the VA Network Director (10N 1-22), Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and facility management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical care center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or facility management does not meet one or more of the standards in subpart D, that the deficiencies do not jeopardize the health or safety of the residents, and that the facility management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the facility, the State official authorized to oversee the operations of the State home, the VA Network Director (10N 1-22), Chief Network Officer (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) of the certification, provisional certification, or noncertification.

(b) Once a facility has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or facility management does not meet the standards of subpart D. Recognition of a facility will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and facility management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the facility that have a bearing on compliance with any of the requirements of this part (including any reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home facility management must submit to the director a completed VA Form 10-3567, Staffing Profile, set forth at § 58.10 of this chapter. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or facility management does not meet the standards of this part, the director will notify the State home facility in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N 1-22), the Chief Network Officer (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114). The letter
will include the reasons for the decision and indicate that the State has the right to appeal the decision.
(e) The State must submit the appeal to the Under Secretary for Health in writing, within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.
(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the facility does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.
(g) In the event that a VA survey team or other VA medical center staff identifies any condition that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of VA medical center of jurisdiction will immediately report this to the VA Network Director (10N 1-22), Chief Network Officer (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) and State official authorized to oversee operations of the State home.

[65 FR 962, 969, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 969, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.31 Automatic recognition.
Notwithstanding other provisions of this part, a facility that already is recognized by VA as a State home for nursing home care at the time this part becomes effective, automatically will continue to be recognized as a State home for nursing home care but will be subject to all of the provisions of this part that apply to facilities that have achieved recognition, including the provisions requiring that the facility meet the standards set forth in subpart D and the provisions for withholding per diem payments and withdrawal of recognition.
[65 FR 962, 970, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 970, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

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Subpart C -- Per Diem Payments

§ 51.40 Monthly payment.
§ 51.50 Eligible veterans.

§ 51.40 Monthly payment.

(a)(1) VA will pay per diem monthly for nursing home care provided to an eligible veteran in a facility recognized as a State home for nursing home care. During Fiscal Year 2000, VA will pay the lesser of the following:
   (i) One-half of the cost of the care for each day the veteran is in the facility; or
   (ii) $ 50.55 for each day the veteran is in the facility.
   (2) Per diem will be paid only for the days that the veteran is a resident at the facility. For purposes of paying per diem, VA will consider a veteran to be a resident at the facility during each full day that the veteran is receiving care at the facility. VA will not deem the veteran to be a resident at the facility if the veteran is receiving care outside the State home facility at VA expense. Otherwise, VA will deem the veteran to be a resident at the facility during any absence from the facility that lasts for no more than 96 consecutive hours. This absence will be considered to have ended when the veteran returns as a resident if the veteran's stay is for at least a continuous 24-hour period.
   (3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10-5588, State Home Report and Statement of Federal Aid Claimed. This form is set forth in full at § 58.11 of this chapter.
   (4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.
   (5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA Forms 10-10EZ, Application for Medical Benefits, and 10-10SH, State Home Program Application for Care -- Medical Certification, at the time of admission and with any request for a change in the level of care (domiciliary, hospital care or adult day health care). These forms are set forth in full at §§ 58.12 and 58.13 of this chapter, respectively, of this part. If the facility is eligible to receive per diem payments for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph, except that VA will pay per diem from the day on which the veteran was admitted to the facility if the completed forms are received within 10 days after admission.
(b) Total per diem costs for an eligible veteran's nursing home care consist of those direct and indirect costs attributable to nursing home care at the facility divided by the total number of patients at the nursing home. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments."
[65 FR 962, 970, Jan. 6, 2000]
§ 51.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran needs nursing home care and the veteran is within one of the following categories:

(a) Veterans with service-connected disabilities;
(b) Veterans who are former prisoners of war;
(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;
(d) Veterans who receive disability compensation under 38 U.S.C. 1151;
(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;
(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C. 1151;
(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);
(h) Veterans of the Mexican border period or of World War I;
(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C. 1710(e);
(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g).

[65 FR 962, 970, Jan. 6, 2000]
Subpart D -- Standards

§ 51.60 Standards applicable for payment of per diem.
§ 51.70 Resident rights.
§ 51.80 Admission, transfer and discharge rights.
§ 51.90 Resident behavior and facility practices.
§ 51.100 Quality of life.
§ 51.110 Resident assessment.
§ 51.120 Quality of care.
§ 51.130 Nursing services.
§ 51.140 Dietary services.
§ 51.150 Physician services.
§ 51.160 Specialized rehabilitative services.
§ 51.170 Dental services.
§ 51.180 Pharmacy services.
§ 51.190 Infection control.
§ 51.200 Physical environment.
§ 51.210 Administration.

§ 51.60 Standards applicable for payment of per diem.
The provisions of this subpart are the standards that a State home and facility management must meet for the State to receive per diem for nursing home care.
[65 FR 962, 971, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 971, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.70 Resident rights.
The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The facility management must protect and promote the rights of each resident, including each of the following rights:
(a) Exercise of rights. (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.
(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility management in exercising his or her rights.
(3) The resident has the right to freedom from chemical or physical restraint.
(4) In the case of a resident determined incompetent under the laws of a State by a court of jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.
(5) In the case of a resident who has not been determined incompetent by the State court, any legal surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.
(b) Notice of rights and services. (1) The facility management must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the
stay in the facility. Such notification must be made prior to or upon admission and periodically during the resident's stay.

(2) The resident or his or her legal representative has the right:

(i) Upon an oral or written request, to access all records pertaining to himself or herself including current clinical records within 24 hours (excluding weekends and holidays); and

(ii) After receipt of his or her records for review, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and with 2 working days advance notice to the facility management.

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status;

(4) The resident has the right to refuse treatment, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (b)(7) of this section; and

(5) The facility management must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services to be billed to the resident.

(6) The facility management must furnish a written description of legal rights which includes:

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A statement that the resident may file a complaint with the State (agency) concerning resident abuse, neglect, misappropriation of resident property in the facility, and non-compliance with the advance directives requirements.

(7) The facility management must have written policies and procedures regarding advance directives (e.g., living wills) that include provisions to inform and provide written information to all residents concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law. If an individual is incapacitated at the time of admission and is unable to receive information (due to the incapacitating conditions) or articulate whether or not he or she has executed an advance directive, the facility may give advance directive information to the individual's family or surrogate in the same manner that it issues other materials about policies and procedures to the family of the incapacitated individual or to a surrogate or other concerned persons in accordance with State law. The facility management is not relieved of its obligation to provide this information to the individual once he or she is no longer incapacitated or unable to receive such information. Follow-up procedures must be in place to provide the information to the individual directly at the appropriate time.

(8) The facility management must inform each resident of the name and way of contacting the primary physician responsible for his or her care.

(9) Notification of changes. (i) Facility management must immediately inform the resident; consult with the primary physician; and if known, notify the resident's legal representative or an interested family member when there is --

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;
(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);
(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or
(D) A decision to transfer or discharge the resident from the facility as specified in § 51.80(a) of this part.

(ii) The facility management must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is --
(A) A change in room or roommate assignment as specified in § 51.100(f)(2); or
(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The facility management must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) Protection of resident funds. (1) The resident has the right to manage his or her financial affairs, and the facility management may not require residents to deposit their personal funds with the facility.
(2) Management of personal funds. Upon written authorization of a resident, the facility management must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (b)(3) through (b)(6) of this section.
(3) Deposit of funds. (i) Funds in excess of $100. The facility management must deposit any residents' personal funds in excess of $100 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)
(ii) Funds less than $100. The facility management must maintain a resident's personal funds that do not exceed $100 in a non-interest bearing account, interest-bearing account, or petty cash fund.
(4) Accounting and records. The facility management must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.
(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.
(ii) The individual financial record must be available through quarterly statements and on request from the resident or his or her legal representative.
(5) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility management must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; or other appropriate individual or entity, if State law allows.
(6) Assurance of financial security. The facility management must purchase a surety bond, or otherwise provide assurance satisfactory to the Under Secretary for Health, to assure the security of all personal funds of residents deposited with the facility.
(d) Free choice. The resident has the right to --
(1) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and
(2) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

e) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.
(1) Residents have a right to personal privacy in their accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility management to give a private room to each resident.
(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;
(3) The resident's right to refuse release of personal and clinical records does not apply when --
(i) The resident is transferred to another health care institution; or
(ii) Record release is required by law.

f) Grievances. A resident has the right to --
(1) Voice grievances without discrimination or reprisal. Residents may voice grievances with respect to treatment received and not received; and
(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

g) Examination of survey results. A resident has the right to --
(1) Examine the results of the most recent VA survey with respect to the facility. The facility management must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability; and
(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

h) Work. The resident has the right to --
(1) Refuse to perform services for the facility;
(2) Perform services for the facility, if he or she chooses, when --
(i) The facility has documented the need or desire for work in the plan of care;
(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
(iii) Compensation for paid services is at or above prevailing rates; and
(iv) The resident agrees to the work arrangement described in the plan of care.
(i) Mail. The resident must have the right to privacy in written communications, including the right to --
Send and promptly receive mail that is unopened; and
(2) Have access to stationery, postage, and writing implements at the resident's own expense.

j) Access and visitation rights. (1) The resident has the right and the facility management must provide immediate access to any resident by the following:
(i) Any representative of the Under Secretary for Health;
(ii) Any representative of the State;
(iii) Physicians of the resident's choice (to provide care in the nursing home, physicians must meet the provisions of § 51.210(j));
(iv) The State long term care ombudsman;
(v) Immediate family or other relatives of the resident subject to the resident's right to deny or withdraw consent at any time; and
(vi) Others who are visiting subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time.
(2) The facility management must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.
(3) The facility management must allow representatives of the State Ombudsman Program, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, subject to State law.
(k) Telephone. The resident has the right to reasonable access to use a telephone where calls can be made without being overheard.
(l) Personal property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.
(m) Married couples. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.
(n) Self-Administration of Drugs. An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 51.110(d)(2)(ii) of this part, has determined that this practice is safe.
[65 FR 962, 971, Jan. 6, 2000]
(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 971, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.80 Admission, transfer and discharge rights.
(a) Transfer and discharge. (1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same facility.
(2) Transfer and discharge requirements. The facility management must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless --
(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing home;
(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the nursing home;
(iii) The safety of individuals in the facility is endangered;
(iv) The health of individuals in the facility would otherwise be endangered;
(v) The resident has failed, after reasonable and appropriate notice to pay for a stay at the facility; or
(vi) The nursing home ceases to operate.
(3) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (a)(2)(vi) of this section, the primary physician must document this in the resident's clinical record.
(4) Notice before transfer. Before a facility transfers or discharges a resident, the facility must --
(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.
(ii) Record the reasons in the resident's clinical record; and
(iii) Include in the notice the items described in paragraph (a)(6) of this section.
(5) Timing of the notice. (i) The notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged, except when specified in paragraph (a)(5)(ii) of this section,
(ii) Notice may be made as soon as practicable before transfer or discharge when --
(A) The safety of individuals in the facility would be endangered;
(B) The health of individuals in the facility would be otherwise endangered;
(C) The resident's health improves sufficiently so the resident no longer needs the services provided by the nursing home;
(D) The resident's needs cannot be met in the nursing home;
(6) Contents of the notice. The written notice specified in paragraph (a)(4) of this section must include the following:
(i) The reason for transfer or discharge;
(ii) The effective date of transfer or discharge;
(iii) The location to which the resident is transferred or discharged;
(iv) A statement that the resident has the right to appeal the action to the State official designated by the State; and
(v) The name, address and telephone number of the State long term care ombudsman.
(7) Orientation for transfer or discharge. A facility management must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
(b) Notice of bed-hold policy and readmission. (1) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility management must provide written information to the resident and a family member or legal representative that specifies --
(i) The duration of the facility's bed-hold policy, if any, during which the resident is permitted to return and resume residence in the facility; and
(ii) The facility's policies regarding bed-hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.
(2) Bed-hold notice upon transfer. At the time of transfer of a resident for hospitalization or therapeutic leave, facility management must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b)(1) of this section.
(3) Permitting resident to return to facility. A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds
the bed-hold period is readmitted to the facility immediately upon the first availability of a bed in a semi-private room, if the resident requires the services provided by the facility.

c) Equal access to quality care. The facility management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

d) Admissions policy. The facility management must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract to pay the facility from the resident's income or resources.

[65 FR 962, 972, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)

[EFFECTIVE DATE NOTE: 65 FR 962, 972, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.90 Resident behavior and facility practices.

(a) Restraints. (1) The resident has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention.

(i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.

(ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body. Bed rails and vest restraints are examples of physical restraints.

(2) The facility management uses a system to achieve a restraint-free environment.

(3) The facility management collects data about the use of restraints.

(4) When alternatives to the use of restraint are ineffective, a restraint must be safely and appropriately used.

(b) Abuse. The resident has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.

(1) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.

(2) Physical abuse includes hitting, slapping, pinching, or kicking. Also includes controlling behavior through corporal punishment.

(3) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.

(4) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Includes withholding or inadequately providing food and hydration (without physician, resident, or surrogate approval), clothing, medical care, and good hygiene. May also include placing the individual in unsafe or unsupervised conditions.

(5) Involuntary seclusion is a resident's separation from other residents or from the resident's room against his or her will or the will of his or her legal representative.

(c) Staff treatment of residents. The facility management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.
(1) The facility management must:
   (i) Not employ individuals who --
   (A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court
       of law; or
   (B) Have had a finding entered into an applicable State registry or with the applicable
       licensing authority concerning abuse, neglect, mistreatment of individuals or
       misappropriation of their property; and
   (ii) Report any knowledge it has of actions by a court of law against an employee, which
       would indicate unfitness for service as a nurse aide or other facility staff to the State
       nurse aide registry or licensing authorities.
(2) The facility management must ensure that all alleged violations involving
   mistreatment, neglect, or abuse, including injuries of unknown source, and
   misappropriation of resident property are reported immediately to the administrator of the
   facility and to other officials in accordance with State law through established
   procedures.
(3) The facility management must have evidence that all alleged violations are thoroughly
   investigated, and must prevent further potential abuse while the investigation is in
   progress.
(4) The results of all investigations must be reported to the administrator or the
   designated representative and to other officials in accordance with State law within 5
   working days of the incident, and appropriate corrective action must be taken if the
   alleged violation is verified.

[65 FR 962, 973, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 973, Jan. 6, 2000, added Part 51, effective Feb.
7, 2000.]

§ 51.100 Quality of life.
A facility management must care for its residents in a manner and in an environment that
promotes maintenance or enhancement of each resident's quality of life.
(a) Dignity. The facility management must promote care for residents in a manner and in
an environment that maintains or enhances each resident's dignity and respect in full
recognition of his or her individuality.
(b) Self-determination and participation. The resident has the right to --
(1) Choose activities, schedules, and health care consistent with his or her interests,
    assessments, and plans of care;
(2) Interact with members of the community both inside and outside the facility; and
(3) Make choices about aspects of his or her life in the facility that are significant to the
    resident.
(c) Resident Council. The facility management must establish a council of residents that
    meet at least quarterly. The facility management must document any concerns submitted
    to the management of the facility by the council.
(d) Participation in resident and family groups. (1) A resident has the right to organize
    and participate in resident groups in the facility;
(2) A resident's family has the right to meet in the facility with the families of other
    residents in the facility;
(3) The facility management must provide the council and any resident or family group that exists with private space;
(4) Staff or visitors may attend meetings at the group's invitation;
(5) The facility management must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;
(6) The facility management must listen to the views of any resident or family group, including the council established under paragraph (c) of this section, and act upon the concerns of residents, families, and the council regarding policy and operational decisions affecting resident care and life in the facility.
(e) Participation in other activities. A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. The facility management must arrange for religious counseling by clergy of various faith groups.
(f) Accommodation of needs. A resident has the right to --
(1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and
(2) Receive notice before the resident's room or roommate in the facility is changed.
(g) Patient Activities. (1) The facility management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.
(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who --
(i) Is licensed or registered, if applicable, by the State in which practicing; and
(ii) Is certified as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body.
(h) Social Services. (1) The facility management must provide medically related social services to attain or maintain the highest practicable mental and psychosocial well-being of each resident.
(2) A nursing home with 100 or more beds must employ a qualified social worker on a full-time basis.
(3) Qualifications of social worker. A qualified social worker is an individual with --
(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred), and
(ii) A social work license from the State in which the State home is located, if offered by the State, and
(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.
(4) The facility management must have sufficient support staff to meet patients' social services needs.
(5) Facilities for social services must ensure privacy for interviews.
(i) Environment. The facility management must provide --
(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;
(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;
(3) Clean bed and bath linens that are in good condition;
(4) Private closet space in each resident room, as specified in § 51.200(d)(2)(iv) of this part;
(5) Adequate and comfortable lighting levels in all areas;
(6) Comfortable and safe temperature levels. Facilities must maintain a temperature range of 71-81 degrees Fahrenheit; and
(7) For the maintenance of comfortable sound levels.
[65 FR 962, 974, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 974, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.110 Resident assessment.
The facility management must conduct initially, annually and as required by a change in the resident's condition a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.
(a) Admission orders. At the time each resident is admitted, the facility management must have physician orders for the resident's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the resident's condition, not to exceed 72 hours after admission, except when an examination was performed within five days before admission and the findings were recorded in the medical record on admission.
(b) Comprehensive assessments. (1) The facility management must make a comprehensive assessment of a resident's needs:
(i) Using the Health Care Financing Administration Long Term Care Resident Assessment Instrument Version 2.0; and
(ii) Describing the resident's capability to perform daily life functions, strengths, performances, needs as well as significant impairments in functional capacity.
(iii) All nursing homes must be in compliance with the use of the Health Care Financing Administration Long Term Care Resident Assessment Instrument Version 2.0 by no later than January 1, 2000.
(2) Frequency. Assessments must be conducted --
(i) No later than 14 days after the date of admission;
(ii) Promptly after a significant change in the resident's physical, mental, or social condition; and
(iii) In no case less often than once every 12 months.
(3) Review of assessments. The nursing facility management must examine each resident no less than once every 3 months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.
(4) Use. The results of the assessment are used to develop, review, and revise the resident's individualized comprehensive plan of care, under paragraph (d) of this section.
(c) Accuracy of assessments. (1) Coordination --
(i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.
(ii) Each assessment must be conducted or coordinated by a registered nurse that signs and certifies the completion of the assessment.

(2) Certification. Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(d) Comprehensive care plans. (1) The facility management must develop an individualized comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following --

(i) The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under § 51.120; and

(ii) Any services that would otherwise be required under § 51.120 of this part but are not provided due to the resident's exercise of rights under § 51.70, including the right to refuse treatment under § 51.70(b)(4) of this part.

(2) A comprehensive care plan must be --

(i) Developed within 7 calendar days after completion of the comprehensive assessment;

(ii) Prepared by an interdisciplinary team, that includes the primary physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, the participation of the resident, the resident's family or the resident's legal representative; and

(iii) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must --

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each resident's written plan of care.

(e) Discharge summary. Prior to discharging a resident, the facility management must prepare a discharge summary that includes --

(1) A recapitulation of the resident's stay;

(2) A summary of the resident's status at the time of the discharge to include items in paragraph (b)(2) of this section; and

(3) A post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

[65 FR 962, 974, Jan. 6, 2000]

§ 51.120 Quality of care.

Each resident must receive and the facility management must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.
(a) Reporting of Sentinel Events. (1) Definition. A sentinel event is an adverse event that results in the loss of life or limb or permanent loss of function.
(2) Examples of sentinel events are as follows:
   (i) Any resident death, paralysis, coma or other major permanent loss of function associated with a medication error; or
   (ii) Any suicide of a resident, including suicides following elopement (unauthorized departure) from the facility; or
   (iii) Any elopement of a resident from the facility resulting in a death or a major permanent loss of function; or
   (iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or
   (v) Assault, homicide or other crime resulting in patient death or major permanent loss of function; or
   (vi) A patient fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall.
(3) The facility management must report sentinel events to the director of VA medical center of jurisdiction within 24 hours of identification. The VA medical center of jurisdiction must report sentinel events by calling VA Network Director (10N 1-22) and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114) within 24 hours of notification.
(4) The facility management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event is to prevent injuries to residents, visitors, and personnel, and to manage those injuries that do occur and to minimize the negative consequences to the injured individuals and facility.
(b) Activities of daily living. Based on the comprehensive assessment of a resident, the facility management must ensure that --
   (1) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to --
      (i) Bathe, dress, and groom;
      (ii) Transfer and ambulate;
      (iii) Toilet;
      (iv) Eat; and
      (v) Talk or otherwise communicate.
   (2) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section; and
   (3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.
(c) Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident --
   (1) In making appointments, and
(2) By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) Pressure sores. Based on the comprehensive assessment of a resident, the facility management must ensure that --

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(e) Urinary and Fecal Incontinence. Based on the resident's comprehensive assessment, the facility management must ensure that --

(1) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary;

(2) A resident who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible; and

(3) A resident who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) Range of motion. Based on the comprehensive assessment of a resident, the facility management must ensure that --

(1) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A resident with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) Mental and Psychosocial functioning. Based on the comprehensive assessment of a resident, the facility management must ensure that a resident who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) Enteral Feedings. Based on the comprehensive assessment of a resident, the facility management must ensure that --

(1) A resident who has been able to adequately eat or take fluids alone or with assistance is not fed by enteral feedings unless the resident's clinical condition demonstrates that use of enteral feedings was unavoidable; and

(2) A resident who is fed by enteral feedings receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, nasal-pharyngeal ulcers and other skin breakdowns, and to restore, if possible, normal eating skills.

(i) Accidents. The facility management must ensure that --

(1) The resident environment remains as free of accident hazards as is possible; and

(2) Each resident receives adequate supervision and assistance devices to prevent accidents.

(j) Nutrition. Based on a resident's comprehensive assessment, the facility management must ensure that a resident --
(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and
(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(k) Hydration. The facility management must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(l) Special needs. The facility management must ensure that residents receive proper treatment and care for the following special services:

(1) Injections;
(2) Parenteral and enteral fluids;
(3) Colostomy, ureterostomy, or ileostomy care;
(4) Tracheostomy care;
(5) Tracheal suctioning;
(6) Respiratory care;
(7) Foot care; and
(8) Prostheses.

(m) Unnecessary drugs. (1) General. Each resident's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or
(ii) For excessive duration; or
(iii) Without adequate monitoring; or
(iv) Without adequate indications for its use; or
(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or
(vi) Any combinations of the reasons above.

(2) Antipsychotic Drugs. Based on a comprehensive assessment of a resident, the facility management must ensure that --

(i) Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and
(ii) Residents who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(n) Medication Errors. The facility management must ensure that --

(1) Medication errors are identified and reviewed on a timely basis; and
(2) strategies for preventing medication errors and adverse reactions are implemented.

§ 51.130 Nursing services.
The facility management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by resident assessment and individualized comprehensive plans of care, of all patients within the facility 24 hours a day, 7 days a week.
(a) The nursing service must be under the direction of a full-time registered nurse who is currently licensed by the State and has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff.
(b) The facility management must provide registered nurses 24 hours per day, 7 days per week.
(c) The director of nursing service must designate a registered nurse as a supervising nurse for each tour of duty.
   (1) Based on the application and results of the case mix and staffing methodology, the director of nursing may serve in a dual role as director and as an onsite-supervising nurse only when the facility has an average daily occupancy of 60 or fewer residents in nursing home.
   (2) Based on the application and results of the case mix and staffing methodology, the evening or night supervising nurse may serve in a dual role as supervising nurse as well as provides direct patient care only when the facility has an average daily occupancy of 60 or fewer residents in nursing home.
(d) The facility management must provide nursing services to ensure that there is direct care nurse staffing of no less than 2.5 hours per patient per 24 hours, 7 days per week in the portion of any building providing nursing home care.
(e) Nurse staffing must be based on a staffing methodology that applies case mix and is adequate for meeting the standards of this part.

[65 FR 962, 976, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)

[EFFECTIVE DATE NOTE: 65 FR 962, 976, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.140 Dietary services.
The facility management must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.
(a) Staffing. The facility management must employ a qualified dietitian either full-time, part-time, or on a consultant basis.
   (1) If a dietitian is not employed, the facility management must designate a person to serve as the director of food service who receives at least a monthly scheduled consultation from a qualified dietitian.
   (2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.
(b) Sufficient staff. The facility management must employ sufficient support personnel competent to carry out the functions of the dietary service.
(c) Menus and nutritional adequacy. Menus must --
   (1) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;
   (2) Be prepared in advance; and
   (3) Be followed.
(d) Food. Each resident receives and the facility provides --
   (1) Food prepared by methods that conserve nutritive value, flavor, and appearance;
(2) Food that is palatable, attractive, and at the proper temperature;
(3) Food prepared in a form designed to meet individual needs; and
(4) Substitutes offered of similar nutritive value to residents who refuse food served.
(e) Therapeutic diets. Therapeutic diets must be prescribed by the primary care physician.
(f) Frequency of meals. (1) Each resident receives and the facility provides at least three
meals daily, at regular times comparable to normal mealtimes in the community.
(2) There must be no more than 14 hours between a substantial evening meal and the
availability of breakfast the following day, except as provided in (f)(4) of this section.
(3) The facility staff must offer snacks at bedtime daily.
(4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a
substantial evening meal and breakfast the following day.
(g) Assistive devices. The facility management must provide special eating equipment
and utensils for residents who need them.
(h) Sanitary conditions. The facility must --
(1) Procure food from sources approved or considered satisfactory by Federal, State, or
local authorities;
(2) Store, prepare, distribute, and serve food under sanitary conditions; and (3) Dispose of
garbage and refuse properly.
[65 FR 962, 977, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 977, Jan. 6, 2000, added Part 51, effective Feb.
7, 2000.]

§ 51.150 Physician services.
A physician must personally approve in writing a recommendation that an individual be
admitted to a facility. Each resident must remain under the care of a physician.
(a) Physician supervision. The facility management must ensure that --
(1) The medical care of each resident is supervised by a primary care physician;
(2) Each resident's medical record lists the name of the resident's primary physician, and
(3) Another physician supervises the medical care of residents when their primary
physician is unavailable.
(b) Physician visits. The physician must --
(1) Review the resident's total program of care, including medications and treatments, at
each visit required by paragraph (c) of this section;
(2) Write, sign, and date progress notes at each visit; and
(3) Sign and date all orders.
(c) Frequency of physician visits.
(1) The resident must be seen by the primary physician at least once every 30 days for the
first 90 days after admission, and at least once every 60 days thereafter, or more
frequently based on the condition of the resident.
(2) A physician visit is considered timely if it occurs not later than 10 days after the date
the visit was required.
(3) Except as provided in paragraphs (c)(4) of this section, all required physician visits
must be made by the physician personally.
(4) At the option of the physician, required visits in the facility after the initial visit may
alternate between personal visits by the physician and visits by a physician assistant,
nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.
(d) Availability of physicians for emergency care. The facility management must provide or arrange for the provision of physician services 24 hours a day, 7 days per week, in case of an emergency.
(e) Physician delegation of tasks. (1) Except as specified in paragraph (e)(2) of this section, a primary physician may delegate tasks to:
   (i) a certified physician assistant or a certified nurse practitioner, or
   (ii) a clinical nurse specialist who --
      (A) Is acting within the scope of practice as defined by State law; and
      (B) Is under the supervision of the physician.
   Note to paragraph (e): An individual with experience in long term care is preferred.
   (2) The primary physician may not delegate a task when the regulations specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.
[65 FR 962, 977, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 977, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.160 Specialized rehabilitative services.
(a) Provision of services. If specialized rehabilitative services such as but not limited to physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the resident's comprehensive plan of care, facility management must --
   (1) Provide the required services; or
   (2) Obtain the required services from an outside resource, in accordance with § 51.210(h) of this part, from a provider of specialized rehabilitative services.
(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.
[65 FR 962, 977, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743)
[EFFECTIVE DATE NOTE: 65 FR 962, 977, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]

§ 51.170 Dental services.
(a) A facility must provide or obtain from an outside resource, in accordance with § 51.210(h) of this part, routine and emergency dental services to meet the needs of each resident;
(b) A facility may charge a resident an additional amount for routine and emergency dental services; and
(c) A facility must, if necessary, assist the resident --
   (1) In making appointments;
   (2) By arranging for transportation to and from the dental services; and
   (3) Promptly refer residents with lost or damaged dentures to a dentist.
§ 51.180 Pharmacy services.
The facility management must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in § 51.210(h) of this part. The facility management must have a system for disseminating drug information to medical and nursing staff.

(a) Procedures. The facility management must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(b) Service consultation. The facility management must employ or obtain the services of a pharmacist licensed in a State in which the facility is located or a VA pharmacist under VA contract who --

1. Provides consultation on all aspects of the provision of pharmacy services in the facility;
2. Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and
3. Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(c) Drug regimen review. (1) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(2) The pharmacist must report any irregularities to the primary physician and the director of nursing, and these reports must be acted upon.

(d) Labeling of drugs and biologicals. Drugs and biologicals used in the facility management must be labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date when applicable.

(e) Storage of drugs and biologicals. (1) In accordance with State and Federal laws, the facility management must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(2) The facility management must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse.

§ 51.190 Infection control.
The facility management must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(a) Infection control program. The facility management must establish an infection control program under which it --
(1) Investigates, controls, and prevents infections in the facility;
(2) Decides what procedures, such as isolation, should be applied to an individual resident; and
(3) Maintains a record of incidents and corrective actions related to infections.

(b) Preventing spread of infection. (1) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility management must isolate the resident.
(2) The facility management must prohibit employees with a communicable disease or infected skin lesions from engaging in any contact with residents or their environment that would transmit the disease.
(3) The facility management must require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice.

(c) Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

[65 FR 962, 978, Jan. 6, 2000]


§ 51.200 Physical environment.
The facility management must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public.

(a) Life safety from fire. The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (1997 edition) and the NFPA 99, Standard for Health Care Facilities (1996 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials incorporated by reference are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW., Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. (For ordering information, call toll-free 1-800-344-3555.)

(b) Emergency power. (1) An emergency electrical power system must be provided to supply power adequate for illumination of all exit signs and lighting for the means of egress, fire alarm and medical gas alarms, emergency communication systems, and generator task illumination.
(2) The system must be the appropriate type essential electrical system in accordance with the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (1997 edition) and the NFPA 99, Standard for Health Care Facilities (1996 edition). Incorporation by reference of these materials was approved by the
Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these materials is described in paragraph (a) of this section.

(3) When electrical life support devices are used, an emergency electrical power system must also be provided for devices in accordance with NFPA 99, Standard for Health Care Facilities (1996 edition).

(4) The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources in accordance with the National Fire Protection Association's NFPA 101, Life Safety Code (1997 edition) and the NFPA 99, Standard for Health Care Facilities (1996 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of these materials is described in paragraph (a) of this section.

(c) Space and equipment. Facility management must --

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) Resident rooms. Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents: (1) Bedrooms must --

(i) Accommodate no more than four residents;

(ii) Measure at least 115 net square feet per resident in multiple resident bedrooms;

(iii) Measure at least 150 net square feet in single resident bedrooms;

(iv) Measure at least 245 net square feet in small double resident bedrooms; and

(v) Measure at least 305 net square feet in large double resident bedrooms used for spinal cord injury residents. It is recommended that the facility have one large double resident bedroom for every 30 resident bedrooms.

(vi) Have direct access to an exit corridor;

(vii) Be designed or equipped to assure full visual privacy for each resident;

(viii) Except in private rooms, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;

(ix) Have at least one window to the outside; and

(x) Have a floor at or above grade level.

(2) The facility management must provide each resident with --

(i) A separate bed of proper size and height for the safety of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(e) Toilet facilities. Each resident room must be equipped with or located near toilet and bathing facilities. It is recommended that public toilet facilities be also located near the resident's dining and recreational areas.

(f) Resident call system. The nurse's station must be equipped to receive resident calls through a communication system from --

(1) Resident rooms; and
(2) Toilet and bathing facilities.

(g) Dining and resident activities. The facility management must provide one or more rooms designated for resident dining and activities. These rooms must --

(1) Be well lighted;
(2) Be well ventilated;
(3) Be adequately furnished; and
(4) Have sufficient space to accommodate all activities.

(h) Other environmental conditions. The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must --

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;
(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
(3) Equip corridors with firmly secured handrails on each side; and
(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

[65 FR 962, 978, Jan. 6, 2000]


§ 51.210 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each resident.

(a) Governing body. (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and
(2) The governing body or State official with oversight for the facility appoints the administrator who is --

(i) Licensed by the State where licensing is required; and
(ii) Responsible for operation and management of the facility.

(b) Disclosure of State agency and individual responsible for oversight of facility. The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Headquarters, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:

(1) The State agency and individual responsible for oversight of a State home facility;
(2) The State home administrator; and
(3) The State employee responsible for oversight of the State home facility if a contractor operates the State home.

(c) Required Information. The facility management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current or as specified:

(1) The copy of legal and administrative action establishing the State-operated facility (e.g., State laws);
(2) Site plan of facility and surroundings;
(3) Legal title, lease, or other document establishing right to occupy facility;
(4) Organizational charts and the operational plan of the facility;
(5) The number of the staff by category indicating full-time, part-time and minority designation (annual at time of survey);
(6) The number of nursing home patients who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities (annual at time of survey);
(7) Annual State Fire Marshall's report;
(8) Annual certification from the responsible State Agency showing compliance with Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112) (VA Form 10-0143A set forth at § 58.14 of this chapter);
(9) Annual certification for Drug-Free Workplace Act of 1988 (VA Form 10-0143 set forth at § 58.15 of this chapter);
(10) Annual certification regarding lobbying in compliance with Public Law 101-121 (VA Form 10-0144 set forth at § 58.16 of this chapter); and
(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 as incorporated in Title 38 CFR 18.1-18.3 (VA Form 10-0144A located at § 58.17 of this chapter).

(d) Percentage of Veterans. The percent of the facility residents eligible for VA nursing home care must be at least 75 percent veterans except that the veteran percentage need only be more than 50 percent if the facility was constructed or renovated solely with State funds. All non-veteran residents must be spouses of veterans or parents all of whose children died while serving in the armed forces of the United States.

(e) Management Contract Facility. If a facility is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility on a full-time onsite basis.

(f) Licensure. The facility and facility management must comply with applicable State and local licensure laws.

(g) Staff qualifications. (1) The facility management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(h) Use of outside resources. (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility management must have that service furnished to residents by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the facility management assumes responsibility for --

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(i) Medical director. (1) The facility management must designate a primary care physician to serve as medical director.

(2) The medical director is responsible for --
(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;
(ii) Directing and coordinating medical care in the facility;
(iii) Helping to arrange for continuous physician coverage to handle medical emergencies;
(iv) Reviewing the credentialing and privileging process;
(v) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the administrator; and
(vi) Monitoring employees' health status and advising the administrator on employee-health policies.

(j) Credentialing and Privileging. Credentialing is the process of obtaining, verifying, and assessing the qualifications of a health care practitioner, which may include physicians, podiatrists, dentists, psychologists, physician assistants, nurse practitioners, licensed nurses to provide patient care services in or for a health care organization. Privileging is the process whereby a specific scope and content of patient care services are authorized for a health care practitioner by the facility management, based on evaluation of the individual's credentials and performance.
(1) The facility management must uniformly apply credentialing criteria to licensed practitioners applying to provide resident care or treatment under the facility's care.
(2) The facility management must verify and uniformly apply the following core criteria: current licensure; current certification, if applicable, relevant education, training, and experience; current competence; and a statement that the individual is able to perform the services he or she is applying to provide.
(3) The facility management must decide whether to authorize the independent practitioner to provide resident care or treatment, and each credentials file must indicate that these criteria are uniformly and individually applied.
(4) The facility management must maintain documentation of current credentials for each licensed independent practitioner practicing within the facility.
(5) When reappointing a licensed independent practitioner, the facility management must review the individual's record of experience.
(6) The facility management systematically must assess whether individuals with clinical privileges act within the scope of privileges granted.

(k) Required training of nursing aides. (1) Nurse aide means any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or a volunteer who provide such services without pay.
(2) The facility management must not use any individual working in the facility as a nurse aide whether permanent or not unless:
(i) That individual is competent to provide nursing and nursing related services; and
(ii) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State.
(3) Registry verification. Before allowing an individual to serve as a nurse aide, facility management must receive registry verification that the individual has met competency evaluation requirements unless the individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency...
evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide, facility management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes will include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(6) Regular in-service education. The facility management must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must --

(i) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;
(ii) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and
(iii) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

(1) Proficiency of Nurse aides. The facility management must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(m) Level B Requirement Laboratory services. (1) The facility management must provide or obtain laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet all applicable certification standards, statutes, and regulations for laboratory services.
(ii) If the facility provides blood bank and transfusion services, it must meet all applicable certification standards, statutes, and regulations.
(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialities and subspecialties of services and meet certification standards, statutes, and regulations.
(iv) The laboratory performing the testing must have a current, valid CLIA number (Clinical Laboratory Improvement Amendments of 1988). The facility management must provide VA surveyors with the CLIA number and a copy of the results of the last CLIA inspection.
(v) Such services must be available to the resident seven days a week, 24 hours a day.

(2) The facility management must --

(i) Provide or obtain laboratory services only when ordered by the primary physician;
(ii) Promptly notify the primary physician of the findings;
(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and
(iv) File in the resident's clinical record laboratory reports that are dated and contain the name and address of the testing laboratory.
(n) Radiology and other diagnostic services. (1) The facility management must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.
   (i) If the facility provides its own diagnostic services, the services must meet all applicable certification standards, statutes, and regulations.
   (ii) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services. The services must meet all applicable certification standards, statutes, and regulations.
   (iii) Radiologic and other diagnostic services must be available 24 hours a day, seven days a week.
(2) The facility must --
   (i) Provide or obtain radiology and other diagnostic services when ordered by the primary physician;
   (ii) Promptly notify the primary physician of the findings;
   (iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and
   (iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.
(o) Clinical records. (1) The facility management must maintain clinical records on each resident in accordance with accepted professional standards and practices that are --
   (i) Complete;
   (ii) Accurately documented;
   (iii) Readily accessible; and
   (iv) Systematically organized.
(2) Clinical records must be retained for --
   (i) The period of time required by State law; or
   (ii) Five years from the date of discharge when there is no requirement in State law.
(3) The facility management must safeguard clinical record information against loss, destruction, or unauthorized use;
(4) The facility management must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by --
   (i) Transfer to another health care institution;
   (ii) Law;
   (iii) Third party payment contract;
   (iv) The resident or;
   (v) The resident's authorized agent or representative.
(5) The clinical record must contain --
   (i) Sufficient information to identify the resident;
   (ii) A record of the resident's assessments;
   (iii) The plan of care and services provided;
   (iv) The results of any pre-admission screening conducted by the State; and
   (v) Progress notes.
(p) Quality assessment and assurance. (1) Facility management must maintain a quality assessment and assurance committee consisting of --
   (i) The director of nursing services;
(ii) A primary physician designated by the facility; and
(iii) At least 3 other members of the facility's staff.
(2) The quality assessment and assurance committee --
   (i) Meets at least quarterly to identify issues with respect to which quality assessment and
       assurance activities are necessary; and
   (ii) Develops and implements appropriate plans of action to correct identified quality
deficiencies; and
(3) Identified quality deficiencies are corrected within an established time period.
(4) The VA Under Secretary for Health may not require disclosure of the records of such
committee unless such disclosure is related to the compliance with requirements of this
section.
(q) Disaster and emergency preparedness. (1) The facility management must have
detailed written plans and procedures to meet all potential emergencies and disasters,
such as fire, severe weather, and missing residents.
(2) The facility management must train all employees in emergency procedures when
they begin to work in the facility, periodically review the procedures with existing staff,
and carry out unannounced staff drills using those procedures.
(r) Transfer agreement. (1) The facility management must have in effect a written transfer
agreement with one or more hospitals that reasonably assures that --
   (i) Residents will be transferred from the nursing home to the hospital, and ensured of
timely admission to the hospital when transfer is medically appropriate as determined by
the primary physician; and
   (ii) Medical and other information needed for care and treatment of residents, and, when
the transferring facility deems it appropriate, for determining whether such residents can
be adequately cared for in a less expensive setting than either the nursing home or the
hospital, will be exchanged between the institutions.
(2) The facility is considered to have a transfer agreement in effect if the facility has an
agreement with a hospital sufficiently close to the facility to make transfer feasible.
(s) Compliance with Federal, State, and local laws and professional standards. The
facility management must operate and provide services in compliance with all applicable
Federal, State, and local laws, regulations, and codes, and with accepted professional
standards and principles that apply to professionals providing services in such a facility.
This includes the Single Audit Act of 1984 (Title 31, Section 7501 et seq.) and the Cash
Management Improvement Acts of 1990 and 1992 (Public Laws 101-453 and 102-589,
see 31 USC 3335, 3718, 3720A, 6501, 6503)
(t) Relationship to other Federal regulations. In addition to compliance with the
regulations set forth in this subpart, facilities are obliged to meet the applicable
provisions of other Federal laws and regulations, including but not limited to those
pertaining to nondiscrimination on the basis of race, color, national origin, handicap, or
age (((38 CFR part 18); protection of human subjects of research (45 CFR part 46),
section 504 of the Rehabilitation Act of 1993, Public Law 93-112; Drug-Free Workplace
Act of 1988, 38 CFR part 44, section 44.100 through 44.420; section 319 of Public
Law 101-121; Title VI of the Civil Rights Act of 1964, 38 CFR 18.1-18.3. Although
these regulations are not in themselves considered requirements under this part, their
violation may result in the termination or suspension of, or the refusal to grant or
continue payment with Federal funds.

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(u) Intermingling. A building housing a facility recognized as a State home for providing nursing home care may only provide nursing home care in the areas of the building recognized as a State home for providing nursing home care.

(v) VA Management of State Veterans Homes. Except as specifically provided by statute or regulations, VA employees have no authority regarding the management or control of State homes providing nursing home care.

[65 FR 962, 979, Jan. 6, 2000]

(38 U.S.C. 101, 501, 1710, 1741-1743, 8135)

[EFFECTIVE DATE NOTE: 65 FR 962, 979, Jan. 6, 2000, added Part 51, effective Feb. 7, 2000.]
PART 52 -- PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

Subpart A -- General
Subpart B -- Obtaining Per Diem for Adult Day Health Care in State Homes
Subpart C -- Per Diem Payments
Subpart D -- Standards
Subpart A -- General

§ 52.1 Purpose.
§ 52.2 Definitions.

§ 52.1 Purpose.
This part sets forth the mechanism for paying per diem to State homes providing adult day health care to eligible veterans and includes quality assurance requirements that are intended to ensure that veterans receive high quality care in State homes.
[67 FR 660, 662, Jan. 7, 2002]


§ 52.2 Definitions.
For purposes of this part --
Activities of daily living (ADLs) means the functions or tasks for self-care usually performed in the normal course of a day, i.e., mobility, bathing, dressing, grooming, toileting, transferring, and eating.
Clinical nurse specialist means a licensed professional nurse with a master's degree in nursing and a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing.
Facility means a building or any part of a building for which a State has submitted an application for recognition as a State home for the provision of adult day health care or a building, or any part of a building, which VA has recognized as a State home for the provision of adult day health care.
Instrumental activities of daily living (IADLs) means functions or tasks of independent living, i.e., shopping, housework, meal preparation and cleanup, laundry, taking medication, money management, transportation, correspondence, and telephone use.
Nurse practitioner means a licensed professional nurse who is currently licensed to practice in the State; who meets the State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by the American Nurses Association.
Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.
Physician assistant means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants (NCCPA) as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and to accomplish other clinical tasks under the appropriate supervision by the primary care physician.
Primary physician or Primary care physician means a designated generalist physician responsible for providing, directing and coordinating health care that is indicated for the residents.
State means each of the several States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.
State home means a home approved by VA which a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home may provide domiciliary care, nursing home care, adult day health care, and hospital care. Hospital care may be provided only when the State home also provides domiciliary and/or nursing home care.

VA means the U.S. Department of Veterans Affairs.

[67 FR 660, 662, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)
Subpart B -- Obtaining Per Diem for Adult Day Health Care in State Homes

§ 52.10 Per diem based on recognition and certification.
§ 52.20 Application for recognition based on certification.
§ 52.30 Recognition and certification.

§ 52.10 Per diem based on recognition and certification.
VA will pay per diem to a State for providing adult day health care to eligible veterans in a facility if the Under Secretary for Health recognizes the facility as a State home based on a current certification that the facility management meet the standards of subpart D of this part.
[67 FR 660, 663, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)

§ 52.20 Application for recognition based on certification.
To apply for recognition and certification of a State home for adult day health care, a State must:
(a) Send a request for recognition and certification to the Under Secretary for Health (10), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The request must be in the form of a letter and must be signed by the State official authorized to establish the State home;
(b) Allow VA to survey the facility as set forth in § 52.30(c); and
(c) Upon request from the director of the VA medical center of jurisdiction, submit to the director all documentation required under subpart D of this part.
(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)
[67 FR 660, 663, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)

§ 52.30 Recognition and certification.
(a)(1) The Under Secretary for Health will make the determination regarding recognition and the initial determination regarding certification, after receipt of a tentative determination from the director of the VA medical center of jurisdiction, regarding whether the facility and program management meet or do not meet the standards of subpart D of this part. The Under Secretary for Health will notify the official in charge of the program, the State official authorized to oversee operations of the State home, the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N), and
the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the action taken.

(2) For each facility recognized as a State home, the director of the VA medical center of jurisdiction will certify annually whether the facility and program management meet, provisionally meet, or do not meet the standards of subpart D of this part (this certification should be made every 12 months during the recognition anniversary month or during a month agreed upon by the VA medical center director and officials of the State home facility). A provisional certification will be issued by the director only upon a determination that the facility or program management does not meet one or more of the standards in subpart D of this part, that the deficiencies do not jeopardize the health or safety of the residents, and that the program management and the director have agreed to a plan of correction to remedy the deficiencies in a specified amount of time (not more time than the VA medical center of jurisdiction director determines is reasonable for correcting the specific deficiencies). The director of the VA medical center of jurisdiction will notify the official in charge of the program, the State official authorized to oversee the operations of the State home, the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N) and the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), of the certification, provisional certification, or noncertification.

(b) Once a program has achieved recognition, the recognition will remain in effect unless the State requests that the recognition be withdrawn or the Under Secretary for Health makes a final decision that the facility or program management does not meet the standards of subpart D of this part. Recognition of a program will apply only to the facility as it exists at the time of recognition; any annex, branch, enlargement, expansion, or relocation must be separately recognized.

(c) Both during the application process for recognition and after the Under Secretary for Health has recognized a facility, VA may survey the facility as necessary to determine if the facility and program management comply with the provisions of this part. Generally, VA will provide advance notice to the State before a survey occurs; however, surveys may be conducted without notice. A survey, as necessary, will cover all parts of the facility, and include a review and audit of all records of the program that have a bearing on compliance with any of the requirements of this part (including any reports from State or local entities). For purposes of a survey, at the request of the director of the VA medical center of jurisdiction, the State home adult day care health program management must submit to the director a completed VA Form 10-3567, "Staffing Profile", set forth at 38 CFR 58.10. The director of the VA medical center of jurisdiction will designate the VA officials to survey the facility. These officials may include physicians; nurses; pharmacists; dietitians; rehabilitation therapists; social workers; and representatives from health administration, engineering, environmental management systems, and fiscal officers.

(d) If the director of the VA medical center of jurisdiction determines that the State home facility or program management does not meet the standards of this part, the director will notify the State home program manager in writing of the standards not met. The director will send a copy of this notice to the State official authorized to oversee operations of the facility, the VA Network Director (10N1-22), the Assistant Deputy Under Secretary for Health (10N), and the Chief Consultant, Geriatrics and Extended Care Strategic
Healthcare Group (114). The letter will include the reasons for the decision and indicate that the State has the right to appeal the decision.

(e) The State must submit an appeal to the Under Secretary for Health in writing within 30 days of receipt of the notice of failure to meet the standards. In its appeal, the State must explain why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the State home facility or program management does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition at the State home facility that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), and State official authorized to oversee operations of the State home.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

[67 FR 660, 663, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)
Subpart C -- Per Diem Payments

§ 52.40 Monthly payment.
§ 52.50 Eligible veterans.

§ 52.40 Monthly payment.
(a)(1) During Fiscal Year 2002, VA will pay monthly one-half of the total cost of each eligible veteran's adult day health care for each day the veteran is in a facility recognized as a State home for adult day health care, not to exceed $ 34.64 per diem.
(2) Per diem will be paid only for a day that the veteran is under the care of the facility at least six hours. For purposes of this paragraph a day means
(i) Six hours or more in one calendar day; or
(ii) Any two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.
(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10-5588, "State Home Report and Statement of Federal Aid Claimed." This form is set forth in full at 38 CFR 58.11.
(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.
(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms: 10-10EZ, "Application for Medical Benefits", and 10-10SH, "State Home Program Application for Care-Medical Certification", at the time of enrollment and with any request for a change in the level of care (nursing home, domiciliary or hospital care). These forms are set forth in full at 38 CFR 58.12 and 58.13, respectively. If the program is eligible to receive per diem payments for adult day health care for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph (a)(5), except that VA will pay per diem from the day on which the veteran was enrolled in the program if VA receives the completed forms within 10 days after enrollment.
(b) For determining "the one-half of the total cost" under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circulars are available at the addresses in 5 CFR 1310.3). (The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)
[67 FR 660, 664, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)
§ 52.50 Eligible veterans.
A veteran is an eligible veteran under this part if VA determines that the veteran meets the definition of a veteran in 38 U.S.C. 101, is not barred from receiving this VA care under 38 U.S.C. 5303-5303A, needs adult day health care, and is within one of the following categories:
(a) Veterans with service-connected disabilities;
(b) Veterans who are former prisoners of war;
(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;
(d) Veterans who receive disability compensation under 38 U.S.C. 1151;
(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;
(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for adult day health care is provided for in the judgment or settlement described in 38 U.S.C. 1151;
(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);
(h) Veterans of the Mexican Border period or of World War I;
(i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e);
(j) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g), if they seek VA (U.S. Department of Veterans Affairs) hospital, nursing home, or outpatient care.
[67 FR 660, 664, Jan. 7, 2002]
Subpart D -- Standards

§ 52.60 Standards applicable for payment of per diem.
§ 52.61 General requirements for adult day health care program.
§ 52.70 Participant rights.
§ 52.71 Participant and family caregiver responsibilities.
§ 52.80 Enrollment, transfer and discharge rights.
§ 52.90 Participant behavior and program practices.
§ 52.100 Quality of life.
§ 52.110 Participant assessment.
§ 52.120 Quality of care.
§ 52.130 Nursing services.
§ 52.140 Dietary services.
§ 52.150 Physician services.
§ 52.160 Specialized rehabilitative services.
§ 52.170 Dental services.
§ 52.180 Administration of drugs.
§ 52.190 Infection control.
§ 52.200 Physical environment.
§ 52.210 Administration.
§ 52.220 Transportation.

§ 52.60 Standards applicable for payment of per diem.
The provisions of this subpart are the standards that a State home and program management must meet for the State to receive per diem for adult day health care provided at that facility.
[67 FR 660, 665, Jan. 7, 2002]


§ 52.61 General requirements for adult day health care program.
Adult day health care must be a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of geriatric patients.
[67 FR 660, 665, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)

§ 52.70 Participant rights.
The participant has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The program management must protect and promote the rights of each participant, including each of the following rights:

(a) Exercise of rights. (1) The participant has the right to exercise his or her rights as a participant of the program and as a citizen or resident of the United States.
(2) The participant has the right to be free of interference, coercion, discrimination, and reprisal from the program management in exercising his or her rights.
(3) The participant has the right to freedom from chemical or physical restraint.
(4) In the case of a participant determined incompetent under the laws of a State by a court of jurisdiction, the rights of the participant are exercised by the person appointed under State law to act on the participant's behalf.

(b) Notice of rights and services. (1) The program management must inform the participant both orally and in writing in a language that the participant understands of his or her rights and all rules and regulations governing participant conduct and responsibilities during enrollment in the program. Such notification must be made prior to or upon enrollment and periodically during the participant's enrollment.
(2) Participants or their legal representatives have the right --
(i) Upon an oral or written request, to access all records pertaining to them including current participant records within 24 hours (excluding weekends and holidays); and
(ii) After receipt of their records for review, to purchase, at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and with two working days advance notice to the facility management.
(3) Participants have the right to be fully informed in language that they can understand of their total health status.
(4) Participants have the right to refuse treatment, to refuse to participate in patient activities, to refuse to participate in experimental research, and to formulate an advance directive as specified in paragraph (a)(7) of this section.
(5) The program management must inform each participant before, or at the time of enrollment, and periodically during the participant's stay, of services available in the facility and of charges for those services to be billed to the participant.
(6) The program management must furnish a written description of legal rights which includes a statement that the participant may file a complaint with the State (agency) concerning participant abuse and neglect.
(7) The program management must have written policies and procedures regarding advance directives (e.g., living wills). These requirements include provisions to inform and provide written information to all participants concerning the right to accept or refuse medical or surgical treatment and, at the individual's option, formulate an advance directive. This includes a written description of the facility's policies to implement advance directives and applicable State law.
(8) Notification of changes. (i) Program management must immediately inform the participant; consult with the primary physician; and notify the participant's legal representative or an interested family member when there is --
(A) An accident involving the participant which results in injury and has the potential for requiring physician intervention;
(B) A significant change in the participant's physical, mental, or psychosocial status (e.g., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);
(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or
(D) A decision to transfer or discharge the participant from the program.

(ii) The program management must also promptly notify the participant and the participant's legal representative or interested family member when there is a change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The program management must record and periodically update the address and phone number of the participant's legal representative, or interested family member, and the primary physician.

(c) Free choice. (1) The participant has the right to --
   (i) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the participant's well-being; and
   (ii) Unless determined incompetent or otherwise determined to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(2) If the participant is determined incompetent or otherwise determined to be incapacitated under the laws of the State, the participant's legal representative or interested family member(s) has the right to participate in planning care and treatment or changes in care and treatment.

(d) Privacy and confidentiality. Participants have the right to privacy and confidentiality of their personal and clinical records.
   (1) Participants have a right to privacy in their medical treatment and personal care.
   (2) Except as provided in paragraph (d)(3) of this section, participants may approve or refuse the release of personal and clinical records to any individual outside the facility.
   (3) The participant's right to refuse release of personal and clinical records does not apply when --
      (i) The participant is transferred to another health care institution; or
      (ii) The release is required by law.

(e) Grievances. A participant has the right to --
   (1) Voice grievances without discrimination or reprisal. Participants may voice grievances with respect to treatment received and not received; and
   (2) Prompt efforts by facility management to resolve grievances the participant may have, including those with respect to the behavior of other participants.

(f) Examination of survey results. A participant has the right to --
   (1) Examine the results of the most recent VA survey with respect to the program. The program management must make the results available for examination in a place readily accessible to participants, and must post a notice of their availability; and
   (2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(g) Work. The participant has the right to --
   (1) Refuse to perform services for the facility;
   (2) Perform services for the facility, if he or she chooses, when --
(i) The facility has documented the need or desire for work therapy in the plan of care;
(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
(iii) Compensation for (work therapy) paid services is at or above prevailing rates; and
(iv) The participant agrees to the work therapy arrangement described in the plan of care.

(h) Access and visitation rights. (1) The program management must provide immediate access to any participant by the following:
   (i) Any representative of the Under Secretary for Health;
   (ii) Any representative of the State;
   (iii) The State long-term care ombudsman;
   (iv) Immediate family or other relatives of the participant subject to the participant's right to deny or withdraw consent at any time; and
   (v) Others who are visiting subject to reasonable restrictions and the participant's right to deny or withdraw consent at any time.
   (2) The program management must provide reasonable access to any participant by any entity or individual that provides health, social, legal, or other services to the participant, subject to the participant's right to deny or withdraw consent at any time.
   (3) The program management must allow representatives of the State Ombudsman Program to examine a participant's clinical records with the permission of the participant or the participant's legal representative, subject to State law.
   (i) Telephone. The participant has the right to reasonable access to use a telephone where calls can be made without being overheard.
   (j) Personal property. The participant has the right to have at least one change of personal clothing.
   (k) Self-administration of drugs. An individual participant may self-administer drugs if the interdisciplinary team has determined that this practice is safe for the individual and is a part of the care plan.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

[67 FR 660, 665, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)

§ 52.71 Participant and family caregiver responsibilities.
The program management has a written statement of participant and family caregiver responsibilities that are posted in the facility and provided to the participant and caregiver at the time of the intake screening. The Statement of responsibilities must include the following:
(a) Treat personnel with respect and courtesy;
(b) Communicate with staff to develop a relationship of trust;
(c) Make appropriate choices and seek appropriate care;
(d) Ask questions and confirm understanding of instructions;
(e) Share opinions, concerns, and complaints with the program director;
(f) Communicate any changes in the participant's condition;
(g) Communicate to the program director about medications and remedies used by the participant;
(h) Let the program director know if the participant decides not to follow any instructions or treatment; and
(i) Communicate with the adult day health care staff if the participant is unable to attend the adult day health care program.
(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)
[67 FR 660, 666, Jan. 7, 2002]


§ 52.80 Enrollment, transfer and discharge rights.
(a) Participants in the adult day health care program must meet the provisions of this part that apply to participants and --
(1) Must meet at least two of the following indicators:
   (i) Dependence in two or more activities of daily living (ADLs).
   (ii) Dependence in three or more instrumental activities of daily living (IADLs).
   (iii) Advanced age, i.e., 75 years old or over.
   (iv) High use of medical services, i.e., three or more hospitalizations in past 12 months; or 12 or more hospitalizations, outpatient clinic visits; or emergency evaluation unit visits, in the past 12 months.
   (v) Diagnosis of clinical depression.
   (vi) Recent discharge from nursing home or hospital.
   (vii) Significant cognitive impairment, particularly when characterized by multiple behavior problems;
(2) Must have a supportive living arrangement sufficient to meet their health care needs when not participating in the adult day health care program; and
(3) Must be able to benefit from the adult day health care program.
(b) Transfer and discharge. (1) Definition. Transfer and discharge includes movement of a participant to a program outside of the adult day health care program whether or not that program or facility is in the same physical plant.
(2) Transfer and discharge requirements. All participants' preparedness for discharge from adult day health care must be a part of a comprehensive care plan. The possible reasons for discharge must be discussed with the participant and family members at the time of intake screening. Program management must permit each participant to remain in the program, and not transfer or discharge the participant from the program unless --
   (i) The transfer or discharge is necessary for the participant's welfare and the participant's needs cannot be met in the adult day health care setting;
   (ii) The transfer or discharge is appropriate because the participant's health has improved sufficiently so the participant no longer needs the services provided in the adult day health care setting;
   (iii) The safety of individuals in the program is endangered;
   (iv) The health of individuals in the program would otherwise be endangered;
   (v) The participant has failed, after reasonable and appropriate notice, to pay for participation in the adult day health care program; or
(vi) The adult day health care program ceases to operate.

(3) Documentation. When the facility transfers or discharges a participant under any of the circumstances specified in paragraphs (b)(2)(i) through (vi) of this section, the primary physician must document the reason for such action in the participant's clinical record.

(4) Notice before transfer. Before a facility transfers or discharges a participant, the program management must --

(i) Notify the participant and a family member or legal representative of the participant of the transfer or discharge and the reasons for the move in writing and in a language and manner they can understand;

(ii) Record the reasons in the participant's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) Timing of the notice. (i) The notice of transfer or discharge required under paragraph (b)(4) of this section must be made by program management at least 30 days before the participant is transferred or discharged, except when specified in paragraph (b)(5)(ii) of this section.

(ii) Notice may be made as soon as practicable before transfer or discharge when --

(A) The safety of individuals in the program would be endangered;

(B) The health of individuals in the program would be otherwise endangered;

(C) The participant's health improves sufficiently so the participant no longer needs the services provided by the adult day health care program;

(D) The resident's needs cannot be met in the adult day health care program.

(6) Contents of the notice. The written notice specified in paragraph (b)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the participant is transferred or discharged, if any;

(iv) A statement that the participant has the right to appeal the action to the State official responsible for the oversight of State Veterans Home programs; and

(v) The name, address and telephone number of the State long-term care ombudsman.

(7) Orientation for transfer or discharge. The program management must provide sufficient preparation and orientation to participants to ensure safe and orderly transfer or discharge from the program.

(c) Equal access to quality care. The program management must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment.

(d) Enrollment policy. The program management must not require a third party guarantee of payment to the program as a condition of enrollment or expedited enrollment, or continued enrollment in the program. However, program management may require a participant or an individual who has legal access to a participant's income or resources to pay for program care from the participant's income or resources, when available.

(e) Hours of operation. Each adult day health care program must provide at least 8 hours of operation five days a week. The hours of operation must be flexible and responsive to caregiver needs.

(f) Caregiver support. The adult day health care program must develop a Caregiver Program which offers mutual support, information and education.
§ 52.90 Participant behavior and program practices.
(a) Restraints. (1) The participant has a right to be free from any chemical or physical restraints imposed for purposes of discipline or convenience. When a restraint is applied or used, the purpose of the restraint is reviewed and is justified as a therapeutic intervention and documented in the participant's clinical record.
   (i) Chemical restraint is the inappropriate use of a sedating psychotropic drug to manage or control behavior.
   (ii) Physical restraint is any method of physically restricting a person's freedom of movement, physical activity or normal access to his or her body.
(2) The program management uses a system to achieve a restraint-free environment.
(3) The program management collects data about the use of restraints.
(4) When alternatives to the use of restraint are ineffective, restraint is safely and appropriately used.
(b) Abuse. (1) The participant has the right to be free from mental, physical, sexual, and verbal abuse or neglect, corporal punishment, and involuntary seclusion.
   (i) Mental abuse includes humiliation, harassment, and threats of punishment or deprivation.
   (ii) Physical abuse includes hitting, slapping, pinching, kicking or controlling behavior through corporal punishment.
   (iii) Sexual abuse includes sexual harassment, sexual coercion, and sexual assault.
   (iv) Neglect is any impaired quality of life for an individual because of the absence of minimal services or resources to meet basic needs. Neglect may include withholding or inadequately providing food and hydration, clothing, medical care, and good hygiene. It also includes placing the individual in unsafe or unsupervised conditions.
   (v) Involuntary seclusion is a participant's separation from other participants against his or her will or the will of his or her legal representative.
(2) [Reserved]
(c) Staff treatment of participants. The program management must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of participants and misappropriation of participant property.
(1) The program management must --
   (i) Not employ individuals who --
      (A) Have been found guilty of abusing, neglecting, or mistreating individuals by a court of law; or
      (B) Have had a finding entered into an applicable State registry or with the applicable licensing authority concerning abuse, neglect, mistreatment of individuals or misappropriation of their property; and
(ii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a program assistant or other program staff to the State oversight agency director and licensing authorities.

(2) The program management must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of participant property are reported immediately to the State oversight agency director and to other officials in accordance with State law through established procedures.

(3) The program management must have evidence that all alleged violations are thoroughly investigated, and must prevent potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the State oversight agency director or the designated representative and to other officials in accordance with State law within five working days of the incident, and appropriate corrective action must be taken if the alleged violation is verified.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

[67 FR 660, 667, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)


§ 52.100 Quality of life.
Program management must provide an environment and provide or coordinate care that supports the quality of life of each participant by maximizing the individual's potential strengths and skills.

(a) Dignity. The program management must promote care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect in full recognition of his or her individuality.

(b) Self-determination and participation. The participant has the right to --

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the program; and

(3) Make choices about aspects of his or her life in the program that are significant to the participant.

(c) Participant and family concerns. The program management must document any concerns submitted to the management of the program by participants or family members.

(1) A participant's family has the right to meet with families of other participants in the program.

(2) Staff or visitors may attend participant or family meetings at the group's invitation.

(3) The program management must respond to written requests that result from group meetings.

(4) The program management must listen to the views of any participant or family group and act upon the concerns of participants and families regarding policy and operational decisions affecting participant care in the program.
(d) Participation in other activities. A participant has the right to participate in social, religious, and community activities that do not interfere with the rights of other participants in the program.

(e) Therapeutic participant activities. (1) The program management must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well being of each participant.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who --

(i) Is licensed, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or an activities professional by a recognized certifying body.

(3) A critical role of the adult day health care program is to build relationships and create a culture that supports, involves, and validates the participant. Therapeutic activity refers to that supportive culture and is a significant aspect of the individualized plan of care. A participant's activity includes everything the individual experiences during the day, not just arranged events. As part of effective therapeutic activity the adult day health care program must:

(i) Provide direction and support for participants, including breaking down activities into small, discrete steps or behaviors, if needed by a participant;

(ii) Have alternative programming available for any participant unable or unwilling to take part in group activity;

(iii) Design activities that promote personal growth and enhance the self-image and/or improve or maintain the functioning level of participants to the extent possible;

(iv) Provide opportunities for a variety of involvement (social, intellectual, cultural, economic, emotional, physical, and spiritual) at different levels, including community activities and events;

(v) Emphasize participants' strengths and abilities rather than impairments and contribute to participant feelings of competence and accomplishment; and

(vi) Provide opportunities to voluntarily perform services for community groups and organizations.

(f) Social services. (1) The facility management must provide medically-related social services to participants and their families.

(2) An adult day health care program must employ or contract for a qualified social worker to provide social services.

(3) Qualifications of social worker. A qualified social worker is an individual with --

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (Note: A master's degree social worker with experience in long-term care is preferred);

(ii) A social work license from the State in which the State home is located, if license is offered by the State; and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The facility management must have sufficient social worker and support staff to meet participant and family social services needs. The adult day health care social services must:
(i) Provide counseling to participants and families/caregivers;
(ii) Facilitate the participant's adaptation to the adult day health care program and active involvement in the plan of care, if appropriate;
(iii) Arrange for services not provided by the adult day health care program and work with these resources to coordinate services;
(iv) Serve as participant advocate by asserting and safeguarding the human and civil rights of the participants;
(v) Assess signs of mental illness and/or dementia and make appropriate referrals;
(vi) Provide information and referral for persons not appropriate for adult day health care program;
(vii) Provide family conferences and serve as liaison between participant, family/caregiver and program staff;
(viii) Provide individual or group counseling and support to caregivers and participants;
(ix) Conduct support groups or facilitate participant or family/caregiver participation in support groups;
(x) Assist program staff in adapting to changes in participants' behavior; and
(xi) Provide or arrange for individual, group, or family psychotherapy for participants' with significant psychosocial needs.
(5) Space for social services must be adequate to ensure privacy for interviews.
(g) Environment. The program management must provide --
(1) A safe, clean, comfortable, and homelike environment, and support the participants' ability to function as independently as possible and to engage in program activities;
(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;
(3) Private storage space for each participant sufficient for a change of clothes;
(4) Interior signs to facilitate participants' ability to move about the facility independently and safely;
(5) A clean bed available for acute illness, when indicated;
(6) A shower for resident's need, when indicated;
(7) Adequate and comfortable lighting levels in all areas;
(8) Comfortable and safe temperature levels; and
(9) Comfortable sound levels.
(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)
[67 FR 660, 668, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)

§ 52.110 Participant assessment.
The program management must conduct initially, semi-annually and as required by a change in the participant's condition a comprehensive, accurate, standardized, reproducible assessment of each participant's functional capacity.
(a) Intake screening. An intake screening must be completed to determine the appropriateness of the adult day health care program for each participant.
(b) Enrollment orders. The program management must have physician orders for the participant's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the participant's condition, not to exceed 72 hours after enrollment, except when an examination was performed within five days before enrollment and the findings were provided and placed in the clinical record on enrollment.

(c) Comprehensive assessments. (1) The program management must make a comprehensive assessment of a participant's needs using (on and after January 1, 2002) the Minimum Data Set for Home Care (MSD-HC) Instrument Version 2.0, August 2, 2000.

(2) Frequency. Participant assessments must be completed --
(i) No later than 14 calendar days after the date of enrollment; and
(ii) Promptly after a significant change in the participant's physical, mental, or social condition.

(3) Review of assessments. Program management must review each participant no less than once every six months and as appropriate and revise the participant's assessment to assure the continued accuracy of the assessment.

(4) Use. The results of the assessment are used to develop, review, and revise the participant's individualized comprehensive plan of care, under paragraph (e) of this section.

(d) Accuracy of assessments. (1) Coordination. (i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) Certification. Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(e) Comprehensive care plans. (1) The program management must develop an individualized comprehensive care plan for each participant that includes measurable objectives and timetables to meet a participant's physical, mental, and psychosocial needs that are identified in the comprehensive assessment. The care plan must describe the following --

(i) The services that are to be provided by the program and by other sources to attain or maintain the participant's highest physical, mental, and psychosocial well-being as required under § 52.120;

(ii) Any services that would otherwise be required under § 52.120 but are not provided due to the participant's exercise of rights under § 52.70, including the right to refuse treatment under § 52.70(b)(4);

(iii) Type and scope of interventions to be provided in order to reach desired, realistic outcomes;

(iv) Roles of participant and family/caregiver; and

(v) Discharge or transition plan, including specific criteria for discharge or transfer.

(2) A comprehensive care plan must be --

(i) Developed within 21 calendar days from the date of the adult day care enrollment and after completion of the comprehensive assessment;

(ii) Assigned to one team member for the accountability of coordinating the completion of the interdisciplinary plan;
(iii) Prepared by an interdisciplinary team that includes the primary physician, a registered nurse with responsibility for the participant, social worker, recreational therapist and other appropriate staff in disciplines as determined by the participant's needs, the participation of the participant, and the participant's family or the participant's legal representative; and
(iv) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must --
(i) Meet professional standards of quality; and
(ii) Be provided by qualified persons in accordance with each participant's written plan of care.

(f) Discharge summary. Prior to discharging a participant, the program management must prepare a discharge summary that includes --
(1) A recapitulation of the participant's care;
(2) A summary of the participant's status at the time of the discharge to include items in paragraph (c)(2) of this section; and
(3) A discharge/transition plan related to changes in service needs and changes in functional status that prompted another level of care.

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

[67 FR 660, 669, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)


§ 52.120 Quality of care.
Each participant must receive, and the program management must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) Reporting of sentinel events. (1) Definition. A sentinel event is an adverse event that results in the loss of life or limb or permanent loss of function.
(2) Examples of sentinel events are as follows:
(i) Any participant death, paralysis, coma or other major permanent loss of function associated with a medication error; or
(ii) Any suicide or attempted suicide of a participant, including suicides following elopement (unauthorized departure) from the program; or
(iii) Any elopement of a participant from the program resulting in a death or a major permanent loss of function; or
(iv) Any procedure or clinical intervention, including restraints, that result in death or a major permanent loss of function; or
(v) Assault, homicide or other crime resulting in a participant's death or major permanent loss of function; or
(vi) A participant's fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall; or
(vii) A serious injury requiring hospitalization.
(3) The program management must report sentinel events to the director of the VA medical center of jurisdiction within 24 hours of identification. The director of the VA medical center of jurisdiction must report sentinel events to the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N), and Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), within 24 hours of identification and/or notification by the State home.

(4) The program management must establish a mechanism to review and analyze a sentinel event resulting in a written report no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event in an adult day health care program is to prevent future injuries to residents, visitors, and personnel.

(b) Activities of daily living. Based on the comprehensive assessment of a resident, the program management must ensure that --

(1) A participant's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the participant's ability to --
   (i) Bathe, dress, and groom;
   (ii) Transfer and ambulate;
   (iii) Toilet; and
   (iv) Eat.

(2) A participant is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section.

(3) A participant who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) Vision and hearing. To ensure that participants receive proper treatment and assistive devices to maintain vision and hearing abilities, the program management must, if necessary, assist the participant and family --

(1) In making appointments; and
(2) Arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) Pressure ulcers. Based on the comprehensive assessment of a participant, the program management must ensure that --

(1) A participant who enters the program without pressure ulcers does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and
(2) A participant having pressure ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new ulcers from developing.

(e) Urinary and fecal incontinence. Based on the participant's comprehensive assessment, the program management must ensure that --

(1) A participant who enters the program without an indwelling catheter is not catheterized unless the participant's clinical condition demonstrates that catheterization was necessary;
(2) A participant who is incontinent of urine receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible; and
(3) A participant who has persistent fecal incontinence receives appropriate treatment and services to treat reversible causes and to restore as much normal bowel function as possible.

(f) Range of motion. Based on the comprehensive assessment of a participant, the program management must ensure that --
(1) A participant who enters the program without a limited range of motion does not experience reduction in range of motion unless the participant's clinical condition demonstrates that a reduction in range of motion is unavoidable; and
(2) A participant with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(g) Mental and psychosocial functioning. Based on the comprehensive assessment of a participant, the program management must ensure that a participant who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem.

(h) Accidents. The program management must ensure that --
(1) The participant environment remains as free of accident hazards as is possible; and
(2) Each participant receives adequate supervision and assistance devices to prevent accidents.

(i) Nutrition. Based on a participant's comprehensive assessment, the program management must ensure, by working with the family, that a participant --
(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the participant's clinical condition demonstrates that this is not possible; and
(2) Receives a therapeutic diet when a nutritional deficiency is identified.

(j) Hydration. The program management must provide each participant with sufficient fluid intake during the day to maintain proper hydration and health.

(k) Unnecessary drugs. (1) General. Each participant's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or
(ii) For excessive duration; or
(iii) Without adequate monitoring; or
(iv) Without adequate indications for its use; or
(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or
(vi) Any combinations of the reasons in paragraphs (k)(1)(i) through (v) of this section.

(2) Antipsychotic drugs. Based on a comprehensive assessment of a participant, the program management must ensure that --
(i) Participants who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed by the primary physician and documented in the clinical record; and
(ii) Participants who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(l) Medication errors. The program management must ensure that --
(1) Medication errors are identified and reviewed on a timely basis; and
(2) Strategies for preventing medication errors and adverse reactions are implemented. (The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.) [67 FR 660, 669, Jan. 7, 2002]


§ 52.130 Nursing services.
The program management must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by participant assessment and individualized comprehensive plans of care, of all participants in the program.
(a) There must be at least one registered nurse on duty each day of operation of the adult day health care program. This nurse must be currently licensed by the State and must have, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing and program assistants. VA recommends that this nurse be a geriatric nurse practitioner or a clinical nurse specialist.
(b) The number and level of nursing staff is determined by the authorized capacity of participants and the nursing care needs of the participants.
(c) Nurse staffing must be adequate for meeting the standards of this part. (The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.) [67 FR 660, 670, Jan. 7, 2002]


§ 52.140 Dietary services.
The program management must provide each participant with a nourishing, palatable, well-balanced meal that proportionally meets the daily nutritional and special dietary needs of each participant.
(a) Food and nutritional services. The program management provides and/or contracts with a food service entity and provides and/or contracts sufficient support personnel competent to carry out the functions of the food service.
(1) The program management must employ a qualified dietitian either part-time or on a contract consultant basis to provide nutritional guidance.
(2) A qualified dietitian is one who is qualified based upon registration by the Commission on Dietetic Registration of the American Dietetic Association.
(3) The dietitian must --
   (i) Conduct participant nutritional assessments and recommend nutritional intervention as appropriate.
   (ii) Consult and provide nutrition education to participants, family/caregivers, and program staff as needed.
   (iii) Consult and provide education and training to the food service staff.
(iv) Monitor and evaluate participants receiving enteral tube feedings and parenteral line solutions, and recommend changes as appropriate.

(b) Menus and nutritional adequacy. (1) The participant's total dietary intake is of concern but is not the adult day health care program's responsibility.
(2) The program is responsible for the meals served in the facility.
(c) Food. Each participant receives and the program provides --
(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;
(2) Food that is palatable, attractive, and at the proper temperature;
(3) Food prepared in a form designed to meet individual needs; and
(4) Substitutes offered of similar nutritive value to participants who refuse food served.
(d) Therapeutic diets. (1) Therapeutic diets must be prescribed by the primary care physician.
(2) Special, modified, or therapeutic diets must be provided as necessary for participants with medical conditions or functional impairments.
(3) An adult day health care program must not admit nor continue to serve a participant whose dietary requirements cannot be accommodated by the program.
(e) Frequency of meals. (1) At regular times comparable to normal mealtimes in the community, each participant may receive and program management must provide at least two meals daily for those veterans staying more than four hours and at least one meal for those staying less than four hours.
(2) The program management must offer snacks and fluids as appropriate to meet the participants' nutritional and fluid needs.
(f) Assistive devices. The program management must provide special eating equipment and utensils for participants who need them.
(g) Sanitary conditions. The program must --
(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;
(2) Store, prepare, distribute, and serve food under sanitary conditions; and
(3) Dispose of garbage and refuse properly.

§ 52.150 Physician services.
As a condition of enrollment in adult day health care program, a participant must obtain a written physician order for enrollment. Each participant must remain under the care of a physician.
(a) Physician supervision. The program management must ensure that --
(1) The medical care of each participant is supervised by a primary care physician;
(2) Each participant's medical record must contain the name of the participant's primary physician; and
(3) Another physician is available to supervise the medical care of participants when their primary physician is unavailable.
(b) Frequency of physician reviews. (1) The participant must be seen by the primary physician at least annually and as indicated by a change of condition.
The program management must have a policy to help ensure that adequate medical services are provided to the participant.

At the option of the primary physician, required reviews in the program after the initial review may alternate between personal physician reviews and reviews by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(c) Availability of acute care. The program management must provide or arrange for the provision of acute care when it is indicated.

(d) Availability of physicians for emergency care. In case of an emergency, the program management must provide or arrange for the provision of physician services when the program has participants under its care.

(e) Physician delegation of tasks. (1) A primary physician may delegate tasks to:
   (i) A certified physician assistant or a certified nurse practitioner, or
   (ii) A clinical nurse specialist who --
      (A) Is acting within the scope of practice as defined by State law; and
      (B) Is under the supervision of the physician.
(2) The primary physician may not delegate a task when the provisions of this part specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

(38 U.S.C. 101, 501, 1741-1743)

§ 52.160 Specialized rehabilitative services.

(a) Provision of services. If specialized rehabilitative services such as, but not limited to, physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the participant's comprehensive plan of care, program management must --
   (1) Provide the required services; or
   (2) Obtain the required services and equipment from an outside resource, in accordance with § 52.210(h), from a provider of specialized rehabilitative services.

(b) Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(38 U.S.C. 101, 501, 1741-1743)

§ 52.170 Dental services.

(a) Program management must, if necessary, assist the participant and family/caregiver --
(1) In making appointments; and
(2) By arranging for transportation to and from the dental services.
(b) Program management must promptly assist and refer participants with lost or
damaged dentures to a dentist.
[67 FR 660, 671, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)
6, 2002.]

§ 52.180 Administration of drugs.
The program management must assist with the management of medication and have a
system for disseminating drug information to participants and program staff.
(a) Procedures. (1) The program management must provide reminders or prompts to
participants to initiate and follow though with self-administration of medications.
(2) The program management must establish a system of records to document the
administration of drugs by participants and/or staff.
(3) The program management must ensure that drugs and biologicals used by participants
are labeled in accordance with currently accepted professional principles, and include the
appropriate accessory and cautionary instructions, and the expiration dates when
applicable.
(4) The program management must store all drugs, biologicals, and controlled schedule II
drugs listed in 21 CFR 1308.12 in locked compartments under proper temperature
controls, permit only authorized personnel to have access, and otherwise comply with all
applicable State and Federal laws.
(b) Service consultation. The program management must employ or contract for the
services of a pharmacist licensed in the State in which the program is located who
provides consultation, as needed, on all the provision of drugs.
(The Office of Management and Budget has approved the information collection
requirements in this paragraph under control number 2900-0160.)
[67 FR 660, 672, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)
6, 2002.]

§ 52.190 Infection control.
The program management must establish and maintain an infection control program
designed to prevent the development and transmission of disease and infection.
(a) Infection control program. The program management must --
(1) Investigate, control, and prevent infections in the program participants and staff; and
(2) Maintain a record of incidents and corrective actions related to infections.
(b) Preventing spread of infection. (1) The program management must prevent
participants or staff with a communicable disease or infected skin lesions from attending
the adult day health care program if direct contact will transmit the disease.
(2) The program management must require staff to wash their hands after each direct
participant contact for which hand washing is indicated by accepted professional practice.
§ 52.200 Physical environment.
The physical environment must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.
(a) Life safety from fire. The facility must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code, 2000 edition. Incorporation by reference this document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The document incorporated by reference is available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW., Washington, DC 20420. Copies may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02269. (For ordering information, call toll-free 1-800-344-3555.)
(b) Space and equipment. (1) Program management must --
   (i) Provide sufficient space and equipment in dining, health services, recreation, and
   program areas to enable staff to provide participants with needed services as required by
   these standards and as identified in each participant's plan of care; and
   (ii) Maintain all essential mechanical, electrical, and patient care equipment in safe
   operating condition.
   (2) Each adult day health care program, when it is co-located in a nursing home,
   domiciliary, or other care facility, must have its own separate designated space during
   operational hours.
   (3) The indoor space for an adult day health care program must be at least 100 square feet
   per participant including office space for staff and must be 60 square feet per participant
   excluding office space for staff.
   (4) Each program will need to design and partition its space to meet its own needs, but a
   minimal number of functional areas must be available. These include:
   (i) A dividable multipurpose room or area for group activities, including dining, with
   adequate table-setting space.
   (ii) Rehabilitation rooms or an area for individual and group treatments for occupational
   therapy, physical therapy, and other treatment modalities.
   (iii) A kitchen area for refrigerated food storage, the preparation of meals and/or training
   participants in activities of daily living.
   (iv) An examination and/or medication room.
   (v) A quiet room (with at least one bed), which functions to isolate participants who
   become ill or disruptive, or who require rest, privacy, or observation, must include a bed.
   It should be separate from activity areas, near a restroom, and supervised.
   (vi) Bathing facilities adequate to facilitate bathing of participants with functional
   impairments.
(vii) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all programs areas, i.e., preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier-free.

(viii) Adequate storage space. There should be space to store arts and crafts materials, personal clothing and belongings, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.

(ix) An individual room for counseling and interviewing participants and family members.

(x) A reception area.

(xi) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and garden area. It should be easily supervised by staff.

(c) Furnishings must be available for all participants. This must include functional furniture appropriate to the participants' needs. Furnishings must be attractive, comfortable, and homelike, while being sturdy and safe.

(d) Participant call system. The coordinator's station must be equipped to receive participant calls through a communication system from --

(1) Clinic rooms; and
(2) Toilet and bathing facilities.

(e) Other environmental conditions. The program management must provide a safe, functional, sanitary, and comfortable environment for the participants, staff and the public. The program management must --

(1) Establish procedures to ensure that water is available to essential areas if there is a loss of normal water supply;
(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
(3) Equip corridors, when available, with firmly-secured handrails on each side; and
(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

[67 FR 660, 672, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)

[EFFECTIVE DATE NOTE: 67 FR 660, 672, Jan. 7, 2002, added Part 52, effective Feb. 6, 2002.]

§ 52.210 Administration.

An adult day health care program must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well being of each participant.

(a) Governing body. (1) The State must have a governing body, or designated person functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the program; and
(2) The governing body or State official with oversight for the program appoints the adult day health care program administrator who is:
(i) A qualified health care professional experienced in clinical program management and, if required by the State, certified as a Certified Administrator in Adult Day Health Care; and
(ii) Responsible for the operation and management of the program including:
(A) Documentation of current credentials for each licensed independent practitioner employed by the program;
(B) Review of the practitioner's record of experience;
(C) Assessment of whether practitioners with clinical privileges act within the scope of privileges granted; and
(iii) Awareness of local trends in community adult day health care and other services, and participation in area adult day health care organizations.

(b) Disclosure of State agency and individual responsible for oversight of facility. The State must give written notice to the Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, at the time of the change, if any of the following change:
(1) The State agency and individual responsible for oversight of a State home facility;
(2) The State adult day health care program administrator; or
(3) The State employee responsible for oversight of the State home adult day health care program if a contractor operates the State program.

(c) Required information. The program management must submit the following to the director of the VA medical center of jurisdiction as part of the application for recognition and thereafter as often as necessary to be current:
(1) The copy of the legal and administrative action establishing the State-operated facility (e.g., State laws);
(2) Site plan of facility and surroundings;
(3) Legal title, lease, or other document establishing the right to occupy the facility;
(4) Organizational charts and the operational plan of the adult day health care program;
(5) The number of the staff by category indicating full-time, part-time and minority designation, annually;
(6) The number of adult day health care participants who are veterans and non-veterans, the number of veterans who are minorities and the number of non-veterans who are minorities, annually;
(7) Annual State Fire Marshall's report;
(8) Annual certification from the responsible State home showing compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (VA Form 10-0143A set forth at 38 CFR 58.14);
(10) Annual certification regarding lobbying in compliance with 31 U.S.C. 1352 (VA Form 10-0144 set forth at 38 CFR 58.16);
(11) Annual certification of compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) as effectuated in 38 CFR part 18 (VA Form 10-0144A located at 38 CFR 58.17);
(d) Percentage of veterans. At least 75 percent of the program participants must be eligible veterans except that the veteran percentage need only be more than 50 percent if the facility was acquired, constructed, or renovated solely with State funds. All
non-veteran participants must be veteran-related family members or gold star parents of veterans.

(e) Management contract facility. If a program is operated by an entity contracting with the State, the State must assign a State employee to monitor the operations of the facility. The State employee may also monitor other levels of care at a colocated facility, but must monitor the adult day health care facility and any colocated facility on a full-time onsite basis.

(f) Licensure. The facility and program management must comply with applicable State and local licensure laws.

(g) Staff qualifications. (1) The program management must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements. Professional disciplines involved in participant care must include registered nurses, program assistants, physicians, social workers, rehabilitation therapists, dietitians, and therapeutic activity therapists and pharmacists. Other disciplines may be considered depending upon the participant and/or program needs.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(3) The staff-participant ratio must be sufficient in number and skills (at least one staff to 4 to 6 participants) to ensure compliance with the standards of this part. There must be at least two responsible persons (paid staff members) at the adult day health care center at all times when there are two or more participants in attendance.

(4) Persons counted in the staff to participant ratio must spend at least 70 percent of their time in direct service with participants.

(5) All professional team members will serve in the role of case manager for designated participants.

(6) All personnel, paid and volunteer, will be provided appropriate training to maintain the knowledge and skills required for the participant needs.

(h) Use of outside resources. (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the program management must have that service furnished to participants by a person or agency outside the facility under a written agreement described in paragraph (h)(2) of this section.

(2) Agreements pertaining to services furnished by outside resources must specify in writing that the program management assumes responsibility for --

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a program; and

(ii) The timeliness of the services.

(i) Medical director. (1) The program management must provide a primary care physician to serve as medical director and a consultant to the interdisciplinary program team.

(2) The medical director is responsible for:

(i) Participating in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services;

(ii) Directing and coordinating medical care in the program;

(iii) Ensuring continuous physician coverage to handle medical emergencies;
(iv) Participating in managing the environment by reviewing and evaluating incident reports or summaries of incident reports, identifying hazards to health and safety, and making recommendations to the adult day health care program administrator; and
(v) Monitoring employees' health status and advising the program administrator on employee health policies.

(3) The medical director may also provide hands-on assessment and/or treatment if authorized by the participant's primary care provider. In programs where a medical director is available to act as a member of the team and authorizes care, information concerning the care provided must be shared with the primary care physician who continues to provide the ongoing medical care.

(4) The program management must have written procedures for handling medical emergencies. The procedures must include, at least:

(i) Procedures for notification of the family;
(ii) Procedures for transportation arrangements;
(iii) Provision for an escort, if necessary; and
(iv) Procedures for maintaining a portable basic emergency information file for each participant that includes:
(A) Hospital preference;
(B) Physician of record and telephone number;
(C) Emergency contact (family);
(D) Insurance information;
(E) Medications/allergies;
(F) Current diagnosis and history; and
(G) Photograph for participant identification.

(j) Required training of program assistants. (1) Program assistants must have a high school diploma, or the equivalent, and must have at least one year of experience in working with adults in a health care setting. Program assistants also must complete the National Adult Day Services Association training course or complete equivalent training.

(2) The program management must not use any individual working in the program as a program assistant whether permanent or not unless:

(i) That individual is competent to provide appropriate services; and

(ii) That individual has completed training or is certified by the National Adult Day Services Association as a certified Program Assistant in Adult Day Services.

(3) Verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must verify that the individual has successfully completed a training and competency evaluation program. Facilities must follow up to ensure that such an individual actually becomes certified, if available in the State.

(4) Multi-State registry verification. Before allowing an individual to serve as a nurse aide or program assistant, program management must seek information from every State registry established under HHS regulations at 42 CFR 483.156 which the facility believes may include information on the individual.

(5) Required retraining. If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.
(6) Regular in-service education. The program management must complete a performance review of every nurse aide or program assistant at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must --

(i) Be sufficient to ensure the continuing competence of nurse aides or program assistants, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in program assistants' performance reviews and address the special needs of participants as determined by the program staff; and

(iii) For program assistants or nurse aides providing services to individuals with cognitive impairments, address the care of the cognitively impaired.

(k) Proficiency of program assistants. The program management must ensure that program assistants or nurse aides are able to demonstrate competency in skills and techniques necessary to care for participants' needs, as identified through participant assessments, and described in the plan of care.

(l) Laboratory and radiology results. The program management must --

(1) Obtain laboratory or radiology results from the participant's primary physician to support the needs of its participants.

(2) Assist the participant and/or family/caregiver in making transportation arrangements to and from the source of laboratory or radiology services, if the participant needs assistance.

(3) File in the participant's clinical record laboratory or radiology reports that are dated and contain the name and address of the testing laboratory or radiology service.

(m) Participant records. (1) The facility management must maintain clinical records on each participant in accordance with accepted professional standards and practices that are --

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for --

(i) The period of time required by State law; or

(ii) Five years from the date of discharge if there is no requirement in State law.

(3) The program management must safeguard clinical record information against loss, destruction, or unauthorized use.

(4) The program management must keep confidential all information contained in the participant's records, regardless of the form or storage method of the records, except when release is required by --

(i) Transfer to another health care institution;

(ii) Law;

(iii) A third-party payment contract;

(iv) The participant; or

(v) The participant's legal representative.

(5) The clinical record must contain --

(i) Sufficient information to identify the participant;

(ii) A record of the participant's assessments;

(iii) The plan of care and services provided;
(iv) The results of any pre-enrollment screening conducted by the State; and
(v) Progress notes.
(n) Quality assessment and assurance. (1) Program management must maintain a quality
improvement program and a quality improvement committee consisting of --
(i) A registered nurse;
(ii) A medical director designated by the program; and
(iii) At least three other members of the program's staff.
(2) The quality improvement committee --
(i) Must implement a quality improvement plan for the evaluation of its operation and
services and review and revise annually; and
(ii) Must meet at least quarterly to identify quality of care issues; and
(iii) Must develop and implement appropriate plans of action to correct identified quality
deficiencies; and
(iv) Must ensure that identified quality deficiencies are corrected within an established
time period.
(3) The VA Under Secretary for Health may not require disclosure of the records of such
committee unless such disclosure is related to the compliance with the requirements of
this section.
(o) Disaster and emergency preparedness. (1) The program management must have
detailed written plans and procedures to meet all potential emergencies and disasters,
such as fire, severe weather, bomb threats, and missing participants.
(2) The program management must train all employees in emergency procedures when
they begin to work in the program, periodically review the procedures with existing staff,
and carry out unannounced staff drills using those procedures.
(p) Transfer procedure. (1) The program management must have in effect a written
transfer procedure that reasonably assures that --
(i) Participants will be transferred from the adult day health care program to the hospital,
and ensured of timely admission to the hospital when transfer is medically appropriate as
determined by a physician; and
(ii) Medical and other information needed for care and treatment of participants will be
exchanged between the institutions.
(2) The transfer must be with a hospital sufficiently close to the adult day health care
program to make transfer feasible.
(q) Compliance with Federal, State, and local laws and professional standards. The
program management must operate and provide services in compliance with all
applicable Federal, State, and local laws, regulations, and codes, and with accepted
professional standards and principles that apply to professionals providing services in
such a facility. This includes the Single Audit Act of 1984 (31 U.S.C. 7501 et seq.) and
3720A, 6501, 6503).
(r) Relationship to other Federal regulations. In addition to compliance with the
regulations set forth in this subpart, the program must meet the applicable provisions of
other Federal laws and regulations, including but not limited to, those pertaining to
nondiscrimination on the basis of race, color, national origin, handicap, or age (((38 CFR
part 18)); protection of human subjects of research (45 CFR part 46), section 504 of the
§ 52.220 Transportation.
Transportation of participants to and from the adult day health care facility must be a component of the overall program.

(a)(1) Except as provided in paragraph (a)(2) of this section, the adult day health care program management must provide or contract for transportation to enable participants, including persons with disabilities, to attend the program and to participate in facility-sponsored outings.

(2) The veteran or the family of a veteran may decline transportation offered by the adult day health care program management and make their own arrangements for the transportation.

(b) The adult day health care program management must have a transportation policy that includes routine and emergency procedures, with a copy of the relevant procedures located in all program vehicles.

(c) All vehicles transporting participants to and from adult day health care must be equipped with a device for two-way communication.

(d) All facility-provided and contracted transportation systems must meet local, State and federal regulations.

(e) The time to transport participant to or from the facility must not be more than 60 minutes except under unusual conditions, e.g., bad weather.

[67 FR 660, 675, Jan. 7, 2002]

(38 U.S.C. 101, 501, 1741-1743)
[EFFECTIVE DATE NOTE: 67 FR 660, 675, Jan. 7, 2002, added Part 52, effective Feb. 6, 2002.]
PART 58 -- FORMS

§ 58.10 VA Form 10-3567 -- State Home Inspection Staffing Profile.
§ 58.11 VA Form 10-5588 -- State Home Report and Statement of Federal Aid Claimed.
§ 58.12 VA Form 10-10EZ -- Application for Health Benefits
§ 58.13 VA Form 10-10SH -- State Home Program Application for Veteran Care Medical Certification.
§ 58.15 VA Form 10-0143 -- Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.
§ 58.16 VA Form 10-0144 -- Certification Regarding Lobbying.

§ 58.10 VA Form 10-3567 -- State Home Inspection Staffing Profile.
CLICK HERE TO VIEW FORM
[65 FR 962, 983, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 983, Jan. 6, 2000, added Part 58, effective Feb. 7, 2000.]

§ 58.11 VA Form 10-5588 -- State Home Report and Statement of Federal Aid Claimed.
CLICK HERE TO VIEW FORM
[65 FR 962, 986, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 986, Jan. 6, 2000, added Part 58, effective Feb. 7, 2000.]

§ 58.12 VA Form 10-10EZ -- Application for Health Benefits
CLICK HERE TO VIEW FORM
[65 FR 962, 988, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 988, Jan. 6, 2000, added Part 58, effective Feb. 7, 2000.]

§ 58.13 VA Form 10-10SH -- State Home Program Application for Veteran Care Medical Certification.
CLICK HERE TO VIEW FORM
[65 FR 962, 990, Jan. 6, 2000]

CLICK HERE TO VIEW FORM
[65 FR 962, 993, Jan. 6, 2000]

§ 58.15 VA Form 10-0143 -- Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.

CLICK HERE TO VIEW FORM
[65 FR 962, 994, Jan. 6, 2000]

§ 58.16 VA Form 10-0144 -- Certification Regarding Lobbying.

CLICK HERE TO VIEW FORM
[65 FR 962, 996, Jan. 6, 2000]


CLICK HERE TO VIEW FORM
[65 FR 962, 997, Jan. 6, 2000]

[EFFECTIVE DATE NOTE: 65 FR 962, 990, Jan. 6, 2000, added Part 58, effective Feb. 7, 2000.]
§ 59.1 Purpose.
§ 59.2 Definitions.
§ 59.3 Federal Application Identifier.
§ 59.4 Decisionmakers, notifications, and additional information.
§ 59.5 Submissions of information and documents to VA.
§ 59.10 General requirements for a grant.
§ 59.20 Initial application requirements.
§ 59.30 Documentation.
§ 59.40 Maximum number of nursing home care and domiciliary care beds for veterans by State.
§ 59.50 Priority list.
§ 59.60 Additional application requirements.
§ 59.70 Award of grants.
§ 59.80 Amount of grant.
§ 59.90 Line item adjustments to grants.
§ 59.100 Payment of grant award.
§ 59.110 Recapture provisions.
§ 59.120 Hearings.
§ 59.121 Amendments to application.
§ 59.122 Withdrawal of application.
§ 59.123 Conference.
§ 59.124 Inspections, audits, and reports.
§ 59.130 General requirements for all State home facilities.
§ 59.140 Nursing home care requirements.
§ 59.150 Domiciliary care requirements.
§ 59.160 Adult day health care requirements.
§ 59.170 Forms.


§ 59.1 Purpose.
This part sets forth the mechanism for a State to obtain a grant:
(a) To construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, and
(b) To expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home, adult day health, or hospital care to veterans in State homes.

[66 FR 33845, 33847, June 26, 2001]


§ 59.2 Definitions.
For the purpose of this part:
Acquisition means the purchase of a facility in which to establish a State home for the provision of domiciliary and/or nursing home care to veterans. Adult day health care is a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of elderly veterans. Construction means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, or adult day health care, or hospital care in State homes, and the provision of initial equipment for any such buildings. Domiciliary care means providing shelter, food, and necessary medical care on an ambulatory self-care basis (this is more than room and board). It assists eligible veterans who are suffering from a disability, disease, or defect of such a degree that incapacitates veterans from earning a living, but who are not in need of hospitalization or nursing care services. It assists in attaining physical, mental, and social well-being through special rehabilitative programs to restore residents to their highest level of functioning. Nursing home care means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing care and related medical services. Secretary means the Secretary of the United States Department of Veterans Affairs. State means each of the several States, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico. State representative means the official designated in accordance with State authority with responsibility for matters relating to the request for a grant under this part. VA means the United States Department of Veterans Affairs. 

§ 59.3 Federal Application Identifier.
Once VA has provided the State representative with a Federal Application Identifier Number for a project, the number must be included on all subsequent written communications to VA from the State, or its agent, regarding a request for a grant for that project under this part. 

§ 59.4 Decisionmakers, notifications, and additional information.
The decisionmaker for decisions required under this part will be the Chief Consultant, Geriatrics and Extended Care, unless specified to be the Secretary or other VA official. The VA decisionmaker will provide written notice to affected States of approvals, denials, or requests for additional information under this part. [66 FR 33845, 33848, June 26, 2001]


§ 59.5 Submissions of information and documents to VA.
All submissions of information and documents required to be presented to VA must be made, unless otherwise specified under this part, to the Chief Consultant, Geriatrics and Extended Care (114), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. [66 FR 33845, 33848, June 26, 2001]


§ 59.10 General requirements for a grant.
For a State to obtain a grant under this part and grant funds, its initial application for the grant must be approved under § 59.20, and the project must be ranked sufficiently high on the priority list for the current fiscal year so that funding is available for the project. It must meet the additional application requirements in § 59.60, and it must meet all other requirements under this part for obtaining a grant and grant funds. [66 FR 33845, 33848, June 26, 2001]


§ 59.20 Initial application requirements.
(a) For a project to be considered for inclusion on the priority list in § 59.50 of this part for the next fiscal year, a State must submit to VA an original and one copy of a completed VA Form 10-0388 and all information, documentation, and other forms specified by VA form 10-0388 (these forms are set forth at § 59.170 of this part). (b) The Secretary, based on the information submitted for a project pursuant to paragraph (a) of this section, will approve the project for inclusion on the priority list in § 59.50 of this part if the submission includes all of the information requested under paragraph (a) of this section and if the submission represents a project that, if further developed, could meet the requirements for a grant under this part. (c) The information requested under paragraph (a) of this section should be submitted to VA by April 15, and must be received by VA by August 15, if the State wishes an application to be included on the priority list for the award of grants during the next fiscal year.
(d) If a State representative believes that VA may not award a grant to the State for a grant application during the current fiscal year and wants to ensure that VA includes the application on the priority list for the next fiscal year, the State representative must, prior to August 15 of the current fiscal year,
(1) Request VA to include the application in those recommended to the Secretary for inclusion on the priority list, and
(2) Send any updates to VA.
[66 FR 33845, 33848, June 26, 2001]


§ 59.30 Documentation.
For a State to obtain a grant and grant funds under this part, the State must submit to VA documentation that the site of the project is in reasonable proximity to a sufficient concentration and population of veterans that are 65 years of age and older and that there is a reasonable basis to conclude that the facility when complete will be fully occupied. This documentation must be included in the initial application submitted to VA under § 59.20.
[66 FR 33845, 33848, June 26, 2001]


§ 59.40 Maximum number of nursing home care and domiciliary care beds for veterans by State.
(a) Except as provided in paragraph (b) of this section, a State may not request a grant for a project to construct or acquire a new State home facility, to increase the number of beds available at a State home facility, or to replace beds at a State home facility if the project would increase the total number of State home nursing home and domiciliary beds beyond the maximum number designated for that State. The maximum number of State home nursing home and domiciliary beds designated for each State is (for maximum numbers see VA website at http://www.va.gov/About - VA/Orgs/VHA/VHAProg.htm). the number in the following chart for the State, minus the sum of the number of nursing home and domiciliary beds already in operation at State home facilities, and the number of State home nursing home and domiciliary beds not yet in operation but for which a grant has either been requested or awarded under this part (the availability of VA and community nursing home beds in each State will also be considered at the time of grant application for bed-producing projects):

<table>
<thead>
<tr>
<th>State</th>
<th>State home nursing home and domiciliary beds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>883</td>
</tr>
<tr>
<td>Alaska</td>
<td>79</td>
</tr>
<tr>
<td>Arizona</td>
<td>1,068</td>
</tr>
</tbody>
</table>

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Arkansas 557
California 5,754
Colorado 717
Connecticut 738
Delaware 165
District of Columbia 104
Florida 4,471
Georgia 1,202
Hawaii 216
Idaho 233
Illinois 2,271
Indiana 1,209
Iowa 632
Kansas 542
Kentucky 759
Louisiana 785
Maine 301
Maryland 1,020
Massachusetts 1,348
Michigan 1,896
Minnesota 932
Mississippi 500
Missouri 1,230
Montana 198
Nebraska 355
Nevada 428
New Hampshire 264
New Jersey 1,683
New Mexico 344
New York 3,220
North Carolina 1,454
North Dakota 121
Ohio 2,530
Oklahoma 747
Oregon 804
Pennsylvania 3,173
Puerto Rico 350
Rhode Island 254
South Carolina 750
South Dakota 155
Tennessee 1,050
Texas 3,226
Utah 304
Vermont 124
Virginia 1,312
Virgin Islands 8
Washington 1,215
West Virginia 455
Wisconsin 1,070
Wyoming 93

Note to paragraph (a): The provisions of 38 U.S.C. 8134 require VA to prescribe for each State the number of nursing home and domiciliary beds for which grants may be furnished. This is required to be based on the projected demand for nursing home and domiciliary care on November 30, 2009 (10 years after the date of enactment of the Veterans Millennium Health Care and Benefits Act (P.L. 106-117)), by veterans who at such time are 65 years of age or older and who reside in that State. In determining the projected demand, VA must take into account travel distances for veterans and their families.
(b) A State may request a grant for a project that would increase the total number of State nursing home and domiciliary beds beyond the maximum number for that State, if the State submits to VA, documentation to establish a need for the exception based on travel distances of at least two hours (by land transportation or any other usual mode of transportation if land transportation is not available) between a veteran population center sufficient for the establishment of a State home and any existing State home. The determination regarding a request for an exception will be made by the Secretary. [66 FR 33845, 33848, June 26, 2001]


§ 59.50 Priority list.

(a) The Secretary will make a list prioritizing the applications that were received on or before August 15 and that were approved under § 59.20 of this part. Except as provided in paragraphs (b) and (c) of this section, applications will be prioritized from the highest to the lowest in the following order:

(1) Priority group 1. An application from a State that has made sufficient funds available for the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State (such as subsequent issuance of bonds) to make such funds available for the project. To meet this criteria, the State must provide to VA a letter from an authorized State budget official certifying that the State funds are, or will be, available for the project, so that if VA awards the grant, the project may proceed without further State action to make such funds available (such as further action to issue bonds). If the certification is based on an Act authorizing the project and making available the State's matching funds for the project, a copy of the Act must be submitted with the certification.

(i) Priority group 1 -- subpriority 1. An application for a project to remedy a condition, or conditions, at an existing facility that have been cited as threatening to the lives or safety of the residents in the facility by a VA Life Safety Engineer, a State or local government agency (including a Fire Marshal), or an accrediting institution (including the Joint Commission on Accreditation of Healthcare Organizations). This priority group does not include applications for the addition or replacement of building utility systems, such as heating and air conditioning systems or building features, such as roof replacements. Projects in this subpriority will be further prioritized in the following order: seismic; building construction; egress; building compartmentalization (e.g., smoke barrier, fire walls); fire alarm/detection; asbestos/hazardous materials; and all other projects. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(ii) Priority group 1 -- subpriority 2. An application from a State that has not previously applied for a grant under 38 U.S.C. 8131-8137 for construction or acquisition of a State nursing home. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).
(iii) Priority group 1 -- subpriority 3. An application for construction or acquisition of a nursing home or domiciliary from a State that has a great need for the beds that the State, in that application, proposes to establish. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(iv) Priority group 1 -- subpriority 4. An application from a State for renovations to a State Home facility other than renovations that would be included in subpriority 1 of Priority group 1. Projects will be further prioritized in the following order: adult day health care construction; nursing home construction (e.g., patient privacy); code compliance under the Americans with Disabilities Act; building systems and utilities (e.g., electrical; heating, ventilation, and air conditioning (HVAC); boiler; medical gasses; roof; elevators); clinical-support facilities (e.g., for dietetics, laundry, rehabilitation therapy); and general renovation/upgrade (e.g., warehouse, storage, administration/office, multipurpose). Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(v) Priority group 1 -- subpriority 5. An application for construction or acquisition of a nursing home or domiciliary from a State that has a significant need for the beds that the State in that application proposes to establish. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

(vi) Priority group 1 -- subpriority 6. An application for construction or acquisition of a nursing home or domiciliary from a State that has a limited need for the beds that the State, in that application, proposes to establish. Projects in this subpriority will be further prioritized based on the date the application for the project was received in VA (the earlier the application was received, the higher the priority given).

Note to paragraph (a)(1): The following chart is intended to provide a graphic aid for understanding Priority group 1 and its subpriorities.

CLICK HERE TO VIEW IMAGE

(2) Priority group 2. An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(i) of this section. Projects within this priority group will be further prioritized the same as in paragraph (a)(1)(i) of this section.

(3) Priority group 3. An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(ii) of this section. Projects within this priority group will be further prioritized the same as in paragraph (a)(1)(ii) of this section.

(4) Priority group 4. An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(iii) of this section. Projects within this priority group will be further prioritized the same as in paragraph (a)(1)(iii) of this section.

(5) Priority group 5. An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(iv) of this section. Projects within this priority group will be further prioritized the same as in paragraph (a)(1)(iv) of this section.

(6) Priority group 6. An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(v) of this section. Projects within this priority group will be further prioritized the same as in paragraph (a)(1)(v) of this section.
(7) Priority group 7. An application not meeting the criteria of paragraph (a)(1) of this section but meeting the criteria of paragraph (a)(1)(vi) of this section. Projects within this priority group will be further prioritized the same as in paragraph (a)(1)(vi) of this section.

(b) An application will be given highest priority on the priority list for the next fiscal year within the priority group to which it is assigned in paragraph (a) of this section (without consideration of subpriorities) if:
(1) During the current fiscal year the State accepted a grant for that application that was less than the amount that would have been awarded if VA had sufficient appropriations to award the full amount of the grant requested; and
(2) The application was the lowest-ranking application on the priority list for the current fiscal year for which grant funds were available.

(c) An application will be given priority on the priority list (after applications described in paragraph (b) of this section) for the next fiscal year ahead of all applications that had not been approved under § 59.20 on the date that the application was approved under § 59.20, if:
(1) During the current fiscal year VA would have awarded a grant based on the application except for the fact that VA determined that the State did not, by July 1, provide evidence that it had its matching funds for the project, and
(2) The State was notified prior to July 1 that VA had funding available for this grant application.

(d) The priority list will not contain any project for the construction or acquisition of a hospital or hospital beds.

(e) For purposes of establishing priorities under this section:
(1) A State has a great need for nursing home and domiciliary beds if the State:
   (i) Has no State homes with nursing home or domiciliary beds, or
   (ii) Has an unmet need of 2,000 or more nursing home and domiciliary beds;
(2) A State has a significant need for nursing home and domiciliary beds if the State has an unmet need of 1,000 to 1,999 nursing home and domiciliary beds; and
(3) A State has a limited need for nursing home and domiciliary beds if the State has an unmet need of 999 or fewer nursing home and domiciliary beds.

(f) Projects that could be placed in more than one subpriority will be placed in the subpriority toward which the preponderance of the cost of the project is allocated. For example, under priority group 1 -- subpriority 1, if a project for which 25 percent of the funds needed would concern seismic and 75 percent of the funds needed would concern building construction, the project would be placed in the subpriority for building construction.

(g) Once the Secretary prioritizes the applications in the priority list, VA will not change the priorities unless a change is necessary as a result of an appeal.

[66 FR 33845, 33848, June 26, 2001]


§ 59.60 Additional application requirements.
For a project to be eligible for a grant under this part for the fiscal year for which the priority list was made, during that fiscal year the State must submit to VA an original and a copy of the following:
(a) Complete, updated Standard Forms 424 (mark the box labeled application and submit the information requested for an application), 424C, and 424D (the forms are set forth at § 59.170 of this part), and
(b) A completed VA Form 10-0388 and all information and documentation specified by VA Form 10-0388 (the form is set forth at § 59.170h).

[66 FR 33845, 33851, June 26, 2001]


§ 59.70 Award of grants.

(a) The Secretary, during the fiscal year for which a priority list is made under this part, will:
(1) Award a grant for each application that has been approved under § 59.20, that is sufficiently high on the priority list so that funding is available for the application, that meets the additional application requirements in § 59.60, and that meets all other requirements under this part for obtaining a grant, or
(2) Conditionally approve a grant for a project for which a State has submitted an application that substantially meets the requirements of this part if the State representative requests conditional approval and provides written assurance that the State will meet all requirements for a grant not later than 180 calendar days after the date of conditional approval. If a State that has obtained conditional approval for a project does not meet all of the requirements within 180 calendar days after the date of conditional approval, the Secretary will rescind the conditional approval and the project will be ineligible for a grant in the fiscal year in which the State failed to fully complete the application. The funds that were conditionally obligated for the project will be deobligated.
(b) As a condition of receiving a grant, a State must make sufficient funds available for the project for which the grant is requested so that such project may proceed upon approval of the grant without further action required by the State (such as subsequent issuance of bonds) to make such funds available for such purpose. To meet this criteria, the State must provide to VA a letter from an authorized State budget official certifying that the State funds are, or will be, available for the project, so that if VA awards the grant, the project may proceed without further State action to make such funds available (such as further action to issue bonds). If the certification is based on an Act authorizing the project and making available the State's matching funds for the project, a copy of the Act must be submitted with the certification. To be eligible for inclusion in priority group 1 under this part, a State must make such funds available by August 15 of the year prior to the fiscal year for which the grant is requested. To otherwise be eligible for a grant and grant funds based on inclusion on the priority list in other than priority group 1, a State must make such funds available by July 1 of the fiscal year for which the grant is requested.
(c) As a condition of receiving a grant, the State representative and the Secretary will sign three originals of the Memorandum of Agreement documents (one for the State and two for VA). A sample is in § 59.170.
[66 FR 33845, 33851, June 26, 2001]


§ 59.80 Amount of grant.
(a) The total cost of a project (VA and State) for which a grant is awarded under this part may not be less than $400,000 and, except as provided in paragraph (i) of this section, the total cost of a project will not exceed the total cost of new construction. The amount of a grant awarded under this part will be the amount requested by the State and approved in accordance with this part, not to exceed 65 percent of the total cost of the project except that:
   (1) The total cost of a project will not include the cost of space that exceeds the maximum allowable space specified in this part, and
   (2) The amount of the grant may be less than 65 percent of the total cost of the project if the State accepts less because VA did not have sufficient funds to award the full amount of the grant requested.
(b) The total cost of a project under this part for acquisition of a facility may also include construction costs.
(c) The total cost of a project under this part will not include any costs incurred before the date VA sent the State written notification that the application in § 59.20 was approved.
(d) The total cost of a project under this part may include administration and production costs, e.g., architectural and engineering fees, inspection fees, and printing and advertising costs.
(e) The total cost of a project under this part may include the cost of projects on the grounds of the facility, e.g., parking lots, landscaping, sidewalks, streets, and storm sewers, only if they are inextricably involved with the construction of the project.
(f) The total cost of a project under this part may include the cost of equipment necessary for the operation of the State home facility. This may include the cost of:
   (1) Fixed equipment included in the construction or acquisition contract. Fixed equipment must be permanently affixed to the building or connected to the heating, ventilating, air conditioning, or other service distributed through the building via ducts, pipes, wires, or other connecting device. Fixed equipment must be installed during construction. Examples of fixed equipment include kitchen and intercommunication equipment, built-in cabinets, and cubicle curtain rods; and
   (2) Other equipment not included in the construction contract constituting no more than 10 percent of the total construction contract cost of the project. Other equipment includes: furniture, furnishings, wheeled equipment, kitchen utensils, linens, draperies, blinds, electric clocks, pictures and trash cans.
   (g) The contingency allowance may not exceed five percent of the total cost of the project for new construction or eight percent for renovation projects.
   (h) The total cost of a project under this part may not include the cost of:
      (1) Land acquisition;

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(2) Maintenance or repair work; or
(3) Office supplies or consumable goods (such as food, drugs, medical dressings, paper, printed forms, and soap) which are routinely used in a State home.

(i) A grant for expansion, remodeling, or alteration of an existing State home, which is on or eligible for inclusion in the National Register of Historic Places, for furnishing domiciliary, nursing home, or adult day health care to veterans may not be awarded for the expansion, remodeling, or alteration of such building if such action does not comply with National Historic Preservation Act procedures or if the total cost of remodeling, renovating, or adapting such building or facility exceeds the cost of comparable new construction by more than five percent. If demolition of an existing building or facility on, or eligible for inclusion in, the National Register of Historic Places is deemed necessary and such demolition action is taken in compliance with National Historic Preservation Act procedures, any mitigation cost negotiated in the compliance process and/or the cost to professionally record the building or facility in the Historic American Buildings Survey (HABS), plus the total cost for demolition and site restoration, shall be included by the State in calculating the total cost of new construction.

(j) The cost of demolition of a building cannot be included in the total cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project.

(k) With respect to the final award of a conditionally-approved grant, the Secretary may not award a grant for an amount that is 10 percent more than the amount conditionally-approved.

[66 FR 33845, 33852, June 26, 2001]


§ 59.90 Line item adjustments to grants.
After a grant has been awarded, upon request from the State representative, VA may approve a change in a line item (line items are identified in Form 424C which is set forth in § 59.170(o) of this part) of up to 10 percent (increase or decrease) of the cost of the line item if the change would be within the scope or objective of the project and would not change the amount of the grant.

[66 FR 33845, 33852, June 26, 2001]


§ 59.100 Payment of grant award.
The amount of the grant award will be paid to the State or, if designated by the State representative, the State home for which such project is being carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of the project, as the Chief Consultant, Geriatrics and Extended Care, may determine and certify for payment to the appropriate
Federal institution. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved. As a condition for the final payment, the State must comply with the requirements of this part based on an architectural and engineering inspection approved by VA, must obtain VA approval of the final equipment list submitted by the State representative, and must submit to VA a completed VA Form 10-0388 (see § 59.170(i)). The equipment list and the completed VA form 10-0388 must be submitted to the Chief Consultant, Geriatrics and Extended Care (114), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

[66 FR 33845, 33852, June 26, 2001]


§ 59.110 Recapture provisions.

If a facility for which a grant has been awarded ceases to be operated as a State home for the purpose for which the grant was made, the United States shall be entitled to recover from the State which was the recipient of the grant or from the then owner of such construction as follows:

(a) If less than 20 years has lapsed since the grant was awarded, and VA provided 65 percent of the estimated cost to construct, acquire or renovate a State home facility principally for furnishing domiciliary care, nursing home care, adult day health care, hospital care, or non-institutional care to veterans, VA shall be entitled to recover 65 percent of the current value of such facility (but in no event an amount greater than the amount of assistance provided for such under these regulations), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated.

(b) Based on the time periods for grant amounts set forth below, if VA provided between 50 and 65 percent of the estimated cost of expansion, remodeling, or alteration of an existing State home facility, VA shall be entitled to recover the amount of the grant as determined by agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated:

<table>
<thead>
<tr>
<th>Grant amount (dollars in thousands)</th>
<th>Recovery period (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-250</td>
<td>7</td>
</tr>
<tr>
<td>251-500</td>
<td>8</td>
</tr>
<tr>
<td>501-750</td>
<td>9</td>
</tr>
<tr>
<td>751-1,000</td>
<td>10</td>
</tr>
<tr>
<td>1,001-1,250</td>
<td>11</td>
</tr>
<tr>
<td>1,251-1,500</td>
<td>12</td>
</tr>
<tr>
<td>1,501-1,750</td>
<td>13</td>
</tr>
<tr>
<td>1,751-2,000</td>
<td>14</td>
</tr>
<tr>
<td>2,001-2,250</td>
<td>15</td>
</tr>
<tr>
<td>2,251-2,500</td>
<td>16</td>
</tr>
<tr>
<td>2,501-2,750</td>
<td>17</td>
</tr>
<tr>
<td>2,751-3,000</td>
<td>18</td>
</tr>
<tr>
<td>Over 3,000</td>
<td>20</td>
</tr>
</tbody>
</table>

(c) If the magnitude of the VA contribution is below 50 percent of the estimated cost of the expansion, remodeling, or alteration of an existing State home facility recognized by
the Department of Veterans Affairs, the Under Secretary for Health may authorize a recovery period between 7 and 20 years depending on the grant amount involved and the magnitude of the project.
(d) This section does not apply to any portion of a State home in which VA has established and operates an outpatient clinic.
[66 FR 33845, 33852, June 26, 2001]


§ 59.120 Hearings.
If the Secretary determines that a submission from a State does not meet the requirements of this part, the Secretary will advise the State by letter that a grant is tentatively denied, explain the reasons for the tentative denial, and inform the State of the opportunity to appeal to the Board of Veterans' Appeals pursuant to 38 U.S.C. 7105. Decisions under this part are not subject to the provisions of § 17.133 of this order.
[66 FR 33845, 33853, June 26, 2001]


§ 59.121 Amendments to application.
Any amendment of an application that changes the scope of the application or changes the cost estimates by 10 percent or more shall be subject to approval in the same manner as an original application.
[66 FR 33845, 33853, June 26, 2001]


§ 59.122 Withdrawal of application.
A State representative may withdraw an application by submitting to VA a written document requesting withdrawal.
[66 FR 33845, 33853, June 26, 2001]


§ 59.123 Conference.
At any time, VA may recommend that a conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss requirements for a grant with VA officials.
[66 FR 33845, 33853, June 26, 2001]
§ 59.124 Inspections, audits, and reports.
(a) A State will allow VA inspectors and auditors to conduct inspections and audits as necessary to ensure compliance with the provisions of this part. The State will provide evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter) and submit that evidence to VA.
(b) A State will make such reports in such form and containing such information as the Chief Consultant, Geriatrics and Extended Care, may from time to time reasonably require and give the Chief Consultant, Geriatrics and Extended Care, upon demand, access to the records upon which such information is based.

§ 59.130 General requirements for all State home facilities.
As a condition for receiving a grant and grant funds under this part, States must comply with the requirements of this section.
(a) The physical environment of a State home must be designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.
(b) A State home must meet the general conditions of the American Institute of Architects, or other general conditions required by the State, for awarding contracts for State home grant projects. Facilities must meet all Federal, State, and local requirements, including the Uniform Federal Accessibility Standards (UFAS) (24 CFR part 40, appendix A), during the design and construction of projects subject to this part. If the State or local requirements are different from the Federal requirements, compliance with the most stringent provisions is required. A State must design and construct the project to provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by this part and as identified in each resident's plan of care.
(c) State homes should be planned to approximate the home atmosphere as closely as possible. The interior and exterior should provide an attractive and home-like environment for elderly residents. The site will be located in a safe, secure, residential-type area that is accessible to acute medical care facilities, community activities and amenities, and transportation facilities typical of the area.
(d)(1) State homes must meet the applicable provisions of the National Fire Protection Association's NFPA 101, Life Safety Code (2000 edition) and the NFPA 99, Standard for Health Care Facilities (1999 edition). Incorporation by reference of these materials was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials, incorporated by reference, are available for inspection at the Office of the Federal Register, Suite 700, 800 North Capitol Street, NW, Washington, DC, and the Department of Veterans Affairs, Office of Regulations Management (02D), Room 1154, 810 Vermont Avenue, NW, Washington, DC 20420. Copies may be...
obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101. (For ordering information, call toll free 1-800-344-3555.)

(2) Facilities must also meet the State and local fire codes.

(e) State homes must have an emergency electrical power system to supply power adequate to operate all exit signs and lighting for means of egress, fire and medical gas alarms, and emergency communication systems. The source of power must be an on-site emergency standby generator of sufficient size to serve the connected load or other approved sources.

(f) The nurse's station must be equipped to receive resident calls through a communication system from resident rooms, toilet and bathing facilities, dining areas, and activity areas.

(g) The State home must have one or more rooms designated for resident dining and activities. These rooms must be:
   (1) Well lighted;
   (2) Well ventilated; and
   (3) Adequately furnished.

(h) The facility management must provide a safe, functional, sanitary, and comfortable environment for the residents, staff and the public. The facility must:
   (1) Ensure that water is available to essential areas when there is a loss of normal water supply;
   (2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;
   (3) Equip corridors with firmly secured handrails on each side; and
   (4) Maintain an effective pest control program so that the facility is free of pests and rodents.

[66 FR 33845, 33853, June 26, 2001]


§ 59.140 Nursing home care requirements.

As a condition for receiving a grant and grant funds for a nursing home facility under this part, States must comply with the requirements of this section.

(a) Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents. Resident rooms must:
   (1) Accommodate no more than four residents;
   (2) Have direct access to an exit corridor;
   (3) Have at least one window to the outside;
   (4) Be equipped with, or located near, toilet and bathing facilities (VA recommends that public toilet facilities also be located near the residents dining and recreational areas);
   (5) Be at or above grade level;
   (6) Be designed or equipped to ensure full visual privacy for each resident;
   (7) Except in private rooms, each bed must have ceiling suspended curtains that extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;

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(8) Have a separate bed for each resident of proper size and height for the safety of the resident;
(9) Have a clean, comfortable mattress;
(10) Have bedding appropriate to the weather and climate;
(11) Have functional furniture appropriate to the resident's needs, and
(12) Have individual closet space with clothes racks and shelves accessible to the resident.

(b) Unless determined by VA as necessary to accommodate an increased quality of care for patients, a nursing home project may propose a deviation of no more than 10 percent (more or less) from the following net square footage for the State to be eligible for a grant of 65 percent of the total estimated cost of the project. If the project proposes building more than the following net square footage and VA makes a determination that it is not needed, the cost of the additional net square footage will not be included in the estimated total cost of construction.

Table to Paragraph (b)--Nursing Home
I. Support facilities [allowable square feet (or metric equivalent) per facility for VA participation]:
   Administrator                                                           200
   Assistant administrator                                                150
   Medical officer, director of nursing or equivalent                     150
   Nurse and dictation area                                                120
   General administration (each office/person)                            120
   Clerical staff (each)                                                  80
   Computer area                                                           40
   Conference room (consultation area, in-service training)              500 (for each room)
   Lobby/waiting area. (150 minimum/600 maximum per facility)             3 (per bed)
   Public/resident toilets (male/female)                                  25 (per fixture)
   Pharmacy fn1                                                           
   Dietetic service fn1                                                   
   Dining area                                                            20 (per bed)
   Canteen/retail sales                                                  2 (per bed)
   Vending machines (450 max. per facility)                               1 (per bed)
   Resident toilets (male/female)                                       25 (per fixture)
   Child day care fn1                                                    
   Medical support (staff offices/exam/treatment room/family counseling, etc.) 140 (for each room)
   Barber and/r beauty shops                                             140
   Mail room                                                              120
   Janitor's closet                                                       40
   Multipurpose room                                                      15 (per bed)
   Employee lockers                                                      6 (per employee)
   Employee lounge (500 max. per facility)                                120
   Employee toilets                                                      25 (per fixture)
   Chapel                                                                 450
   Physical therapy                                                      5 (per bed)
   Office, if required                                                    120
   Occupational therapy                                                  5 (per bed).
   Office, if required                                                    120
   Library                                                                1.5 (per bed)
   Building maintenance storage                                          2.5 (per bed)
   Resident storage                                                      6 (per bed)

© 2006 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.
General warehouse storage 6 (per bed)
Medical/dietary/pharmacy 7 (per bed)
General laundry fn1

II. Bed units:
One 150
Two 245
Large two-bed per unit 305
Four 460
Lounge areas (resident lounge with storage) 8 (per bed)
Resident quiet room 3 (per bed)
Clean utility 120
Soiled utility 105
Linen storage 150
General storage 100
Nurses station, ward secretary 260
Medication room 75
Exam/Treatment room 140
Waiting area 50
Unit supply and equipment 50
Staff toilet 25 (per fixture)
Stretcher/wheelchair storage 100
Kitchenette 150
Janitor's closet 40
Resident laundry 125
Trash collection 60

III. Bathing and Toilet Facilities:
(A) Private or shared facilities:
Wheelchair facilities 25 (per fixture)
Standard facilities 15 (per fixture)
(B) Full bathroom 75
(C) Congregate bathing facilities:
First tub/shower 80
Each additional fixture 25

fn1 The size to be determined by the Chief Consultant, Geriatrics and Extended Care, as necessary to accommodate projected patient care needs (must be justified by State in space program analysis).

[66 FR 33845, 33854, June 26, 2001]


§ 59.150 Domiciliary care requirements.
As a condition for receiving a grant and grant funds for a domiciliary under this part, the domiciliary must meet the requirements for a nursing home specified in § 59.140 of this part.
[66 FR 33845, 33855, June 26, 2001]

§ 59.160 Adult day health care requirements.
As a condition for receiving a grant and grant funds under this part for an adult day health care facility, States must meet the requirements of this section.
(a) Each adult day health care program, when it is co-located in a nursing home, domiciliary, or other care facility, must have its own separate designated space during operational hours.
(b) The indoor space for an adult day health care program must be at least 100 square feet per participant including office space for staff, and must be 60 square feet per participant excluding office space for staff.
(c) Each program will need to design and partition its space to meet its own needs, but the following functional areas must be available:
   (1) A dividable multipurpose room or area for group activities, including dining, with adequate table setting space.
   (2) Rehabilitation rooms or an area for individual and group treatments for occupational therapy, physical therapy, and other treatment modalities.
   (3) A kitchen area for refrigerated food storage, the preparation of meals and/or training participants in activities of daily living.
   (4) An examination and/or medication room.
   (5) A quiet room (with at least one bed), which functions to isolate participants who become ill or disruptive, or who require rest, privacy, or observation. It should be separate from activity areas, near a restroom, and supervised.
   (6) Bathing facilities adequate to facilitate bathing of participants with functional impairments.
   (7) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all programs areas, i.e. preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier free.
   (8) Adequate storage space. There should be space to store arts and crafts materials, personal clothing and belongings, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.
   (9) An individual room for counseling and interviewing participants and family members.
   (10) A reception area.
(11) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and a garden area. It should be easily supervised by staff.
(d) Furnishings must be available for all participants. This must include functional furniture appropriate to the participants' needs.
(e) Unless determined by VA as necessary to accommodate an increased quality of care for patients, an adult day health care facility project may propose a deviation of no more than 10 percent (more or less) from the following net square footage for the State to be eligible for a grant of 65 percent of the total estimated cost of the project. If the project proposes building more than the following net square footage and VA makes a determination that it is not needed, the cost of the additional net square footage will not be included in the estimated total cost of construction.
Table to Paragraph (e)—Adult Day Health Care

I. Support facilities [allowable square feet (or metric equivalent) per facility for VA participation]:

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Allowable Sq. Ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Director</td>
<td>200</td>
</tr>
<tr>
<td>Assistant administrator</td>
<td>150</td>
</tr>
<tr>
<td>Medical officer, director of nursing or equivalent</td>
<td>150</td>
</tr>
<tr>
<td>Nurse and dictation area</td>
<td>120</td>
</tr>
<tr>
<td>General administration (each office/person)</td>
<td>120</td>
</tr>
<tr>
<td>Clerical staff (each)</td>
<td>80</td>
</tr>
<tr>
<td>Computer area</td>
<td>40</td>
</tr>
<tr>
<td>Conference room</td>
<td>500 (for each training)</td>
</tr>
<tr>
<td>Lobby/receiving/waiting area (150 minimum)</td>
<td>3 (per participant)</td>
</tr>
<tr>
<td>Public/resident toilets (male/female)</td>
<td>25 (per fixture).</td>
</tr>
<tr>
<td>Dining area (may be included in the multipurpose room)</td>
<td>20 (per participant).</td>
</tr>
<tr>
<td>Vending machines</td>
<td>1 (per participant).</td>
</tr>
<tr>
<td>Participant toilets (male/female)</td>
<td>25 (per fixture).</td>
</tr>
<tr>
<td>Medical support (staff offices/family counseling, etc.)</td>
<td>140 (for each room).</td>
</tr>
<tr>
<td>Janitor's closet</td>
<td>40</td>
</tr>
<tr>
<td>Dividable multipurpose room</td>
<td>15 (per participant).</td>
</tr>
<tr>
<td>Employee lockers</td>
<td>6 (per employee)</td>
</tr>
<tr>
<td>Employee lounge</td>
<td>120</td>
</tr>
<tr>
<td>Employee toilets</td>
<td>25 (per fixture).</td>
</tr>
<tr>
<td>Physical therapy</td>
<td>5 (per participant).</td>
</tr>
<tr>
<td>Office, if required</td>
<td>120</td>
</tr>
<tr>
<td>Occupational therapy</td>
<td>5 (per participant).</td>
</tr>
<tr>
<td>Office, if required</td>
<td>120</td>
</tr>
<tr>
<td>Building maintenance storage</td>
<td>2.5 (per participant).</td>
</tr>
<tr>
<td>Resident storage</td>
<td>6 (per participant).</td>
</tr>
<tr>
<td>General warehouse storage</td>
<td>6 (per participant).</td>
</tr>
<tr>
<td>Medical/dietary</td>
<td>7 (per participant).</td>
</tr>
<tr>
<td>General laundry fn1</td>
<td></td>
</tr>
</tbody>
</table>

II. Other Areas:

<table>
<thead>
<tr>
<th>Area</th>
<th>Allowable Sq. Ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant quiet room</td>
<td>3 (per participant).</td>
</tr>
<tr>
<td>Clean utility</td>
<td>120</td>
</tr>
<tr>
<td>Soiled utility</td>
<td>105</td>
</tr>
<tr>
<td>General storage</td>
<td>100</td>
</tr>
<tr>
<td>Nurses station, ward secretary</td>
<td>260</td>
</tr>
<tr>
<td>Medication/exam/treatment rooms</td>
<td>75</td>
</tr>
<tr>
<td>Waiting area</td>
<td>50</td>
</tr>
<tr>
<td>Program supply and equipment</td>
<td></td>
</tr>
<tr>
<td>Staff toilet</td>
<td>25 (per fixture).</td>
</tr>
<tr>
<td>Wheelchair storage</td>
<td>100</td>
</tr>
<tr>
<td>Kitchen</td>
<td>120</td>
</tr>
<tr>
<td>Janitor's closet</td>
<td>40</td>
</tr>
<tr>
<td>Resident laundry</td>
<td>125</td>
</tr>
</tbody>
</table>

fn1 General laundry
III. Bathing and Toilet Facilities:
(A) Private or shared facilities:
Wheelchair facilities 25 (per fixture).
Standard facilities 15 (per fixture).
(B) Full bathroom 75

fn1 The size to be determined by the Chief Consultant, Geriatrics and Extended Care, as necessary to accommodate projected patient care needs (must be justified by State in space program analysis).

[66 FR 33845, 33855, June 26, 2001]


§ 59.170 Forms.
All forms set forth in this part are available on the Internet at http://www.va.gov/About_VA/Orgs/VHA/VHAProg.htm.
(a) VA Form 10-0143 -- Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals
CLICK HERE TO VIEW FORM
(b) VA Form 10-0144 -- Certification Regarding Lobbying
CLICK HERE TO VIEW FORM
(c) VA Form 10-0148a -- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (To be signed by Contractor(s)).
CLICK HERE TO VIEW FORM
(d) VA Form 10-0148b -- CERTIFICATION OF STATE MATCHING FUNDS TO QUALIFY FOR GROUP 1 ON THE PRIORITY LIST.
CLICK HERE TO VIEW FORM
(e) VA Form 10-0148c -- Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions.
CLICK HERE TO VIEW FORM
(f) VA Form 10-0148d -- CERTIFICATION OF COMPLIANCE WITH FEDERAL REQUIREMENTS STATE HOME CONSTRUCTION GRANT.
CLICK HERE TO VIEW FORM
(g) VA Form 10-0388 -- DOCUMENTS AND INFORMATION REQUIRED FOR STATE HOME CONSTRUCTION AND ACQUISITION GRANTS.
CLICK HERE TO VIEW FORM
(h) VA Form 10-0388a -- ADDITIONAL DOCUMENTS AND INFORMATION REQUIRED FOR STATE HOME CONSTRUCTION AND ACQUISITION GRANTS.
CLICK HERE TO VIEW FORM
(i) VA Form 10-0388b -- DOCUMENTS/CERTIFICATIONS REQUIRED FOR STATE HOME CONSTRUCTION AND ACQUISITION GRANTS.
CLICK HERE TO VIEW FORM
(j) VA Form 10-0392 -- STATE HOME CONSTRUCTION GRANT PROGRAM SPACE PROGRAM ANALYSIS -- NURSING HOME AND DOMICILIARY.
CLICK HERE TO VIEW FORM
(k) VA Form 10-0392a -- STATE HOME CONSTRUCTION GRANT PROGRAM SPACE PROGRAM ANALYSIS -- ADULT DAY HEALTH CARE.
CLICK HERE TO VIEW FORM
(l) VA Form 10-5348 -- SAMPLE MEMORANDUM OF AGREEMENT.
CLICK HERE TO VIEW FORM
(m) Standard Form 271 -- OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS.
CLICK HERE TO VIEW FORM
(n) Standard Form 424 -- APPLICATION FOR FEDERAL ASSISTANCE.
CLICK HERE TO VIEW FORM
(o) Standard Form 424C -- INSTRUCTIONS FOR THE SF-424C.
CLICK HERE TO VIEW FORM
(p) Standard Form 424D -- ASSURANCES -- CONSTRUCTION PROGRAMS.
CLICK HERE TO VIEW FORM
[66 FR 33845, 33856, June 26, 2001]

PART 60 -- FISHER HOUSES AND OTHER TEMPORARY LODGING

§ 60.1 Purpose.
§ 60.2 Definitions.
§ 60.3 Eligible persons.
§ 60.4 Application.
§ 60.5 Travel.
§ 60.6 Condition of veteran.
§ 60.7 Duration of temporary lodging.
§ 60.8 Lodging availability.
§ 60.9 Decisionmaker.
§ 60.10 Costs.


§ 60.1 Purpose.
Discussion and Analysis in the Veterans Benefits Manual
This part sets forth requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or C&P examinations and a family member or other person accompanying the veteran to provide the equivalent of familial support.
[68 FR 8547, 8549, Feb. 24, 2003]


§ 60.2 Definitions.
Discussion and Analysis in the Veterans Benefits Manual
For the purposes of this part:
C&P examination means an examination requested by VA's Compensation and Pension Service to be conducted at a VA health care facility for the purpose of evaluating claims by veterans.
Temporary lodging means:
(1) Lodging at a Fisher House which is a housing facility that is located at or near a VA health care facility, that is available for residential use on a temporary basis by eligible persons, and that was constructed by and donated to VA by the Zachary and Elizabeth M. Fisher Armed Services Foundation or Fisher House Foundation; or
(2) Lodging at a temporary lodging facility located at a VA health care facility (generally referred to as a "hoptel"), or a temporary non-VA lodging facility, such as a hotel or motel, provided by a VA health care facility.
VA means the Department of Veterans Affairs.
[68 FR 8547, 8549, Feb. 24, 2003]

§ 60.3 Eligible persons.

The following are eligible to stay in temporary lodging subject to the conditions of this part:
(a) A veteran with an appointment at a VA health care facility for the purpose of receiving health care or a C&P examination; and
(b) A member of the family of such veteran or another person who accompanies such veteran to provide the equivalent of familial support.

[EFFECTIVE DATE NOTE: 68 FR 8547, 8549, Feb. 24, 2003]

§ 60.4 Application.

To obtain temporary lodging under this part, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. The veteran shall provide the following information:
(a) Veteran's name;
(b) Beginning date and time and duration of scheduled care;
(c) Type of scheduled care;
(d) Name, gender, and relationship to the veteran of person accompanying veteran;
(e) Requested dates for temporary lodging;
(f) Distance, time, and means of travel from the veteran's home to VA health care facility;
(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and
(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0630.)

[EFFECTIVE DATE NOTE: 68 FR 8547, 8549, Feb. 24, 2003]

§ 60.5 Travel.

As a condition for receiving temporary lodging under this part, a veteran must be required to travel either 50 or more miles, or at least two hours from his or her home to the VA health care facility, except that the facility Director at the VA health care facility of jurisdiction may make an exception to distance or time provisions based on exceptional circumstances, such as condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran.

[EFFECTIVE DATE NOTE: 68 FR 8547, 8549, Feb. 24, 2003]
§ 60.6 Condition of veteran.
As a condition for receiving temporary lodging under this part, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. Questions regarding these issues will be resolved by an appropriate health care provider at the VA health care facility of jurisdiction.

§ 60.7 Duration of temporary lodging.
Temporary lodging may be furnished to eligible persons in connection with care or C&P examinations provided at a VA health care facility. When a veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section. Temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8 a.m., would be unable to arrive at the health care facility by the time of the scheduled care. Temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7 p.m.

§ 60.8 Lodging availability.
Fisher Houses are available solely for temporary lodging under this part. Non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. Temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility of jurisdiction. Temporary lodging will be provided on a first-come first-serve basis.

§ 60.9 Decisionmaker.
Except as otherwise provided in this part, the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction is responsible for making decisions under this part.
§ 60.10 Costs.
Costs for temporary lodging under this part shall be borne by VA.
[68 FR 8547, 8550, Feb. 24, 2003]
PART 61 -- VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

§ 61.0 Purpose.
§ 61.1 Definitions.
§ 61.10 Capital grants -- general.
§ 61.11 Applications for capital grants.
§ 61.12 Threshold requirements for capital grant applications.
§ 61.13 Rating criteria for capital grant applications.
§ 61.14 Selecting applications for capital grants.
§ 61.15 Obtaining additional information and awarding capital grants.
§ 61.16 Matching funds for capital grants.
§ 61.17 Site control for capital grants.
§ 61.20 Life Safety Code capital grants.
§ 61.30 Per diem-general.
§ 61.31 Application for per diem.
§ 61.32 Ranking non-capital grant recipients for per diem.
§ 61.33 Payment of per diem.
§ 61.40 Special needs grants -- general.
§ 61.41 Special needs grants application.
§ 61.42 Threshold requirements for special needs grant applications.
§ 61.43 Rating criteria for special needs grant applications.
§ 61.44 Awarding special needs grants.
§ 61.50 Technical assistance grants-general.
§ 61.51 Applications for technical assistance grants.
§ 61.52 Threshold requirements for technical assistance grant applications.
§ 61.53 Rating criteria for technical assistance grant applications.
§ 61.54 Awarding technical assistance grants.
§ 61.55 Technical assistance reports.
§ 61.60 Notice of Fund Availability.
§ 61.61 Agreement and funding actions.
§ 61.62 Program changes.
§ 61.63 Procedural error.
§ 61.64 Religious organizations.
§ 61.65 Inspections.
§ 61.66 Financial management.
§ 61.67 Recovery provisions.
§ 61.80 General operation requirements for supportive housing and service centers.
§ 61.81 Outreach activities.
§ 61.82 Resident rent for supportive housing.

§ 61.0 Purpose.
This part implements the VA Homeless Providers Grant and Per Diem Program which consists of the following components: capital grants, per diem, special needs grants, and technical assistance grants.  
[68 FR 13590, 13594, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.1 Definitions.  
For purposes of this part:  
Area or community means a political subdivision or contiguous political subdivisions (such as precinct, ward, borough, city, county, State, Congressional district, etc.) with a separately identifiable population of homeless veterans.  
Capital grant means a grant for construction, renovation, or acquisition of a facility; or for acquisition of a van.  
Capital lease means a lease that will be in effect for the full period in which VA may recover all or portions of the capital grant amount under this part.  
Chronically mentally ill means a condition of schizophrenia or major affective disorder (including bipolar disorder) or post-traumatic stress disorder (PTSD), based on a diagnosis from a licensed mental health professional, with at least one documented hospitalization for this condition sometime in the last 2 years or with documentation of a formal assessment on a standardized scale of any serious symptomology or serious impairment in the areas of work, family relations, thinking, or mood.  
Fee means a fixed charge for a service offered by a recipient under this part, that is in addition to the services that are outlined in the recipient's application; and are not paid for by VA per diem or provided by VA, (e.g., cable television, recreational outings, professional instruction or counseling).  
Fixed site means a physical structure that under normal conditions is not capable of readily being moved from one location to another location.  
Frail elderly means 65 years of age or older with one or more chronic health problems and limitations in performing one or more activities of daily living (such as bathing, toileting, transferring from bed to chair, etc.)  
Homeless means: (1)(i) Lacking a fixed, regular and adequate nighttime residence; or (ii) Having a primary nighttime residence that is --  
(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);  
(B) An institution that provides a temporary residence for persons intended to be institutionalized; or  
(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.  
(2) The term homeless does not include imprisonment or other detainment pursuant to Federal or State law. Imprisonment or other detainment does not include probation, parole or electronic custody.
New construction means the building of a structure where none existed or an addition to
an existing structure that increases the floor area by more than 100 percent.
Nonprofit organization means a private organization, no part of the net earnings of which
may inure to the benefit of any member, founder, contributor, or individual. The
organization must be recognized as a 501(c)(3) or 501(c)(19) nonprofit organization by
the United States Internal Revenue Service, and:
(1) Have a voluntary board;
(2) Have a functioning accounting system that is operated in accordance with generally
accepted accounting principles, or designate an entity that will maintain a functioning
accounting system for the organization in accordance with generally accepted accounting
principles; and
(3) Practice nondiscrimination in the provision of supportive housing and supportive
services assistance.
Operating costs means expenses incurred in operating supportive housing, supportive
services or service centers with respect to:
(1) Administration (including staff salaries; costs associated with accounting for the use
of grant funds, preparing reports for submission to VA, obtaining program audits, and
securing accreditation; and similar costs related to administering the grant after the
award), maintenance, repair and security for the supportive housing;
(2) Van costs or building rent (except under capital leases), e.g., fuel, insurance, utilities,
furnishings, and equipment;
(3) Conducting on-going assessments of supportive services provided for and needed by
participants and the availability of such services;
(4) Other costs associated with operating the supportive housing.
Outpatient health services means outpatient health care, outpatient mental health services,
outpatient alcohol and/or substance abuse services, and case management.
Participant means a person receiving services based on a grant or per diem provided
under this part.
Public entity includes:
(1) A county, municipality, city, town, township, local public authority (including any
public and Indian housing agency under the United States Housing Act of 1937), school
district, special district, intrastate district, council of governments (whether or not
incorporated as a nonprofit corporation under state law), any other regional or interstate
government entity, or any agency or instrumentality of a local government, and
(2) The governing body or a governmental agency of any Indian tribe, band, nation, or
other organized group or community (including any Native village as defined in section 3
of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the
Interior as eligible for the special programs and services provided by the Bureau of Indian
Affairs.
Rehabilitation means the improvement or repair of an existing structure. Rehabilitation
does not include minor or routine repairs.
State means any of the several States of the United States, the District of Columbia, the
Commonwealth of Puerto Rico, any territory or possession of the United States, or any
agency or instrumentality of a State exclusive of local governments. The term does not
include any public and Indian housing agency under United States Housing Act of 1937.
Supportive housing means housing with supportive services provided for homeless veterans and is:
1. Transitional housing, or
2. A part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless veterans.

Supportive services means services, which may be designed by the recipient or program participants, that provide appropriate services or assist such persons in obtaining appropriate services to address the needs of homeless veterans to be served by the project. Supportive services does not include inpatient acute hospital care, but does include:
1. Outreach activities;
2. Providing food, nutritional advice, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;
3. Establishing and operating child care services for dependents of homeless veterans;
4. Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using supportive housing or services;
5. Providing assistance in obtaining permanent housing;
6. Providing education, employment counseling and assistance, and job training;
7. Providing assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling and assistance, veterans' benefits, medical assistance, and income support assistance; and
8. Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

Terminally ill means a prognosis of 9 months or less to live based on a written medical diagnosis from a physician.

VA means the Department of Veterans Affairs.
Veteran means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

§ 61.10 Capital grants -- general.
(a) VA provides capital grants to public or nonprofit private entities so they can assist homeless veterans by helping to ensure the availability of supportive housing and service centers to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing. Specifically, VA provides capital grants for up to 65 percent of the cost to:
1. Construct structures and purchase the underlying land to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;
2. Acquire structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers;
(3) Renovate existing structures to establish new supportive housing facilities or service centers, or to expand existing supportive housing facilities or service centers; and
(4) Procure vans (purchase price, sales taxes, and title and licensing fees) to provide transportation or outreach for the purpose of providing supportive services.

(b) Capital grants may not be use for acquiring buildings located on VA-owned property. However, capital grants may be awarded for construction, expansion, or renovation of buildings located on VA-owned property.

[68 FR 13590, 13596, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.11 Applications for capital grants.
(a) To apply for a capital grant, an applicant must obtain from VA a capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability under § 61.60 of this part.
(b) The capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:
(1) Justification for the capital grant;
(2) Site description, site design, and site cost estimates;
(3) Documentation on eligibility to receive a capital grant under this part;
(4) Documentation on matching funds committed to the project;
(5) Documentation on operating budget and cost sharing;
(6) Documentation on supportive services committed to the project;
(7) Documentation on site control and appropriate zoning, and on the boundaries of the area or community proposed to be served;
(8) If capital grant funds are proposed to be used for acquisition or rehabilitation, documentation demonstrating that the costs associated with acquisition or rehabilitation are less than the costs associated with new construction;
(9) If grant funds are proposed to be used for new construction, documentation demonstrating that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction, and that new construction is less costly than acquisition of an existing building, (for purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition);
(10) If the proposed construction includes demolition, a demolition plan, including the extent and cost of existing site features to be removed, stored, or relocated and information establishing that the proposed construction is in the same location as the building to be demolished or that the demolition is inextricably linked to the design of the construction project (the cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished).
demolished or unless the demolition is inextricably linked to the design of the
construction project);
(11) Comments or recommendations by appropriate State (and area wide) clearinghouses
pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and
(12) Reasonable assurances with respect to receipt of a capital grant under this part that:
(i) The project will be used principally to furnish to veterans the level of care for which
such application is made; that not more than 25 percent of participants at any one time
will be nonveterans; and that such services will meet the requirements of this part;
(ii) The recipient will continue to operate the project until the expiration of the period
during which VA could seek recovery under § 61.67;
(iii) Title to such site or van will vest solely in the applicant and the applicant will insure
vans to the same extent they would insure a van bought with their own funds;
(iv) Adequate financial support will be available for the completion of the project or for
the purchase and maintenance, repair, and operation of the van; and
(v) The recipient will keep records and submit reports as VA may reasonably require,
within the time frames required; and give VA, upon demand, access to the records upon
which such information is based.
(c) Applicants may apply for more than one capital grant.
(The Office of Management and Budget has approved the information collection
requirements in this section under control number 2900-0554.)
§ 61.12 Threshold requirements for capital grant applications.
To be eligible for a capital grant, an applicant must meet the following threshold
requirements:
(a) The application was completed in all parts and included the information called for in
the application package and was filed within the time period established in the Notice of
Fund Availability;
(b) The applicant is a public or nonprofit private entity;
(c) The population proposed to be served is homeless veterans;
(d) The activities for which assistance is requested are eligible for funding under this part;
(e) The applicant has demonstrated that adequate financial support will be available to
carry out the project for which the capital grant is sought consistent with the plans,
specifications and schedule submitted by the applicant;
(f) The application has demonstrated compliance with the Uniform Relocation Assistance
and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655);
(g) The applicant has agreed to comply with the requirements of this part and has
demonstrated the capacity to do so;
(h) The applicant does not have an outstanding obligation to VA that is in arrears, and
does not have an overdue or unsatisfactory response to an audit; and

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the restrictions and terms and conditions of the Matthew Bender Master Agreement.
(i) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

[68 FR 13590, 13596, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.13 Rating criteria for capital grant applications.
(a) Applicants that meet the threshold requirements in § 61.12 of this part, will then be rated using the selection criteria listed in this section. To be eligible for a capital grant, an applicant must receive at least 600 points (out of a possible 1,200) and must receive points under criteria in paragraphs (b), (c), (d), (e), and (i) of this section.
(b) Quality of the project. VA will award up to 300 points based on the following:
(1) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;
(2) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;
(3) How program participants will be involved in making project decisions that affect their lives so that they achieve greater self-determination, including how they will be involved in selecting supportive services, establishing individual goals and developing plans to achieve these goals;
(4) How permanent affordable housing will be identified and made known to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;
(5) How the service needs of participants will be assessed on an ongoing basis;
(6) How the proposed housing, if any, will be managed and operated;
(7) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities, and services;
(8) How and when the progress of participants toward meeting their individual goals will be monitored, evaluated, and documented;
(9) How and when the effectiveness of the overall project in achieving its goals will be evaluated and documented; and how any needed program modifications will be made based on those evaluations; and how program modifications will be reported to VA; and
(10) How the proposed project will be implemented in a timely fashion.
(c) Targeting to persons on streets and in shelters. VA will award up to 150 points based on:
(1) The extent to which the project is designed to serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and
(2) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.
(d) Ability of applicant to develop and operate a project. VA will award up to 200 points based on the extent to which the application demonstrates experience in the following areas:

1. Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;
2. Assessing the housing and relevant supportive service needs of homeless veterans;
3. Accessing housing and relevant supportive service resources;
4. If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;
5. If applicable, administering a rental assistance program;
6. Providing supportive services or supportive housing for homeless veterans;
7. Monitoring and evaluating the progress of persons toward meeting their individual goals;
8. Evaluating the overall effectiveness of a program and using evaluation results to make program improvements, as needed; and
9. Maintaining fiscal solvency as evidenced by providing their last complete yearly financial statements.

(e) Need. VA will award up to 150 points based on the extent to which the applicant demonstrates:

1. Substantial unmet needs, particularly among the target population living in places not ordinarily meant for human habitation such as the streets, emergency shelters, based on reliable data from surveys of homeless populations or other reports or data gathering mechanisms that directly support claims made; and
2. An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(f) Innovative quality of the proposal. VA will award up to 50 points based on the innovative quality of the proposal, in terms of:

1. Helping homeless veterans or homeless veterans with disabilities to reach residential stability, to increase their skill level and/or income, and to increase the influence they have over decisions that affect their lives;
2. Establishing a clear link between the innovation(s) and its proposed effect(s); and
3. Establishing usefulness as a model for other projects.

(g) Leveraging. VA will award up to 50 points based on the extent to which the applicant documents resources from other public and private sources, including cash and the value of third party contributions, have been committed to support the project at the time of application.

(h) Cost-effectiveness. VA will award up to 100 points for cost-effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount, and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high-cost areas. Cost-effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(i) Coordination with other programs. VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the
project. Such entities may include shelter transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other program providers relevant to the needs of homeless veterans in the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area. VA will award up to 50 points of the 200 points based on the extent to which commitments to provide supportive services are documented at the time of application. Up to 150 points of the 200 points will be given to the extent applicants demonstrate that:

1. They are part of an ongoing community-wide planning process within the framework described above which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;
2. They have consulted directly with the closest VA Medical Center and other providers within the framework described above regarding coordination of services for project participants; and
3. They have coordinated with the closest VA Medical Center their plan to assure access to health care, case management, and other care services.

[68 FR 13590, 13596, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.14 Selecting applications for capital grants.

(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a capital grant in accordance with their ranked order, as determined under § 61.13 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(e) of this part to determine the ranking.

[68 FR 13590, 13597, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.15 Obtaining additional information and awarding capital grants.
(a) Each applicant who has been conditionally selected for a capital grant will be requested by VA to submit additional information, including:

(1) Documentation to show that the project is feasible, including a plan from an architect, contractor, or other building professional that provides estimated costs for the proposed design;

(2) Documentation showing the sources of funding for the project and firm financing commitments for the matching requirements described in § 61.16 of this part;

(3) Documentation establishing site control described in § 61.17 of this part;

(4) Documentation establishing compliance with the National Historic Preservation Act (16 U.S.C. 470);

(5) Information necessary for VA to ensure compliance both with Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines;

(6) Documentation establishing compliance with local and state zoning codes;

(7) Documentation in the form of one set of design development (35 percent completion) drawings demonstrating compliance with local codes, state codes, and the Life Safety Code of the National Fire Protection Association.

(8) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq.);

(9) A site survey performed by a licensed land surveyor; and

(10) Such other documentation as specified by VA in writing to the applicant to confirm or clarify information provided in the application.

(b) The required additional information must be received by VA in acceptable form within the time frame established by VA in a Notice of Fund Availability published in the Federal Register.

(c) Following receipt of the additional information in acceptable form, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part and other applicable provisions of this part.

§ 61.16 Matching funds for capital grants.

The amount of a capital grant may not exceed 65 percent of the total cost of the project for which the capital grant was awarded. The recipient must, from sources other than grant funds received under this part, match the funds provided by VA to cover the percentage of the total cost of the project not funded by the capital grant. This matching share shall constitute at least 35 percent of the total cost. If the project is for supportive housing, or a service center that would be used for purposes under this part and for other purposes, a capital grant may be awarded only in proportion to the use under this part.
Capital grants may include application costs, including site surveys, architectural, and engineering fees, but may not include relocation costs.

[68 FR 13590, 13598, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.17 Site control for capital grants.

(a) As a condition for obtaining a capital grant for supportive housing or a fixed site service center, an applicant must demonstrate site control through a deed, a capital lease, or an executed contract of sale, unless the site is in a building or on land owned by VA. Such site control must be demonstrated within 1 year after execution of an agreement under § 61.61 of this part.

(b) A capital grant recipient may change the site to a new site meeting the requirements of this part subject to VA approval under § 61.62 of this part. However, the recipient is responsible for and must demonstrate ability to provide for any additional costs resulting from the change in site.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554.)

[68 FR 13590, 13598, Mar. 19, 2003, as confirmed and at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.20 Life Safety Code capital grants.

(a) This section sets forth provisions for obtaining a Life Safety Code capital grant under 38 U.S.C. 2012(c)(3). To be eligible to receive such a capital grant, an applicant already must have received a grant under section 3 of the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102-590; 38 U.S.C. 7221 note) for construction, renovation, or acquisition of a facility and must obtain the Life Safety Code capital grant solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association. The following sections of this part apply to the Life Safety Code grants §§ 61.60 through 61.66; and § 61.80 and § 61.82.

(b) To apply for a Life Safety Code capital grant under this section, an applicant must obtain from VA a Life Safety Code capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The Life Safety Code capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:
(1) Justification for the modifications needed to meet the Life Safety Code or such other comparable fire and safety requirements;
(2) Site description, site design, and site cost estimates;
(3) Reasonable assurances with respect to receipt of a Life Safety Code capital grant under this part that:
   (i) The project being renovated is being, used principally to furnish veterans the level of care for which VA awarded the applicant a grant under the Homeless Veterans Comprehensive Service Program Act of 1992; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;
   (ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based;
   (iii) The applicant has agreed to comply with the applicable requirements of this part and has demonstrated the capacity to do so;
   (iv) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and
   (v) The applicant is not in default, by failing to meet requirements for any previous assistance from VA.
(c)(1) Cost-effectiveness. VA will award up to 300 points for cost-effectiveness with adjustments for high-cost areas. Applicants should address the following:
   (i) Estimated cost of the renovation and the type of work to be done;
   (ii) Estimated cost of any displacement of program participants or services due to the renovation; and
   (iii) Cost-benefit analysis addressing the benefit of renovation to the structure compared to moving program to another site.
(2) Coordination. VA will award up to 200 points for a summary countersigned by the local VAMC Facilities Management of the discussions concerning renovation plans. The summaries should detail the following:
   (i) Urgency of the renovation;
   (ii) Adequacy of the renovation; and
   (iii) Opinion of feasibility and cost benefit.
(d) The highest-ranked applications for the Life Safety Code capital grants for which funding is available will be selected to receive grants in accordance with their ranked order. The amount awarded will be 100 percent of the estimated total cost of the renovation as stated in the Life Safety Code application (this may include application costs, architectural fees, and engineering fees). VA will execute an agreement and make payments to the Life Safety Code capital grant recipient in accordance with § 61.61 of this part and other applicable provisions of this part. In the event of a tie between applicants, VA will use the score from § 61.20(c)(2) of this part to determine the ranking.
(e) Applicants may apply for more than one Life Safety Code capital grant.
(f) The authority to provide Life Safety Code grants expires on December 21, 2006.
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554.)
§ 61.30 Per diem-general.
VA provides per diem funds to capital grant recipients or to entities eligible to receive a capital grant, which established a program of supportive housing or services after November 10, 1992 so they can assist homeless veterans by helping to offset operating costs to ensure the availability of supportive housing and service centers tasked with furnishing outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance.

§ 61.31 Application for per diem.
(a) To apply for per diem, a capital grant recipient need only indicate the intent to receive per diem on the capital grant application or may separately request per diem by submitting to VA a written statement requesting per diem.
(b) To apply for per diem, a non-capital grant recipient must obtain from VA a non-capital grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability. The non-capital grant application package includes exhibits to be prepared and submitted as part of the application process, including:
(1) Justification for per diem;
(2) Documentation on eligibility to receive per diem under this part;
(3) Documentation on operating budget and cost sharing;
(4) Documentation on supportive services committed to the project;
(5) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and
(6) Reasonable assurances with respect to receipt of per diem under this part that:
(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be nonveterans; and that such services will meet the requirements of this part;
(ii) Adequate financial support will be available for the per diem program; and
(iii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.
§ 61.32 Ranking non-capital grant recipients for per diem.
(a) Applications from non-capital grant recipients in response to a Notice of Fund Availability will be reviewed and grouped in categories according to the funding priorities set forth in the NOFA, if any. Such applications will then be ranked within their respective funding category according to scores achieved only if the applicant scores at least 500 cumulative points from paragraphs (b), (c), (d), (e), and (i) of § 61.13 of this part. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected for eligibility to receive per diem payments in accordance with their ranked order. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.

(b) In the event of a tie between applicants, VA will use the score from § 61.13(e) of this part to determine the ranking.

(c) All applicants responding to a NOFA for "Per Diem Only" will be subject to the ranking method in paragraph (a) of this section.

Note to § 61.32: Capital grant recipients are not required to be ranked, however, continuation of per diem payments to capital grant recipients will be subject to limitations set forth in § 61.33 of this part.

§ 61.33 Payment of per diem.
(a) A capital grant recipient meeting the application requirements as outlined in § 61.31(a) of this part is eligible for per diem subject to a site inspection establishing that the applicant continues to meet the requirements for a capital grant as outlined in the following sections, §§ 61.62, 61.64, 61.65, 61.66, 61.80, 61.81, and 61.82.

(b) For non-capital grant recipients who apply for per diem under this part, funds will be allocated to the highest-ranked applicants in descending order until funds are expended. Payments will be contingent upon verification of application information based on an
initial site inspection and other inspections pursuant to § 61.66 of this part and will be
made for 3 years or as otherwise specified in the Notice of Fund Availability. Non-capital
grant recipients may apply again thereafter only in response to a Notice of Fund
Availability.
(c) For those applicants selected to receive per diem, VA will execute an agreement in
accordance with § 61.61 of this part and make payments to the grant recipient or
non-grant recipient for those homeless veterans --
(1) Who VA referred to the grant recipient or non-grant recipient; or
(2) For whom VA authorized the provision of supportive housing or supportive service.
(d)(1) The rate of per diem payments for each veteran in supportive housing shall be the
lesser of --
(i) The daily cost of care estimated by the per diem recipient minus other sources of
payments to the per diem recipient for furnishing services to homeless veterans that the
per diem recipient certifies to be correct (other sources include payments and grants from
other departments and agencies of the United States, from departments of State and local
governments, from private entities or organizations, and from program participants), or
(ii) The current VA State Home Program per diem rate for domiciliary care.
(2) The per diem amount for service centers shall be 1/8 of the lesser of the amounts in
paragraphs (d)(1)(i) and (d)(1)(ii) of this section per hour, not to exceed 8 hours in any
day.
(e) Per diem payments may be paid retroactively for services provided not more than 3
days before VA approval is given or, where through no fault of the recipient, per diem
payments should have been made but were not made. VA will not pay per diem for any
additional days of absence when a veteran has already been absent for more than 72
hours consecutively (scheduled or unscheduled). In addition, VA will not pay per diem
payments for supportive housing for any homeless veteran who has had three or more
episodes (admission and discharge for each episode) of supportive housing services paid
for under this part. VA may waive the episode requirement if the services offered are
different from those previously provided and may lead to a successful outcome.
(f) Payment of per diem is subject to availability of funds. When necessary due to
funding limitations, VA will reduce the rate of per diem as necessary.
(g) Capital grant recipients and non-capital grant recipients may continue to receive per
diem assistance only so long as they continue to meet the minimum eligibility
requirements for obtaining a grant. For grant recipients this is the minimum 600 points as
provided for in § 61.13(a) of this part. For non-grant recipients this is the minimum 500
points provided for in § 61.32(a) of this part.
(h) Per diem payments will not be paid for both supportive housing and supportive
services provided to the same veteran by the same per diem recipient.
(i) For non-capital grant recipients, only those portions of the service center or supportive
housing described in the application will be considered for per diem assistance.
(j) At the time of receipt, a per diem recipient must report to VA all other sources of
income for the project for which per diem was awarded. The information in this
paragraph provides a basis for adjustments to the per diem payment.
[68 FR 13590, 13599, Mar. 19, 2003, as corrected at 68 FR 34332, June 9, 2003, and
confirmed at 68 FR 55467, 55468, Sept. 26, 2003]
§ 61.40 Special needs grants -- general.

(a) VA provides special needs grants to capital grant and per diem recipients under this part to assist with additional operational costs that would not otherwise be incurred but for the fact that the recipient is providing beds or services in supportive housing and at service centers for the following homeless veterans:

1. Women, including women who have care of minor dependents;
2. Frail elderly;
3. Terminally ill; or
4. Chronically mentally ill.

(b) No part of a special needs grant may be used for any purpose that would change significantly the scope of the project for which a capital grant or per diem was awarded.

(c) The following sections of this part apply to special needs grants: §§ 61.60 through 61.66; and § 61.80; § 61.82.

§ 61.41 Special needs grants application.

(a) To apply for a special needs grant, an applicant must obtain from VA a special needs grant application package and submit to VA the information called for in the application package within the time period established in the Notice of Fund Availability.

(b) The special needs grant application package includes exhibits to be prepared and submitted as part of the application process, including:

1. Justification for the special needs grant;
2. Documentation on eligibility to receive a special needs grant under this part;
3. Documentation concerning the estimated operating costs for the needs of the specific population for which the special needs grant is requested;
4. Documentation concerning supportive services committed to the project;
5. Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and
6. Reasonable assurances with respect to receipt of a special needs grant under this part that:
   (i) The funds will be used to furnish to veterans the level of care for which such application is made; and that the special needs program will comply with applicable requirements of this part;
   (ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based; and
§ 61.42 Threshold requirements for special needs grant applications.

To be eligible for a special needs grant, an applicant must meet the following threshold requirements:

(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;
(b) The applicant still meets the requirements for receipt of per diem;
(c) The activities for which assistance is requested are eligible for funding under this part;
(d) The applicant has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant;
(e) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit;
(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part; and
(g) The applicant has agreed to comply with applicable requirements of this part, to maintain eligibility for special need payments and has demonstrated the capacity to do so.

§ 61.43 Rating criteria for special needs grant applications.

(a) Applicants that meet the threshold requirements in § 61.42 of this part, will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a special needs grant, an applicant must receive at least 300 points (out of a possible 500) and must score points in all areas (paragraphs (b)(1) through (c)(3)).
(b) VA will award up to 200 points based on the extent to which the applicant demonstrates why the service, operation, or personnel for which the special needs grant:
(1) Is needed for the project;
(2) Is integral to the project;
(3) Is appropriate to the population and overall project design; and
(4) Meets the special needs population provided per diem in the previous year.
(c) VA will award up to 300 points based on the extent the applicant's goals, objectives, and measures for the population to be served are:

(1) Appropriate;
(2) Reasonable; and
(3) Measurable.

(d) The information provided under paragraphs (b) and (c) of this section for women, including women who have care of minor dependents, should demonstrate how the program design will:

(1) Ensure transportation for women and their children, especially for health care and educational needs;
(2) Provide directly or offer referrals for adequate and safe child care;
(3) Ensure children's health care needs are met especially age appropriate wellness visits and immunizations; and
(4) Address safety and security issues including segregation procedures from other program participants if deemed appropriate.

(e) The information provided under paragraphs (b) and (c) of this section for the frail elderly should demonstrate how the program design will:

(1) Ensure the safety of the residents in the facility to include preventing harm and exploitation;
(2) Ensure opportunities to keep residents mentally and physically agile to the fullest extent through the incorporation of structured activities, physical activity, and plans for social engagement within the program and in the community;
(3) Provide opportunities for participants to address life transitional issues and separation and/or loss issues;
(4) Provide access to assistance devices such as walkers, grippers, or other devices necessary for optimal functioning;
(5) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and
(6) Provide opportunities for participants either directly or through referral for other services particularly relevant for the frail elderly, including services or programs addressing emotional, social, spiritual, and generative needs.

(f) The information provided under paragraphs (b) and (c) of this section for the terminally ill should demonstrate how the program design will:

(1) Help participants address life-transition and life-end issues;
(2) Ensure that participants are afforded timely access to hospice services;
(3) Provide opportunities for participants to engage in "tasks of dying," or activities of "getting things in order" or other therapeutic actions that help resolve end of life issues and enable transition and closure;
(4) Ensure adequate supervision including supervision of medication and monitoring of medication compliance; and
(5) Provide opportunities for participants either directly or through referral for other services particularly relevant for terminally ill such as legal counsel and pain management.

(g) The information provided under paragraphs (b) and (c) of this section for the chronically mentally ill should demonstrate how the program design will:

(1) Help participants join in and engage with the community;
(2) Facilitate reintegration with the community and provide services that may optimize reintegration such as life-skills education, recreational activities, and follow up case management;
(3) Ensure that participants have opportunities and services for re-establishing relationships with family;
(4) Ensure adequate supervision, including supervision of medication and monitoring of medication compliance; and
(5) Provide opportunities for participants, either directly or through referral, to obtain other services particularly relevant for a chronically mentally ill population, such as vocational development, benefits management, fiduciary or money management services, medication compliance, and medication education.

[68 FR 13590, 13600, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.44 Awarding special needs grants.
(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a special needs grant in accordance with their ranked order, as determined under § 61.43 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.
(b) In the event of a tie between applicants, VA will use the score from § 61.43(b) of this part to determine the ranking.
(c) For those applicants selected for a special needs grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part.
(d) The amount of the special needs grant will be the estimated total operational cost of the special need over the life of the special needs grant award as specified in the special needs grant agreement. Payments may be made for no more than 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.

[68 FR 13590, 13601, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.50 Technical assistance grants-general.
VA provides grants to entities or organizations with expertise in preparing grant applications relating to the provision of assistance for homeless veterans. The recipients are to use the grants to provide technical assistance to those nonprofit community-based groups with experience in providing assistance to homeless veterans in order to help such groups apply for grants under 38 CFR part 61 or apply for other grants from any source for addressing the problems of homeless veterans. This includes:

(a) Group or individual seminars providing general instructions concerning grant applications;
(b) Group or individual seminars providing instructions for applying for a specific grant; or
(c) Group or individual instruction for preparing analyses to be included in a grant application.

[68 FR 13590, 13601, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.51 Applications for technical assistance grants.

(a) To apply for a technical assistance grant under this part, an applicant must obtain from VA a technical assistance grant application package and submit to VA the information called for in the technical assistance grant application package within the time period established in the Notice of Fund Availability.

(b) The technical assistance grant application package includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the technical assistance grant;
(2) Documentation on eligibility to receive a technical assistance grant under this part;
(3) Description of type of technical assistance that would be provided (see § 61.50);
(4) Documentation concerning the estimated operating costs and operating budget for the technical assistance program for which a grant is sought;
(5) Documentation concerning expertise in preparing grant applications;
(6) Documentation on resources committed to the provision of technical expertise;
(7) Comments or recommendations by appropriate State (and area wide) clearinghouses pursuant to E.O. 12372 (3 CFR, 1982 Comp., p. 197), if the applicant is a State; and
(8) Reasonable assurances with respect to receipt of a technical assistance grant under this part that:

(i) The recipient will provide adequate financial and administrative support for providing the services set forth in the technical assistance grant application and will actually provide such services; and
(ii) The recipient will keep records and submit reports as VA may reasonably require, within the time frames required; and give VA, upon demand, access to the records upon which such information is based.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554.)
§ 61.52 Threshold requirements for technical assistance grant applications.
To be eligible for a technical assistance grant, an applicant must meet the following threshold requirements:
(a) The application included the information called for in the application package and was filed within the time period established in the Notice of Fund Availability;
(b) The applicant established expertise in preparing grant applications;
(c) The activities for which assistance is requested are eligible for funding under this part;
(d) The applicant has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant;
(e) The applicant does not have an outstanding obligation to VA that is in arrears, and does not have an overdue or unsatisfactory response to an audit; and
(f) The applicant is not in default, by failing to meet requirements for any previous assistance from VA under this part.

§ 61.53 Rating criteria for technical assistance grant applications.
(a) Applicants that meet the threshold requirements in § 61.52 of this part, will then be rated using the selection criteria listed in paragraphs (b) and (c) of this section. To be eligible for a technical assistance grant, an applicant must receive at least 600 points (out of a possible 800) and must score points under paragraphs (b) and (c) of this section.
(b) Quality of the technical assistance. VA will award up to 400 points based on the following:
(1) How the recipients of technical training will increase their skill level regarding the completion of applications;
(2) How the recipients of technical training will learn to find grant opportunities in a timely manner;
(3) How the technical assistance provided will be monitored and evaluated and changes made, if needed; and
(4) How the proposed technical assistance programs will be implemented in a timely fashion.
(c) Ability of applicant to demonstrate expertise in preparing grant applications develop and operate a technical assistance program. VA will award up to 400 points based on the extent to which the application demonstrates:
(1) Ability to find grants available for addressing the needs of homeless veterans;
(2) Ability to find and offer technical assistance to entities eligible for such assistance;
(3) Ability to administer a technical assistance program;
(4) Ability to provide grant technical assistance; and
(5) Ability to evaluate the overall effectiveness of the technical assistance program and to make adjustments, if necessary, based on those evaluations.
[68 FR 13590, 13602, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.54 Awarding technical assistance grants.
(a) Applicants will first be grouped in categories according to the funding priorities set forth in the NOFA, if any. Applicants will then be ranked, within their respective funding category if applicable. The highest-ranked applications for which funding is available, within highest priority funding category if applicable, will be conditionally selected to receive a technical assistance grant in accordance with their ranked order, as determined under § 61.53 of this part. If funding priorities have been established and funds are still available after selection of those applicants in the highest priority group VA will continue to conditionally select applicants in lower priority categories in accordance with the selection method set forth in this paragraph subject to available funding.
(b) In the event of a tie between applicants, VA will use the score from § 61.53(c) of this part to determine the ranking.
(c) For those applicants selected to receive a technical assistance grant, VA will execute an agreement and make payments to the grant recipient in accordance with § 61.61 of this part.
(d) The amount of the technical assistance grant will be the estimated total operational cost of the technical assistance over the life of the technical assistance grant award as specified in the technical assistance grant agreement. Payments may be made for no more than 3 years. Recipients may apply again thereafter only in response to a Notice of Fund Availability.
(e) The amount of a technical assistance grant under this part may not exceed the cost of the estimated cost of the provision of technical assistance.
(f) VA will not pay for sustenance or lodging under a technical assistance grant.
[68 FR 13590, 13602, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]

§ 61.55 Technical assistance reports.
Each recipient of a technical assistance grant must submit to VA, quarterly, a report describing the activities for which the technical assistance grant funds were awarded, including the type and amount of technical assistance provided and the number of nonprofit community-based groups served.
(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554.)
[68 FR 13590, 13602, Mar. 19, 2003, as confirmed and amended at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.60 Notice of Fund Availability.
When funds are made available for capital grants, per diem for non-capital grant recipients, special needs grants, or technical assistance grants, VA will publish a Notice of Fund Availability in the Federal Register. The notice will:
(a) Give the location for obtaining application packages;
(b) Specify the date, time, and place for submitting completed applications;
(c) State the estimated amount and type of funding available; and
(d) State any priorities for or exclusions from funding to meet the statutory mandate of 38 U.S.C. 2011, to ensure that awards do not result in the duplication of ongoing services and to reflect the maximum extent practicable appropriate geographic dispersion and an appropriate balance between urban and nonurban locations.
(e) Provide other information necessary for the application process.
[68 FR 13590, 13602, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.61 Agreement and funding actions.
(a) When an applicant for a capital grant, per diem, a special needs grant, or a technical assistance grant meets all of the requirements under this part for the type of assistance requested and VA has funding for such assistance, VA will incorporate requirements under this part into an agreement to be executed by VA and the applicant. Upon execution of the agreement, grant funds are obligated to cover the amount of the approved assistance subject to the availability of funding. Payments will be for services rendered and are contingent upon submission of documentation in the form of invoices or purchase agreements and contingent on inspections, as VA deems necessary. VA will make payments on its own schedule to reimburse for amounts expended.
(b) Except for increases in the rate of per diem, VA will not make revisions to increase the amount obligated for assistance under this part after the initial obligation of funds.
(c) VA will enforce the obligations under this part through such action as may be appropriate, including temporarily withholding cash payments pending correction of a deficiency.
(d) VA may deobligate all or parts of assistance awarded under this part:
   (1) If the actual total costs for assistance is less than the total cost stated in the application, or
   (2) If the recipient fails to comply with the requirements of this part.
(e) However, before determining whether to deobligate under paragraph (d)(2) of this section, VA will issue a notice of intent to terminate payments. The recipient will then have 30 days to submit documentation demonstrating why payments should not be terminated. After review of any such documentation, VA will issue a final decision concerning termination of payment.
(f) VA may also seek recovery under § 61.67 of this part where a capital grant recipient fails to provide supportive services and/or supportive housing for the minimum period of operation under § 61.67.
(g) Where a recipient has no control over causes for delays in implementing a project, VA may change the due date, as appropriate.
(h) Grant recipients that concurrently receive per diem and special needs payments shall not be paid more than 100 percent of the cost of the bed per day, product, operation, personnel, or service provided.
(i) No funds provided under this part may be used to replace Federal, State or local funds previously used, or designated for use, to assist homeless veterans.
(j) VA may obligate any recovered funds without fiscal year limitation.

§ 61.62 Program changes.
(a) Except as provided in paragraphs (b) through (d) of this section, a recipient may not make any significant changes to a project for which a grant has been awarded without prior VA approval. Significant changes include, but are not limited to, a change in the recipient, a change in the project site (including relocating, adding an annex, a branch, or other expansion), additions or deletions of activities, shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.
(b) Recipients of grants exceeding $ 100,000 for nonconstruction projects must receive prior VA approval for cumulative transfers among direct cost categories which exceed or are expected to exceed 10 percent of the current total approved budget.
(c) Recipients of grants for projects involving both construction and nonconstruction who are State or local governments must receive prior VA approval for any budget revision which would transfer funds between nonconstruction and construction categories.

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(d) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.
(e) Any changes to an approved program must be fully documented in the recipient's records.

[68 FR 13590, 13603, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.63 Procedural error.
If an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection. A new application will not be required for this purpose.

[68 FR 13590, 13603, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.64 Religious organizations.
(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. In the selection of service providers, neither the Federal Government nor a state or local government receiving funds under this part shall discriminate for or against an organization on the basis of the organization's religious character or affiliation.
(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:
(i) Inherently religious activities such as, religious worship, instruction, or proselytization; or
(ii) Equipment or supplies to be used for any of those activities.
(2) For purposes of this section, "indirect financial assistance" means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. "Direct financial assistance," means Federal aid in the form of a grant, contract, or cooperative agreement where the independent choices of individual beneficiaries do not determine which organizations receive program funds.
(c) Organizations that engage in inherently religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's inherently religious activities must be voluntary.
for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A religious organization that participates in VA programs under this part will retain its independence from Federal, State, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a State or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where VA funds are provided to religious organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of this Part. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

§ 61.65 Inspections.
VA may inspect the facility and any records of an entity applying for or receiving assistance under this part at such times as are deemed necessary to determine compliance with the provisions of this part. The authority to inspect carries with it no authority over the management or control of any entity applying for or receiving assistance under this part.
§ 61.66 Financial management.
(a) All recipients shall comply with applicable requirements of the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133.
(b) All entities receiving assistance under this part must use a financial management system that follows generally accepted accounting principals and provides accounting records, including cost accounting records that are supported by documentation. Such cost accounting must be reflected in the entity's fiscal cycle financial statements to the extent that the actual costs can be determined for the program for which assistance is provided. All entities receiving per diem under this part must monitor the accuracy of the costs used to determine payment amounts per veteran. Entities receiving assistance must meet the applicable requirements of the appropriate OMB Circular for Cost-Principles (A-122 or A-87).

§ 61.67 Recovery provisions.
(a) If after 3 years from the date of award of a capital grant, the grant recipient has withdrawn from the VA Homeless Providers Grant and Per Diem Program (Program); does not establish the project for which the grant was made; or has established the project for which the grant was made but has not had final inspection, VA would be entitled to recover from the grant recipient all of the grant amounts provided for the project.
(b) Where the grant recipient is not subject to recovery under paragraph (a) of this section, VA will seek recovery of the grant amount on a prorated basis where the grant recipient ceases to provide services for which the grant was made or withdraws from the Program prior to the expiration of the applicable period of operation, which period shall begin on the date of final inspection for which the grant was made. The amount to be recaptured equals the total amount of the grant, multiplied by the fraction resulting from using the number of years the recipient was not operational as the numerator, and using the number of years of operation required under the following chart as the denominator.

<table>
<thead>
<tr>
<th>Grant amount (dollars in thousands)</th>
<th>Years of operation</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-250</td>
<td>7</td>
</tr>
<tr>
<td>251-500</td>
<td>8</td>
</tr>
</tbody>
</table>
Example A: Grantee A is awarded a grant and does not bring the project to operational status within 3 years from the time of award. Grantee A may be subject to full recapture of the grant award.

Example B: Grantee B is awarded a grant in the amount of $300,000 and brings the project to operational status within 3 years from the time of award. Grantee B then provides services to homeless veterans for a period of 6 years from the date the program was operationalized, but now decides to close the program. As the original award was $300,000 and as a condition of receiving the grant funds Grantee B agreed to provide services for 8 years. Therefore, Grantee B would be subject to the prorated recapture of the grant award for the 2-year period not served or in this case 1/4 of the original grant would be subject to recapture.

Example C: Grantee C is awarded a grant in the amount of $400,000, becomes operational within 1 year of the date of the grant award and ceases operation 1 year later, 2 years after the date of the grant award. After the expiration of the 3-year period beginning on the date of the grant award, Grantee C would be subject to prorated recapture for the 7 years it did not provide service of the required 8 years of operation. The amount subject to recapture would thus be 7/8 x $400,000 or $350,000.
(c) VA will seek to recover from the recipient of per diem, a special needs grant, or a technical assistance grant any funds that are not used in accordance with the requirements of this part.
(d) Before VA would take action to recover funds, VA will issue to the recipient a notice of intent to recover funds. The recipient will then have 30 days to submit documentation demonstrating why funds should not be recovered. After review of any such documentation, VA will issue a decision regarding whether action will be taken to recover funds.

[68 FR 13590, 13603, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.80 General operation requirements for supportive housing and service centers.
(a) Supportive housing and service centers for which assistance is provided under this part must:
(1) Comply with the Life Safety Code of the National Fire Protection Association and all applicable State and local housing codes, licensing requirements, fire and safety

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requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the supportive housing or service centers.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, recipients of grants prior to December 21, 2001, are required to comply with the Life Safety Code of the National Fire Protection Association by December 21, 2006. Such recipients are not excused from meeting the other requirements of paragraph (a)(1) of this section, including State and local fire and safety requirements.

(b) Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements;

(2) Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire;

(3) Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by section 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act;

(4) Each resident must be afforded appropriate space and security for themselves and their belongings, including an acceptable place to sleep that is in compliance with all applicable local, state, and federal requirements;

(5) Every room or space must be provided with natural or mechanical ventilation and the structures must be free of pollutants in the air at levels that threaten the health of residents;

(6) The water supply must be free from contamination;

(7) Residents must have access to sufficient sanitary facilities that are in proper operating condition, that may be used in privacy, and that are adequate for personal cleanliness and the disposal of human waste;

(8) The housing must have adequate heating and/or cooling facilities in proper operating condition;

(9) The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents and sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire;

(10) All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(11) The housing and any equipment must be maintained in a sanitary manner;

(12) The residents with disabilities must be provided meals or meal preparation facilities must be available;

(13) Residential supervision from a paid staff member, volunteer, or senior resident participant must be provided 24 hours per day, 7 days per week and for those times that a volunteer or senior resident participant is providing residential supervision a paid staff member must be on call for emergencies 24 hours a day 7 days a week (all supervision must be provided by individuals with sufficient knowledge for the position); and
(14) Residents must be provided a clean and sober (free from illicit drugs) environment and those supportive housing or service centers that provide medical or social detox at the same site as the supportive housing or service must ensure that those residents in detox are clearly separated from the general residential population.

(c) Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project and the availability of such services, and make adjustments as appropriate. The recipient will provide evidence of this ongoing assessment to VA at such times as are deemed necessary, but as a minimum, once annually in the form of a report that addresses the recipient's ability to meet the goals, objectives, measures, and special needs as set forth in the recipient's grant proposal.

(d) A homeless veteran may remain in transitional housing for which assistance is provided under this part for a period no longer than 24 months, except that a veteran may stay longer, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, at any given time, no more than one-half of the veterans at such transitional housing facility may have resided at the facility for periods longer than 24 months.

(e) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(f) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.

(g) Each recipient of assistance under this part shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

(h) The recipient of assistance under this part that provides family violence prevention or treatment services must establish and implement procedures to ensure:

(1) The confidentiality of records pertaining to any individual provided services, and

(2) The confidentiality of the address or location where the services are provided.

(i) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.

(j) VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. Further, VA will not pay per diem where the Department concludes that services furnished by the recipient are unacceptable.

(k) A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of 5 days per week, as well as provide services on an as-needed, unscheduled basis. The calculation of average hours shall include travel time for mobile service centers. In addition:
(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;
(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;
(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area; and
(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

(1) Fixed site service centers will prominently post at or near the entrance to the service center their hours of operation and contacts in case of emergencies. Mobile service centers must take some action reasonably calculated to provide in advance a tentative schedule of visits, (e.g., newspapers, fliers, public service announcements on television or radio). The schedule should include but is not limited to:

(1) The region of operation;
(2) Times of operation;
(3) Expected services to be provided; and
(4) Contacts for specific information and changes.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0554.)

[68 FR 13590, 13604, Mar. 19, 2003, as confirmed and amended at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.81 Outreach activities.
Recipients of capital grants and per diem under this part relating to supportive housing or service centers must use their best efforts to ensure that eligible hard-to-reach veterans are found, engaged, and provided assistance. Accordingly, a recipient should search for homeless veterans at places such as shelters, soup kitchens, parks, bus or train stations, and the streets. Outreach particularly should be directed toward veterans who have a nighttime residence that is an emergency shelter or a public or private place not ordinarily used as a regular sleeping accommodation for human beings (e.g., cars, streets, or parks).

[68 FR 13590, 13605, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26, 2003]


§ 61.82 Resident rent for supportive housing.
(a) Each resident of supportive housing may be required to pay rent in an amount
determined by the recipient, except that such rent may not exceed 30 percent of the
resident's monthly income after deducting medical expenses, child care expenses, court
ordered child support payments, or other court ordered payments.
(b) Resident rent may be used for costs of operating the supportive housing or to assist
supportive housing residents move to permanent housing.
(c) In addition to resident rent, recipients may charge residents reasonable fees for
services not covered by VA per diem funds and not otherwise provided by VA.
[68 FR 13590, 13605, Mar. 19, 2003, as confirmed at 68 FR 55467, 55468, Sept. 26,
2003]

[EFFECTIVE DATE NOTE: 68 FR 13590, 13605, Mar. 19, 2003, added Part 61,
effective Mar. 19, 2003, except for §§ 61.11, 61.14, 61.17, 61.31, 61.41 and 61.51, which
are effective Apr. 3, 2003.]
Sections
§ 9.4.3 Rights and Remedies Relating to Overpayments of VA Benefits

Sections
§ 13.9.3.1 BVA De Novo Review Process in Original Appeals

Sections
§ 12.9.4 VA Authority to Subpoena Witnesses

Sections
§ 2.2 THE BASIC DEFINITION OF “VETERAN”
§ 2.5.1 Overview
§ 3.1.2 Basic Definitions
§ 3.4.5.4 Service Connection by Presumption for Former Prisoners of War
§ 3.6.4.1 Proving a Combat Stressor in Cases in Which the Veteran Engaged in Combat
§ 8.1.1.1 The General Definition of Communications or Actions That Qualify as an Original or Reopened Claim for Benefits

Sections
§ 2.3 WARTIME OR PEACETIME SERVICE
§ 3.7.1 The Three Requirements for Service Connection under 38 U.S.C.S. § 1117
§ 7.6.3.4 Vietnam Service

Sections
§ 6.1.2 The Basic Eligibility Criteria for Pension
§ 6.2.2.2.5 Special Rules for Pension Claimants Aged Sixty-five Years or Older

Sections
§ 3.1.1 Overview
§ 7.7.3.4 Death Compensation Where Death Occurred Prior to January 1, 1957

Sections
§ 7.7.3 Death Benefits Based on a Service-Connected Condition(s) — Dependency and Indemnity Compensation (DIC) and Death Compensation

Sections
§ 2.2.2 Active Service Requirements
§ 3.1.2 Basic Definitions

Sections
§ 2.2.2 Active Service Requirements

Sections
§ 2.2.1 Eligibility Criteria Related to the Type of Discharge
§ 2.2.1.2 Eligibility Criteria Related to the Type of Discharge When the Former Service Member Served for Two or More Periods of Service
§ 2.4 LENGTH OF SERVICE REQUIREMENTS
§ 3.1.1 Overview
§ 6.1.2 The Basic Eligibility Criteria for Pension
§ 10.22 CHARACTER OF DISCHARGE AND ELIGIBILITY FOR VA HEALTH CARE
§ 18.1 INTRODUCTION: BOARDS FOR CORRECTION OF MILITARY RECORDS
§ 19.2 CLASSIFICATION OF DISCHARGES AND GENERAL ELIGIBILITY FOR VA PROGRAMS

§ 19.2.1 Cautionary Note: Proposed New Regulations

xxi Sections

§ 2.2.1.2 Eligibility Criteria Related to the Type of Discharge When the Former Service Member Served for Two or More Periods of Service

§ 19.2 CLASSIFICATION OF DISCHARGES AND GENERAL ELIGIBILITY FOR VA PROGRAMS

xxii Sections

§ 18.1 INTRODUCTION: BOARDS FOR CORRECTION OF MILITARY RECORDS

xxiii Sections

§ 7.7 BENEFITS AVAILABLE TO QUALIFYING SURVIVORS OF A DECEASED VETERAN OR DECEASED VA CLAIMANT

§ 7.7.1.3 Benefits Awarded, but Unpaid, at Death

§ 7.7.3 Death Benefits Based on a Service-Connected Condition(s) — Dependency and Indemnity Compensation (DIC) and Death Compensation

xxiv Sections

§ 3.1.1 Overview

§ 7.7.3.2.1 The Ten-Year Rule under 38 U.S.C.S. § 1318

§ 7.7.3.2.1.1 If the Veteran Was Not Receiving Compensation at the Total Disability Rate for Ten Years Prior to Death: Entitlement to Section 1318 Benefits Via a CUE Motion or Other Avenues Described in 38 C.F.R. § 3.22

§ 7.7.3.2.1.2 If the Veteran Was Not Receiving Compensation at the Total Disability Rate for Ten Years Prior to Death: Entitlement to Section 1318 Benefits on a Hypothetical Basis — For DIC Claims Filed Prior to January 21, 2000

§ 12.5.6 The Proper Law to Apply in Cases in Which the Applicable Law Has Changed After Filing of a Claim

§ 15.3.7 The Proper Law to Apply in Cases in Which the Applicable Law Has Changed After Filing of a Claim

xxv Sections

§ 6.1.4 Countable Income: In General

§ 6.2.1.1 The Formula Used to Calculate Improved Pension

§ 6.2.1.6 What Is Countable Income for Improved Pension

§ 6.2.1.6.2 Shielding the Income of Dependent Children by Using the Hardship Exclusion

§ 7.7.5.1 Eligibility Requirements for Improved Death Pension

§ 7.7.5.3 How the VA Computes the Improved Death Pension Benefit

xxvi Sections

§ 3.1.1 Overview

xxvii Sections

§ 6.2.1.4 Annualization: How the VA Selects or Later Amends the Starting Date upon Which the One-Year Period for Calculating the Pension Payment Is Based

§ 7.6.5 Effective Date of Awards

xxviii Sections

§ 2.2 THE BASIC DEFINITION OF “VETERAN”
xxix Sections
§ 7.1.1 Spouse
§ 7.1.2 Surviving Spouse
§ 7.1.2.3 Requirement of Continuous Cohabitation
§ 7.1.2.4 Effect of Remarriage or Deemed Remarriage Relationship After Veteran's Death

xxx Sections
§ 7.1.2.1 Deemed Valid Marriage

xxxi Sections
§ 7.1.2.2 One-year Marriage Requirement
§ 7.7.5.1.1 Eligibility as a Surviving Spouse

xxxii Sections
§ 7.1.2.4.1 Category One: Remarried Surviving Spouses Whose Remarriage Ends
§ 7.1.4 Child or Surviving Child

xxxiii Sections
§ 7.1.4 Child or Surviving Child
§ 7.1.4.2 Adopted Child
§ 7.1.4.3 Stepchild
§ 7.1.4.5 School Attendance Required for Child Between Ages 18 and 23
§ 7.7.5.1.2 Eligibility for Death Pension as a Surviving Child

xxxiv Sections
§ 7.1.3 Dependent Parent or Surviving Parent

xxxv Sections
§ 3.1.7 The Traditional Four-Step Adjudication Process at the VA Regional Office Level
§ 3.2.1 When, in an Original Disability Compensation Claim, the VA Must Help the Veteran Obtain the Necessary Medical Diagnosis by Scheduling a VA Medical Examination
§ 3.3 REQUIREMENT OF EVIDENCE OF AN IN-SERVICE PRECIPITATING DISEASE, INJURY, OR EVENT
§ 3.4.1 Overview of the Five Ways to Establish Service Connection
§ 3.4.2.3 Standard of Proof
§ 3.4.6 Secondary Service Connection
§ 3.5.3.2 The Impact on a Claim Caused by Diagnoses of Mental Conditions Not Entitled to Compensation
§ 3.6.2 Summary of the Three Requirements to Qualify for Disability Compensation
§ 3.6.3 Requirement of a Medical Diagnosis of PTSD
§ 3.6.4 Requirement of Evidence of a Stressor in Service
§ 3.6.4.1 Proving a Combat Stressor in Cases in Which the Veteran Engaged in Combat
§ 3.6.5 Medical Evidence of a Link between the Currently-Diagnosed PTSD and the Stressor in Service
§ 5.1.5.7 Rule Requiring the VA to Separate the Effects of Service-Connected Disability from the Effects of a Non Service-Connected Disability
§ 9.5.2 Presumption in Favor of Competency
§ 16.1.6 The Necessity of Obtaining Medical Opinions
§ 16.6.8.1 Sample Letter to a Medical Expert Requesting a Medical Opinion
Sections
§ 3.4.1 Overview of the Five Ways to Establish Service Connection
§ 5.1.1 Rating Schedule and Rates
§ 5.9.7 The Process by Which Running Awards of Compensation Are Reduced or Terminated
§ 6.2.1.6.2.1 How VAROs Adjudicate the Hardship Exclusion
§ 7.3 ADDITIONAL MONTHLY COMPENSATION OR PENSION PAYABLE TO VETERANS BECAUSE OF QUALIFYING FAMILY MEMBERS
§ 9.5.2 Presumption in Favor of Competency
§ 10.2.1.4 Appealing a VHA Decision that is Not a Medical Determination
§ 12.4.2 How to File an Original or Reopened Claim to Establish the Earliest Possible Effective Date
§ 12.5.2 VA Duty to Consider All the Legal Theories on Which the Claim Could Be Granted
§ 12.5.3 VA Duty to Notify Claimant of Information and Evidence Necessary to Substantiate Claim
§ 12.6.3 Notice of the RO Decision
§ 12.9.1 General
§ 12.9.3 The Setting for RO Hearings and How They Are Conducted
§ 13.3.3.1 General
§ 13.6.2.1 General
§ 15.2.8.3.2 General Rules Governing Issue Exhaustion
§ 16.1.1.2 The Unique VA Advocacy Environment
§ 16.5.2.1 Introduction
§ 16.5.2.4 Closing Statements and Conclusion of the Hearing
§ 16.6.5.1.2 Substantially Complete Application
§ 16.7.6 Developing to Deny — Scheduling Unwanted VA Examinations

Sections
§ 3.4.4.2 How to Prove Aggravation
§ 5.3.1 Temporary 100 Percent Disability Ratings Based on Convalescent Ratings (TDCC)
§ 5.9.7 The Process by Which Running Awards of Compensation Are Reduced or Terminated
§ 6.2.1.6.1.2 Reassessment of Levels of Disability
§ 12.6.7 Special Types of Review of RO Decisions by VA Central Office or BVA
§ 12.7.2 Place and Deadline for Filing

Sections
§ 6.2.3 Renouncement of Pension in Order to Prevent Lump Sum Payments from Reducing the Amount of Improved Pension: No Longer an Option Under Current VA Regulations

Sections
§ 7.7.1.1.4 Time Limit to File for Accrued Benefits
§ 12.7.2 Place and Deadline for Filing

Sections
§ 5.5.1.2 Special Monthly Compensation (SMC(k)) for Loss or Loss of Use of a Creative Organ
§ 5.5.1.8 Special Monthly Compensation (SMC(k)) for Anatomical Loss of 25 Percent or More of Tissue from a Single Breast or Both Breasts
§ 7.6.5 Effective Date of Awards
§ 8.5 THE EXCEPTION FOR A FAVORABLE CHANGE IN STATUTE OR REGULATION
§ 8.6.4 Category 3: Disability and Death Benefit Claims That Were Initially Received by the VA on or after the Amendment to VA Regulations Recognizing the Disease in Question as Related to Agent Orange
§ 7.7.5.1.1 Eligibility as a Surviving Spouse

Sections
§ 6.2.1.2 Providing Information to Initiate a Claim for Improved Pension
§ 8.1.1 Determining the Date the VA Received the Claim
§ 8.1.1.3.3 When a Claim for Compensation or Pension Qualifies as a Claim for Both Compensation and Pension
§ 12.4.2 How to File an Original or Reopened Claim to Establish the Earliest Possible Effective Date

§ 7.7.3 Death Benefits Based on a Service-Connected Condition(s) — Dependency and Indemnity Compensation (DIC) and Death Compensation

Sections
§ 7.7.5.1.3 How to Apply

§ 5.4.7 How to Apply for TDIU
§ 5.7.1 Informal Claims
§ 6.2.1.2 Providing Information to Initiate a Claim for Improved Pension
§ 7.7.1.1.4 Time Limit to File for Accrued Benefits
§ 8.1.1.1 The General Definition of Communications or Actions That Qualify as an Original or Reopened Claim for Benefits
§ 12.4.2 How to File an Original or Reopened Claim to Establish the Earliest Possible Effective Date
§ 16.1.2.1 Wide Open Claims Adjudication System
§ 16.8.2 Inferred Claims for TDIU

Sections
§ 7.7.3.2.1.2 If the Veteran Was Not Receiving Compensation at the Total Disability Rate for Ten Years Prior to Death: Entitlement to Section 1318 Benefits on a Hypothetical Basis — For DIC Claims Filed Prior to January 21, 2000
§ 8.1.1.5 The Impact of Failure to Timely Comply with a VA Request to Submit Information or Evidence
§ 8.1.1.6 The Impact of Submitting, within the Appeal Period, New and Material Evidence from Any Source
§ 12.2.2.2.1 Introduction
§ 12.2.2.2.2 The Proper Analysis in Determining What Type of Evidence Qualifies as “New and Material”
§ 12.2.2.2.3 How Strong Must New Evidence Be to Qualify as “New and Material”?§ 12.6.4 RO Denials for Failure of the Claimant to Prosecute the Claim
§ 12.7.2 Place and Deadline for Filing
§ 13.9.3.2 Board Review Process in Appeals of Reopened Claims
§ 16.6.5 More Difficulty Reopening a Claim
§ 16.6.6.4 Reopening a Claim

Sections
§ 5.7.1 Informal Claims
§ 8.1.1.2 Special Rules Qualifying a Medical Examination Report or Hospitalization as a Claim
§ 12.4.2 How to File an Original or Reopened Claim to Establish the Earliest Possible Effective Date

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§ 8.1.1.5 The Impact of Failure to Timely Comply with a VA Request to Submit Information or Evidence

§ 12.6.4 RO Denials for Failure of the Claimant to Prosecute the Claim

§ 3.2.1 When, in an Original Disability Compensation Claim, the VA Must Help the Veteran Obtain the Necessary Medical Diagnosis by Scheduling a VA Medical Examination

§ 3.2.2 When, in a Reopened Disability Compensation Claim, the VA Must Help the Veteran Obtain the Necessary Medical Diagnosis by Scheduling a VA Medical Examination

§ 3.3 REQUIREMENT OF EVIDENCE OF AN IN-SERVICE PRECIPITATING DISEASE, INJURY, OR EVENT

§ 3.4.2.1 Why Medical Evidence Is Needed

§ 3.4.2.2 How To Obtain Medical Evidence to Satisfy the Nexus Requirement

§ 3.6.4 Requirement of Evidence of a Stressor in Service

§ 3.6.4.2 Proving a Stressor in Cases in Which the Veteran Either Did Not Engage in Combat or Experienced a Non-Combat Stressor

§ 5.1.10 Efforts the VA Must Make to Obtain Existing Records When Adjudicating Claims

§ 5.1.9 New Notice Requirements That the VA Must Now Provide Under the Veterans Claims Assistance Act

§ 5.7.4 The Duty to Assist Requires VA to Fully Develop the Claim for Increase

§ 8.1.1.5 The Impact of Failure to Timely Comply with a VA Request to Submit Information or Evidence

§ 12.5 CLAIMANT’S BURDENS AND VA’S DUTIES IN THE CLAIMS ADJUDICATION PROCESS

§ 12.5.1 VA Duty to Notify Claimant of Information Necessary to Complete Application

§ 12.5.3 VA Duty to Notify Claimant of Information and Evidence Necessary to Substantiate Claim

§ 12.5.4.1 When No VA Assistance Is Required

§ 12.5.4.2 VA Duty to Assist in Obtaining Records

§ 12.5.4.3 VA Duty to Assist in Obtaining Records in Disability Compensation Claims

§ 12.5.4.4 In Disability Compensation Claims, VA Duty to Assist in Obtaining Medical Examinations or Medical Opinions

§ 12.6.4 RO Denials for Failure of the Claimant to Prosecute the Claim

§ 14.6.2 The Failure of the VA to Comply with the Section 5103(a) Notice Requirements

§ 14.6.2.4 Whether VA Failure to Comply with Section 5103(a) Is Prejudicial

§ 14.6.4 The Failure of the VA to Comply with Its Duty to Assist the Claimant in Obtaining Evidence Necessary to Substantiate the Claim

§ 15.3.3.5.1 The Rule of Prejudicial Error and Violations of the Notice Provisions of 38 U.S.C.S. § 5103(a)

§ 16.3.3.1 Overview

§ 16.3.4 Obtaining Other Records or Documents in Support of a Claim

§ 16.3.6.1 Introduction

§ 16.6.3 Duty to Assist and the VCAA

§ 16.6.4.1 Duty to Notify and Reopened Claims

§ 16.6.5.1 VA Defines Important Terms

§ 16.6.5.1.1 Competent Medical Evidence and Competent Lay Evidence

§ 16.6.5.1.2 Substantially Complete Application

§ 16.6.5.1.3 Information

§ 16.6.5.5 Time Frame for Submitting Requested Evidence

§ 12.3 TERMINOLOGY USED BY THE ROS TO DESCRIBE CLAIMS

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§ 3.4.8 The VA Thought Process in Considering Claims for Compensation Benefits
§ 3.5 DISABILITY COMPENSATION FOR MENTAL DISABILITIES OTHER THAN POST-TRAUMATIC STRESS DISORDER
§ 3.6.5 Medical Evidence of a Link between the Currently-Diagnosed PTSD and the Stressor in Service
§ 5.12 EVALUATION OF HEARING LOSS
§ 5.7.5 Medical Statements in Support of a Claim for Increase
§ 12.2.1.1.6 Claims in Which a Change Has Been Made to the Substantive Criteria for Entitlement to a Benefit Since the Last Final Denial

lxx Sections
§ 3.3 REQUIREMENT OF EVIDENCE OF AN IN-SERVICE PRECIPITATING DISEASE, INJURY, OR EVENT
§ 3.3.1 How the Presumption of Sound Condition Makes It Difficult for VA to Deny Service Connection Because VA Believes the Condition Preexisted Service
§ 3.3.1.1 When the Presumption of Soundness Applies
§ 3.3.1.2 What Evidence Can Rebut the Presumption of Sound Condition
§ 3.3.1.2.1 What Is “Clear and Unmistakable Evidence” That a Disease or Injury Existed Prior to Service
§ 3.3.2 Special Rules for Combat Veterans
§ 3.3.2.1 The Prerequisite for Section 1154(b) to Apply: The In-Service Incident Occurred While the Veteran Was “Engaged in Combat”
§ 3.3.2.4 Applying Section 1154(b) to Service Connection for Post-Traumatic Stress Disorder (PTSD)
§ 3.4.4 Service Connection by Aggravation Where the Condition Was Noted at Entrance to Service and the Presumption of Sound Condition Does Not Apply
§ 3.6.3 Requirement of a Medical Diagnosis of PTSD
§ 3.6.4 Requirement of Evidence of a Stressor in Service
§ 3.6.4.1 Proving a Combat Stressor in Cases in Which the Veteran Engaged in Combat
§ 3.6.4.2 Proving a Stressor in Cases in Which the Veteran Either Did Not Engage in Combat or Experienced a Non-Combat Stressor
§ 3.6.4.2.1 Proving an In-Service Personal Assault as a Stressor for PTSD
§ 3.6.5 Medical Evidence of a Link between the Currently-Diagnosed PTSD and the Stressor in Service
§ 9.4.1 Overview
§ 13.5.2 BVA Requests for an Independent Medical Expert (IME) Opinion
§ 15.3.3.4 Whether the Court Has Authority to Resolve on Its Own Issues That Were Not Resolved by the BVA

lxxi Sections
§ 3.3.1.2.2 What Is Clear and Unmistakable Evidence That a Disease or Injury Was Not Aggravated by Service
§ 3.3.1.3 When a Preexisting Condition Noted on Entry into Service Can Be Service Connected
§ 3.4.1 Overview of the Five Ways to Establish Service Connection
§ 3.4.4 Service Connection by Aggravation Where the Condition Was Noted at Entrance to Service and the Presumption of Sound Condition Does Not Apply
§ 3.4.8 The VA Thought Process in Considering Claims for Compensation Benefits
§ 3.5 DISABILITY COMPENSATION FOR MENTAL DISABILITIES OTHER THAN POST-TRAUMATIC STRESS DISORDER
§ 16.6.8.1 Sample Letter to a Medical Expert Requesting a Medical Opinion

lxxii Sections

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§ 3.3 REQUIREMENT OF EVIDENCE OF AN IN-SERVICE PRECIPITATING DISEASE, INJURY, OR EVENT

§ 3.4.2.4 When Evidence from a Medical Expert Is Not Needed
§ 3.4.3.1 Chronicity
§ 3.4.5.1 A Liberalizing Rule
§ 3.4.5.2 Service Connection by Presumption for Chronic Diseases
§ 3.4.5.3 Service Connection by Presumption for Tropical Diseases
§ 3.4.5.4 Service Connection by Presumption for Former Prisoners of War
§ 3.8.1.1 The Vietnam Service Requirement
§ 3.8.1.2 The Second Requirement: Medical Evidence That the Veteran Has a Disease, or the Residuals of a Disease, Associated with Agent Orange Exposure
§ 3.8.1.3 The Third Requirement for Some Diseases: Medical Evidence of the Onset of the Disease Within a Certain Time Period
§ 3.8.1.4 Special Rules Regarding Non-Hodgkin’s Lymphoma (NHL)
§ 7.6.3.4 Vietnam Service
§ 7.7.6 DIC Benefits Related to Agent Orange for Surviving Family Members of Vietnam Veterans
§ 15.8.1.3 The Bar to Federal Circuit Review of Issues of Fact

lxxiii Sections
§ 3.4.5.1 A Liberalizing Rule

lxxiv Sections
§ 3.4.2.4 When Evidence from a Medical Expert Is Not Needed
§ 3.4.5.3 Service Connection by Presumption for Tropical Diseases
§ 3.4.5.4 Service Connection by Presumption for Former Prisoners of War
§ 3.4.5.5 Presumption of Service Connection for Radiogenic Diseases
§ 3.5 DISABILITY COMPENSATION FOR MENTAL DISABILITIES OTHER THAN POST-TRAUMATIC STRESS DISORDER
§ 3.8.1.2 The Second Requirement: Medical Evidence That the Veteran Has a Disease, or the Residuals of a Disease, Associated with Agent Orange Exposure
§ 3.8.1.4 Special Rules Regarding Non-Hodgkin’s Lymphoma (NHL)
§ 3.8.5 Veterans Exposed to Agent Orange Outside of Vietnam or Not During the Vietnam Era
§ 5.10 EVALUATION OF DIABETES MELLITUS
§ 7.7.6 DIC Benefits Related to Agent Orange for Surviving Family Members of Vietnam Veterans
§ 10.5.1 Eligibility for Free VA Hospital Care and Outpatient Care
§ 12.2.1.1.4 Claims for Service-Connected Disability Compensation for POW Presumptive Diseases
§ 15.8.1.3 The Bar to Federal Circuit Review of Issues of Fact

lxxv Sections
§ 2.5.4 Current Rules Concerning Claims Involving Alcoholism and Drug Abuse
§ 3.4.1 Overview of the Five Ways to Establish Service Connection
§ 3.4.6 Secondary Service Connection
§ 3.4.8 The VA Thought Process in Considering Claims for Compensation Benefits
§ 3.5 DISABILITY COMPENSATION FOR MENTAL DISABILITIES OTHER THAN POST-TRAUMATIC STRESS DISORDER
§ 3.8.1.2 The Second Requirement: Medical Evidence That the Veteran Has a Disease, or the Residuals of a Disease, Associated with Agent Orange Exposure
§ 4.4.2.3 Offset Not Applicable — Increased Compensation and Secondary Service Connection
§ 5.11 EVALUATION OF CARDIOVASCULAR CONDITIONS
§ 5.11.2 Hypertension
§ 3.4.5.5 Presumption of Service Connection for Radiogenic Diseases

§ 2.5.4 Current Rules Concerning Claims Involving Alcoholism and Drug Abuse
§ 2.5.7 Suicide
§ 7.7.3.1 Establishing Entitlement to DIC By Showing That Death Resulted from a Service-Connected Condition
§ 7.7.3.1.3 Death Due to Disability Not Service Connected Prior to Death
§ 11.1.2.1 Eligibility for Service-Connected Death Burial Allowance

§ 3.4.1 Overview of the Five Ways to Establish Service Connection
§ 3.8.1.4 Special Rules Regarding Non-Hodgkin’s Lymphoma (NHL)

§ 7.1.4.4 Helpless Child

§ 3.4.5.1 A Liberalizing Rule

§ 3.7.1 The Three Requirements for Service Connection under 38 U.S.C.S. § 1117
§ 3.7.2 Qualifying for Compensation Due to an Undiagnosed Illness

§ 5.2 EXTRASCHEDULAR RATINGS FOR EXCEPTIONAL OR UNUSUAL DISABILITIES
§ 5.4.3 VA Central Office Consideration of TDIU Cases in Which the Veteran’s Rating Does Not Meet the Minimum Schedular Rating Levels
§ 6.2.2 The Requirement of Permanent and Total Disability
§ 6.2.2.2.2 The Key Role of the VA Rating Schedule in the Total Disability Determination
§ 6.2.2.2.3 The Impact of Age on the Ability to Work
§ 6.2.2.2.4 Extraschedular Grants of Pension
§ 15.2.2 Who May Appeal a BVA Decision to the CAVC
§ 15.2.4.1 The Requirement That the BVA Decision on the Claim for Benefits Must Be Final
§ 15.3.3.4 Whether the Court Has Authority to Resolve on Its Own Issues That Were Not Resolved by the BVA

§ 5.1.2 Noncompensable (0 Percent) Evaluation

§ 3.2 REQUIREMENT OF MEDICAL EVIDENCE OF CURRENT DISABILITY
§ 3.4.6.1 Examples of Secondary Conditions
§ 5.7.4 The Duty to Assist Requires VA to Fully Develop the Claim for Increase
§ 5.7.5 Medical Statements in Support of a Claim for Increase
§ 6.2.2.3 The Types of Medical Evidence That Are Adequate for Determining Permanent and Total Disability
§ 16.7.5 Veteran Has Duty to Cooperate — Notice to Claimants
Sections

§ 5.6.1 Reexaminations to Determine the Current Degree of Disability
§ 5.6.3 How the VA Schedules Review Examinations for Running Awards
§ 5.6.6 Requirement That Claimants Report for Reexamination

Sections

§ 5.1.11 Medical Examinations for the Purpose of Determining the Degree of Disability

Sections

§ 6.2.2 The Requirement of Permanent and Total Disability
§ 6.2.2.1 Substantial Gainful Employment and Disqualification of a Veteran from Pension Benefits
§ 6.2.2.2 The Key Role of the VA Rating Schedule in the Total Disability Determination
§ 6.2.2.2.5 Special Rules for Pension Claimants Aged Sixty-five Years or Older

Sections

§ 5.9.2 Rules Regulating the Reduction of Total (100 Percent) Disability Evaluations
§ 14.4.2 What Types of Errors Constitute Clear and Unmistakable Error

Sections

§ 5.9.3 The Requirement of Sustained Improvement to Reduce a Rating Level That Has Been in Effect for Five or More Years
§ 5.9.4 Rating Reduction in Unprotected Cases (Cases Involving Disabilities Where the Veteran Does Not Have Either a Total Disability or a Disability Rating That Has Been in Effect for Five Years or More)
§ 14.4.2 What Types of Errors Constitute Clear and Unmistakable Error

Sections

§ 3.1.1 Overview
§ 5.5.1.1 Introduction
§ 5.5.1.10 Special Monthly Compensation (SMC(l)) for Regular Aid and Attendance (A&A) and Permanently Bedridden
§ 5.5.1.2 Special Monthly Compensation (SMC(k)) for Loss or Loss of Use of a Creative Organ
§ 5.5.1.3 Special Monthly Compensation (SMC(k)) for Loss or Loss of Use of a Foot or Hand
§ 5.5.1.4 Special Monthly Compensation (SMC(k)) for Loss of Use of Both Buttocks
§ 5.5.1.5 Special Monthly Compensation (SMC(k)) for Loss of Use or Blindness of One Eye
§ 5.5.1.6 Special Monthly Compensation (SMC(k)) for Deafness
§ 5.5.1.7 Special Monthly Compensation (SMC(k)) for Aphonia
§ 5.5.1.8 Special Monthly Compensation (SMC(k)) for Anatomical Loss of 25 Percent or More of Tissue from a Single Breast or Both Breasts
§ 5.5.1.9 Special Monthly Compensation (SMC(s)) for Total Rating Plus 60 Percent or Housebound Status
§ 5.5.2.10 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(p)—Additional Independent 50 Percent or 100 Percent Disabilities
§ 5.5.2.11 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(p)—Blindness with Deafness or Loss or Loss of Use of a Hand or Foot
§ 5.5.2.12 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(p)—Triple Extremity Rate
§ 5.5.2.13 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(r-1)—Special Aid and Attendance Benefits
§ 5.5.2.14 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(r-2)—Special Aid and Attendance Benefits — Higher Level of Care

§ 5.5.2.2 Upper Extremity

§ 5.5.2.4 Intermediate Rates

§ 5.5.7 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(n)

§ 5.5.9.1 SMC(o) Based on Two SMC Rates (l) through (n)

§ 5.5.9.2 SMC(o) Based on Vision Loss and Deafness

§ 5.5.9.3 SMC(o) Based on Paraplegia

§ 5.5.9.4 SMC(o) Based on Helplessness

Sections

§ 6.2.1.5.1 Housebound Pension Benefits for Veterans

§ 6.2.1.5.2 Aid and Attendance Benefits for Veterans

§ 6.4.2 Examples of Factors Advocates for Elderly Veterans Should Consider

§ 7.2 SPECIAL ALLOWANCE RATES FOR SPOUSES AND PARENTS REQUIRING AID & ATTENDANCE OR WHO ARE PERMANENTLY HOUSEBOUND

Sections

§ 3.1.1 Overview

§ 5.5.11 Introduction

§ 5.5.10 Special Monthly Compensation (SMC(l)) for Regular Aid and Attendance (A&A) and Permanently Bedridden

§ 5.5.13 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(r-1)—Special Aid and Attendance Benefits

§ 5.5.14 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(r-2)—Special Aid and Attendance Benefits — Higher Level of Care

§ 5.5.23 Special Monthly Compensation Ratings Under 38 U.S.C.S. § 1114(l)

§ 6.2.1.5.2 Aid and Attendance Benefits for Veterans

Sections

§ 7.4.1 Direct Payments to a Family Member as Fiduciary for the Veteran

§ 9.5.1 Definition

§ 9.5.2 Presumption in Favor of Competency

Sections

§ 2.2.1.1 Insanity Exception

§ 5.1.1 Rating Schedule and Rates

§ 19.2 CLASSIFICATION OF DISCHARGES AND GENERAL ELIGIBILITY FOR VA PROGRAMS

Sections

§ 7.1.4.4 Helpless Child

Sections

§ 4.3.2 No Section 1151 Benefits for Contract Care

§ 4.3.3 Section 1151 Prior to 1997 Amendment

§ 12.2.1.1.6 Claims in Which a Change Has Been Made to the Substantive Criteria for Entitlement to a Benefit Since the Last Final Denial

Sections

§ 19.2 CLASSIFICATION OF DISCHARGES AND GENERAL ELIGIBILITY FOR VA PROGRAMS
§ 4.3.1 Requirements for a Section 1151 Claim
§ 4.3.1.1 The Requirement of Additional Disability or Death
§ 4.3.1.3 The Proximate Cause Requirement
§ 4.3.1.3.1 Alleging That VA Care Was the Proximate Cause of Additional Disability or Death
§ 4.3.1.3.2 Alleging That an Event Not Reasonably Foreseeable Was the Proximate Cause of Additional Disability or Death
§ 4.3.1.3.3 Alleging That Training and Rehabilitation Services or Compensated Work Therapy (CWT) Was the Proximate Cause of Additional Disability or Death
§ 4.3.1.4 The Requirement That Medical Care Be Furnished by a VA Employee or in a VA Facility
§ 4.3.2 No Section 1151 Benefits for Contract Care
§ 4.3.3 Section 1151 Prior to 1997 Amendment

§ 10.13 VA DENTAL CARE

§ 5.12 EVALUATION OF HEARING LOSS
§ 5.5.1.5 Special Monthly Compensation (SMC(k)) for Loss of Use or Blindness of One Eye

§ 5.12 EVALUATION OF HEARING LOSS

§ 5.1.6.2.2 Moderate Muscle Disability
§ 5.8 EFFECTIVE DATE FOR RATING INCREASES
§ 6.2.1.4 Annualization: How the VA Selects or Later Amends the Starting Date upon Which the One-Year Period for Calculating the Pension Payment Is Based
§ 7.7.3.2.1.2 If the Veteran Was Not Receiving Compensation at the Total Disability Rate for Ten Years Prior to Death: Entitlement to Section 1318 Benefits on a Hypothetical Basis — For DIC Claims Filed Prior to January 21, 2000
§ 7.7.5.1.3 How to Apply
§ 8.1 THE GENERAL RULE
§ 8.4.1 Claims Based Upon Clear and Unmistakable Error
§ 8.4.2 Disability Compensation Claims Received within One Year of Discharge from Military Service
§ 8.4.4 Claims for an Increase in Disability Rating Received within a Year of the Date the Disability Became Worse
§ 8.4.5 Pension Claims Received before October 1, 1984
§ 8.4.7 Death Pension Claims Received on or after October 1, 1984, and within 45 Days of Veteran’s Death
§ 8.4.8 Disability Compensation Claims Granted Due to a DRB or BCMR Upgrade in Discharge
§ 8.4.9 Claims Granted Due to Newly Obtained Military Service Records
§ 12.4 THE ADVANTAGES OF FILING AN ORIGINAL OR REOPENED CLAIM EARLY
§ 12.4.2 How to File an Original or Reopened Claim to Establish the Earliest Possible Effective Date
§ 14.3.1 Motions for Reconsideration
§ 19.3.2 Choice of Forum
§ 7.6.5 Effective Date of Awards

civ Sections
§ 7.4 DIRECT PAYMENT TO FAMILY MEMBERS OF A VETERAN'S COMPENSATION OR PENSION BENEFITS

cv Sections
§ 7.4.2 Apportionment of a Veteran's Benefits to a Qualifying Family Member

cvi Sections
§ 9.4.2 Erroneous or Excess VA Payments That Do Not Create a Debt

cvii Sections
§ 10.6.4 Low Income Veterans and Nursing Home Care

cviii Sections
§ 3.1.1.6 Prohibition Against Dual Receipt of VA Compensation and Active Service Pay

cix Sections
§ 3.2.1 When, in an Original Disability Compensation Claim, the VA Must Help the Veteran Obtain the Necessary Medical Diagnosis by Scheduling a VA Medical Examination
§ 3.4.2.2 How To Obtain Medical Evidence to Satisfy the Nexus Requirement
§ 5.6.2 Regulatory Authority to Reexamine
§ 5.6.4 Adverse Outcome: Failure to Report for VA Examination
§ 5.6.7 Good Cause for Missing a VA Reexamination

cx Sections
§ 6.2.5 Adjustments to Income Based on Changes in Income or Net Worth
§ 6.2.5.1 The Time Limit for Furnishing Amended Income Information So That the Veteran’s Rate Can Be Increased
§ 6.2.5.2 The Time Limit for Furnishing Amended Net Worth Information
§ 6.3.1.2 The Time Limit for Amending Award Information to Preserve Continued Entitlement to Protected Pension
§ 7.7.5.1.4 Income/Net Worth Eligibility After Date of First Application
§ 7.7.5.3 How the VA Computes the Improved Death Pension Benefit
§ 7.7.5.6 The Time Limit for Amending Award Information to Preserve Continued Entitlement to Protected Pension

cxi Sections
§ 9.2.1 Limitations on Disability Compensation and Dependency and Indemnity Compensation Payments during Incarceration

cxii Sections
§ 7.1.4.6 Fugitive Felon Rule and Eligibility as a Child
§ 9.2.2 Limitations on Pension Payments during Incarceration

cxiii Sections
§ 3.1.1.4 Prohibition Against Dual Receipt of VA Compensation and VA Pension Benefits
§ 3.1.1.6 Prohibition Against Dual Receipt of VA Compensation and Active Service Pay
§ 9.3 PROHIBITION AGAINST DUPLICATION OF BENEFITS
§ 9.4.1 Overview
§ 3.1.1.4 Prohibition Against Dual Receipt of VA Compensation and VA Pension Benefits
§ 6.1.3 The Three Different VA Pension Programs: The Way the VA Determines Need Differentiates the Three Programs
§ 6.1.3.2 Section 306 Pension
§ 6.1.3.3 The Improved Pension Program
§ 9.3 PROHIBITION AGAINST DUPLICATION OF BENEFITS

§ 7.7.3 Death Benefits Based on a Service-Connected Condition(s) — Dependency and Indemnity Compensation (DIC) and Death Compensation

§ 3.1.1.5 Prohibition Against Dual Receipt of VA Compensation and Full Military Retirement Benefits
§ 9.3 PROHIBITION AGAINST DUPLICATION OF BENEFITS

§ 4.2.3 Offset Required
§ 4.4.1 Offset of Any Section 1151 Benefit by the Amount of a Final FTCA Award

§ 2.5.4 Current Rules Concerning Claims Involving Alcoholism and Drug Abuse

§ 7.7.3.3.3 The Amount of DIC Benefits Payable to Surviving Children

§ 11.5.1 Automobles, Conveyances, and Adaptive Equipment

§ 4.3.6 Section 1151 and Entitlement to Ancillary VA Benefits
§ 11.5.3 Specially Adapted Housing and Special Home Adaptation Grant

§ 11.5.2 Clothing Allowance

§ 7.7.4 Special Survivors Benefits: Restored Entitlement Program for Survivors (REPS)
§ 7.7.4.1 Eligibility Criteria for REPS
§ 7.7.4.4 Offset against Social Security Benefits
§ 7.7.4.5 Appellate Process

§ 3.8.1.2 The Second Requirement: Medical Evidence That the Veteran Has a Disease, or the Residuals of a Disease, Associated with Agent Orange Exposure
§ 7.6 BENEFITS FOR CHILDREN BORN WITH SPINA BIFIDA, AND CERTAIN OTHER BIRTH DEFECTS, TO A VIETNAM VETERAN PARENT
§ 7.6.1.1.1 Non-Spina Bifida Birth Defects in Children of Female Vietnam Veterans
§ 7.7.1  Survivor Benefits Available When a VA Claimant Dies
§ 7.7.1.1  Accrued Benefits
§ 7.7.1.1.1  General Information About Accrued Benefits
§ 7.7.1.1.2  Who Is Eligible for Accrued Benefits
§ 7.7.1.1.3  Requirement of a Pending Claim or Existing Decision Showing Entitlement
§ 7.7.1.1.4  Time Limit to File for Accrued Benefits
§ 7.7.1.1.5  Accrued Claims Decided on Evidence in the File at Death or in VA’s Possession at Death
§ 7.7.1.1.6  The Amount of Benefits a Survivor May Recover Via an Accrued Benefits Claim

§ 7.7.1.2  Nonnegotiated Benefits

§ 7.7 BENEFITS AVAILABLE TO QUALIFYING SURVIVORS OF A DECEASED VETERAN OR DECEASED VA CLAIMANT
§ 11.1 BURIAL-RELATED BENEFITS
§ 11.1.1.1  Eligibility for Non-Service-Connected Death Burial Allowance
§ 11.1.2  Burial Allowance for Service-Connected Death
§ 11.1.2.1  Eligibility for Service-Connected Death Burial Allowance
§ 11.1.3  Plot or Interment Allowance
§ 11.1.3.1  Plot or Interment Allowance Where Death Was Prior to November 1, 1990
§ 11.1.3.2  Plot or Interment Allowance Where Death Was After October 31, 1990

§ 11.1.1  Burial Allowance for Non-Service-Connected Death
§ 11.1.2  Burial Allowance for Service-Connected Death

§ 11.1.3.2  Plot or Interment Allowance Where Death Was After October 31, 1990

§ 11.1 BURIAL-RELATED BENEFITS

§ 12.8.1  The DRO Process
§ 16.5.2.1  Introduction

§ 3.1.3  Schedule for Rating Disabilities
§ 5.1 EVALUATING THE DEGREE OF DISABILITY FOR SERVICE-CONNECTED DISABILITIES
§ 5.1.1  Rating Schedule and Rates
§ 5.1.3  The Concept of Total (100 Percent) Disability Under the Rating Schedule
§ 5.1.4.1  VA Evaluation Philosophy
§ 5.4 TOTAL DISABILITY RATINGS BASED ON INDIVIDUAL UNEMPLOYABILITY
§ 5.9.4 Rating Reduction in Unprotected Cases (Cases Involving Disabilities Where the Veteran Does Not Have Either a Total Disability or a Disability Rating That Has Been in Effect for Five Years or More)

§ 5.1.11  Medical Examinations for the Purpose of Determining the Degree of Disability
§ 5.1.4.1 VA Evaluation Philosophy
§ 5.9.4 Rating Reduction in Unprotected Cases (Cases Involving Disabilities Where the Veteran Does Not Have Either a Total Disability or a Disability Rating That Has Been in Effect for Five Years or More)

cxliii Sections
§ 5.1.4.2 Doctrine of Benefit of the Doubt
§ 5.1.5.6 Rule Requiring the VA to Give the Higher of Two Evaluations

cxliv Sections
§ 5.1.1 Rating Schedule and Rates
§ 5.1.4.2 Doctrine of Benefit of the Doubt
§ 5.1.5.6 Rule Requiring the VA to Give the Higher of Two Evaluations

cxl Sections
§ 5.1.11 Medical Examinations for the Purpose of Determining the Degree of Disability
§ 5.1.4.1 VA Evaluation Philosophy

cxlvi Sections
§ 5.1.4.1 VA Evaluation Philosophy
§ 5.9.4 Rating Reduction in Unprotected Cases (Cases Involving Disabilities Where the Veteran Does Not Have Either a Total Disability or a Disability Rating That Has Been in Effect for Five Years or More)

cxlvii Sections
§ 5.1.5.3 The Rule against “Pyramiding”
§ 5.1.6.1 Introduction
§ 5.1.6.6 The Evaluation of Functional Loss and Fatigue in Rating Musculoskeletal Disorders

cxlviii Sections
§ 5.1.3 The Concept of Total (100 Percent) Disability Under the Rating Schedule
§ 6.2.2 The Requirement of Permanent and Total Disability

cxlix Sections
§ 5.1.6.6 The Evaluation of Functional Loss and Fatigue in Rating Musculoskeletal Disorders
§ 5.1.7 General Rules Regarding Evaluation of Mental Disabilities
§ 5.3 TEMPORARY 100 PERCENT DISABILITY RATINGS
§ 5.4 TOTAL DISABILITY RATINGS BASED ON INDIVIDUAL UNEMPLOYABILITY
§ 5.4.1 The TDIU Requirement That the Veteran Be Unable to Secure a Substantial Gainful Occupation
§ 5.4.2 The Two-Step Analysis to Qualify for a TDIU Rating
§ 5.4.3 VA Central Office Consideration of TDIU Cases in Which the Veteran’s Rating Does Not Meet the Minimum Schedular Rating Levels
§ 5.4.4 Age, Non-Service-Connected Conditions and TDIU
§ 5.4.8 Special Factors That Are Relevant to TDIU Determinations
§ 5.9.2 Rules Regulating the Reduction of Total (100 Percent) Disability Evaluations
§ 6.2.2 The Requirement of Permanent and Total Disability
§ 6.2.2.2.3 The Impact of Age on the Ability to Work
§ 7.7.3.2.1 The Ten-Year Rule under 38 U.S.C.S. § 1318
§ 15.2.8.3.1 Specific Rules Governing Theories of Entitlement to Service Connection and Entitlement to TDIU
§ 16.8.1.5 Communicating with the Vocational Expert
Sections

§ 6.1.2 The Basic Eligibility Criteria for Pension
§ 6.2.2.2.1 Substantial Gainful Employment and Disqualification of a Veteran from Pension Benefits
§ 6.2.2.2.3 The Impact of Age on the Ability to Work

§ 5.4.6 Static Conditions: Special Problems

§ 5.4.4 Age, Non-Service-Connected Conditions and TDIU

§ 5.1.1 Rating Schedule and Rates
§ 5.1.5.1 Analogous Ratings

§ 5.1.4.1 VA Evaluation Philosophy

§ 3.4.4 Service Connection by Aggravation Where the Condition Was Noted at Entrance to Service and the Presumption of Sound Condition Does Not Apply

§ 5.1.5.2 Combined Ratings: How to Calculate the Overall Rating When There Are Two or More Service-Connected Disabilities
§ 5.1.5.3 The Rule against “Pyramiding”
§ 5.1.6.3.2 Combining Muscle Group Injuries in the Same Anatomical Region Evaluated As Severe
§ 5.1.6.3.4 Combining Muscle Group Injuries and Peripheral Nerve Injuries
§ 5.1.6.4 Evaluating Scars
§ 5.5.1.4 Special Monthly Compensation (SMC(k)) for Loss of Use of Both Buttocks
§ 6.2.2 The Requirement of Permanent and Total Disability

§ 5.3.2 Prestabilization Ratings

§ 5.3.3 Total Ratings for Service-Connected Disabilities Requiring Hospitalization

§ 5.3.1 Temporary 100 Percent Disability Ratings Based on Convalescent Ratings (TDCC)

§ 3.1.3 Schedule for Rating Disabilities
§ 3.2.3 The Disability Must Be Presently Existing
§ 5.1.2 Noncompensable (0 Percent) Evaluation
§ 5.12 EVALUATION OF HEARING LOSS
§ 4.3.5 Evaluating a Disability Treated “As If” Service Connected under Section 1151
§ 5.1.6.6 The Evaluation of Functional Loss and Fatigue in Rating Musculoskeletal Disorders
§ 14.6.3.3 The BVA’s Failure to Discuss All of the Factors That Statutes and Regulations Require the Board to Consider

§ 5.1.6.2 The Evaluation of Residuals of Muscle Damage Due to Gunshot or Shell Fragment Injuries
§ 5.1.6.3 Principles of Combined Ratings for Muscle Injuries
§ 5.1.6.3.1 Combining Muscle Group Injuries in the Same Anatomical Region Evaluated As Moderate or Moderately Severe
§ 5.1.6.3.2 Combining Muscle Group Injuries in the Same Anatomical Region Evaluated As Severe
§ 5.1.6.3.4 Combining Muscle Group Injuries and Peripheral Nerve Injuries

§ 3.4.3.1 Chronicity
§ 5.1.6.2 The Evaluation of Residuals of Muscle Damage Due to Gunshot or Shell Fragment Injuries
§ 5.1.6.2.1 Slight Muscle Disability
§ 5.1.6.2.2 Moderate Muscle Disability
§ 5.1.6.2.3 Moderately Severe Muscle Disability
§ 5.1.6.2.4 Severe Muscle Disability

§ 5.1.6.5 Evaluation of Painful Motion and Arthritis of the Musculoskeletal System
§ 5.1.6.6 The Evaluation of Functional Loss and Fatigue in Rating Musculoskeletal Disorders

§ 5.5.1.3 Special Monthly Compensation (SMC(k)) for Loss or Loss of Use of a Foot or Hand
§ 5.5.1.4 Special Monthly Compensation (SMC(k)) for Loss of Use of Both Buttocks

§ 5.1.5.4 The Amputation Rule
§ 5.1.6.5 Evaluation of Painful Motion and Arthritis of the Musculoskeletal System

§ 5.1.6.2.3 Moderately Severe Muscle Disability

§ 3.7.2 Qualifying for Compensation Due to an Undiagnosed Illness
§ 5.1.1 Rating Schedule and Rates
§ 5.1.5.4 The Amputation Rule
§ 5.1.6.3.2 Combining Muscle Group Injuries in the Same Anatomical Region Evaluated As Severe
§ 5.1.6.6 The Evaluation of Functional Loss and Fatigue in Rating Musculoskeletal Disorders
§ 5.13 EVALUATION OF INTERVERTEBRAL DISC SYNDROME (IVDS)
§ 5.1.6.1.1 The Thought Process in Analyzing the Impact of Traumatic Injury
§ 5.1.6.2 The Evaluation of Residuals of Muscle Damage Due to Gunshot or Shell Fragment Injuries
§ 5.1.6.2.2 Moderate Muscle Disability
§ 5.1.6.2.3 Moderately Severe Muscle Disability

§ 5.5.1.5 Special Monthly Compensation (SMC(k)) for Loss of Use or Blindness of One Eye

§ 5.12 EVALUATION OF HEARING LOSS
§ 5.5.1.6 Special Monthly Compensation (SMC(k)) for Deafness

§ 5.1.5.5 The Bilateral Factor
§ 5.12.1 Tinnitus
§ 12.5.6 The Proper Law to Apply in Cases in Which the Applicable Law Has Changed After Filing of a Claim
§ 15.3.6 Issues That Are Beyond the Court’s Power to Review
§ 15.3.7 The Proper Law to Apply in Cases in Which the Applicable Law Has Changed After Filing of a Claim

§ 5.1.1 Rating Schedule and Rates

§ 5.11 EVALUATION OF CARDIOVASCULAR CONDITIONS

§ 5.1.1 Rating Schedule and Rates
§ 5.1.8 Evaluation of Hepatitis

§ 5.5.1.8 Special Monthly Compensation (SMC(k)) for Anatomical Loss of 25 Percent or More of Tissue from a Single Breast or Both Breasts

§ 3.8.1.4 Special Rules Regarding Non-Hodgkin’s Lymphoma (NHL)

§ 5.1.6.2.1 Slight Muscle Disability
§ 5.1.6.4 Evaluating Scars

§ 5.10 EVALUATION OF DIABETES MELLITUS

§ 5.1.6.1.1 The Thought Process in Analyzing the Impact of Traumatic Injury
§ 5.1.6.3.4 Combining Muscle Group Injuries and Peripheral Nerve Injuries

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§ 16.2.2.3 Representation by Agents
§ 16.2.2.5 Representation by Legal Interns, Law Students, and Paralegals
§ 17.1 HISTORY OF LIMITATIONS ON ATTORNEY’S FEES

cxcv Sections
§ 12.4.1 Authorization to Represent the Claimant
§ 16.2.2.6 Authorization to Represent in a Particular Claim

cxcvi Sections
§ 12.4.1 Authorization to Represent the Claimant
§ 16.2.2.1 General
§ 16.2.2.2 Accredited Service Representatives and Recognized Veterans Service Organizations
§ 16.2.2.3 Representation by Agents
§ 16.2.2.4 Representation by Attorneys
§ 16.2.2.5 Representation by Legal Interns, Law Students, and Paralegals

cxcvii Sections
§ 16.1.1.1 Ethical Responsibilities of Representatives
§ 16.2.3 Confidentiality of Records and Claimant Information
§ 16.5.2.2 The Start of the Hearing and Opening Statements
§ 17.3.2 The Restrictions on the Amount of Fees for Representation before the VA

cxcviii Sections
§ 17.1 HISTORY OF LIMITATIONS ON ATTORNEY’S FEES

cxcix Sections
§ 10.10 VA DOMICILIARY CARE
§ 10.16.1.2 Criteria for Fee-Basis Care

c Sections
§ 4.3.1.3.1 Alleging That VA Care Was the Proximate Cause of Additional Disability or Death
§ 10.2.2 Informed Consent for Medical Care

ci Sections
§ 10.3.2 Exceptions to the Enrollment Requirement

cii Sections
§ 10.3.1 The Enrollment Process
§ 10.3.3 Enrollment Priority Groups
§ 10.3.4 Catastrophic Disablement

ciii Sections
§ 10.3.2 Exceptions to the Enrollment Requirement

civ Sections
§ 10.4 THE HEALTH CARE BENEFITS THAT VA CAN PROVIDE

cv Sections
§ 10.5.1 Eligibility for Free VA Hospital Care and Outpatient Care
§ 10.5.4.1 Priority Based on Medical Need

§ 10.5.2.3 Veterans with “Attributable Income” Under Limit
§ 10.5.2.4 Hardship Waiver Can Overcome Attributable Income Limit
§ 10.5.2.5 Net Worth Determinations for Cost-Free Hospital and Outpatient Care

§ 10.5.4.2 Priority Based on Service Connection

§ 10.5.4 Who Receives Priority for Care

§ 10.6.6 Priorities for Nursing Home Care

§ 10.16.1.2 Criteria for Fee-Basis Care
§ 10.16.1.3 When VA Facilities Are Not Feasibly Available
§ 10.16.1.4 Restriction on Authorization in Emergencies
§ 10.17 REIMBURSEMENT OF NON-VA EMERGENCY TREATMENT EXPENSES AND NON-VA UNAUTHORIZED MEDICAL EXPENSES

§ 10.16.2.1 Time Limit for Requesting Authorization

§ 10.6.3.1 Time Limit on Some VA-Paid Community Nursing Home Care

§ 10.24 NON-VA TREATMENT FOR SOME VETERANS WITH DRUG AND ALCOHOL PROBLEMS

§ 9.6.1.5.4 Entitlement to Drugs and Medicines Because of Entitlement to SMP
§ 10.6 NURSING HOME CARE
§ 10.9.2 VA Pharmacies Will Sometimes Fill Non-VA Prescriptions

§ 10.23 BREAKING SCHEDULED APPOINTMENTS

§ 10.14.2 Veterans Owing a Copayment for the Particular VA Health Care Service Received
§ 10.14 PAYING FOR VA HEALTH CARE
§ 10.14.3 VA Copayments
§ 10.14.4 Billing for VA Health Care Provided in Emergencies and other Unusual Cases

§ 10.14.3.3.1 Waiver or Compromise of a Copayment Debt

§ 10.14.3.1 Copayment for VA Hospital Care
§ 10.14.3.1.1 Reduced Inpatient Charges Under HUD Geographic Means Test Rules
§ 10.14.3.2 Copayment for VA Outpatient Treatment
§ 10.5.1 Eligibility for Free VA Hospital Care and Outpatient Care
§ 10.5.2.3 Veterans with “Attributable Income” Under Limit

§ 10.9.1 Medication Copayment for VA Outpatient Prescriptions

§ 10.10.1 Eligibility for Cost-Free Domiciliary Care
§ 10.6.4 Low Income Veterans and Nursing Home Care
§ 10.6.5.1 Copayment for Care in VA Nursing Home Care Units
§ 10.8 NON-INSTITUTIONAL EXTENDED CARE PROGRAMS
§ 10.8.4 Adult Day Health Care (ADHC)
§ 10.8.5 Geriatric Evaluation
§ 10.8.6 Respite Care

§ 10.17 REIMBURSEMENT OF NON-VA EMERGENCY TREATMENT EXPENSES AND NON-VA UNAUTHORIZED MEDICAL EXPENSES

§ 10.2.1.4 Appealing a VHA Decision that Is Not a Medical Determination

§ 10.18.1 Veteran Eligibility for Travel Reimbursement
§ 10.18.2 Eligibility for Travel Reimbursement for Others
§ 10.18.3 Travel Expenses Covered
§ 10.18.6 Exemption from Travel Reimbursement Deductible
§ 10.18.7 Waiver of Travel Reimbursement Deductible

ccxviii Sections
§ 10.12.2 Sensori-neural Aids (such as Eyeglasses, Contact Lenses, Hearing Aids)

ccxix Sections
§ 10.12.1 Prosthetic Appliances

ccxci Sections
§ 10.12 PROSTHETICS AND SENSORI-NEURAL AIDS

ccxcii Sections
§ 10.12.3 Guide Dogs and Service Dogs

ccxciii Sections
§ 11.5.1 Automobiles, Conveyances, and Adaptive Equipment

ccxcii Sections
§ 11.5.1 Automobiles, Conveyances, and Adaptive Equipment

ccxciv Sections
§ 11.5.1 Automobiles, Conveyances, and Adaptive Equipment

ccxcv Sections
§ 10.13 VA DENTAL CARE

ccxcvi Sections
§ 10.7 STATE VETERANS HOMES

ccxcvii Sections
§ 10.7 STATE VETERANS HOMES

ccxcviii Sections
§ 10.7 STATE VETERANS HOMES

ccxcix Sections
§ 10.7 STATE VETERANS HOMES

ccx Sections
§ 10.21 MEDICAL SERVICES FOR DEPENDENTS AND SURVIVORS OF VETERANS

ccxi Sections
§ 10.21 MEDICAL SERVICES FOR DEPENDENTS AND SURVIVORS OF VETERANS
§ 10.6.6 Priorities for Nursing Home Care

ccxii Sections
§ 10.21.1 Description of CHAMPVA Benefits
ccxliii Sections
§ 10.21.1 Description of CHAMPVA Benefits

cxliv Sections
§ 10.21.2 Appealing CHAMPVA Determinations

cxlv Sections
§ 7.6.7.3 What Is Covered
§ 7.6.7.5 Filing a Health Care Claim and Payments

cxlvi Sections
§ 7.6.7.3 What Is Covered
§ 7.6.7.4 Who Is Considered a Health Care Provider

cxlvii Sections
§ 7.6.7.3 What Is Covered

cxlviii Sections
§ 7.6.7.3 What Is Covered
§ 7.6.7.5 Filing a Health Care Claim and Payments

cxlix Sections
§ 7.6.7.6 Appeals of Spina Bifida Health Care Claims

cli Sections
§ 10.17 REIMBURSEMENT OF NON-VA EMERGENCY TREATMENT EXPENSES AND NON-VA UNAUTHORIZED MEDICAL EXPENSES

clii Sections
§ 10.17 REIMBURSEMENT OF NON-VA EMERGENCY TREATMENT EXPENSES AND NON-VA UNAUTHORIZED MEDICAL EXPENSES

clii Sections
§ 10.17 REIMBURSEMENT OF NON-VA EMERGENCY TREATMENT EXPENSES AND NON-VA UNAUTHORIZED MEDICAL EXPENSES

cliii Sections
§ 10.17 REIMBURSEMENT OF NON-VA EMERGENCY TREATMENT EXPENSES AND NON-VA UNAUTHORIZED MEDICAL EXPENSES

cliv Sections
§ 12.6.6 Types of Decisions Subject to Appeal

clv Sections
§ 14.3.1 Motions for Reconsideration

clv Sections
§ 12.10.1 Purpose
§ 12.7.1 Purpose

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§ 12.7.3 What Language Should Be Used in an NOD

cclvii Sections
§ 15.2.5 What Recourse Does a Claimant Have When No Final BVA Decision Can Be Obtained Because the VA Regional Office Refuses to Issue a Rating Decision or a Statement of the Case

cclviii Sections
§ 12.10.1 Purpose
§ 12.10.2 Content
§ 16.1.1.2 The Unique VA Advocacy Environment

cclix Sections
§ 12.10.3 Responding to the SOC

cclx Sections
§ 12.10.4 Supplemental Statements of the Case
§ 12.11.5 A Supplemental Statement of the Case Can Only Address Claims That Were the Subject of a Previous SOC
§ 13.3.3.2 Submitting Additional Evidence at the Hearing
§ 13.6.2.2 Submitting Additional Evidence at the Hearing

cclxi Sections
§ 12.11.3 What to File
§ 12.11.6 Certification of Issues on Appeal
§ 13.4 TRANSFER OF THE VA CLAIMS FILE FROM THE REGIONAL OFFICE TO THE BVA
§ 13.9.2.1.1 The Significance of VA Form 8

cclxii Sections
§ 13.5.1.1 General

cclxiii Sections
§ 12.10.4 Supplemental Statements of the Case
§ 13.10 THE PROCESS USED WHEN BVA REMANDS THE CLAIM FOR ADDITIONAL PROCEEDINGS
§ 13.10.2 The SSOC Prepared on Remand

cclxiv Sections
§ 12.6.7 Special Types of Review of RO Decisions by VA Central Office or BVA

cclxv Sections
§ 13.3.1 Requesting and Scheduling a Travel Board Hearing

cclxvi Sections
§ 13.3.1 Requesting and Scheduling a Travel Board Hearing

cclxvii Sections
§ 12.7.2 Place and Deadline for Filing

cclxviii Sections

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§ 12.12 SPECIAL RULES: SIMULTANEOUSLY CONTESTED CLAIMS

Sections

§ 12.12 SPECIAL RULES: SIMULTANEOUSLY CONTESTED CLAIMS

Sections

§ 10.2.1.1 Inadequate Remedy for an Erroneous VHA Denial
§ 10.2.1.2 Which Avenue of Appeal to Pursue
§ 10.5.4.1 Priority Based on Medical Need
§ 10.6.3.3 When the Duration of VA-Paid Contract Nursing Care Expires
§ 12.11.2 Place and Deadline for Filing
§ 12.11.3 What to File
§ 12.6.6 Types of Decisions Subject to Appeal
§ 13.1.1 The Types of Claims That May Be Appealed to the BVA
§ 13.9.2.1.2 Claims That the RO Expressly Adjudicated, and Which the BVA Is Required to Resolve

Sections

§ 12.7.1 Purpose

Sections

§ 12.11.1 Purpose of the Substantive Appeal
§ 12.11.3 What to File
§ 13.2 OVERVIEW OF THE BVA APPEALS PROCESS
§ 13.9.2.1.2 Claims That the RO Expressly Adjudicated, and Which the BVA Is Required to Resolve
§ 13.9.2.2 The "Issues" the BVA Is Required to Address
§ 15.2.8.3 Whether the CAVC Can Review an Issue That Was Not Addressed by the BVA or Raised by the Claimant Below in Support of a Claim Over Which the CAVC Has Jurisdiction

Sections

§ 12.11.2 Place and Deadline for Filing

Sections

§ 16.2.2.1 General

Sections

§ 12.11.2 Place and Deadline for Filing
§ 12.7.2 Place and Deadline for Filing

Sections

§ 12.10.4 Supplemental Statements of the Case
§ 12.11.2 Place and Deadline for Filing
§ 12.7.2 Place and Deadline for Filing

Sections

§ 12.11.2 Place and Deadline for Filing

Sections

§ 12.11.2 Place and Deadline for Filing

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§ 12.7.2 Place and Deadline for Filing
§ 15.2.6 The Interrelationship between Motions for Reconsideration or Vacatur Filed with the BVA and the Court's Jurisdictional Requirements

Sections
§ 12.11.2 Place and Deadline for Filing

Sections
§ 12.6.7 Special Types of Review of RO Decisions by VA Central Office or BVA

Sections
§ 17.4 PAYMENT OF ATTORNEY'S FEES BY THE VA DIRECTLY TO ATTORNEYS BY DEDUCTING THE FEE FROM PAST DUE BENEFITS

Sections
§ 12.11.2 Place and Deadline for Filing
§ 12.12 SPECIAL RULES: SIMULTANEOUSLY CONTESTED CLAIMS
§ 12.7.2 Place and Deadline for Filing

Sections
§ 16.2.2.4 Representation by Attorneys

Sections
§ 16.2.2.5 Representation by Legal Interns, Law Students, and Paralegals

Sections
§ 16.2.2.1 General

Sections
§ 14.4.1 The Procedures for Filing a CUE Claim with the BVA
§ 16.1.1.3 Prohibition Against Attorney Fees at the Administrative Level
§ 17.1 HISTORY OF LIMITATIONS ON ATTORNEY'S FEES
§ 17.2.1 Filing the Fee Agreement with the CAVC
§ 17.3 ATTORNEY'S FEES RESTRICTIONS AND REIMBURSEMENT OF EXPENSES FOR REPRESENTATION BEFORE THE VARO OR THE BVA
§ 17.3.1 The Eligibility Requirements for Charging a Fee
§ 17.3.2 The Restrictions on the Amount of Fees for Representation before the VA
§ 17.3.3 Reimbursement of Expenses
§ 17.4 PAYMENT OF ATTORNEY'S FEES BY THE VA DIRECTLY TO ATTORNEYS BY DEDUCTING THE FEE FROM PAST DUE BENEFITS
§ 17.5 ATTORNEY'S FEES IN HOME LOAN GUARANTY CASES

Sections
§ 17.1 HISTORY OF LIMITATIONS ON ATTORNEY'S FEES
§ 17.3.3 Reimbursement of Expenses

Sections
§ 13.3.3.1 General
§ 13.6.2.1 General
§ 13.7.1 When a Videoconference Hearing is an Option
§ 16.5.2.2 The Start of the Hearing and Opening Statements
§ 13.3.3.1 General
§ 13.6.2.1 General

§ 12.12 SPECIAL RULES: SIMULTANEOUSLY CONTESTED CLAIMS
§ 13.6.1 Scheduling a Hearing in Washington, D.C.

§ 13.3.1 Requesting and Scheduling a Travel Board Hearing
§ 13.6.1 Scheduling a Hearing in Washington, D.C.

§ 16.5.2.2 The Start of the Hearing and Opening Statements

§ 13.3.1 General
§ 13.6.2.1 General

§ 13.3.3.3 Submitting Evidence After the Hearing
§ 13.6.3 Submitting Additional Evidence After the Hearing

§ 13.3.1 General
§ 13.6.2.1 General

§ 13.3.1 Requesting and Scheduling a Travel Board Hearing
§ 13.5.1.2 Obtaining an Extension of the 90-Day Period for Good Cause
§ 13.5.6 Procedures to Obtain a Speedy Decision for Needy, Seriously Ill, or Elderly Claimants

§ 10.17 REIMBURSEMENT OF NON-VA EMERGENCY TREATMENT EXPENSES AND NON-VA UNAUTHORIZED MEDICAL EXPENSES
§ 13.5.2 BVA Requests for an Independent Medical Expert (IME) Opinion
§ 13.5.3 BVA Requests for an Opinion from a VA Physician
§ 13.5.1.2  Obtaining an Extension of the 90-Day Period for Good Cause

§ 13.9.4  The BVA’s Decision
§ 14.3.2  Motions to Vacate
§ 15.2.6  The Interrelationship between Motions for Reconsideration or Vacatur Filed with the BVA and the Court’s Jurisdictional Requirements

§ 14.3.1  Motions for Reconsideration

§ 13.9  BVA DECISION MAKING PROCESS
§ 14.3.1  Motions for Reconsideration
§ 15.2.6  The Interrelationship between Motions for Reconsideration or Vacatur Filed with the BVA and the Court’s Jurisdictional Requirements

§ 14.5  WHEN A FINAL RO DENIAL IS IMMUNIZED FROM A CUE CHALLENGE BECAUSE IT HAS BEEN SUBSUMED BY A SUBSEQUENT BVA DENIAL

§ 7.7.1.1.1  General Information About Accrued Benefits
§ 7.7.3.1.3  Death Due to Disability Not Service Connected Prior to Death
§ 7.7.3.1.5  The Effect of 38 C.F.R. § 20.1106 on DIC Claims
§ 7.7.3.2.1  The Ten-Year Rule under 38 U.S.C.S. § 1318
§ 7.7.3.2.1.4  Chart Explaining Section 1318 DIC Options Based on Date of Filing

§ 12.11.3  What to File
§ 12.9.1  General
§ 13.3.1  Requesting and Scheduling a Travel Board Hearing
§ 13.3.3.2  Submitting Additional Evidence at the Hearing
§ 13.4  TRANSFER OF THE VA CLAIMS FILE FROM THE REGIONAL OFFICE TO THE BVA
§ 13.5.1.1  General
§ 13.5.1.2  Obtaining an Extension of the 90-Day Period for Good Cause
§ 13.6.2.2  Submitting Additional Evidence at the Hearing

§ 14.4.1  The Procedures for Filing a CUE Claim with the BVA

§ 14.4.1  The Procedures for Filing a CUE Claim with the BVA

§ 14.4.1  The Procedures for Filing a CUE Claim with the BVA

§ 4.3.4  Limited Window of Opportunity for “No-Fault” Claims
§ 7.7.1.3  Benefits Awarded, but Unpaid, at Death

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§ 14.4.2 What Types of Errors Constitute Clear and Unmistakable Error

Sections
§ 14.4.1 The Procedures for Filing a CUE Claim with the BVA

Sections
§ 14.4.3 BVA Action on CUE Motions

Sections
§ 12.12 SPECIAL RULES: SIMULTANEOUSLY CONTESTED CLAIMS

Sections
§ 14.4.3 BVA Action on CUE Motions

Sections
§ 14.4.1 The Procedures for Filing a CUE Claim with the BVA

Sections
§ 11.3 VOCATIONAL REHABILITATION BENEFITS
§ 16.3.3.2 The VA Claims File

Sections
§ 16.1.2.1 Wide Open Claims Adjudication System

Sections
§ 11.3 VOCATIONAL REHABILITATION BENEFITS

Sections
§ 11.3 VOCATIONAL REHABILITATION BENEFITS

Sections
§ 11.3 VOCATIONAL REHABILITATION BENEFITS

Sections
§ 4.3 CLAIMS FOR 38 U.S.C.S. § 1151 BENEFITS

Sections
§ 11.2.1 General

Sections
§ 11.2.1 General

Sections
§ 11.2.1 General

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§ 11.2.1 General

§ 11.2.2 Post-Vietnam Era Veterans’ Educational Assistance Program (VEAP)

§ 11.3 VOCATIONAL REHABILITATION BENEFITS

§ 11.2.3 All Volunteer Force Education Benefits (Montgomery GI Bill)

§ 7.6.8.1 Introduction and Overview

§ 7.6.8.4 Miscellaneous Provisions
§ 7.6.8.4  Miscellaneous Provisions

§ 7.6.8.4  Miscellaneous Provisions

§ 7.6.8.4  Miscellaneous Provisions

§ 7.6.8.4  Miscellaneous Provisions

§ 9.4.6  Rights and Remedies in Cases of Home Loan Guaranty Debts

§ 11.5.3  Specially Adapted Housing and Special Home Adaptation Grant

§ 11.1  BURIAL-RELATED BENEFITS
  § 11.1.4  Burial in a National Cemetery

§ 11.1.4  Burial in a National Cemetery

§ 10.7  STATE VETERANS HOMES

§ 10.7  STATE VETERANS HOMES

§ 10.7  STATE VETERANS HOMES

§ 10.7  STATE VETERANS HOMES

§ 10.18.9  Availability of Temporary Lodging in Connection with VA Medical Care

§ 10.18.9  Availability of Temporary Lodging in Connection with VA Medical Care

§ 10.18.9  Availability of Temporary Lodging in Connection with VA Medical Care

§ 10.18.9  Availability of Temporary Lodging in Connection with VA Medical Care
Sections

§ 10.18.9  Availability of Temporary Lodging in Connection with VA Medical Care