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Veterans Benefits Administration

Supplement No. 83

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Veterans Benefits Administration

Supplement No. 83

5 February 2010

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**Book G, Supplement No. 83
February 5, 2010**

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HIGHLIGHTS

Book G, Supplement No. 83 February 5, 2010

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book G (*Rehabilitation and Education*) was originally supplemented six times a year, in February, April, June, August, October, and December. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 20 January 2010, the VA published a final rule, effective 19 February 2010, to amend Vocational Rehabilitation and Employment Program regulations concerning individuals’ basic entitlement to vocational rehabilitation benefits and services; effective dates of induction into a rehabilitation program, including retroactive induction; and individuals’ cooperation and lack of cooperation in the initial evaluation process. Changes:

- Revised §21.40 and the undesignated center heading immediately preceding it;
- Revised §§21.42 and 21.47;
- In §21.50, revised paragraph (d); and
- Revised §21.282 and the undesignated center heading immediately preceding it.

2. On 20 January 2010, the VA published a final rule, effective 19 February 2010, to adopt without change the proposed rule published in the *Federal Register* on 9 March 9 2009, amending regulations concerning periods of eligibility applicable to VA’s provision of Vocational Rehabilitation and Employment benefits and services in order to clarify program requirements, interpret and incorporate new statutory requirements, and make clarifying non-substantive changes. Changes:

- Revised §§21.41–21.42 and 21.44–21.45; and
- Added a new §21.46.

3. On 20 January 2010, the VA published a final rule, effective 19 February 2010, to amend the VA's vocational rehabilitation and employment regulations concerning self-employment for individuals with qualifying disabilities by making changes to conform the regulations for self-employment programs for veterans, and for servicemembers awaiting discharge, to statutory provisions, including provisions limiting eligibility for certain supplies, equipment, stock, and license fees to individuals with the most severe service-connected disabilities; by making related changes in the regulations affecting eligibility for such assistance for certain veterans' children with birth defects in self-employment programs; and by amending the regulations regarding the approval authority for self-employment plans to make certain requirements less restrictive and less burdensome, to remove a vague and overly broad requirement, to make changes to reflect longstanding VA policy, and to make nonsubstantive clarifying changes. Changes:

- In §21.214, revised paragraph (e), introductory text, and paragraph (e)(3);
- In §21.254, revised paragraph (c);
- Revised 2§21.257–21.258; and
- In §21.8020, revised paragraphs (b) and (d).

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This looseleaf book has two indices. The first is arranged by section number and presents the contents of Part 21 in the order in which they appear in the Code of Federal Regulations. The second is arranged by section title, and presents the titles of all sections in Part 21 in alphabetical order, grouped by subpart. The section title index begins on page G-33.

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Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

Source: 49 FR 40814, Oct. 18, 1984, unless otherwise noted.

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Vocational Rehabilitation Overview**§21.1 Training and rehabilitation for veterans with service-connected disabilities.**

(a) *Purposes.* The purposes of this program are to provide to eligible veterans with compensable service-connected disabilities all services and assistance necessary to enable them to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment. (Authority: 38 U.S.C. 3100)

(b) *Basic requirements.* Before a service-disabled veteran may receive training and rehabilitation services under Chapter 31, Title 38, United States Code, three basic requirements must be met:

(1) The Department of Veterans Affairs must first find that the veteran has basic entitlement to services as prescribed by §21.40. (Authority: 38 U.S.C. 3102)

(2) The services necessary for training and rehabilitation must be identified by the Department of Veterans Affairs and the veteran. (Authority: 38 U.S.C. 3106)

(3) An individual written plan must be developed by the Department of Veterans Affairs and the veteran describing the goals of the program and the means through which these goals will be achieved. (Authority: 38 U.S.C. 3107)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

Next Section is §21.21

(5) *Rehabilitation facility*. This term means a distinct organizational entity, either separate or within a larger institution or agency, which provides goal-oriented comprehensive and coordinated services to individuals designed to evaluate and minimize the handicapping effects of physical, mental, social and vocational disadvantages, and to effect a realization of the individual's potential. (Authority: 38 U.S.C. 3115(a))

(6) *Workshop*. This term means a charitable organization or institution, conducted not for profit, but for the purpose of carrying out an organized program of evaluation and rehabilitation for handicapped workers and/or for providing such individuals with remunerative employment and other occupational rehabilitative activity of an educational or therapeutic nature. (Authority: 38 U.S.C. 3115(a))

(7) *Vocational rehabilitation counselor*. Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocation Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs. (Authority: 38 U.S.C. 3118(c))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 53 FR 50956, Dec. 19, 1988; 62 FR 17707, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001]

Supplement *Highlights* reference: 30(2)

Next Section is §21.40

Entitlement

§21.40 Basic entitlement to vocational rehabilitation benefits and services.

An individual meets the basic entitlement criteria for vocational rehabilitation benefits and services under this subpart if VA determines that he or she meets the requirements of paragraph (a), (b), (c), or (d) of this section. For other requirements affecting the provision of vocational rehabilitation benefits and services, see §§21.41 through 21.46 (period of eligibility), §21.53 (reasonable feasibility of achieving a vocational goal), and §§21.70 through 21.79 (months of entitlement).

(a) *Veterans with at least 20 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated 20 percent or more under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

(b) *Veterans with 10 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of a serious employment handicap.

(c) *Servicemembers awaiting discharge.* The individual is a servicemember who, while waiting for discharge from the active military, naval, or air service, is hospitalized, or receiving outpatient medical care, services, or treatment, for a disability that VA will likely determine to be service-connected. In addition, VA must have determined that:

(1) The hospital or other medical facility providing the hospitalization, care, service, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned;

(2) The individual is in need of rehabilitation because of an employment handicap; and

(3) The individual has a disability or combination of disabilities that will likely be:

(i) At least 10 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; or

(ii) At least 20 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 on or after November 1, 1990.

(d) *Exception for veterans who first applied after March 31, 1981, and before November 1, 1990.* The individual is a veteran who:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11;

(2) Originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; and

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

Authority: 38 U.S.C. ch. 11, 3102, 3103, 3106; sec. 8021(b), Pub. L. 101-508, 104 Stat. 1388-347; sec. 404(b), Pub. L. 102-568, 106 Stat. 4338, as amended by sec. 602, Pub. L. 103-446, 108 Stat. 4671.

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 56 FR 15836, Apr. 18, 1991; 75 FR 3164, Jan. 20, 2010]

Supplement *Highlights* reference: 83(1)

Periods of Eligibility

§21.41 Basic period of eligibility.

(a) *Time limit for eligibility to receive vocational rehabilitation.*

(1) For purposes of §§21.41 through 21.46, the term basic period of eligibility means the 12-year period beginning on the date of a veteran's discharge or release from his or her last period of active military, naval, or air service, and ending on the date that is 12 years from the veteran's discharge or release date, but the beginning date may be deferred or the ending date extended under the sections referred to in paragraph (b) of this section. (See §§21.70 through 21.79 concerning duration of rehabilitation programs.)

(2) Except as provided in paragraph (b) or (c) of this section, the period during which an individual may receive a program of vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 is limited to his or her basic period of eligibility.

(b) *Deferral and extension of the basic period of eligibility.* VA may defer the beginning date of a veteran's basic period of eligibility under §21.42. VA may extend the ending date of a veteran's basic period of eligibility under §21.42 (extension due to medical condition); §21.44 (extension for a veteran with a serious employment handicap), §21.45 (extension during a program of independent living services and assistance), and §21.46 (extension for a veteran recalled to active duty). (Authority: 38 U.S.C. 3103)

(c) *Servicemember entitled to vocational rehabilitation services and assistance before discharge.* The basic period of eligibility for a servicemember who is entitled to vocational rehabilitation services and assistance under 38 U.S.C. chapter 31 for a period before discharge does not run while the servicemember remains on active duty, but begins on the date of discharge from the active military, naval, or air service. The period of eligibility requirements of this section are not applicable to provision of vocational rehabilitation services and assistance under chapter 31 during active duty. (Authority: 38 U.S.C. 3102, 3103)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 62 FR 17707, Apr. 11, 1997; 75 FR 3166, Jan. 20, 2010]

Supplement *Highlights* references: 30(2), 83(2).

§21.42 Deferral or extension of the basic period of eligibility.

The basic period of eligibility does not run as long as any of the following reasons prevents the veteran from commencing or continuing a vocational rehabilitation program:

(a) *Qualifying compensable service-connected disability(ies) not established.* The basic period of eligibility does not commence until the day VA notifies a veteran of a rating determination by VA that the veteran has a qualifying compensable service-connected disability under §21.40. (Authority: 38 U.S.C. 3103(b)(3))

(b) *Character of discharge is a bar to benefits.*

(1) The basic period of eligibility does not commence until the veteran meets the requirement of a discharge or release under conditions other than dishonorable. (For provisions regarding character of discharge, see §3.12 of this chapter.)

(2) If VA has considered a veteran's character of discharge to be a bar to benefits, the basic period of eligibility commences only when one of the following happens:

(i) An appropriate authority changes the character of discharge or release;
or

(ii) VA determines that the discharge or release was under conditions other than dishonorable or that the discharge or release was, but no longer is, a bar to benefits.

(3) If there is a change in the character of discharge, or the discharge or release otherwise is determined, as provided in paragraph (b)(2) of this section, not to be a bar to benefits, the beginning date of the basic period of eligibility will be the effective date of the change or VA determination. (Authority: 38 U.S.C. 3103(b)(2))

(c) *Commencement or continuation of participation prevented by medical condition(s).*

(1) The basic period of eligibility does not run during any period when a veteran's participation in a vocational rehabilitation program is determined to be infeasible for 30 days or more because of any medical condition(s) of the veteran, including the disabling effects of chronic alcoholism (see paragraphs (c)(2) through (c)(5) of this section).

(2) For purposes of this section, the term disabling effects of chronic alcoholism means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations that:

(i) Have been diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Have been determined to prevent the affected veteran from beginning or continuing in a program of vocational rehabilitation and employment.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, or chronic alcohol abuse, in and of itself, does not satisfy the definition of disabling effects of chronic alcoholism.

(4) Injuries sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication are not considered disabling effects of chronic alcoholism. An injury itself, however, may prevent commencement or continuation of a rehabilitation program.

(5) For purposes of this section, after November 17, 1988, the disabling effects of chronic alcoholism do not constitute willful misconduct. See 38 U.S.C. 105(c).

(6) If the basic period of eligibility is delayed or interrupted under this paragraph (c) due to any medical condition(s) of the veteran, it will begin or resume on the date a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) notifies the veteran in writing that the CP or VRC has determined, based on the evidence of record, that participation in a vocational rehabilitation program is reasonably feasible for the veteran. (Authority: 38 U.S.C. 3103(b)(1))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 55 FR 40171, Oct. 2, 1990; 56 FR 15836, Apr. 18, 1991; 62 FR 17707, Apr. 11, 1997; 75 FR 3165, 3166, Jan. 20, 2010]

Supplement *Highlights* references: 30(2), 83(1,2).

Next Section is §21.44

§21.44 Extension of the basic period of eligibility for a veteran with a serious employment handicap.

(a) *Conditions for extension.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the basic period of eligibility of a veteran with a serious employment handicap when the veteran's current employment handicap and need for rehabilitation services and assistance necessitate an extension under the following conditions:

(1) *Not rehabilitated to the point of employability.* The veteran has not been rehabilitated to the point of employability; or (Authority: 38 U.S.C. 3103(c))

(2) *Rehabilitated to the point of employability.* The veteran was previously declared rehabilitated to the point of employability, but currently meets one of the following three conditions:

(i) One or more of the veteran's service-connected disabilities has worsened, preventing the veteran from working in the occupation for which he or she trained, or in a related occupation;

(ii) The veteran's current employment handicap and capabilities clearly show that the occupation for which the veteran previously trained is currently unsuitable; or

(iii) The occupational requirements in the occupation for which the veteran trained have changed to such an extent that additional services are necessary to enable the veteran to work in that occupation, or in a related field. (Authority: 38 U.S.C. 3103(c))

(b) *Length of eligibility extension.* For a veteran with a serious employment handicap, a CP or VRC may extend the basic period of eligibility for such additional period as the CP or VRC determines is needed for the veteran to accomplish the purposes of his or her individualized rehabilitation program. (Authority: 38 U.S.C. 3103(c))

[49 FR 40814, Oct. 18, 1984, as amended at 75 FR 3166, Jan. 20, 2010]

Supplement *Highlights* reference: 83(2)

§21.45 Extending the period of eligibility for a program of independent living beyond basic period of eligibility.

A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the period of eligibility for a veteran's program of independent living services beyond the veteran's basic period of eligibility if the CP or VRC determines that an extension is necessary for the veteran to achieve maximum independence in daily living. The extension may be for such period as the CP or VRC determines is needed for the veteran to achieve the goals of his or her program of independent living. (See §21.76(b) concerning duration of independent living services.) (Authority: 38 U.S.C. 3103(d))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 75 FR 3166, Jan. 20, 2010]

Supplement *Highlights* reference: 83(2)

§21.46 Veteran ordered to active duty; extension of basic period of eligibility.

If VA determines that a veteran is prevented from participating in, or continuing in, a program of vocational rehabilitation as a result of being ordered to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, the veteran's basic period of eligibility will be extended by the length of time the veteran serves on active duty plus 4 months. (Authority: 38 U.S.C. 3103(e); sec. 308(h), Pub. L. 107-330, 116 Stat. 2829)

[75 FR 3168, Jan. 20, 2010]

Supplement *Highlights* reference: 83(2)

§21.47 Eligibility for employment assistance.

(a) *Providing employment services to veterans eligible for a rehabilitation program under chapter 31.* Each veteran, other than one found in need of a program of independent living services and assistance, who is otherwise currently eligible for and entitled to participate in a program of rehabilitation under chapter 31 may receive employment services. Included are those veterans who:

(1) Have completed a program of rehabilitation services under chapter 31 and been declared rehabilitated to the point of employability;

(2) Have not completed a period of rehabilitation to the point of employability under chapter 31, but:

(i) Have elected to secure employment without completing the period of rehabilitation to the point of employability; and

(ii) Are employable; or

(3) Have never received services for rehabilitation to the point of employability under chapter 31 if they:

(i) Are employable or employed in a suitable occupation;

(ii) Have an employment handicap or a serious employment handicap; and

(iii) Need employment services to secure and/or maintain suitable employment. (Authority: 38 U.S.C. 3102)

(b) *Veteran previously participated in a VA vocational rehabilitation program or a similar program under the Rehabilitation Act of 1973, as amended.* A veteran who at some time in the past has participated in a vocational rehabilitation program under chapter 31 or a similar program under the Rehabilitation Act of 1973 as amended, and is employable is eligible for employment services under the following conditions even though he or she is ineligible for any other assistance under chapter 31:

(1) The veteran is employable in a suitable occupation;

(2) The veteran has filed a claim for vocational rehabilitation or employment assistance;

(3) The veteran meets the criteria for eligibility described in §21.40; and

(4) The veteran has an employment handicap or serious employment handicap;
and

(5) The veteran:

(i) Completed a vocational rehabilitation program under 38 U.S.C. ch. 31 or participated in such a program for at least 90 days on or after September 16, 1940; or

(ii) Completed a vocational rehabilitation program under the Rehabilitation Act of 1973 after September 26, 1975, or participated in such a program which included at least 90 days of postsecondary education or vocational training. (Authority: 38 U.S.C. 3117)

(c) *Veteran never received vocational rehabilitation services from the Department of Veterans Affairs or under the Rehabilitation Act of 1973.* If a veteran is currently ineligible under chapter 31 because he or she does not have an employment handicap, and has never before participated in a vocational rehabilitation program under chapter 31 or under the Rehabilitation Act of 1973, no employment assistance may now be provided to the veteran under chapter 31. (Authority: 38 U.S.C. 3117)

(d) *Duration of period of employment assistance.* The periods during which employment assistance may be provided are not subject to limitations on periods of eligibility for vocational rehabilitation provided in §§21.41 through 21.45 of this part, but entitlement to such assistance is, as provided in §21.73 of this part, limited to 18 total months of assistance. (Authority: 38 U.S.C. 3105)

[54 FR 21215, May 17, 1989; 56 FR 15836, April 18, 1991; 75 FR 3165, Jan. 20, 2010]

Supplement *Highlights* reference: 83(1)

§21.48 Severance of service connection— reduction to noncompensable degree.

When a rating action is taken which proposes severance of service-connection or reduction to a noncompensable degree, the provisions of the following paragraphs will govern the veteran's entitlement to rehabilitation and employment assistance under 38 U.S.C. Chapter 31.

(a) *Applicant.* If the veteran is an applicant for rehabilitation or employment assistance when the proposed rating action is taken, all processes respecting determination of entitlement or induction into training shall be immediately suspended. In no event shall any veteran be inducted into a rehabilitation program or provided employment assistance during the interim periods provided in §3.105(d) and (e) of this title. If the proposed rating action becomes final, the application will be denied. See also §21.50 as to initial evaluation. (Authority: 38 U.S.C. 3104)

(b) *Reduction while in a rehabilitation program.* If the proposed rating action is taken while the veteran is in a rehabilitation program and results in a reduction to a noncompensable rating of his or her disability, the veteran may be retained in the program until the completion of the program, except if "discontinued" under §21.198 he or she may not reenter. (Authority: 38 U.S.C. 3103)

(c) *Severance while in a rehabilitation program.* If the proposed rating action is taken while the veteran is in a rehabilitation program and results in severance of the service-connection of his or her disability, rehabilitation will be terminated effective as of the last day of the month in which severance of service-connection becomes final. (Authority: 38 U.S.C. 3103)

Next Section is §21.50

Initial and Extended Evaluation

§21.50 Initial evaluation.

(a) *Entitlement to an initial evaluation.* VA will provide an initial evaluation to an individual who:

(1) Applies for benefits under 38 U.S.C. chapter 31; and

(2) Meets the service-connected disability requirements of §21.40. (Authority: 38 U.S.C. 3101(9), 3106)

(b) *Determinations to be made by VA during the initial evaluation.* A counseling psychologist (CP) or vocational rehabilitation counselor (VRC) will determine:

(1) Whether the individual has an employment handicap as determined in accordance with this section and §21.51;

(2) Whether an individual with an employment handicap has a serious employment handicap as determined in accordance with this section and §21.52; and

(3) Whether the achievement of a vocational goal is currently reasonably feasible as described in §21.53. (Authority: 38 U.S.C. 3102, 3103)

(c) *Factors for assessment as part of the initial evaluation.* In making the determinations under paragraph (b) of this section, the following factors will be developed and assessed:

(1) The handicapping effects of the individual's service-connected and nonservice-connected disability(ies) on employability and on independence in daily living;

(2) The individual's physical and mental capabilities that may affect employability and ability to function independently in daily living activities in family and community;

(3) The impact of the individual's identified vocational impairments on the individual's ability to prepare for, obtain, and keep suitable employment;

(4) The individual's abilities, aptitudes, and interests;

(5) The individual's personal history and current circumstances (including educational and training achievements, employment record, developmental and related vocationally significant factors, and family and community adjustment); and

(6) Other factors that may affect the individual's employability. (Authority: 38 U.S.C. 3106(a))

(d) *Need for cooperation in the initial evaluation process.* The individual's cooperation is essential in the initial evaluation process. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will suspend the initial evaluation process (see §21.362, regarding satisfactory conduct and cooperation, and §21.364, regarding unsatisfactory conduct and cooperation). Authority: 38 U.S.C. 3111.

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 56 FR 15836, April 18, 1991; 62 FR 17707, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 71 FR 28586, May 17, 2006; 72 FR 14042, Mar. 26, 2007; 75 FR 3165, Jan. 20, 2010]

Supplement *Highlights* references: 30(2), 72(1), 83(1).

§21.214 Furnishing supplies for special programs.

(a) *General.* A veteran pursuing one of the following types of vocational rehabilitation programs is eligible for any types of supplies listed in §21.212. The following paragraphs clarify the applicability of the general provisions of §21.212 to these special situations.

(b) *Supplies furnished to veterans pursuing training in the home.* VA may furnish to veterans training in the home:

(1) Books, tools, and supplies which schools or training establishments that train individuals outside the home for the objective the veteran is pursuing at home ordinarily require all students and trainees to personally possess;

(2) Supplies and equipment which are essential to the prescribed course of training because the veteran is pursuing the course at home. Equipment in this category consists of items which ordinarily are not required by a school or training establishment;

(3) Special equipment, such as a vise or drafting table;

(4) Supplies needed to enable the veteran to function more independently in his or her home and community. (Authority: 38 U.S.C. 3104(a))

(c) *Supplies furnished to a veteran in farm cooperative training.* The books and related training supplies which VA may furnish a veteran in farm cooperative training depend upon the type of instruction he or she is receiving:

(1) When organized group instruction is part of a veteran's course, VA will furnish those books and supplies which the school requires all students in the school portion of the course to own personally or on a rental basis;

(2) When all instruction is given on the veteran's farm by an individual instructor, VA will furnish to a student only those textbooks and other supplies which would ordinarily be required by a school. (Authority: 38 U.S.C. 3104(a)(7))

(d) *Obtaining and maintaining employment.* A veteran being furnished employment services may receive supplies which:

(1) The employer requires similarly circumstanced non-veterans to own upon beginning employment to the extent that the items were not furnished during the period in which the veteran was training for the objective, or the items that were furnished for training purposes are not adequate for employment;

(2) VA determines that special equipment is necessary for the veteran to perform his or her duties, subject to the obligation of the employer to make reasonable accommodation to the disabling effects of the veteran's condition. (Authority: 38 U.S.C. 3104(a), 4212)

(e) *Self-employment.* The supplies and related assistance which may be furnished, subject to the requirements prescribed under §§21.257 and 21.258, to a veteran for whom self-employment has been approved as the occupational objective, are generally limited to those necessary to begin operations:

(1) Minimum stocks of materials, e.g., inventory of saleable merchandise or goods, expendable items required for day-to-day operations, and items which are consumed on the premises;

(2) Essential equipment, including machinery, occupational fixtures, accessories, and appliances; and

(3) Other related assistance such as business license fees. (Authority: 38 U.S.C. 3104(a)(12))

(f) *Supplies and related assistance which may not be furnished for self employment.* VA may not authorize assistance for:

(1) Purchase of, or part payment for, land and buildings;

(2) Making full or part payment of leases or rentals;

(3) Purchase or rentals of trucks, cars, or other means of transportation;

(4) Stocking a farm for animal husbandry operations.

(Authority: 38 U.S.C. 3104(a)(12))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 75 FR 3169, Jan. 20, 2010]

Supplement *Highlights* reference: 83(3)

Next Section is §21.216

§21.254 Supportive services.

(a) *General.* Supportive services which may be provided during a period or program of employment services include a broad range of medical treatment, care and services, supplies, license and other fees, special services, including services to the blind and deaf, transportation assistance, services to the veteran's family, and other appropriate services, subject to the limitations provided in VA regulations governing the provisions of these services under Chapter 31.

(b) *Exclusions.* The following benefits may not be provided to the veteran by VA during a period or program of employment services:

(1) Subsistence allowance, or payment of an allowance at the educational assistance rate paid under Chapter 30 for similar training;

(2) Education and training services, other than brief courses, such as review courses necessary for licensure;

(3) Revolving Fund Loan; and

(4) Work-study allowance. (Authority: 38 U.S.C. 3104(a), 3108(f))

(c) *Individuals with service-connected disability(ies) trained for self-employment under a State rehabilitation agency.* An individual with service-connected disability(ies) who has trained for self-employment under a State rehabilitation agency may be provided supplemental equipment and initial stocks and supplies similar to the materials supplied under 38 U.S.C. chapter 31 to individuals with the most severe service-connected disability(ies) who require self-employment as defined in §21.257(b) if VA determines that the following conditions are met:

(1) The individual is eligible for employment assistance under the provisions of §21.47;

(2) Evidence of record indicates that the individual has successfully completed training for a self-employment program under a State rehabilitation agency;

(3) No other non-VA sources of assistance are known to be available for the individual to complete his or her self-employment program; and

(4) The individual meets the requirements of the definition in §21.257(b). (Authority: 38 U.S.C. 3104, 3117(b)(2))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 62 FR 17709, Apr. 11, 1997; 75 FR 3169, Jan. 20, 2010]

Supplement *Highlights* references: 30(2), 83(3).

Next Section is §21.256

Reserved

§21.257 Self-employment.

(a) *Approval of self-employment as a vocational goal.* A program of vocational rehabilitation benefits and services may include self-employment for an individual if VA determines that such an objective is a suitable vocational goal. VA will make this determination based on:

(1) The results of the individual's initial evaluation conducted in accordance with the provisions of §21.50; and

(2) The provisions of this section. (Authority: 38 U.S.C. 3104(a))

(b) *Definition.* For purposes of this subpart, *individuals with the most severe service-connected disability(ies) who require self-employment* means individuals who have been determined by VA to have limitations affecting employability arising from the effects of each individual's service-connected disability(ies), which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individuals. (Authority: 38 U.S.C. 3104)

(c) *Scope of self-employment benefits and services.*

(1) VA may provide the self-employment services listed in paragraph (d) of this section to program participants who are pursuing the vocational goal of self-employment.

(2) VA may provide the more extensive services listed in paragraph (e) of this section to individuals with the most severe service-connected disability(ies) who require self-employment. (Authority: 38 U.S.C. 3104(a))

(d) *Assistance for other individuals in self-employment.* Subject to the provisions of §21.258, VA may provide the following assistance to any individual for whom self-employment is determined to be a suitable vocational goal:

(1) Vocational training;

(2) Incidental training in the management of a business;

(3) License or other fees required for self-employment;

(4) Necessary tools and supplies for the occupation; and

(5) Services described in §21.252. (Authority: 38 U.S.C. 3104(a))

(e) *Special self-employment services for individuals with the most severe service-connected disability(ies) who require self-employment.* Individuals described in paragraph (b) of this section who are in a self-employment program may receive:

(1) The services described in paragraph (d) of this section; and

(2) The assistance described in §21.214. (Authority: 38 U.S.C. 3104, 3116, 3117)

(f) *Feasibility analysis of a proposed self-employment business plan.* VA will conduct a comprehensive review and analysis of the feasibility of a proposed business plan, as submitted by the individual or developed with VA's assistance, prior to authorizing a rehabilitation plan leading to self-employment (a "self-employment plan"). The feasibility analysis must include:

- (1) An analysis of the economic viability of the proposed business;
- (2) A cost analysis specifying the amount and types of assistance that VA will provide;
- (3) A market analysis for the individual's proposed services or products;
- (4) Availability of financing from non-VA sources, including the individual's personal resources, local banks, and other sources;
- (5) Evidence of coordination with the Small Business Administration to secure special consideration under section 8 of the Small Business Act, as amended;
- (6) The location of the site for the proposed business and the cost of the site, if any; and
- (7) A training plan to operate a successful business. (Authority: 38 U.S.C. 3104)

[49 FR 40814, Oct. 18, 1984, as amended at 75 FR 3170, Jan. 20, 2010]

Supplement *Highlights* reference: 83(3)

§21.258 Cost limitations on approval of self-employment plans.

A self-employment plan with an estimated or actual cost of less than \$25,000 may be approved by the VR&E Officer with jurisdiction. Any self-employment plan with an estimated or actual cost of \$25,000 or more must be approved by the Director, VR&E Service. (Authority: 38 U.S.C. 3104)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 55 FR 25975, June 26, 1990; 55 FR 28511, July 11, 1990; 75 FR 3170, Jan. 20, 2010]

Supplement *Highlights* reference: 83(3)

Next Section is §21.260

Reserved

§21.276 Incarcerated veterans.

(a) *General.* The provisions contained in this section describe the limitations on payment of subsistence allowance and charges for tuition and fees for:

- (1) Incarcerated veterans;
- (2) Formerly incarcerated veterans in halfway houses; and
- (3) Incarcerated and formerly incarcerated veterans in work release programs.

(Authority: 38 U.S.C. 3108(g), 3680(a))

(b) *Definition.* The term *incarcerated veteran* means any veteran incarcerated in a Federal, State, or local prison, jail, or other penal institution for a felony. It does not include any veteran who is pursuing a rehabilitation program under Chapter 31 while residing in a halfway house or participating in a work-release program in connection with such veteran's conviction of a felony.

(c) *Subsistence allowance not paid to an incarcerated veteran.* A subsistence allowance may not be paid to an incarcerated veteran convicted of a felony, but VA may pay all or part of the veteran's tuition and fees. (Authority: 38 U.S.C. 3108(g))

(d) *Halfway house.* A subsistence allowance may be paid to a veteran pursuing a rehabilitation program while residing in a halfway house as a result of a felony conviction even though all of the veteran's living expenses are paid by a non-VA Federal, State, or local government program. (Authority: 38 U.S.C. 3108(a))

(e) *Work-release program.* A subsistence allowance may be paid to a veteran in a work-release program as a result of a felony conviction.

(f) *Services.* VA may provide other appropriate services, including but not limited to medical, reader service, and tutorial assistance necessary for the veteran to pursue his or her rehabilitation program. (Authority: 38 U.S.C. 3108(g))

(g) *Payment of allowance at the rates paid under Chapter 30.* A veteran incarcerated for a felony conviction or a veteran in a halfway house or work-release program who elects payment at the educational assistance rate paid under Chapter 30 shall be paid in accordance with the provisions of law applicable to other incarcerated veterans training under Chapter 30. (Authority: 38 U.S.C. 3108(f), 3680(a))

(h) *Apportionment.* Apportionment of subsistence allowance which began before October 17, 1980, made to dependents of an incarcerated veteran convicted of a felony may be continued. (Authority: 38 U.S.C. 3108(g))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22807, June 23, 1986; 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 62 FR 17709, Apr. 11, 1997]

Supplement *Highlights* reference: 30(2)

Next Section is §21.282

Induction into a Rehabilitation Program

§21.282 Effective date of induction into a rehabilitation program; retroactive induction.

(a) *Entering a rehabilitation program.* The effective date of induction into a rehabilitation program is governed by the provisions of §§21.320 through 21.334, except as provided in this section. Authority: 38 U.S.C. 3108, 5113.

(b) *Retroactive induction.* Subject to paragraphs (c) and (d) of this section, an individual may be inducted into a rehabilitation program on a retroactive basis. If the individual is retroactively inducted, VA may authorize payment pursuant to §21.262 or §21.264 for tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with the approved rehabilitation program. In addition, VA may authorize payment of subsistence allowance pursuant to §§21.260, 21.266, and 21.270 for the period of retroactive induction, except for any period during which the individual was on active duty. Authority: 38 U.S.C. 3108, 3113, 3681, 5113.

(c) *Conditions for retroactive induction.* Retroactive induction into a rehabilitation program may be authorized for a past period under a claim for vocational rehabilitation benefits when all of the following conditions are met:

(1) The past period is within:

(i) A period under §21.40(c) during which a servicemember was awaiting discharge for disability; or

(ii) A period of eligibility under §§21.41 through 21.44 or 38 U.S.C. 3103.

(2) The individual was entitled to disability compensation under 38 U.S.C. chapter 11 during the period or would likely have been entitled to that compensation but for active-duty service.

(3) The individual met the criteria for entitlement to vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 in effect during the period.

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (see §§21.80 through 21.88, and §§21.92 through 21.98).

(5) VA has recouped any benefits that it paid the individual for education or training pursued under any VA education program during any portion of the period.

(6) An initial evaluation was completed under §21.50.

(7) A period of extended evaluation is not needed to be able to determine the reasonable feasibility of the achievement of a vocational goal. Authority: 38 U.S.C. 3102, 3103, 3108, 5113.

(d) *Effective date for retroactive induction.* The effective date for retroactive induction is the date when all the entitlement conditions set forth in paragraph (c) of this section are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating under 38 U.S.C. chapter 11 establishing a qualifying level under §21.40 of service-connected disability. Authority: 38 U.S.C. 5113.

[49 FR 40814, Oct. 18, 1984, as amended at 75 FR 3165, Jan. 20, 2010]

Supplement *Highlights* reference: 83(1)

§21.283 Rehabilitated.

(a) *General.* For purposes of chapter 31 a veteran shall be declared rehabilitated when he or she has overcome the employment handicap to the maximum extent feasible as described in paragraph (c), (d) or (e) of this section. (Authority: 38 U.S.C. 3101(1), (2))

(b) *Definition.* The term *suitably employed* includes employment in the competitive labor market, sheltered situations, or on a non-pay basis which is consistent with the veteran's abilities, aptitudes and interests if the criteria contained in paragraph (c)(1) or (2) of this section are otherwise met. (Authority: 38 U.S.C. 3100)

(c) *Rehabilitation to the point of employability has been achieved.* The veteran who has been found rehabilitated to the point of employability shall be declared rehabilitated if he or she:

(1) Is employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

(2) Is employed in an occupation unrelated to the occupational objective of the veteran's rehabilitation plan for at least 60 continuous days if the veteran concurs in the change and such employment:

(i) Follows intensive, yet unsuccessful, efforts to secure employment for the veteran in the occupation objective of a rehabilitation plan for a closely related occupation contained in the veteran's rehabilitation plan;

(ii) Is consistent with the veteran's aptitudes, interests, and abilities; and

(iii) Utilizes some of the academic, technical or professional knowledge and skills obtained under the rehabilitation plan; or

(3) Pursues additional education or training, in lieu of obtaining employment, after completing his or her prescribed program of training and rehabilitation services if:

(i) The additional education or training is not approvable as part of the veteran's rehabilitation program under this chapter; and

(ii) Achievement of employment consistent with the veteran's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training. (Authority: 38 U.S.C. 3101(1), 3107 and 3117)

(d) *Rehabilitation to the point of employability has not been completed.* A veteran under a rehabilitation plan who obtains employment without being declared rehabilitated to the point of employability as contemplated by the plan, including a veteran in a rehabilitation program consisting solely of employment services, is considered to be rehabilitated if the following conditions exist:

§21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive. (Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training. (Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent. (Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart. (Authority: 38 U.S.C. 1804, 1814, 1824)

Next Section is §21.8020

Basic Entitlement Requirements

§21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal. (Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in §21.8050(a).

(1) The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

- (i) Section 21.250(a) and (b)(2);
- (ii) Section 21.252;
- (iii) Section 21.254;
- (iv) Section 21.256 (not including paragraph (e)(2));
- (v) Section 21.257; and
- (vi) Section 21.258.

(2) For purposes of this subpart, the requirements for application of §21.257(e)(1) and (2) are deemed met for an individual in a self-employment program regardless of whether the individual is described in §21.257(b), if the individual has been determined by VA to have limitations affecting employability arising from the effects of the individual's spina bifida and/or other covered birth defect(s) which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual. (Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes. (Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and becomes suitably employed, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement. (Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.*

(1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

- (i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and
- (ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in §21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in §21.8310. The provisions concerning reduced work tolerance under §21.312, and those relating to less-than-half-time training under §21.314, do not apply under this subpart. (Authority: 38 U.S.C. 1804, 1814)

[67 FR 72565, Dec. 6, 2002, as amended at 75 FR 3170, Jan. 20, 2010]

Supplement *Highlights* reference: 83(3)

Next Section is §21.8022

§21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with §21.8014. (Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance. (Authority: 38 U.S.C. 1804, 1814, 1822)

Next Section is §21.8030