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Title 38, Part 21

*Vocational Rehabilitation and Education*

**Veterans Benefits Administration**

Supplement No. 89

Covering period of *Federal Register* issues  
through June 1, 2016

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## Supplemental Materials for *Book G*

Code of Federal Regulations

Title 38, Part 21

*Vocational Rehabilitation and Education*

## Veterans Benefits Administration

Supplement No. 89

5 June 2016

Covering the period of Federal Register issues  
through June 1, 2016

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21.53-1 to 21.60-2	21.53-1 to 21.60-2	§§21.53, 21.57 & 21.60
21.72-1 to 21.79-1	21.72-1 to 21.79-1	§§21.72, 21.74, 21.76 & 21.78
21.90-1 to 21.120-1	21.90-1 to 21.120-1	§§21.92, 21.94, 21.98 & 21.100
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21.298-2 to 21.310-1	21.298-2 to 21.310-1	§21.299
21.362-2 to 21.364- <u>1</u>	21.362-2 to 21.364- <u>3</u>	§21.364
21.380-1 to 21.382-1	21.380-1 to 21.382-1	§21.380
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21.6052-1 to 21.6080-1	21.6052-1 to 21.6080-1	§21.6052, 21.6056, 21.6059, 21.6070, 21.6072 & 21.6080
21.6509-1 to 21.6519-1	21.6509-1 to 21.6519-1	§21.6509 & 21.6519

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## HIGHLIGHTS

### Book G, Supplement No. 89 June 1, 2016

**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 2 May 2016, the VA published a final rule effective that same day, to amend its regulations by making non-substantive changes to ensure consistency within its regulations regarding a nomenclature change in the title of a Vocational Rehabilitation and Employment position. Changes:

- The overall change was to replace “counseling psychologist” with “Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC)”
- In §21.53, revised paragraphs (f) and (g);
- In §21.57, revised paragraph (d);
- In §21.60, revised paragraphs (b)(1) and (e)(1);
- In §21.72, revised paragraphs (c)(1), (c)(2) and (d)(2);
- In §21.74, revised paragraphs (c)(1), (c)(2) and (c)(3);
- In §21.76, revised paragraph (b);
- In §21.78, revised paragraph (d);
- In §21.92, revised paragraphs (b), (c) and (d);
- In §21.94, revised paragraphs (a) and (b);

- In §21.98, revised paragraph (b);
- In §21.100, revised paragraphs (d)(1), (d)(3)(ii) and (d)(4);
- In §21.180, revised paragraph (c);
- In §21.274, revised paragraph (e)(1);
- In §21.299, revised paragraphs (a);
- In §21.364, revised paragraph (a);
- In §21.380, revised paragraph (a)(1);
- In §21.3102, revised paragraph (a);
- In §21.3301, revised paragraph (e);
- In §21.4232, revised paragraphs (a)(2), (a)(2)(i), (a)(3) and (d);
- In §21.6005, add paragraph (j)(10);
- In §21.6052, revised paragraphs (b)(1) and (c);
- In §21.6056, revised paragraphs (a), (b) and (c);
- In §21.6059, revised paragraphs (b)(1) and (b)(2);
- In §21.6070, revised paragraphs (b) and (e);
- In §21.6072, revised paragraph (d)(2);
- In §21.6080, revised paragraph (d);
- In §21.6509, revised paragraph (d); and
- In §21.6515, revised paragraph (a).



**§21.53 Reasonable feasibility of achieving a vocational goal.**

(a) *Requirement.* The Department of Veterans Affairs shall determine the reasonable feasibility of achieving a vocational goal in each case in which a veteran has either:

- (1) An employment handicap, or
- (2) A serious employment handicap. (Authority: 38 U.S.C. 3106(a))

(b) *Definition.* The term “vocational goal” means a gainful employment status consistent with the veteran’s abilities, aptitudes, and interests. (Authority: 38 U.S.C. 3101(8))

(c) *Expeditious determination.* The determination of reasonable feasibility shall be made as expeditiously as possible when necessary information has been developed in the course of initial evaluation. If an extended evaluation is necessary as provided in §21.57 a decision of feasibility shall be made by the end of the extended evaluation. Any reasonable doubt shall be resolved in favor of a finding of feasibility. (Authority: 38 U.S.C. 3105(d))

(d) *Vocational goal is reasonably feasible.* Achievement of a vocational goal is reasonably feasible for a veteran with either an employment or serious employment handicap when the following conditions are met:

- (1) Vocational goal(s) has (have) been identified;
- (2) The veteran’s physical and mental conditions permit training for the goal(s) to begin within a reasonable period; and
- (3) The veteran:
  - (i) Possesses the necessary educational skills and background to pursue the vocational goal; or
  - (ii) Will be provided services by the Department of Veterans Affairs to develop such necessary educational skills as part of the program. (Authority: 38 U.S.C. 3104(a)(1), 3106(a))

(e) *Criteria for reasonable feasibility not met.*

(1) When VA finds that the provisions of paragraph (d) of this section are not met, but VA has not determined that achievement of a vocational goal is not currently reasonably feasible, VA shall provide the rehabilitation services contained in §21.35(i)(1)(i) of this Part as appropriate;

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt. (Authority: 38 U.S.C. 3104(a)(1), 3106(b))

(f) *Independent living services.* The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocation Rehabilitation and Employment (VR&E) Officer is required in any case in which the CP or VRC does not approve a program of independent living services. (Authority: 38 U.S.C. 3100)

(g) *Responsible staff.* A CP or VRC in the Vocation Rehabilitation and Employment Division shall determine whether achievement of a vocational goal is:

(1) Reasonably feasible; or

(2) Not currently reasonably feasible under the provisions of paragraph (e) of this section for the purpose of determining present eligibility to receive a program of independent living services. (Authority: 38 U.S.C. 3106(b), Pub. L 99-576)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989; 66 FR 44053, Aug. 22, 2001; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.57*

**§21.57 Extended evaluation.**

(a) *Purpose.* The purpose of an extended evaluation for a veteran with a serious employment handicap is to determine the current feasibility of the veteran achieving a vocational goal, when this decision reasonably cannot be made on the basis of information developed during the initial evaluation. (Authority: 38 U.S.C. 3106(c), Pub. L 99-576)

(b) *Scope of services.* During the extended evaluation, a veteran may be provided:

- (1) Diagnostic and evaluative services;
- (2) Services to improve his or her ability to attain a vocational goal;
- (3) Services to improve his or her ability to live and function independently in the community;
- (4) An allowance as provided in §21.260. (Authority: 38 U.S.C. 3104)

(c) *Determination.*

(1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor; (Authority: 38 U.S.C. 3106(d))

(2) When it is reasonably feasible for the veteran to achieve a vocational goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in §21.84 of this part. (Authority: 38 U.S.C. 3106(b))

(d) *Responsibility for determining the need for a period of extended evaluation.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) in the Vocation Rehabilitation and Employment Division shall determine whether a period of extended evaluation is needed. (Authority: 38 U.S.C. 3106(c))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50956, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989; 62 FR 17707, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* references:** 30(2), 89(1)

**§21.58 Redetermination of employment handicap and serious employment handicap.**

(a) *Prior to induction into a program.* A determination as to employment handicap, serious employment handicap, or eligibility for a program of employment services will not be changed except for:

- (1) Unmistakable error in fact or law; or
- (2) New and material evidence which justifies a change.

(b) *After induction into a program.*

(1) The Department of Veterans Affairs will not redetermine a finding of employment handicap, serious employment handicap, or eligibility for a program of employment services subsequent to the veteran's induction into a program because of a reduction in his or her disability rating, including a reduction to 0 percent:

(2) The Department of Veterans Affairs may consider whether a finding of employment handicap should be changed to serious employment handicap when there is an increase in the degree of service-connected disability, or other significant change in the veteran's situation;

(3) A redetermination of employment handicap, serious employment handicap, or eligibility for a program of employment services will be made when there is a clear and unmistakable error of fact or law. (Authority: 38 U.S.C. 3102, 3106)

(c) *Following rehabilitation or discontinuance.* A veteran's eligibility and entitlement to assistance must be redetermined in any case in which:

(1) The veteran is determined to be rehabilitated to the point of employability under the provisions of §21.190;

(2) The veteran is determined to meet the requirements for rehabilitation under the provisions of §21.196; or

(3) The veteran's program is discontinued under the provisions of §21.198, except as described in §21.198(c)(3). (Authority: 38 U.S.C. 3102, 3111)

**§21.59 Review and appeal of decisions on eligibility and entitlement.**

A veteran may appeal decisions of the Vocation Rehabilitation and Employment staff on eligibility and entitlement to rehabilitation services to the Board of Veterans Appeals as provided in §19.2 of Title 38, CFR. However, the veteran or an accredited representative, on his or her behalf, may request administrative review by Central Office prior to filing an appeal to BVA. A case already on appeal to BVA may not be referred to Central Office for administrative review or advisory opinion. (Authority: 38 U.S.C. 3107(c))

[49 FR 40814, Oct. 18, 1984, as amended at 66 FR 44053, Aug. 22, 2001]

## Vocational Rehabilitation Panel

### §21.60 Vocational Rehabilitation Panel.

(a) *Establishment of the Panel.* A Vocational Rehabilitation Panel will be established at each field facility by the facility head. The purpose of the Panel is to provide technical assistance in the planning of rehabilitation programs for seriously disabled veterans and dependents. This purpose will be most effectively carried out through use of the services of a wide range of professionals to bring the resources of the Department of Veterans Affairs and the community to bear on problems presented in the individual case. (Authority: 38 U.S.C. 3104(a))

(b) *Composition of the Panel.* The Panel will include, but not be limited to the following:

(1) A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) in the VR&E (Vocation Rehabilitation and Employment) Division as the chairperson;

(2) A vocational rehabilitation specialist in VR&E;

(3) A medical consultant from a Department of Veterans Affairs Medical Center;

(4) A member of the Social Services staff from a Department of Veterans Affairs Medical Center; and

(5) Other specialists from the Department of Veterans Affairs. (Authority: 38 U.S.C. 3104(a), 3115(a))

(c) *Appointment to the Panel.*

(1) The VR&E (Vocation Rehabilitation and Employment) Officer may not serve as either chairperson or member of the Panel.

(2) The VR&E Officer will arrange for the participation of nonmedical professional staff in the Panel's meetings. (Authority: 38 U.S.C. 3115(a)(2))

(d) *Scope of Panel review.* The Panel will review each case which has been referred to it in relation to:

(1) Specific reason for the referral; and

(2) Other problem areas which the Panel identifies in the course of its consideration of the case.

(e) *Referral.* A case may be referred to the Panel by:

(1) A CP or VRC in VR&E

- (2) A vocational rehabilitation specialist in VR&E; or
- (3) The VR&E officer.

(f) *Report.* The Panel must prepare a report on its findings and recommendations in each case. The Panel's recommendations may include specific actions which are warranted on the basis of current information, or may identify additional information needed to provide a sounder basis for planning the veteran's program of rehabilitation. (Authority: 38 U.S.C. 3104(a))

[49 FR 40814, Oct. 18, 1984, as amended at 66 FR 44053, Aug. 22, 2001; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.62*

**§21.72 Rehabilitation to the point of employability.**

(a) *General.* Rehabilitation to the point of employability may include the services needed to:

(1) Evaluate and improve the veteran's ability to undertake training;

(2) Train the veteran to the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma, or certificate is generally necessary for entry into the occupation, e.g., an MSW for social work, the veteran shall be trained to that level. (Authority: 38 U.S.C. 3101(5), 3104)

(b) *When duration of training may exceed general requirements:*

(1) *Employment handicap.* If the amount of training necessary to qualify for employment in a particular occupation in a geographical area where a veteran lives or will seek employment exceeds the amount generally needed for employment in that occupation, the Department of Veterans Affairs will provide, or arrange for the necessary additional training.

(2) *Serious employment handicap.* The Department of Veterans Affairs will assist a veteran with a serious employment handicap to train to a higher level than is usually required to qualify in a particular occupation, when one of the following conditions exist:

(i) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for jobs or business, and the additional training will help to offset the competitive disadvantage;

(ii) The number of feasible occupations are restricted, and additional training will enhance the veteran's employability in one of those occupations;

(iii) The number of employment opportunities within feasible occupations are restricted. (Authority: 38 U.S.C. 3105(c))

(c) *Responsibility for estimating duration of training.*

(1) The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) shall estimate the duration of training and the estimate shall be incorporated in the IWRP (Individualized Written Rehabilitation Plan). When the period of training is estimated to exceed 48 months, the concurrence of the Vocation Rehabilitation and Employment Officer is required, prior to approving the IWRP, under conditions listed in §21.78.

(2) The estimated duration of the period of training required to complete an original or amended IWRP may be extended when necessary. Authorization of an extension is the responsibility of the CP or VRC, except as provided in paragraph (d) of this section. Any extension which will result in use of more than 48 months of entitlement must meet conditions described in §21.78. (Authority: 38 U.S.C. 3695(b))

(d) *Extension of training by the vocational rehabilitation specialist.*

(1) The VRS (Vocational Rehabilitation Specialist) may authorize an extension of up to six months of the period of vocational rehabilitation training authorized by the IWRP when:

(i) The veteran is in “rehabilitation to the point of employability” status under §21.190;

(ii) The veteran has completed more than half of the prescribed training;

(iii) The veteran is making satisfactory progress;

(iv) The extension is necessary to complete training;

(v) Training can be completed within six months; and

(vi) The extension will not result in use of more than 48 months of entitlement under Chapter 31 alone or in combination with other programs identified in §21.4020.

(2) If the conditions listed in paragraph (d)(1) of this section are not met, and an extension is needed to complete the program, the case will be referred to the CP or VRC for a determination. (Authority: 38 U.S.C. 3105(c))

[49 FR 40814, Oct. 18, 1994, as amended at 62 FR 17707, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* references:** 30(2), 89(1).

**§21.73 Duration of employment assistance programs.**

(a) *Duration.* Employment assistance may be provided to the veteran for the period necessary to enable the veteran to secure employment in a suitable occupation, and to adjust in the employment. This period shall not exceed 18 months. A veteran may be provided such assistance if he or she is eligible for employment assistance under the provisions of §21.47 of this part. (Authority: 38 U.S.C. 3105(b))

(b) *Employment assistance not charged against Chapter 31 entitlement.* The period of employment assistance provided in paragraph (a) of this section is not charged against the months of entitlement under Chapter 31 (see §21.70). (Authority: 38 U.S.C. 3105(b))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 21216, May 17, 1989]

**§21.74 Extended evaluation.**

(a) *General.* An extended evaluation may be authorized for the period necessary to determine whether the attainment of a vocational goal is currently reasonably feasible for the veteran. The services which may be provided during the period of extended evaluation are listed in §21.57(b) of this part. (Authority: 38 U.S.C. 3105(a), 3106(a))

(b) *Duration.* An extended evaluation may not be for less than two weeks (full or part-time equivalent) nor for more than twelve months unless a longer period is necessary to determine whether achievement of a vocational goal is reasonably feasible. (Authority: 38 U.S.C. 3105(a))

(c) *Approval of the period of an extended evaluation.*

(1) The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may approve an initial period of up to 12 months for an extended evaluation.

(2) An additional period of extended evaluation of up to 6 months may be approved by the CP or VRC, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain the concurrence of the Vocation Rehabilitation and Employment (VR&E) Officer before approving the extension of a period of extended evaluation.

(3) An extension beyond a total period of 18 months for additional periods of up to 6 months each may only be approved by the CP or VRC if there is a substantial certainty that a determination of current feasibility may be made within this extended period. The concurrence of the VR&E Officer is also required for this extension. (Authority: 38 U.S.C. 3105(a), 3106(b); Pub 99-576)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989; 62 FR 17707, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 73 FR 79647, Dec. 30, 2008; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* references:** 30(2), 89(1).

*Next Section is §21.76*

**§21.76 Independent living.**

(a) *General.* A program of independent living services may be authorized to enable the veteran to:

(1) Reach the goals of the program, and

(2) Maintain the newly achieved level of independence in daily living. (Authority: 38 U.S.C. 3101(4), 3104(b))

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational Counseling and Rehabilitation Officer in this finding is required. (Authority: 38 U.S.C. 3105(d))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 37332, Sept. 8, 1989; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.78*

**§21.78 Approving more than 48 months of rehabilitation.**

(a) *General.* Neither the basic period of entitlement which may be authorized for a program of rehabilitation under Chapter 31 alone, nor a combination of entitlement of Chapter 31 and other programs listed in §21.4020 shall exceed 48 months except as indicated in paragraphs (b) and (c) of this section. (Authority: 38 U.S.C. 3695)

(b) *Employment handicap.* A rehabilitation program for a veteran with an employment handicap may only be extended beyond 48 months when:

(1) The veteran previously completed training for a suitable occupation but the veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which training had been provided, and a period of training in the same or a different field is required. An extension beyond 48 months under Chapter 31 alone shall be authorized for this purpose. (Authority: 38 U.S.C. 3105(c)(1)(A))

(2) The occupation in which the veteran previously completed training is found to be unsuitable because of the veteran's abilities and employment handicap. An extension beyond 48 months under Chapter 31 alone shall be approved for this purpose. (Authority: 38 U.S.C. 3105(c)(1)(B))

(3) The veteran previously used education benefit entitlement under other programs administered by VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all VA education programs, under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone. (Authority: 38 U.S.C. 3695)

(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 educational assistance rate. The 48 month limitation may be exceeded only:

(i) To the extent that the entitlement in excess of 48 months does not exceed the entitlement previously used by the veteran in a course at the secondary school level under §21.4235 before December 31, 1989, or

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31. (Authority: 38 U.S.C. 3013, 3695; Pub. L. 98-525) [Paragraph (b)(4) is retroactively effective to January 1, 1990]

(5) The assistance to be provided in excess of 48 months consists only of a period of employment assistance (see §21.73). (Authority: 38 U.S.C. 3105(b))

(c) *Serious employment handicap.* The duration of a rehabilitation program for a veteran with a serious employment handicap may be extended beyond 48 months under Chapter 31 for

the number of months necessary to complete a rehabilitation program under the following conditions:

(1) To enable the veteran to complete a period of rehabilitation to the point of employability;

(2) To provide an extended evaluation in cases in which the total period needed for an extended evaluation and for rehabilitation to the point of employability would exceed 48 months;

(3) To provide a program of independent living services, including cases in which achievement of a vocational goal becomes feasible during or following a program of independent living services;

(4) Following rehabilitation to the point of employability:

(i) The veteran has been unable to secure employment in the occupation for which training has been provided despite intensive efforts on the part of the Department of Veterans Affairs and the veteran, and a period of retraining or additional training is needed;

(ii) The skills which the veteran developed in training for an occupation in which he or she was employed are no longer adequate to maintain employment in that field and a period of retraining is needed;

(iii) The veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which the veteran has been trained. and a period of training in the same or different field is required;

(iv) The occupation in which the veteran previously completed training is found to be unsuitable due to the veteran's abilities and employment handicap.

(5) The assistance to be provided in excess of 48 months consists, only of a period of employment assistance. (see §21.73). (Authority: 38 U.S.C. 3105(c)(2))

(d) *Approval of extension beyond 48 months.* All extensions of a rehabilitation program beyond 48 months of total entitlement under all Department of Veterans Affairs programs requires the approval of the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) and concurrence of the Vocation Rehabilitation and Employment Officer. Concurrence of the VR&E Officer is not required for an extension due to provision of employment assistance (see §21.21). (Authority: 38 U.S.C. 3105(b))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 66 FR 44053, Aug. 22, 2001; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

**§21.79 Determining entitlement usage under chapter 31.**

(a) General. The determination of entitlement usage for chapter 31 participants is made under the provisions of this section except as provided in paragraph (f) of this section. Charges for entitlement usage shall be based upon the principle that a veteran who pursues a rehabilitation program for 1 day should be charged 1 day of entitlement. The determination of entitlement is based upon the rate at which the veteran pursues his or her rehabilitation program. The rate of pursuit is determined under the provisions of §21.310 of this part. (Authority: 38 U.S.C. 3108(d))

(b) No charge against chapter 31 entitlement. No charge will be made against chapter 31 entitlement under any of the following circumstances:

(1) The veteran is receiving employment services under an Individualized Employment Assistance Plan (IEAP);

(2) The veteran is receiving an employment adjustment allowance; or

(3) The veteran is on leave from his or her program, but leave is not authorized by the Department of Veterans Affairs. (Authority: 38 U.S.C. 3108(d), 3117)

(c) Periods during which entitlement may be charged. Charges for usage of chapter 31 entitlement may only be made for program participants in one of the following case statuses:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living. (Authority: 38 U.S.C. 3106, 3109)

(d) *Method of charging entitlement under chapter 31.* The Department of Veterans Affairs will make a charge against entitlement:

(1) On the basis of total elapsed time (1 day of entitlement for each day of pursuit) if the veteran is being provided a rehabilitation program on a fulltime basis;

(2) On the basis of a proportionate rate of elapsed time if the veteran is being provided a rehabilitation program on a three-quarter, one-half or less than one-half time basis. Entitlement is charged at a:

(i) Three-quarter time rate if pursuit is three-quarters or more, but less than full-time;

(ii) One-half time rate if pursuit is half-time or more, but less than three-quarter time;

(iii) One-quarter time rate if pursuit is less than half-time. Measurement of pursuit on a one-quarter time basis is limited to veterans in independent living or extended evaluation programs. (Authority: 38 U.S.C. 3108(d), 3680(g))

**§21.90 Individualized independent living plan.**

(a) *Purpose.* The purpose of the IILP is to identify the steps through which a veteran, whose disabilities are so severe that a vocational goal is not currently reasonably feasible, can become more independent in daily living within the family and community. (Authority: 38 U.S.C. 3109, 3120)

(b) *Elements of the plan.* The IILP shall follow the same structure as the IWRP. The plan will include:

(1) Services which may be provided under Chapter 31 to achieve independence in daily living; (Authority: 38 U.S.C. 3104)

(2) Utilization of programs with a demonstrated capacity to provide independent living services for severely handicapped persons; (Authority: 38 U.S.C. 3104(b), 3120(a))

(3) Services provided under other Department of Veterans Affairs and non-Department of Veterans Affairs programs needed to achieve the goals of the plan; (Authority: 38 U.S.C. 3107)

(4) Arrangements for maintaining the improved level of independence following completion of the plan. (Authority: 38 U.S.C. 3107(a))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988; 62 FR 17708, Apr. 11, 1997]

**Supplement *Highlights* reference:** 30(2)

**§21.92 Preparation of the plan.**

(a) *General.* The plan will be jointly developed by Department of Veterans Affairs staff and the veteran.

(b) *Approval of the plan.* The terms and conditions of the plan must be approved and agreed to by the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC), the vocational rehabilitation specialist, and the veteran.

(c) *Implementation of the plan.* The vocational rehabilitation specialist or CP or VRC designated as case manager has the primary role in carrying out Department of Veterans Affairs responsibility for implementation of the plan.

(d) *Responsible staff.* The CP or VRC has the primary responsibility for the preparation of plans. (Authority: 38 U.S.C. 3107(a))

[49 FR 40814, Oct. 18, 1984; as amended at 81 FR 26131, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.94*

[Reserved]

**§21.94 Changing the plan.**

(a) *General.* The veteran, the Counseling Psychologist (CP), Vocational Rehabilitation Counselor (VRC) or the vocational rehabilitation specialist may request a change in the plan at any time. (Authority: 38 U.S.C. 3107(b))

(b) *Long-range goals.* A change in the statement of a long-range goal may only be made following a reevaluation of the veteran's rehabilitation program by the CP or VRC. A change may be made when:

(1) Achievement of the current goal(s) is no longer reasonably feasible; or

(2) The veteran's circumstances have changed or new information has been developed which makes rehabilitation more likely if a different long-range goal is established; and

(3) The veteran fully participates and concurs in the change. (Authority: 38 U.S.C. 3107(b))

(c) *Intermediate objectives or services.* A change in intermediate objectives or services provided under the plan may be made by the case manager when such change is necessary to carry out the statement of long-range goals. The veteran must concur in the change. (Authority: 38 U.S.C. 3107(b))

(d) *Minor changes.* Minor changes in the plan (e.g., changing the date of a scheduled evaluation) by the case manager may be made without the participation and concurrence of the veteran. (Authority: 38 U.S.C. 3107(b))

(e) *Changes in duration of the plan.* Any change in the total duration of a veteran's rehabilitation plan is subject to provisions on duration of a rehabilitation program described in §§21.70-21.78. (Authority: 38 U.S.C. 3107(b))

[49 FR 40814, Oct. 18, 1994, as amended at 62 FR 17708, Apr. 11, 1997; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* references:** 30(2), 89(1).

**§21.96 Review of the plan.**

(a) *General.* The veteran's progress in reaching the goals of the plan will be reviewed and evaluated as scheduled in the plan by the case manager and the veteran.

(b) *Comprehensive review required.* The case manager and the veteran will review all of the terms of the plan and the veteran's progress at least every twelve months. On the basis of such review the veteran and the case manager will agree whether the plan should be:

(1) Retained in its current form;

(2) Amended; or

(3) Redeveloped. (Authority: 38 U.S.C. 3107(b))

*Next Section is §21.98*

**§21.98 Appeal of disagreement regarding development of, or change in, the plan.**

(a) *General.* The veteran may request a review of a proposed, original, or amended plan when Department of Veterans Affairs staff and the veteran do not reach agreement on the terms and conditions of the plan. A veteran who requests a review of the plan must submit a written statement to the case manager which:

(1) Requests a review of the proposed, original, or amended plan; and

(2) Details his or her objections to the terms and conditions of the proposed, original, or amended plan.

(b) *Review by Vocational Rehabilitation and Employment Officer.* Upon receipt of the veteran's request for review of the plan, the Counseling Psychologist (CP), the Vocational Rehabilitation Counselor (VRC), or the case manager will forward the request together with relevant comment to the VR&E Officer who will:

(1) Review relevant information; and

(2) Inform the veteran of his or her decision within 90 days.

(c) *Review by Director, Vocational Rehabilitation and Employment Service.* The veteran's request shall be reviewed by the Director, VR&E in any case in which the VR&E Officer is the case manager. The veteran will be informed of the decision within 90 days.

(d) *Appeal to the Board of Veterans Appeals.* The veteran may appeal an adverse decision of the VR&E, or the Director, VR&E to the Board of Veterans Appeals. (Authority: 38 U.S.C. 3107(c))

[49 FR 40814, Oct. 18, 1994, as amended at 62 FR 17708, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 81 FR 26131, May 2, 2016]

**Supplement *Highlights* references:** 30(2), 89(1)

*Next Section is §21.100*

## Counseling

### §21.100 Counseling.

(a) *General.* A veteran requesting or being furnished assistance under Chapter 31 shall be provided professional counseling services by Vocational Rehabilitation and Employment (VR&E) Service and other staff as necessary to:

- (1) Carry out an initial evaluation in each case in which assistance is requested;
- (2) Develop a rehabilitation plan or plan for employment services in each case in which the veteran is found during the initial evaluation to be eligible and entitled to services;
- (3) Assist veterans found ineligible for services under Chapter 31 to the extent provided in §21.82; and
- (4) Try to overcome problems which arise during the course of the veteran's rehabilitation program or program of employment services. (Authority: 38 U.S.C. 3101)

(b) *Types of counseling services.* VA will furnish comprehensive counseling services, including but not limited to:

- (1) Psychological;
- (2) Vocational;
- (3) Personal adjustment;
- (4) Employment;
- (5) Educational. (Authority: 38 U.S.C. 3104(a)(2))

(c) *Qualifications.* Counseling services may only be furnished by VA or other personnel who meet requirements established under provisions of §21.380 and other policies of the VA pertaining to the qualifications of staff providing assistance under Chapter 31. (Authority: 38 U.S.C. 3118)

(d) *Limitations.*

(1) If a veteran resides within a State, counseling services necessary to carry out the initial evaluation and the development of a rehabilitation plan or a program of employment services will be furnished by Counseling Psychologists (CP) or Vocational Rehabilitation Counselors (VRC) in the Vocational Rehabilitation and Employment (VR&E) Division;

(2) If a veteran does not reside in a State the counseling services necessary to carry out an initial evaluation may be accomplished in the same manner as for a veteran residing

in a State or through other arrangements when deemed appropriate by the VR&E Division. These alternative arrangements include, but are not limited to:

(i) Use of counseling centers or individual qualified professionals under contract to VA; and

(ii) Professional staff of other Federal agencies located in the area in which the veteran resides.

(3) Alternative arrangements to provide counseling are subject to the following requirements:

(i) All arrangements must be consistent with the provisions of paragraph (c) of this section regarding utilization of professionally qualified persons to provide counseling services during the initial evaluation;

(ii) All determinations of eligibility, entitlement and the development of a rehabilitation plan will continue to be made by CP or VRC in the VR&E Division.

(4) If a CP or VRC in the VR&E Division determines that the evidence of record is insufficient to carry out an initial evaluation in a case in which alternative arrangements were used, VA staff may authorize the veteran to travel to a VA facility to complete the evaluation. (Authority: 38 U.S.C. 3118(c))

(e) *Definition.* For the purposes of this section, the term “State” means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico. (Authority: 38 U.S.C. 101(20))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 32071, Aug. 4, 1989; 62 FR 17708, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* references:** 30(2), 89(1).

*Next Section is §21.120*

## Educational and Vocational Training Services

### §21.120 Educational and vocational training services.

(a) *Purposes.* The purposes of providing educational and vocational training services are to enable a veteran eligible for, and entitled to, services and assistance under Chapter 31 to:

(1) Meet the requirements for employment in the occupational objective established in the IWRP (Individualized Written Rehabilitation Plan)

(2) Provide incidental training which is necessary to achieve the employment objective in the IEAP (Individualized Employment Assistance Plan);

(3) Provide incidental training needed to achieve the goals of an IILP (Individualized Independent Living Plan); or

(4) Provide training services necessary to implement an IEEP (Individualized Extended Evaluation Plan).

(b) *Selection of courses.* VA will generally select courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or employment. If such courses are not available in the area in which the veteran resides, or if they are available but not accessible to the veteran, other arrangements may be made. Such arrangements may include, but are not limited to:

(1) Relocation of the veteran to another area in which necessary services are available, or

(2) Use of an individual instructor to provide necessary training. (Authority: 38 U.S.C. 3107)

(c) *Charges for education and training services.* The cost of education and training services will be one of the factors considered in selecting a facility when:

(1) There is more than one facility in the area in which the veteran resides which:

(i) Meets requirements for approval under §§21.292 through 21.298;

(ii) Can provide the education and training services, and other supportive services specified in the veteran's plan; and

(iii) Is within reasonable commuting distance; or

(2) The veteran wishes to train at a suitable facility in another area, even though training can be provided at a suitable facility in the area in which the veteran resides. (Authority: 38 U.S.C. 3104(a)(7), 3115(a))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985; 62 FR 17708, Apr. 11, 1997]

**Supplement *Highlights* reference:** 30(2)

*Next Section is §21.122*

**§21.162 Participation in a program of independent living services.**

(a) *Approval of a program of independent living services.* A program of independent living services and assistance is approved when:

(1) VA determines that achievement of a vocational goal is not currently reasonably feasible;

(2) VA determines that the veteran's independence in daily living can be improved, and the gains made can reasonably be expected to continue following completion of the program;

(3) All steps required by §§21.90 and 21.92 of this Part for the development and preparation of an Individualized Independent Living Plan (IILP) have been completed; and

(4) The VR&E Officer concurs in the IILP. (Authority: 38 U.S.C. 3104(a)(15), 3109, 3120)

(b) *Considerations for the VR&E Officer.* The VR&E Officer will consider the following factors in administering programs providing independent living services:

(1) If VA resources available limit the number of veterans who may be provided a program of independent living services and assistance, the first priority shall be given to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of service-connected disability; and

(2) To the maximum extent feasible, a substantial portion of veterans provided with programs of independent living services and assistance shall be receiving long-term care in VA medical centers and nursing homes. (Authority: 38 U.S.C. 3120(c))

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988; 55 FR 48842, Nov. 23, 1990; 62 FR 17708, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001]

**Supplement *Highlights* reference:** 30(2)

*Next section is §21.180*

## Case Status

### §21.180 Case status system.

(a) *General.* Each veteran's case will be assigned to a specific case status from the point of initial contact until all appropriate steps in the rehabilitation process have been completed. The case status system will:

(1) Assist VR&E staff to fulfill its case management responsibility to provide authorized assistance to enable the veteran to successfully pursue his or her program; and

(2) Assure program management and accountability. (Authority: 38 U.S.C. 3107)

(b) *Responsibility for change of case status.* The case manager is responsible for assigning a case to the appropriate case status at each point in the rehabilitation process.

(c) *Case manager.* The VR&E (Vocational Rehabilitation and Employment) Officer or his or her designee will assign a case manager when the veteran's case is placed in *evaluation and planning* status. The VR&E Officer or his or her designee may assign case management responsibility for development and implementation of a rehabilitation plan authorized under Chapter 31 to a Counseling Psychologist (CP), Vocational Rehabilitation Counselor (VRC), or vocational rehabilitation specialist in the VR&E Division. The case manager assigned will, unless replaced by the VR&E Officer, continue to be responsible for case management throughout the course of the veteran's rehabilitation program. When securing medical care, treatment, and other related services, the VR&E case manager will coordinate with Veterans Health Administration (VHA) staff members who have case management responsibility for the veteran. (Authority: 38 U.S.C. 3106(e))

(d) *Informing the veteran.* The veteran will be informed in writing of changes in case status by VA which affect his or her receipt of benefits and services under Chapter 31. The letter to the veteran will include the reason for the change of case status, and other information required under provisions of §21.420. (Authority: 38 U.S.C. 3107)

(e) *Normal progression for eligible veterans.* The cases of veterans who are eligible for and entitled to services under Chapter 31 for whom individualized plans have been prepared will generally undergo the following changes of status:

(1) *Individualized written rehabilitation plan.* A veteran with an IWRP (Individualized Written Rehabilitation Plan) will generally move sequentially from *applicant* status through *evaluation and planning* status, *rehabilitation to the point of employability* status, *employment services* status, and *rehabilitated* status.

(2) *Individualized extended evaluation plan.* A veteran with an IEEP (Individualized Extended Evaluation Plan) will generally move from *applicant* status through *evaluation and planning* status to *extended evaluation* status. Once in *extended evaluation* status

there will generally be a finding which leads to development of an IWRP (paragraph (e)(1) of this section), or IILP (Individualized Independent Living Plan)(paragraph (e)(3) of this section).

(3) *Individualized independent living plan.* A veteran with an IILP (Individualized Independent Living Plan) will generally move from *applicant* status through *evaluation and planning, extended evaluation, independent living, and rehabilitated* status.

(4) *Individualized employment assistance plan.*

(i) A veteran with an IEAP (Individualized Employment Assistance Plan) which is a part of an IWRP will move through the case statuses described in paragraph (e)(1) of this section, or in some cases through the steps in paragraph (e)(2) of this section.

(ii) A veteran for whom only employment services are provided will generally move from *applicant* through *evaluation and planning, employment services to rehabilitated* status. (Authority: 38 U.S.C. 3107)

(f) *Normal progression for ineligible veterans.* A veteran found ineligible for services under Chapter 31 will generally move from *applicant* to *evaluation and planning* status, to *ineligible* status. (Authority: 38 U.S.C. 3107)

(g) *Changes of status.* The case manager may change the case status when:

(1) Conditions for change specified in the status are met;

(2) The change is not specifically precluded by the status to which change is being considered; and

(3) The change is consistent with provisions of other applicable regulations. (Authority: 38 U.S.C. 3106)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 34987, Aug. 23, 1989; 62 FR 17708, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* references:** 30(2), 89(1)

*Next Section is §21.182*

**§21.182 “Applicant” status.**

(a) *Purpose.* The purposes of *applicant* status are to:

(1) Process a veteran’s claim for assistance under Chapter 31 in a timely manner;  
and

(2) Identify service-disabled veterans whom VA should contact individually to increase their awareness and understanding of how they may benefit from services furnished under Chapter 31. (Authority: 38 U.S.C. 3102)

(b) *Assignment to applicant status.* VA will assign a veteran’s records to *applicant* status when either:

- (1) VA receives a formal or informal application from a veteran for services under Chapter 31; or
- (2) The VR&E (Vocational Rehabilitation and Employment) Division:

(i) Advises a veteran in writing of the veteran’s potential eligibility for Chapter 31 services, or

(ii) Is informed that the veteran has been advised in writing of his or her potential eligibility for Chapter 31 services by other VA elements. (Authority: 38 U.S.C. 3102(2))

(c) *Termination of applicant status.* *Applicant* status will be terminated when:

- (1) An appointment for an initial evaluation has been kept by the veteran;  
or
- (2) The veteran’s service-connected disability is reduced to a noncompensable degree; or
- (3) The veteran’s service-connected disability is severed; or
- (4) The veteran’s application is invalid because of fraud or error; or
- (5) The veteran withdraws his or her claim, or otherwise indicates that no further assistance is desired. (Authority: 38 U.S.C. 3106)

(d) *Transfer of terminated cases to discontinued status.* Each instance in which a veteran’s case is terminated for reasons described in paragraph (c)(4) or (5) of this section shall be placed in *discontinued* status. (Authority: 38 U.S.C. 3102)

[49 FR 40814, Oct. 18, 1984, as amended at 52 FR 2518, Jan. 23, 1987; 66 FR 44053, Aug. 22, 2001]

**Cross references:** See §§21.30 Claims, 21.31 Informal claims, and 21.32 Time limits.

*Next Section is §21.184*

**§21.274 Revolving fund loan.**

(a) *Establishment of revolving fund loan.* A revolving fund is established to provide advances to veterans who would otherwise be unable to begin or continue in a rehabilitation program without such assistance.

(b) *Definition.* The term *advance* means a non-interest loan from the revolving fund.

(c) *Eligibility.* A veteran is eligible for an advance if the following conditions are present:

(1) An Individualized Written Rehabilitation Plan, Individualized Extended Evaluation Plan, or Individualized Independent Living Plan has been prepared; and

(2) The veteran and VA staff agree on the terms and conditions of the plan.

(d) *Advance conditions.*

(1) An advance may be approved when the following conditions are met:

(i) The purpose of the advance is clearly and directly related to beginning, continuing, or reentering a rehabilitation program;

(ii) The veteran would otherwise be unable to begin, continue or reenter his or her rehabilitation program;

(iii) The advance does not exceed either the amount needed, or twice the monthly subsistence allowance for a veteran without dependents in full-time institutional training specified in §21.260(b); and

(iv) The veteran has elected, or is in receipt of, subsistence allowance.

(2) An advance may not be made to a veteran who meets conditions described in paragraph (d)(1) of this section if the veteran:

(i) Has not fully repaid an advance;

(ii) Does not agree to the terms and conditions for repayment; or

(iii) Will not be eligible in the future for payments of pension, compensation, subsistence allowance, educational assistance, or retired pay.

(e) *Determination of the amount of the advance.*

(1) If the conditions described in paragraphs (c) and (d)(2) of this section are met, a Counseling Psychologist (CP), Vocational Rehabilitation Counselor (VRC), or vocational rehabilitation specialist in the VR&E Division will:

- (i) Document the findings; and
- (ii) Determine the amount of the advance.

(2) Loans will be made in multiples of \$10.

(f) *Repayment:*

(1) *Offset possible.* The amount advanced will be repaid in monthly installments from future VA payments for compensation, pension, subsistence allowance, educational assistance allowance or retired pay.

(i) Repayment will begin on the earlier of the following dates:

(A) The first day of the month following the month in which the advance is granted; or

(B) The first day of the month after receipt of the advance in which the veteran receives a subsistence allowance

(ii) The VR&E staff person who approves the advance will determine the rate of repayment.

(iii) The monthly rate of repayment may not be less than 10 percent of the amount advanced unless the monthly benefit against which the advance is being offset is less than that amount.

(2) *Offset not possible.* If the amount advanced cannot be repaid from the benefits cited in paragraph (f)(1) of this section because the veteran is not in receipt of any of these benefits, collection of the amount due will be made in the same manner as any other debt payable to VA. (Authority: 38 U.S.C. 3112)

[49 FR 40814, Oct. 18, 1984, as amended at 66 FR 44053, Aug. 22, 2001; 76 FR 45705, Aug. 1, 2011; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* references:** 87(1), 89(1).

*Next Section is §21.276*

(c) *Selecting a farm—farm manager.* The farm on which a veteran trains to become a farm manager shall be of such size and character that, together with the group instruction part of the course the farm:

- (1) Will occupy the full time of the veteran;
- (2) Will permit instruction in all aspects of the management and operation of a farm of the type for which the veteran is being trained; and
- (3) Meets the requirements of paragraph (a) of this section.

(d) *Employer agreement.* VA may approve a farm on which a veteran is to train to become a farm manager only if the employer-trainer agrees:

- (1) To instruct the veteran in various aspects of farm management in accordance with the individual's plan;
- (2) To pay the veteran for each successive period of training a salary or wage rate:
  - (i) Commensurate with the value of the veteran's productive labor; and
  - (ii) Not less than that customarily paid to a nonveteran trainee in the same or similar training situation in that community; and
- (3) To employ the veteran as a manager of the farm on which he or she is being trained if his or her conduct and progress remain satisfactory, or assure that the veteran will be employed as manager of a specified comparable farm. (Authority: 38 U.S.C. 3115)

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

**§21.299 Use of Government facilities for on-job training or work experience at no or nominal pay.**

(a) *Types of facilities which may be used to provide training.* Notwithstanding any other provision of regulations governing chapter 31, the facilities of any agency of the United States or of any State or local government receiving Federal financial assistance may be used to provide training or work experience at no or nominal pay as all or part of the veteran's program of vocational training under §§21.123, 21.294, and 21.296 of this part. The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) and case manager must determine that the training work experience is necessary to accomplish vocational rehabilitation and providing such training or work experience is in the best interest of the veteran and the Federal government. (Authority: 38 U.S.C. 3115, Pub. L. 100-689)

(b) *Employment status of veterans.*

(1) While pursuing on-job training or work experience in a facility of the United States, a veteran:

(i) Shall be deemed to be an employee of the United States for the purposes of benefits under chapter 81, title 5, United States Code; but

(ii) Shall not be deemed an employee of the United States for the purpose of laws administered by the Office of Personnel Management.

(2) While pursuing on-job training or work experience in a State or local government agency the veteran shall have the employment status and rights comparable to those provided in paragraph (b)(1) of this section for a veteran pursuing on-job training or work experience at a Federal agency. (Authority: 38 U.S.C. 3115, Pub. L. 100-689)

(c) *Terms applicable to training in State and local government.*

(1) The term *State* means each of the several States, Territories, any possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. (Authority: 38 U.S.C. 101(20))

(2) The term *local government agency* means an administrative subdivision of a government including a county, municipality, city, town, township, public authority, district, school district, or other such agency or instrumentality of a local government.

(3) The term *Federal financial assistance* means the direct or indirect provision of funds by grant, loan, contract, or any other arrangement by the Federal government to a State or local government agency.

(d) *Additional considerations in providing on-job training and work experience in State and local government agencies.*

(1) The veteran's progress and adjustment in a rehabilitation program conducted wholly or in part at a State or local government agency shall be closely monitored by VR&E staff members to assure that:

(i) Training and rehabilitation services are provided in accordance with the veteran's rehabilitation plan. The plan shall provide for:

(A) Close supervision of the veteran's progress and adjustment by the case manager during the period he or she is at the State or local government agency; and

(B) The employer's periodic certification (not less than once every three months) that the veteran's progress and adjustment are in accordance with the program which has been jointly developed by VA, the veteran and the employer; and

(ii) The veteran achieves his or her employment goal.

(2) Training may not be provided for a position which involves religious or political activities;

(3) The veteran's training:

(i) Will not result in the displacement of currently employed workers; and

(ii) Will not be in a job while another person is laid off from a substantially equivalent job, or will not be in a job the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its workforce with the intention of using the opening for a Chapter 31 trainee.  
(Authority: Pub. L. 100-689)

[55 FR 3739, Feb. 5, 1990, as amended at 66 FR 44053, Aug. 22, 2001; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.310*

## Rate of Pursuit

### §21.310 Rate of pursuit of a rehabilitation program.

(a) *Programs offered at educational institutions.* This section provides policy for determining the full-time and part-time rate of pursuit of a rehabilitation program by a veteran whose ability to pursue a program has not been reduced by the effects of disability.

(1) *Measuring full and part-time training.* VA will measure the full-time and part-time rate of pursuit of training offered at educational institutions according to the criteria found in §§21.4270 through 21.4275, except as provided in paragraphs (a)(2) and (3) of this section.

(2) *Independent study course.*

(i) For certain seriously disabled veterans described in subdivision (i)(A) of this subparagraph VA may measure the veteran's enrollment:

(A) In an independent study course as half-time or greater training,  
or

(B) Both in independent study subjects and subjects requiring class attendance on the basis of the combined training load when the number of credit hours of independent study equals or exceeds the number of other credit hours.

(ii) To qualify for measurement described in paragraph (a)(2)(i) of this section:

(A) The seriously disabled veteran must have a disability or circumstances which preclude regular attendance at an institution of higher learning, and

(B) Independent study must be a sound method for providing the training necessary for restoring the veteran's employability.

(iii) In all other cases VA will measure independent study according to the provisions of §21.4280.

(3) *Special school.* If training is pursued in a special school, such as those for persons with visual or hearing disabilities, the rate of pursuit will be measured under §§21.4270 through 21.4275 unless it is the established policy of the school to measure the rate of pursuit for full-time or particular level or part-time training based upon fewer semester, credit, or clock hours of attendance than prescribed in these regulations.

(4) *Farm cooperative.* If training in a farm cooperative program is provided by an educational institution, the rate of pursuit shall be determined the same as under §21.4270 for that type of training.

- (i) Enrollment and reenrollment in a course;
- (ii) Changing the rate at which a course is pursued;
- (iii) Requesting a leave of absence;
- (iv) Requesting medical care and treatment;
- (v) Securing supplies; and
- (vi) Other applicable procedures.

(5) Conform to the rules and regulations of the training or rehabilitation facility at which services are being provided.

(d) *Responsibility for determining satisfactory conduct and cooperation.* VR&E staff with case management responsibility in the veteran's case will:

(1) Monitor the veteran's conduct and cooperation as necessary to assure consistency with provisions of paragraph (c) of this section.

(2) Provide assistance which may be authorized under Chapter 31, or for which arrangements may be made under other programs to enable the veteran to maintain satisfactory conduct and cooperation. (Authority: 38 U.S.C. 3111)

[49 FR 40814, Oct. 18, 1984, as amended at 66 FR 44053, Aug. 22, 2001]

*Next Section is §21.364*

**§21.364 Unsatisfactory conduct and cooperation.**

(a) *General.* If VA determines that a veteran has failed to maintain satisfactory conduct or cooperation, VA may, after determining that all reasonable counseling efforts have been made and are found not reasonably likely to be effective, discontinue services and assistance to the veteran, unless the case manager determines that mitigating circumstances exist. In any case in which such services and assistance have been discontinued, VA may reinstitute such services and assistance only if the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) determines that:

(1) The unsatisfactory conduct or cooperation of such veteran will not be likely to recur; and

(2) The rehabilitation program which the veteran proposes to pursue (whether the same or revised) is suitable to such veteran's abilities, aptitudes, and interests.

(b) *Unsatisfactory conduct or cooperation exists.* When the case manager determines that the veteran's conduct and/or cooperation are not in conformity with provisions of §21.362(c), the case manager will:

(1) Discuss the situation with the veteran;

(2) Arrange for services, particularly counseling services, which may assist in resolving the problems which led to the veteran's unsatisfactory conduct or cooperation;

(3) Interrupt the program to allow for more intense efforts, if the unsatisfactory conduct and cooperation persist. If a reasonable effort to remedy the situation is unsuccessful during the period in which the program is interrupted, the veteran's case will be discontinued and assigned to "discontinued" status unless mitigating circumstances are found. When mitigating circumstances exist the case may be continued in "interrupted" status until VA staff determines the veteran may be reentered into the same or a different program because the veteran's conduct and cooperation will be satisfactory, or if a plan has been developed, to enable the veteran to reenter and try to maintain satisfactory conduct and cooperation. Mitigating circumstances include:

(i) The effects of the veteran's service and nonservice-connected condition;

(ii) Family or financial problems which have led the veteran to unsatisfactory conduct or cooperation; or

(iii) Other circumstances beyond the veteran's control. (Authority: 38 U.S.C. 3111)

[49 FR 40814, Oct. 18, 1984 as amended at 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.370*

[Reserved]

## Personnel Training and Development

### §21.380 Establishment of qualifications for personnel providing assistance under Chapter 31.

(a) *General.* Notwithstanding any other provision of law or regulation, VA shall establish qualification standards for VBA personnel providing evaluation, rehabilitation, and case management services to eligible veterans under chapter 31, including:

- (1) Counseling Psychologists (CP) or Vocational Rehabilitation Counselors (VRC);
- (2) Vocational rehabilitation specialists; and
- (3) Other staff providing professional and technical assistance.

(b) *Rehabilitation Act of 1973.* VA shall consider qualification standards established for comparable personnel under the Rehabilitation Act of 1973, when setting agency standards. (Authority: 38 U.S.C. 3118(c))

[49 FR 40814, Oct. 18, 1984 as amended at 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.382*

**§21.382 Training and staff development for personnel providing assistance under Chapter 31.**

(a) *General.* VA shall provide a program of ongoing professional training and development for staff of the VR&E Service engaged in providing rehabilitation services under chapter 31. The objective of such training shall be to insure that rehabilitation services for disabled veterans are provided in accordance with the most advanced knowledge, methods, and techniques available for the rehabilitation of disabled persons. The areas in which training and development services may be provided to enhance staff skills include:

- (1) Evaluation and assessment;
  - (2) Medical aspects of disability;
  - (3) Psychological aspects of disability;
  - (4) Counseling theory and techniques;
  - (5) Personal and vocational adjustment;
  - (6) Occupational information;
  - (7) Placement processes and job development;
  - (8) Special considerations in rehabilitation of the seriously disabled;
  - (9) Independent living services;
  - (10) Resources for training and rehabilitation; and
  - (11) Utilizing research findings and professional publications.
- (Authority: 38 U.S.C. 3118)

(b) *Training and development resources.* For the purpose of carrying out the provisions of paragraph (a) of this section VA may:

- (1) Employ the services of consultants;
- (2) Make grants to and contract with public and private agencies, including institutions of higher learning, to conduct workshop and training activities;
- (3) Authorize individual training at institutions of higher learning and other appropriate facilities; and
- (4) Utilize chapter 41 of title 5, U.S.C., and related instructions to provide training and staff development activities on a group and individual basis. (Authority: 38 U.S.C. 3118(b))

(c) *Interagency coordination.* VA shall coordinate with the Commissioner of the Rehabilitation Services Administration and the Assistant Secretary for Veterans' Employment in planning and carrying out personnel training in areas of mutual programmatic concern. (Authority: 38 U.S.C. 3118(c))

*Next Section is §21.390*

## Counseling

### §21.3100 Counseling.

(a) *Purpose of counseling.* The purpose of counseling is to assist:

- (1) In selecting an educational or training objective; (Authority: 38 U.S.C. 3520)
- (2) In developing a suitable program of education or training; (Authority: 38 U.S.C. 3520)
- (3) In selecting an educational institution or training establishment appropriate for the attainment of the educational or training objective; (Authority: 38 U.S.C. 3561(a))
- (4) In resolving any personal problems which are likely to interfere with successful pursuit of a program; (Authority: 38 U.S.C. 3561(a))
- (5) In selecting an employment objective for the eligible person that would be likely to provide the eligible person with satisfactory employment opportunities in light of his or her circumstances. (Authority: 38 U.S.C. 3520, 3561(a))

(b) *Availability of counseling.* Counseling assistance is available for:

- (1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training; or
- (2) In considering changes in career plans, and making sound decisions about the changes. (Authority: 38 U.S.C. 3520, 3561(a))

(c) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the eligible person. (Authority: 38 U.S.C. 3520, 3561(a))

[61 FR 26109, May 24, 1996)

**Supplement *Highlights* reference:** 27(1)

*Next Section is §21.3102*

**§21.3102 Required counseling.**

(a) *Child.* The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) will provide counseling and assist in preparing the educational plan only if the eligible child or his or her parent or guardian requests assistance, except that counseling is required for an eligible child if:

(1) The eligible child may require specialized vocational training or special restorative training; or

(2) The eligible child has reached the compulsory school attendance age under State law, but has neither reached his or her 18th birthday, nor completed secondary schooling. See §21.3040(a).

(b) *Spouse or surviving spouse.* Counseling is required for a spouse or surviving spouse only if he or she desires specialized vocational training. (Authority: 38 U.S.C. 3520, 3536, 3541, 3561)

[61 FR 26109, May 24, 1996; as amended at 81 FR 26132, May 2, 2016]

**Supplement *Highlights* references:** 27(1), 89(1).

**§21.3103 Failure to cooperate.**

VA will not act further on an eligible person's application for assistance under 38 U.S.C. chapter 35 when counseling is required for him or her and the eligible person:

(a) Fails to report;

(b) Fails to cooperate in the counseling process; or

(c) Does not complete counseling to the extent required under §21.3102. (Authority: 38 U.S.C. 3536, 3541, 3561(a))

[61 FR 26109, May 24, 1996]

**Supplement *Highlights* reference:** 27(1)

individualized written plan comparable to a plan for an extended evaluation under 38 U.S.C. chapter 31. In the case of an eligible person who is a spouse or surviving spouse, or a child who has attained majority under laws applicable in his or her State of residence, the plan will be developed jointly with the spouse or surviving spouse, or the child, respectively. In the case of an eligible person who has a guardian or has not attained majority under laws applicable in his or her State of residence, the plan will be developed jointly with the eligible person and his or her parent or guardian (see §21.3021(d)). (Authority: 38 U.S.C. 3501, 3541(a))

(d) *Notification of disallowance.* When an eligible person, or a parent or guardian on behalf of an eligible person, has requested special restorative training, and the counseling psychologist or vocational rehabilitation counselor finds that this training is not needed or will not materially improve the eligible person's condition, VA will inform the eligible person, except that VA will inform his or her parent or guardian (see §21.3021(d)) if the eligible person has a guardian or has not attained majority under laws applicable in his or her State of residence, in writing of the finding and of his or her appeal rights. (Authority: 38 U.S.C. 3501, 3540, 3543, 5104)

(e) *Reentrance after interruption.* The case of an eligible person shall be referred to the panel for consideration of whether the eligible person may be permitted reentrance into special restorative training following interruption. The panel will recommend approval to the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) if there is a reasonable expectation that the purpose of special restorative training will be accomplished. See §21.3306. (Authority: 38 U.S.C. 3501, 3540, 3543)

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42725, Oct. 24, 1984; 73 FR 2424, Jan. 15, 2008; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* references:** 77(2), 89(1).

**§21.3302 Special restorative training agreements and reports.**

(a) *Agreements to provide training.* The Department of Veterans Affairs may make agreements with public or private educational institutions or others to provide suitable and necessary special restorative training for an eligible person.

(b) *Tuition charge.* When a customary tuition charge is not applicable, the agreement will include the fair and reasonable amounts charged for the training provided to the eligible person.

(c) *Reports.* Each educational institution or other provider of a course of special restorative training must report promptly the eligible person's enrollment in, interruption of, or termination of the course of special restorative training. (Authority: 38 U.S.C. 501(a), 3543, 3680, 3684)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0014, 2900-0073, and 2900-0156.)

[48 FR 37973, Aug. 22, 1983, as amended at 73 FR 2425, Jan. 15, 2008]

**Supplement *Highlights* reference:** 77(2)

**§21.4216 Review of decision of Director of VA Regional Processing Office of jurisdiction.**

(a) *Decision is subject to review by the Director, Education Service.* At the request of the educational institution the Director, Education Service will review a decision of a Director of a VA Regional Processing Office of jurisdiction to discontinue payments; to disapprove new enrollments or reenrollments; or to deny payment of benefits for licensing or certification tests. This review will be based on the evidence of record when the Director of the VA Regional Processing Office of jurisdiction made that decision. It will not be de novo in nature and no hearing on the issue will be held. When reviewing a decision to deny payment for licensing or certification tests, the Director, Education Service may seek the advice of the Professional Certification and Licensure Advisory Committee established under 38 U.S.C. 3689(e). (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), (e), 3690; Pub. L. 122 Stat. 2375)

(b) *Authority of Director, Education Service.* The Director, Education Service has the authority to affirm, reverse, or remand the original decision. In the case of such a review, the reviewing official's decision, other than a remand, shall become the final Department decision on the issue presented.

(c) *Notice of decision of Director, Education Service is required.* Notice of the reviewing official's decision will be provided to the interested parties and published in the *Federal Register*, in the same manner as is provided in §21.4215(e) for decisions of the Director of the VA Regional Processing Office of jurisdiction, for the information of all concerned. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35836, July 1, 1998, as amended at 72 FR 16973, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

**Supplement *Highlights* references:** 39(4), 73(1).

*Next Section is §21.4232*

**§21.4232 Specialized vocational training—38 U.S.C. Chapter 35.***(a) Eligibility requirements for specialized vocational training.*

(1) The Department of Veterans Affairs may provide a program of a specialized course of vocational training to an eligible person who:

- (i) Is not in need of special restorative training, and
- (ii) Requires specialized vocational training because of a mental or physical handicap.

(2) The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) will:

- (i) After consulting with the Vocational Rehabilitation Panel, determine whether such a course is in the best interest of the eligible person; and
- (ii) Deny the application for the program when the course is not in the eligible person's best interest.

(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program, if the CP or VRC has previously determined that the course is in the eligible person's best interest. (Authority: 38 U.S.C. 3521, 3536; Pub. L. 99-576)

(4) The Department of Veterans Affairs may authorize specialized vocational training for an eligible child only if the child has passed his or her 14th birthday at the time training is to begin. (Authority: 38 U.S.C. 3536)

*(b) Program objective.* The objective of a program of specialized vocational training will be designated as a vocational objective.

*(c) Special assistance.* When needed, special assistance will be provided under §21.4276.

*(d) Length of specialized vocational training.* When the program of specialized vocational training will exceed 45 months, the CP or VRC will refer the program to the Director, Vocational Rehabilitation and Employment Service for prior approval. (Authority: 38 U.S.C. 3543(b))

[48 FR 37989, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 54 FR 33889, Aug. 17, 1989; 66 FR 44053, Aug. 22, 2001; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

(j) *Other terms.* The following terms shall have the same meaning or explanation provided in §21.35 of this part.

- (1) Vocational goal.
- (2) Program of education.
- (3) Rehabilitation to the point of employability.
- (4) Counseling psychologist.
- (5) Vocational rehabilitation specialist.
- (6) School, educational institution or institution.
- (7) Training establishment.
- (8) Rehabilitation facility.
- (9) Workshop. (Authority: 38 U.S.C. 1524)
- (10) Vocational Rehabilitation Counselor (VRC)

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17271, Apr. 24, 1990; 57 FR 28086, June 24, 1992; 58 FR 41637, August 5, 1993; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* references:** 8(1), 89(1).

*Next Section is §21.6010*

**§21.6010 Applicability of rules and administrative procedures under 38 U.S.C.  
Chapter 31.**

(a) *General* Title 38, United States Code, section 1524(b)(2)(A) provides, in part, that a vocational training program shall consist of vocationally oriented services and assistance of the kind provided service-disabled veterans under chapter 31, Title 38, United States Code, and other services and assistance of the kind provided under that chapter as are necessary to enable the veteran to prepare for and participate in vocational training or employment. (Authority: 38 U.S.C. 1524(b)(2)(A))

(b) *Applicable chapter 31 rules—general.* The rules and procedures in force for administration of the chapter 31 program (§21.1-§21.430) are deemed to be applicable to administration of this program in so far as their use shall not conflict with 38 U.S.C. 1524 or the rules under this subpart. Where a particular grouping of chapter 31 rules are generally applicable, without modification, the rules under this subpart will be deemed to incorporate the chapter 31 rules. The chapter 31 rules may be read as written, but terms such as *chapter 31* and *service-connected disability* shall be understood to read *chapter 15* and *disabilities* whenever used. References in the chapter 31 rules to benefits (subsistence allowances, loans) or eligibility (dependents, service-connection, serious employment handicap) are to be considered inapplicable to this program and do not confer benefits or rights not provided by 38 U.S.C. 1524. (Authority: 38 U.S.C. 1524)

*Next Section is §21.6015*

**§21.6052 Evaluations.**

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program shall be the same as for an evaluation of the reasonable feasibility of achieving a vocational goal under the procedures described for chapter 31 benefits. See §21.50(b)(5) and §21.53 (d) and (f). (Authority: 38 U.S.C. 1524(a)(1)(2))

(b) *Specific services which may be provided in the course of evaluation in determining the reasonable feasibility of achieving a vocational goal.* The following specific services may be provided as a part of the evaluation of reasonable feasibility of achieving a vocational goal, as appropriate:

(1) Assessment of feasibility by a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC);

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical and other diagnostic services;

(4) Evaluation of employability, for a period not to exceed 30 days, by professional staff of an educational or rehabilitation facility.  
(Authority: 38 U.S.C. 1524(b))

(c) *Responsibility for evaluation.* All determinations as to the reasonable feasibility of vocational training and entitlement to assistance under 38 U.S.C. 1524 shall be made by a CP or VRC in the Vocational Rehabilitation and Employment Division. (Authority: 38 U.S.C. 1524(b))

[53 FR 4397, Feb. 16, 1988, as amended at 66 FR 44053, Aug. 22, 2001; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.6054*

**§21.6054 Criteria for determining good employment potential.**

(a) *Determining good employment potential.* Before scheduling an evaluation of feasibility to pursue a vocational goal for a qualified veteran under §21.6005(c)(2), VA will first determine whether the veteran has good potential for achieving employment if provided a vocational training or employment program. This determination shall be made on the basis of the information of record, including information submitted by the veteran at the time of the veteran's request to participate in this temporary program. (Authority: 38 U.S.C. 1524(a)(2); Pub. L. 100-687).

(b) *Criteria.* The criteria contained in paragraphs (c) and (d) of this section are to be applied by Vocational Rehabilitation and Employment professional staff members to determine whether information of record supports a determination that a veteran age 45 or older has good potential for employment. Any reasonable doubt shall be resolved in the veteran's favor. (Authority: 38 U.S.C. 1524(a)(2))

(c) *Indicators of good potential for employment.* Indicators of good potential for employment include one or more of the following:

- (1) A period of stable employment prior to the onset of disability.
  - (2) Strong motivation to return to the work force.
  - (3) Successful pursuit of education or training.
  - (4) Cooperation in treatment of disabling conditions.
  - (5) Stabilization of medical conditions or substance abuse problems.
  - (6) Participation in therapeutic work programs.
  - (7) Evidence of recent sustained jobseeking.
- (Authority: 38 U.S.C. 1524(b)(1))

(d) *Contraindications of good potential for employment.* Contraindications of good potential for employment include one or more of the following:

- (1) A lifelong history of unstable employment with long periods of employment before the onset of disability.
- (2) Being out of the labor market for five years or more preceding the evaluation.
- (3) Unsuccessful pursuit of education or training.
- (4) Noncooperation in the treatment of disability.
- (5) Need for an additional period of medical care or treatment before training would be feasible.

(6) Nonparticipation in prescribed or recommended therapeutic work programs.

(7) Failure of previous vocational rehabilitation programs to achieve employability. (Authority: 38 U.S.C. 1524(a)(2))

(e) *Negative determinations.* If VA does not find good employment potential, VA will notify the veteran that he or she is not eligible to receive an evaluation. Since this finding will preclude program participation, the veteran will be informed of his or her appellate rights as described in §21.59 of this part.

(1) If the determination cannot be made on the evidence of record, VA shall advise the veteran and may provide him or her with an opportunity to submit additional information within a reasonable time.

(2) A veteran's disagreement with a negative finding shall be considered evidence of motivation for employment, and may, when considered in relation to other information, provide a basis for finding that good employment potential exists;

(3) If the final VA determination, following a review of a contested negative finding, is that good potential for achieving employment does not exist, a personal interview will be scheduled, and the reasons for VA's determination shall be discussed with the veteran. (Authority: 38 U.S.C. 1524(a)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 66 FR 44053, Aug. 22, 2001]

*Next Section is §21.6056*

**§21.6056 Cooperation of the veteran in an evaluation.**

(a) *Cooperation of the veteran.* The cooperation of the veteran is essential to a successful evaluation. The purpose of the evaluation and the steps in the process shall be explained to the veteran, and the importance of his or her cooperation shall be stressed. If the veteran does not cooperate in the initiation or completion of the evaluation, the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) shall make a reasonable effort through counseling to secure the veteran's cooperation. (Authority: 38 U.S.C. 1524(a)(3))

(b) *Consequences of noncooperation when evaluation is required.* If the veteran fails to report for or cooperate in a required evaluation and the CP or VRC has made a reasonable effort to secure his or her participation VA shall take appropriate action including discontinuance of the evaluation under the provisions of §21.364 of this part. If the veteran's case is discontinued under §21.364 of this part, the Veterans Service Center will be notified. The Veterans Service Center also will be informed if the reason for discontinuance is subsequently removed and the evaluation process is resumed. (Authority: 38 U.S.C. 1524(a)(1))

(c) *Consequences of noncooperation when evaluation is not required.* If the veteran fails to report for or cooperate in an optional evaluation and the CP or VRC has made a reasonable effort to secure the veteran's participation, VA shall take appropriate action, including discontinuance of the evaluation under the provisions of §21.364 of this part. The evaluation may be resumed if the reason for the discontinuance is removed and the veteran is otherwise eligible. (Authority: 38 U.S.C. 1524(a)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 71 FR 28586, May 17, 2006; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.6058*

**§21.6058 Consequences of evaluation.**

(a) *Eligible veteran may choose to participate.* If VA finds, based on the evaluation, that achievement of a vocational goal by the veteran is reasonably feasible, the veteran shall be offered and may elect to pursue a vocational training program. If the veteran elects to pursue such a program, the program shall be designed in consultation with the veteran in order to meet the veteran's individual needs, and shall be set forth in an Individualized Written Rehabilitation Plan (IWRP) under the provisions of §21.84 of this part or an Individualized Employment Assistance Plan (IEAP) under §21.88 of this part. (Authority: 38 U.S.C. 1524(b)(1))

(b) *Veteran ineligible to participate.* A veteran for whom achievement of a vocational goal is not found reasonably feasible shall be notified of this finding and be informed of his or her appellate rights as described in §21.59 of this part. The veteran shall be provided the assistance described in §21.50(b)(9) of this part. (Authority: 38 U.S.C. 1524(b)(1))

Reserved

**§21.6059 Limitations on the number of evaluations.**

(a) *Number of evaluations.* No more than 3,500 evaluations of the reasonable feasibility of achieving a vocational goal may be given during any 12-month period, beginning on February 1, 1985, and each subsequent February 1 during the program period. (Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100-227)

(b) *Cases counted as evaluation.* An evaluation is deemed to be countable against the 3,500 limit permitted during each 12-month period when the following conditions are met:

(1) The veteran is provided one or more personal interviews by a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC); and

(2) A determination of the reasonable feasibility of achieving a vocational goal is made by the CP or VRC. (Authority: 38 U.S.C. 1524(a)(3); Pub. L. 100-227)

(c) *Cases not counted as evaluations.* Computation of the number of evaluations which may be provided in a 12-month period shall exclude cases in which:

(1) The veteran under age 45 awarded pension during the program period is unable to participate for reasons beyond his or her control;

(2) Review of available information does not indicate a good potential for employment of otherwise qualified veterans.

(3) The veteran either fails to keep a scheduled appointment to complete the evaluation or withdraws the claim for an evaluation, or

(4) The veteran who has completed an evaluation requires or requests a reevaluation. (Authority: 38 U.S.C. 1524(a)(3), Pub. L. 100-227, Pub. L. 101-237)

(d) *Priority.* If a veteran below age 45 for whom an evaluation is required cannot be provided an evaluation during a particular 12-month period because of the limitation on the number of evaluations, the veteran will be given first priority for evaluation during the following 12-month period, or first available subsequent 12-month period, if otherwise eligible. (Authority: 38 U.S.C. 1524(a)(3), Pub. L. 101-237)

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 56 FR 21448, May 9, 1991; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

## Services and Assistance to Program Participants

### §21.6060 Services and assistance.

(a) *General.* VA may provide to program participants:

(1) Vocationally oriented services and assistance of the kind provided veterans under chapter 31, title 38, United States Code;

(2) Employment assistance during the 18 month period following completion of a vocational training program, including:

- (i) Educational, vocational, psychological, employment and personal adjustment counseling;
  - (ii) Placement services to effect suitable placement in employment, and post-placement services to attempt to insure satisfactory adjustment in employment; and
  - (iii) Personal adjustment and work adjustment training.
- (Authority: 38 U.S.C. 1524(b))

(3) Such other services and assistance of the kind provided veterans under chapter 31, except as provided in paragraph (b) of this section, as are necessary to enable the veteran to prepare for, and participate in, vocational training or employment.

(b) *Services and assistance not provided.* VA will not provide to a participant under this program any:

- (1) Loan;
  - (2) Subsistence allowance;
  - (3) Automobile adaptive equipment of the kind provided eligible veterans under 38 U.S.C., chapter 39 or chapter 31;
  - (4) Training at an institution of higher learning in a program of education that is not predominantly vocational in content;
  - (5) Employment adjustment allowance;
  - (6) Room and board in a special rehabilitation facility for a period in excess of 30 days;
  - (7) Independent living services, except those which are indispensable to the pursuit of the vocational training program during the period of rehabilitation to the point of employability under §21.6160 of this part; or
  - (8) Period of extended evaluation under 38 U.S.C. 1506(e).
- (Authority: 38 U.S.C. 1524(b))

*Next Section is §21.6070*

## Duration of Training

### §21.6070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program may not exceed 24 calendar months of full-time training except as provided in §21.6072 of this part. (Authority: 38 U.S.C. 1524(b)(2))

(b) *Responsibility for estimating the duration of a vocational training program.* The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) is responsible for estimating the time needed by the veteran to complete a vocational training program. The estimate is made in consultation with the veteran and the vocational rehabilitation specialist during the preparation of the IWRP. (Authority: 38 U.S.C. 1524(b)(1))

(c) *Duration of training prescribed must meet general requirements for entry into the occupation selected.* The veterans will be provided training for a period sufficient for the veteran to reach the level generally recognized as necessary for entry into employment in a suitable occupational objective. Where a particular degree, diploma or certificate is generally necessary for entry into employment, the veteran may be trained to that level. (Authority: 38 U.S.C. 1524(b))

(d) *When duration of the training period may be expanded beyond the entry level.* If the amount of training the particular veteran needs in order to qualify for employment in a particular occupation will exceed the amount generally needed for employment in that occupation, VA may provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the area in which the veteran lives or will seek employment exceed those generally needed for employment;

(2) The veteran is preparing for a type of work in which he or she will be at a definite disadvantage in competing with nondisabled persons for a job or business, and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited and additional training will enhance the veteran's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted. (Authority: 38 U.S.C. 1524(b)(2))

(e) *Estimating the duration of the training period needed.* The CP or VRC, in estimating duration of the training period needed, must determine that:

(1) The proposed vocational training program must be one which, when pursued full-time by a nondisabled person, would not normally require more than 24 calendar months of pursuit for successful completion;

(2) The program of training and other services needed by the veteran, based upon VA's evaluation, will not exceed 24 calendar months, if training is pursued on a full-time basis, or 36 calendar months if pursued on a less than full-time basis. In making this determination the following criteria will be applied:

(i) The number of actual months and days of the period during which the veteran will pursue the training program will be counted;

(ii) Days of authorized leave and other periods during which the veteran will not be pursuing training, such as periods between terms will also be counted;

(iii) The period of evaluation prior to determination of reasonable feasibility will be excluded but the actual number of months and days needed to evaluate and improve rehabilitation potential during the training program will be included;

(iv) The time required, as determined in months and days under paragraph (e)(2)(i) through (iii) of this section, will be the total period that would be required for the veteran to accomplish the vocational program under consideration;

(v) If the total period the veteran requires exceeds 24 calendar months, when pursued on a full-time basis, and an extension of the basic training period may not be approved under §21.6072 of this part, another suitable vocational goal must be selected for which training can be completed within that period.

(3) If the veteran's vocational training program would require more than 36 calendar months when pursued on a less than full-time basis, the program must be reevaluated to select a vocational goal for which a suitable vocational training program can be completed within that period. (Authority: 38 U.S.C. 1524(b)(2))

(f) *Effect of change in the vocational goal on duration of training period.* The veteran's vocational goal may be changed during the program in accordance with §21.94 (a) through (d) of this part. The extent to which such changes may be made is limited by the following considerations:

(1) A change of the vocational goal from one field or occupational family to another field or occupational family may only be approved before the end of the first 24 months of training whether training is pursued on a fulltime or a less than full-time basis; and

(2) A change from one occupational objective to another within the same field or occupational family shall not be considered a change in the vocational goal identified in the veteran's IWRP. (Authority: 38 U.S.C. 1524(b)(2))

[49 FR 40814, Oct. 18, 1984 as amended at 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.6072*

**§21.6072 Extending the duration of a vocational training program.**

(a) *Extension of the duration of a vocational training program.* An extension of a vocational training program as formulated in the IWRP may only be approved to enable the veteran to achieve a vocational goal identified before the end of the first 24 calendar months of the program. (Authority: 38 U.S.C. 1524(b)(2))

(b) *Maximum number of months for which a program for new participants may be approved.* If a veteran had never participated in this temporary program of vocational training, the originally planned period of training may be extended to a total period consisting of the number of months necessary to attain the vocational goal, but in no case will a program be extended for:

(1) More than 24 calendar months beyond the originally planned period:

(2) A period which, when added to the originally planned period, totals more than 48 months, as provided in §21.6074(c) of this part. (Authority: 38 U.S.C. 1524(b))

(c) *Maximum number of months by which a program may be extended for prior participants in the temporary program.*

(1) A veteran who has previously participated in this program, but who was not *rehabilitated to the point of employability*, may be provided additional training under this program to complete the prior vocational goal or a different vocational goal, subject to the same provisions as apply to new participants;

(2) If a finding of *prior rehabilitation to the point of employability* is set aside to enable a veteran to pursue a program of on-job training or work experience, including the provision of employer incentives under §21.256 of this part, the number of months for which assistance may be authorized under this program shall be established as provided in §21.256 of this part to the extent consistent with the rules of this section;

(3) If the determination of *rehabilitation to the point of employability* has been set aside under §21.6284(a) or (b) of this part, additional training may be provided subject to the same provisions as apply to new participants. (Authority: 38 U.S.C. 1524(b))

(d) *Who may authorize an extension to a vocational training program.*

(1) The Vocational Rehabilitation Specialist (VRS) may authorize an extension of up to 3 calendar months of full-time or up to 6 calendar months of less than full-time training to the period of an existing vocational training program, if the VRS determines that the additional time is needed to successfully complete training and the following conditions are met:

(i) The veteran is in *rehabilitation to the point of employability* status under §21.190 of this part;

(ii) The veteran has completed more than half of the prescribed training;

(iii) The veteran is making satisfactory progress;

(iv) The extension is necessary to complete training;

(v) Training can be completed with 3 months of full-time training or not more than 6 calendar months of less than full-time training; and

(vi) The extension plus the original program period will not result in a program of vocational training greater than 36 total calendar months;

(2) The Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may approve any other extensions of the vocational training program, except as provided in paragraph (d)(3) of this section, if it is determined that the additional time is needed and the conditions for extension under paragraphs (a) and (b) of this section are met;

(3) The VR&E Officer must also concur in an extension of the vocational training program beyond 24 months when paragraphs (a) through (c) of this section are met. (Authority: 38 U.S.C. 1524(b)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 66 FR 44053, Aug. 22, 2001; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.6074*

**§21.6074 Computing the period of vocational training program participation.**

(a) *Computing the participation period.* The number of months and days used in a vocational training program shall be computed on the basis of calendar months and days during which the program participant is receiving services under the plan developed in accordance with §21.6080 of this part, whether training is pursued on a full-time or less than full-time basis. Leaves of absence during a period of instruction and periods in which the veteran does not pursue actual training, such as breaks between periods of instruction, are included. (Authority: 38 U.S.C. 1524(b))

(b) *Period of employment services separate.* The period during which employment services may be provided pursuant to §21.6040(b) of this part is not included in computing the period used for vocational training under this program. (Authority: 38 U.S.C. 1524(b))

(c) *Limitations.*

(1) A program participant may receive the services necessary to carry out the vocational training program during a maximum period of 48 months. The 48-month period begins to run on the day the veteran begins to receive the services needed to carry out the vocational training program as specified in the IWRP, and ends 48 months from that date.

(2) Employment services which begin before the end of the 48-month period may be continued for the period specified in the IEAP, or may be provided after the end of the 48 month period if so specified in the IWRP or IEAP, subject to the provisions of §21.6040(b) of this part. (Authority: 38 U.S.C. 1524(b)(2), (3))

*Next Section is §21.6080*

## Individualized Written Rehabilitation Plan

### §21.6080 Requirement for an individualized written rehabilitation or employment assistance plan.

(a) *General.* An Individualized Written Rehabilitation Plan (IWRP) and/or Individualized Employment Assistance Plan (IEAP) will be developed for each program participant for services under 38 U.S.C. 1524. These plans shall be developed in the same manner as for chapter 31 purposes. See §§21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), 21.96 and 21.98. (Authority: 38 U.S.C. 1524(b)(2))

(b) *Selecting the type of training to include in the plan.* The use of on-job training, including non-pay training, a combination of on-job and institutional training, or institutional training to accomplish the goals of the program should be explored in each case. On-job training, or a combination of onjob and institutional training, should generally be used:

(1) When these options are available;

(2) When these options are as suitable as institutional training for accomplishing the goals of the program; and

(3) The veteran agrees that such training will meet his or her needs. (Authority: 38 U.S.C. 1524(b))

(c) *Changes in the plan.* Any change amending the duration of a veteran's plan is subject to provisions governing duration of a vocational training program described in §21.6070 and §21.6072 of this part. (Authority: 38 U.S.C. 1524(b))

(d) *Change in the vocational goal after 24 months of training.* If a veteran seeks to change the vocational goal after receipt of 24 months of training and the change is not permitted under §21.6070(f) of this part, the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) shall inform the veteran that:

(1) No change of goal may be authorized but training for the vocational goal previously established may be continued, if it is still reasonably feasible for the veteran to pursue the training under appropriate extensions of the program pursuant to §21.6072 of this part;

(2) If the veteran elects to terminate the planned vocational training program, he or she shall be provided assistance, to the extent provided under §21.80(d) of this part, in identifying other resources through which the training desired may be secured;

(3) If the veteran disagrees with the decision, the veteran's case shall be considered under the provisions of §21.98 of this part. (Authority: 38 U.S.C. 1524(b)(2))

[49 FR 40814, Oct. 18, 1984 as amended at 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

*Next Section is §21.6082*

**§21.6509 Notice to qualified veterans.**

(a) At the time notice is provided to a qualified veteran of an award of an IU rating, VA shall provide the veteran with an additional statement. These statements shall contain the following information:

(1) Notice of the provisions of 38 U.S.C. 1163;

(2) Information explaining the purposes and availability of, as well as eligibility requirements and procedures for pursuing a vocational rehabilitation program under Chapter 31; and

(3) A summary description of the scope of services and assistance available under that chapter. (Authority: 38 U.S.C. 1163(c)(1)).

(b) *Opportunity for evaluation.* After providing the notice required under paragraph (a) of this section VA shall offer the veteran the opportunity for an evaluation under §21.50 of this part. (Authority: 38 U.S.C. 1163(c); Pub. L. 100-687).

(c) *Evaluation.* The term *evaluation* hereinafter shall be understood to mean the same evaluation accorded in an *initial evaluation* and an *extended evaluation* as those terms are described in §§21.50 and 21.57 of this part.

(d) *Responsible staff member.* The evaluation or reevaluation will be provided by a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) in the Vocational Rehabilitation and Employment (VR&E) Division. (Authority: 38 U.S.C. 1163(c)).

[55 FR 17273, Apr. 24, 1990, as amended at 66 FR 44053, Aug. 22, 2001; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

**§21.6511 [Reserved]**

**§21.6513 [Reserved]**

*Next Section is §21.6515*

**§21.6515 Formulation of rehabilitation plan.**

(a) *Formulation of plan.* Following an evaluation, the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) will formulate an IWRP (individualized written rehabilitation plan) or an IEAP (individualized employment assistance plan) for each participating qualified veteran for whom achievement of a vocational goal is reasonably feasible. These plans shall be prepared in accordance with §21.84 (IWRP) or §21.88 (IEAP).

(b) *Existing plan.* If the veteran already has undertaken a rehabilitation program under Chapter 31, a new plan shall not be developed unless circumstances indicate that the existing plan should be modified or replaced. (Authority: 38 U.S.C. 1163(c), Pub. L. 100-687).

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 81 FR 26132, May 2, 2016]

**Supplement *Highlights* References:** 89(1)

**§21.6517 [Reserved]****§21.6519 Eligibility of qualified veterans for employment and counseling services.**

(a) *General.* A qualified veteran for whom vocational rehabilitation and achievement of a vocational goal are reasonably feasible may be provided the employment and counseling services to which he or she may be entitled under chapter 31. If the qualified veteran is not eligible for such assistance under chapter 31, he or she may be provided, nevertheless, the counseling, placement and postplacement services provided under 38 U.S.C. 3104(a)(2) and (5). The specific services which may be authorized are discussed in §§21.100, 21.252 and 21.254(a).

(b) *Services under other VA and non-VA programs.* Veterans being provided counseling, placement and postplacement services under §§21.100, 21.252, and 21.254(a) will also be aided in identifying services of other VA and non-VA programs which may be of assistance in securing employment. All elements of a program of these services shall be incorporated in the IEAP.

(c) *Veteran elects counseling, placement and postplacement services.* If a qualified veteran elects not to undertake the IWRP and is otherwise eligible for counseling, placement and postplacement services under 38 U.S.C. 3104(a)(2) and (5), he or she may be provided those services. (Authority: 38 U.S.C. 1163(b)).

(d) *Duration of services under 38 U.S.C. 3104(a)(2) and (5).* The services provided under 38 U.S.C. 3104(a)(2) and (5), are limited to an 18-month period of employment assistance as described in §21.73. (Authority: 38 U.S.C. 1163(b))

[51 FR 19333, May 29, 1986. Redesignated at 53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17273, Apr. 24, 1990]

*Next Section is §21.6521*