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Federal Regulations**

Title 38, Part 21

*Vocational Rehabilitation and Education*

**Veterans Benefits Administration**

Supplement No. 87

Covering period of *Federal Register* issues  
through August 4, 2011

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Custom Federal Regulations Service™

## Supplemental Materials for *Book G*

Code of Federal Regulations

Title 38, Part 21

*Vocational Rehabilitation and Education*

## Veterans Benefits Administration

Supplement No. 87

5 August 2011

Covering the period of Federal Register issues  
through August 4, 2011

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<b>FILING INSTRUCTIONS</b>
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**Book G, Supplement No. 87  
August 5, 2011**

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21.260-1 to 21.260-10	21.260-1 to 21.260- <u>14</u>	§21.260
21.262-1 to 21.264-1	21.262-1 to 21.264- <u>3</u>	§21.264
21.268-1 to 21.270-1	21.268-1 to 21.270-1	§21.270
21.274-1 to 21.274-2	21.274-1 to 21.274-2	§21.274

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## HIGHLIGHTS

### Book G, Supplement No. 87 August 5, 2011

**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 1 August 2011, the VA published an interim final rule effective that same day, to reflect changes made by the Post-9/11 Veterans Educational Assistance Improvements Act of 2010, that affect payment of vocational rehabilitation benefits for certain service-disabled veterans.  
Changes:

- In §21.79, redesignated paragraphs (f)(2) and (f)(3) as paragraphs (f)(3) and (f)(4) respectively and added new paragraph (f)(2);
- In §21.260, revised paragraph (a), redesignated paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and added a new paragraph (c);
- In §21.264, revised the section heading, redesignated paragraphs (a)(b)(c) & (d) as new paragraph (a), and added new paragraph (b);
- In §21.270, revised the section heading, removed paragraph (b), redesignated paragraph (c) as paragraph (b); and
- In §21.274, revised paragraph (d)(1)(iii).



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(e) *Computing entitlement.*

(1) The computation of entitlement is based upon the rate of program pursuit, as determined under §21.310 of this part, over the elapsed time during which training and rehabilitation services were furnished;

(2) The Department of Veterans Affairs will compute elapsed time from the commencing date of the rehabilitation program as determined under §21.322 of this part to the date of termination as determined under §21.324 of this part. This includes the period during which veterans not receiving subsistence allowance because of a statutory bar; e.g., certain incarcerated veterans or servicepersons in a military hospital, nevertheless, received other chapter 31 services and assistance. Elapsed time includes the total period from the commencing date until the termination date, except for any period of unauthorized leave;

(3) If the veteran's rate of pursuit changes after the commencing date of the rehabilitation program, the Department of Veterans Affairs will:

(i) Separate the period of rehabilitation program services into the actual periods of time during which the veteran's rate of pursuit was different; and

(ii) Compute entitlement based on the rate of pursuit for each separate elapsed time period. (Authority: 38 U.S.C. 3108(f))

(f) *Special situations.*

(1) When a chapter 31 participant elects benefits of the kind provided under chapter 30 or chapter 34 as a part of his or her rehabilitation program under chapter 31 the veteran's entitlement usage will be determined by using the entitlement provisions of those programs. Entitlement charges shall be in accordance with §21.7076 for chapter 30 and §21.1045 under chapter 34. The entitlement usage computed under these provisions is deducted from the veteran's chapter 31 entitlement. No entitlement charges are made against either chapter 30 or chapter 34. (Authority: 38 U.S.C. 3108(f))

(2) When a chapter 31 participant elects to receive payment of the *Post-9/11 subsistence allowance* under § 21.260(c) in lieu of a subsistence allowance under § 21.260(b), the entitlement usage is deducted from the veteran's chapter 31 entitlement. No entitlement charges are made against chapter 33. (Authority: 38 U.S.C. 3108(b))

(3) When a veteran is pursuing on-job training or work experience in a Federal agency on a nonpay or nominal pay basis, the amount of entitlement used is determined in the following manner:

(i) Entitlement used in on-job training in a Federal agency on a nonpay or nominal pay basis is determined in the same manner as other training.

(ii) Entitlement used in pursuing work experience will be computed in the same manner as for veterans in on-job training except that work experience may be pursued on a less than full-time basis. If the veteran is receiving work experience on a less than full-time basis, entitlement charges are based upon a proportionate amount of the workweek. For example, if the workweek is 40 hours, three-quarter time is at least 30 hours, but less than 40 hours, and half-time is at least 20 hours but less than 30 hours. (Authority: 38 U.S.C. 3108(c))

(3) Entitlement is charged on a fulltime basis for a veteran found to have a reduced work tolerance. (Authority: 38 U.S.C. 3108(d), 3680(g))

(g) Overpayment. The Department of Veterans Affairs will make a charge against entitlement for an overpayment of subsistence allowance under the conditions described in §21.1045(h) of this part. (Authority: 38 U.S.C. 3680(g))

[49 FR 40814, Oct. 18, 1984; as amended at 76 FR 45703, Aug. 1, 2011]

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

**Monetary Assistance Services**

**§21.260 Subsistence allowance.**

(a) *General.* A veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 will receive a monthly subsistence allowance at the rates in paragraph (b) of this section, unless the veteran elects to receive an alternate payment (for the purposes of part 21, subpart A, referred to as the *Post-9/11 subsistence allowance*) as specified in paragraph (c) of this section, or payment at the rate of monthly educational assistance allowance payable under 38 U.S.C. chapter 30 for the veteran's type of training. See §21.264(a) for election of payment at the chapter 30 rate and § 21.264(b) for election of the *Post-9/11 subsistence allowance*. See §§ 21.7136, 21.7137, and 21.7138 to determine the applicable chapter 30 rate. (Authority: 38 U.S.C. 3108(a), 3108(b), 3108(f))

(b) *Rate of payment.* VA pays subsistence allowance at the rates stated in the following tables:

(1) Subsistence allowance is paid at the following rates effective October 1, 1994, and before November 2, 1994:

<i>Type of Program</i>	<u>Monthly rate of subsistence allowance</u>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
<b>Institutional: (1)</b>				
Full-time.....	\$374.93	\$465.08	\$548.05	\$39.95
3/4 time .....	281.71	349.32	409.76	30.73
1/2 time .....	188.49	233.56	274.54	20.49
<b>Nonpay or nominal pay on-job training in a Federal, State, or local agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:</b>				
Full-time only.....	374.93	465.08	548.05	39.95
<b>Nonpay or nominal pay work experience in a Federal, State, or local agency:</b>				
Full-time.....	374.93	465.08	548.05	39.95
3/4 time .....	281.71	349.32	409.76	30.73
1/2 time .....	188.49	233.56	274.54	20.49
<b>Farm cooperative; apprenticeship, or other on-job training: (2)</b>				
Full-time only.....	327.81	396.44	456.88	29.71

Combination of institutional and OJT (Full-time only):

Institutional greater than				
1/2 time .....	374.93	465.08	548.05	39.45
OJT greater than				
1/2 time .....	327.81	396.44	456.88	29.71

*Monthly rate of subsistence allowance (cont.)*

<i>Type of Program</i>	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	<i>Additional amount for each dependent over two</i>
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Non-farm cooperative (Full-time only):

Institutional .....	374.93	465.08	548.05	39.95
On-job .....	327.81	396.44	456.88	29.71

Improvement of rehabilitation potential:

Full-time only.....	374.93	465.08	548.05	39.95
3/4 time .....	281.71	349.32	409.76	30.73
1/2 time .....	188.49	233.56	274.54	20.49
1/4 time (3).....	94.24	116.78	137.27	10.24

- (1) For measurement of rate of pursuit, see §§21.4270 through 21.4275.
- (2) For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.
- (3) The quarter-time rate may be paid only during extended evaluation.

(2) Subsistence allowance is paid at the following rates effective November 2, 1994, and before October 1, 1995:

*Monthly rate of subsistence allowance*

<i>Type of Program</i>	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	<i>Additional amount for each dependent over two</i>
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Institutional: (1)

Full-time.....	\$374.93	\$465.08	\$548.05	\$39.95
3/4 time .....	281.71	349.32	409.76	30.73
1/2 time .....	188.49	233.56	274.54	20.49

Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:

Full-time only.....374.93 .....465.08.....548.05 .....39.95

*Monthly rate of subsistence allowance (cont.)*

<i>Type of Program</i>	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	<i>Additional amount for each dependent over two</i>
------------------------	----------------------	----------------------	-----------------------	--

Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency:

Full-time.....374.93 .....465.08.....548.05 .....39.95  
 3/4 time .....281.71 .....349.32.....409.76 .....30.73  
 1/2 time .....188.49 .....233.56.....274.54 .....20.49

Farm cooperative; apprenticeship, or other on-job training: (2)

Full-time only.....327.81 .....396.44.....456.88 .....29.71

Combination of institutional and OJT (Full-time only):

Institutional greater than 1/2 time .....374.93 .....465.08.....548.05 .....39.95  
 OJT greater than 1/2 time .....327.81 .....396.44.....456.88 .....29.71

Non-farm cooperative (Full-time only):

Institutional .....374.93 .....465.08.....548.05 .....39.45  
 On-job .....327.81 .....396.44.....456.88 .....29.71

Improvement of rehabilitation potential:

Full-time only.....374.93 .....465.08.....548.05 .....39.95  
 3/4 time .....281.71 .....349.32.....409.76 .....30.73  
 1/2 time .....188.49 .....233.56.....274.54 .....20.49  
 1/4 time (3).....94.24 .....116.78.....137.27 .....10.24

- (1) For measurement of rate of pursuit, see §§21.4270 through 21.4275.
- (2) For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.

(3) The quarter-time rate may be paid only during extended evaluation.

(3) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1995, and before October 1, 1996:

<i>Type of Program</i>	<i>Monthly rate of subsistence allowance</i>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
<b>Institutional: (1)</b>				
Full-time.....	\$385.80	\$478.57	\$563.94	\$41.11
3/4 time .....	289.88	359.45	421.64	31.62
1/2 time .....	193.96	240.33	282.50	21.08
<b>Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:</b>				
Full-time only.....	385.80	478.57	563.94	41.11
<b>Nonpay or nominal pay work experience in a facility of a Federal, State, local, or Indian tribe agency:</b>				
Full-time.....	385.80	478.57	563.94	41.11
3/4 time .....	289.88	359.45	421.64	31.62
1/2 time .....	193.96	240.33	282.50	21.08
<b>Farm cooperative, apprenticeship, or other on-job training(OJT): (2)</b>				
Full-time only.....	337.32	407.94	470.13	30.57
<b>Combination of institutional and OJT (Full-time only):</b>				
<b>Institutional greater than</b>				
1/2 time .....	385.80	478.57	563.94	41.11
<b>OJT greater than</b>				
1/2 time (2) .....	337.32	407.94	470.13	30.57
<b>Non-farm cooperative (Full-time only):</b>				
Institutional .....	385.80	478.57	563.94	41.11

On-job (2).....337.32 .....407.94.....470.13 .....30.57

Improvement of rehabilitation potential:

Full-time only.....385.80 .....478.57.....563.94 .....41.11  
 3/4 time .....289.88 .....359.45.....421.64 .....31.62  
 1/2 time .....193.96 .....240.33.....282.50 .....21.08  
 1/4 time (3).....96.97 .....120.17.....141.25 .....10.54

- (1) For measurement of rate of pursuit, see §§21.4270 through 21.4275.
- (2) For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.
- (3) The quarter-time rate may be paid only during extended evaluation.

(4) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1996, and before October 1, 1997:

<i>Type of Program</i>	<i>Monthly rate of subsistence allowance</i>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
<b>Institutional: (1)</b>				
Full-time.....	\$396.22	\$491.49	\$579.17	\$42.22
3/4 time .....	297.71	369.16	433.02	32.47
1/2 time .....	199.20	246.82	290.13	21.65
 <b>Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:</b>				
Full-time only.....	396.22	491.49	579.17	42.22
 <b>Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency:</b>				
Full-time.....	396.22	491.49	579.17	42.22
3/4 time .....	297.71	369.16	433.02	32.47
1/2 time .....	199.20	246.82	290.13	21.65

Farm cooperative, apprenticeship, or other on-job training (OJT) (2)

Full-time only.....	346.43	.....418.95.....	482.82	.....31.40
Combination of institutional and OJT (Full-time only):				
Institutional greater than				
1/2 time .....	396.22	.....491.49.....	579.17	.....42.22
OJT greater than				
1/2 time (2) .....	346.43	.....418.95.....	482.82	.....31.40
Non-farm cooperative				
(Full-time only):				
Institutional .....	396.22	.....491.49.....	579.17	.....42.22
On-job (2).....	346.43	.....418.95.....	482.82	.....31.40
Improvement of rehabilitation				
potential:				
Full-time only.....	396.22	.....491.49.....	579.17	.....42.22
3/4 time .....	297.71	.....369.16.....	433.02	.....32.47
1/2 time .....	199.20	.....246.82.....	290.13	.....21.65
1/4 time (3).....	99.59	.....123.41.....	145.06	.....10.82

- (1) For measurement of rate of pursuit, see §§21.4270 through 21.4275.
- (2) For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.
- (3) The quarter-time rate may be paid only during extended evaluation.

(5) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1997, and before November 1, 1998:

<i>Type of Program</i>	<i>Monthly rate of subsistence allowance</i>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
Institutional: (1)				
Full-time.....	\$407.31	.....\$505.25.....	\$595.39	.....\$43.40
3/4 time .....	306.05	.....379.50.....	445.14	.....33.38
1/2 time .....	204.78	.....253.73.....	298.25	.....22.26

Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a

rehabilitation facility or sheltered workshop; independent instructor:

Full-time only.....407.31 .....505.25.....595.39 .....43.40

Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency:

Full-time.....407.31 .....505.25.....595.39 .....43.40  
 3/4 time .....306.05 .....379.50.....445.14 .....33.38  
 1/2 time .....204.78 .....253.73.....298.25 .....22.26

Farm cooperative, apprenticeship, or other on-job training (OJT) (2)

Full-time only.....356.13 .....430.68.....496.34 .....32.28

Combination of institutional and OJT (Full-time only):

Institutional greater than  
 1/2 time .....407.31 .....505.25.....595.39 .....43.40  
 OJT greater than  
 1/2 time (2) .....356.13 .....430.68.....496.34 .....32.28

Non-farm cooperative (Full-time only):

Institutional .....407.31 .....505.25.....595.39 .....43.40  
 On-job (2).....356.13 .....430.68.....496.34 .....32.28

Monthly rate of subsistence allowance

<i>Type of Program</i>	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	<i>Additional amount for each dependent over two</i>
Improvement of rehabilitation potential:				
Full-time only.....	407.31	505.25	595.39	43.40
3/4 time .....	306.05	379.50	445.14	33.38
1/2 time .....	204.78	253.73	298.25	22.26
1/4 time (3).....	102.38	126.87	148.09	11.12

- (1) For measurement of rate of pursuit, see §§21.4270 through 21.4275.
- (2) For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.
- (3) The quarter-time rate may be paid only during extended evaluation.

(6) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1998, and before October 1, 1999:

<i>Type of Program</i>	<u>Monthly rate of subsistence allowance</u>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
<b>Institutional: (1)</b>				
Full-time.....	\$413.83	\$513.33	\$604.92	\$44.09
3/4 time .....	310.95	385.57	452.26	33.91
1/2 time .....	208.06	257.79	303.02	22.62
<b>Nonpay or nominal pay on-job training in a facility of a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor:</b>				
Full-time only.....	413.83	513.33	604.92	44.09
<b>Nonpay or nominal pay work experience in a facility of a Federal, State, local, or federally recognized Indian tribe agency:</b>				
Full-time.....	413.83	513.33	604.92	44.09
3/4 time .....	310.95	385.57	452.26	33.91
1/2 time .....	208.06	257.79	303.02	22.62

<i>Type of Program</i>	<u>Monthly rate of subsistence allowance</u>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
<b>Farm cooperative, apprenticeship, or other on-job training (OJT) (2)</b>				
Full-time only.....	361.83	437.57	504.28	32.80
<b>Combination of institutional and OJT (Full-time only):</b>				
<b>Institutional greater than</b>				
1/2 time .....	413.83	513.33	604.92	44.09
<b>OJT greater than</b>				
1/2 time (2) .....	361.83	437.57	504.28	32.80

Non-farm cooperative (Full-time only):

Institutional .....	413.83	.....513.33.....	604.92	.....44.09
On-job (2).....	361.83	.....437.57.....	504.28	.....32.80

Improvement of rehabilitation potential:

Full-time only.....	413.83	.....513.33.....	604.92	.....44.09
3/4 time .....	310.95	.....385.57.....	452.26	.....33.91
1/2 time .....	208.06	.....257.79.....	303.02	.....22.62
1/4 time (3).....	104.02	.....128.90.....	151.51	.....11.30

- (1) For measurement of rate of pursuit, see §§21.4270 through 21.4275.
- (2) For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.
- (3) The quarter-time rate may be paid only during extended evaluation.

(7) The following table states the monthly rates of subsistence allowance payable for participation in a rehabilitation program under 38 U.S.C. Chapter 31 that occurs after September 30, 1999, and before October 1, 2000:

<i>Type of Program</i>	<u>Monthly rate of subsistence allowance</u>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
<b>Institutional: (1)</b>				
Full-time.....	\$420.45	.....\$521.54.....	\$614.60	.....\$44.80
3/4 time .....	315.93	.....391.74.....	459.50	.....34.45
1/2 time .....	211.39	.....261.91.....	307.87	.....22.98

<i>Type of Program</i>	<u>Monthly rate of subsistence allowance</u>			<i>Additional amount for each dependent over two</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>	
<b>Nonpay or nominal pay on-job training in a Federal, State, local, or federally recognized Indian tribe agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor; institutional non-farm cooperative:</b>				
Full-time only.....	420.45	.....521.54.....	614.60	.....44.80

Nonpay or nominal pay work experience in a Federal, State, local, or federally recognized Indian tribe agency:

Full-time.....	420.45	.....521.54.....	614.60	.....44.80
3/4 time .....	315.93	.....391.74.....	459.50	.....34.45
1/2 time .....	211.39	.....261.91.....	307.87	.....22.98

Farm cooperative, apprenticeship, or other on-job training (OJT) (2)

Full-time only.....	367.62	.....444.57.....	512.35	.....33.32
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Combination of institutional and OJT (Full-time only):

Institutional greater than				
1/2 time .....	420.45	.....521.54.....	614.60	.....44.80
OJT greater than				
1/2 time (2) .....	367.62	.....444.57.....	512.35	.....33.32

Non-farm cooperative (Full-time only):

Institutional .....	420.45	.....521.54.....	614.60	.....44.80
On-job (2).....	367.62	.....444.57.....	512.35	.....33.32

Improvement of rehabilitation potential:

Full-time only.....	420.45	.....521.54.....	614.60	.....44.80
3/4 time .....	315.93	.....391.74.....	459.50	.....34.45
1/2 time .....	211.39	.....261.91.....	307.87	.....22.98
1/4 time (3).....	105.98	.....130.96.....	153.93	.....11.48

- (1) For measurement of rate of pursuit, see §§21.4270 through 21.4275.
  - (2) For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran’s objective.
  - (3) The quarter-time rate may be paid only during extended evaluation.
- (Authority: 38 U.S.C. 3108, 3115(a)(1); Pub. L. 103-446)

(c) *Rate of payment of Post-9/11 subsistence allowance.* In lieu of the subsistence allowance payable under paragraph (b) of this section, VA pays the *Post-9/11 subsistence allowance* at the rates in the table at the end of this paragraph, effective August 1, 2011, based on the basic allowance for housing payable under 37 U.S.C. 403. For purposes of the following table:

(1) *BAH* means “the applicable amount of basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which is located the institution, agency, or employer providing the rehabilitation program concerned”.

(2) *BAH National Average* means “the average (i.e., unweighted arithmetic mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 residing in the United States”.

<b>Payment of Post-9/11 Subsistence Allowance in Accordance With Public Law 111-377</b>	
[Effective August 1, 2011] <sup>1</sup>	
<b>Type of program</b>	<b>Payment</b>
Institutional: <sup>2</sup>	
Full-time	Entire <i>BAH</i> of institution ZIP code.
¾ time	¾ <i>BAH</i> of institution ZIP code.
½ time	½ <i>BAH</i> of institution ZIP code.
Nonpay or nominal pay on-job training in a Federal, State, local, or federally recognized Indian tribe agency; vocational course in a rehabilitation facility or sheltered workshop; institutional non-farm cooperative:	
Full-time only	Entire <i>BAH</i> of agency or institution ZIP code.
Nonpay or nominal pay work experience in a Federal, State, local, or federally recognized Indian tribe agency:	
Full-time	Entire <i>BAH</i> of agency ZIP code.
¾ time	¾ <i>BAH</i> of agency ZIP code.
½ time	½ <i>BAH</i> of agency ZIP code.
Farm cooperative, apprenticeship, or other on-job training (OJT): <sup>3</sup>	
Full-time only	Entire <i>BAH</i> of employer ZIP code.
Combination of institutional and OJT (Full-time only):	
Institutional greater than ½ time	Entire <i>BAH</i> of institution ZIP code.
OJT greater than ½ time <sup>3</sup>	Entire <i>BAH</i> of employer ZIP code.
Non-farm cooperative (Full-time only):	
Institutional	Entire <i>BAH</i> of institution ZIP code.
On-job <sup>3</sup>	Entire <i>BAH</i> of employer ZIP code.

Improvement of rehabilitation potential:	
Full-time	Entire <i>BAH</i> of institution ZIP code.
$\frac{3}{4}$ time	$\frac{3}{4}$ <i>BAH</i> of institution ZIP code.
$\frac{1}{2}$ time	$\frac{1}{2}$ <i>BAH</i> of institution ZIP code.
$\frac{1}{4}$ time <sup>4</sup>	$\frac{1}{4}$ <i>BAH</i> of institution ZIP code.
Training consisting of solely distance learning: <sup>5</sup>	
Full-time	$\frac{1}{2}$ <i>BAH National Average</i> .
$\frac{3}{4}$ time	$\frac{3}{8}$ <i>BAH National Average</i> .
$\frac{1}{2}$ time	$\frac{1}{4}$ <i>BAH National Average</i> .
Training in the home, including independent instructor:	
Full-time only	$\frac{1}{2}$ <i>BAH National Average</i> .
Training in an institution not assigned a ZIP code, including foreign institutions:	
Full-time	Entire <i>BAH National Average</i> .
$\frac{3}{4}$ time	$\frac{3}{4}$ <i>BAH National Average</i> .
$\frac{1}{2}$ time	$\frac{1}{2}$ <i>BAH National Average</i> .

<sup>1</sup> Effective August 1, 2011, the *Post-9/11 subsistence allowance* may be paid in lieu of subsistence allowance authorized in §21.260(b), and is not adjusted to include dependents.

<sup>2</sup> For measurement of rate of pursuit, see §§21.4270 and 21.4272 through 21.4275. Payments for courses being taken simultaneously at more than one institution are based on the *BAH* of the ZIP code assigned to the parent institution.

<sup>3</sup> For on-job training, payment of the *Post-9/11 subsistence allowance* may not exceed the difference between the monthly training wage, not including overtime, and the entrance journeyman wage for the veteran's objective.

<sup>4</sup> The quarter-time rate may be paid only during extended evaluation.

<sup>5</sup> Payment for training consisting of both distance learning and courses taken at a local institution is based on the *BAH* of the ZIP code assigned to the local institution.

(Authority: 38 U.S.C. 3108, 3115(a)(1))

(d) *Subsistence allowance precluded.* A veteran may not receive a subsistence allowance when VA is providing the veteran only the following services:

- (1) Initial evaluation;
- (2) Placement and post-placement services under 38 U.S.C. 3105(b); or
- (3) Counseling. (Authority: 38 U.S.C. 3108 (a)(1) and (a)(3))

(e) *Dependents.* The term “dependent” means a spouse, child or dependent parent who meets the definition of relationship specified in §§3.50, 3.57 or 3.59 of this chapter. (Authority: 38 U.S.C. 3108(b))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 9955, Mar. 24, 1986; 52 FR 42113, Nov. 3, 1987; 54 FR 4283, Jan. 30, 1989; 56 FR 7567, Feb. 25, 1991; 60 FR 4561, Jan. 24, 1995; 62 FR 17709, Apr. 11, 1997; 65 FR 51764, Aug. 25, 2000; 65 FR 60724, Oct. 12, 2000; 76 FR 34000, June 10, 2011; 76 FR 45703, Aug. 1, 2011]

**Supplement *Highlights* references:** 16(1), 30(2), 51(2), 86(1), 87(1).

*Next section is §21.262*

Reserved

**§21.262 Procurement and reimbursement of cost for training and rehabilitation services,  
supplies, or facilities.**

(a) *General.* Whenever services, supplies and facilities from source outside VA are required by any of these regulations, they shall be provided through contract, agreement of other cooperative arrangement between VA and the vendor. (Authority: 38 U.S.C. 3115(b))

(b) *VA Acquisition Regulations.* Payments of charges for training and rehabilitation services, supplies, or facilities, authorized under Chapter 31 are subject to the provisions of applicable VA Acquisition Regulations especially 48 CFR Part 831 and Subpart 871.2. (Authority: 38 U.S.C. 3115(a))

*Next Section is §21.264*

**§21.264 Election of payment at the 38 U.S.C. chapter 30 educational assistance rate or election of payment of Post-9/11 subsistence allowance.***(a) Election of chapter 30 educational assistance rate.*

(1) *Eligibility.* A veteran who applies for, and is found entitled to training or education under Chapter 31, may elect to receive payment at the educational allowance rate and other assistance furnished under Chapter 30, for similar training in lieu of a subsistence allowance, provided the following criteria are met:

(i) The veteran has remaining eligibility for, and entitlement to educational assistance under Chapter 30;

(ii) The veteran enrolls in a program of education or training approved for benefits under Chapter 30;

(iii) The program of education is part of an IWRP (Individualized Written Rehabilitation Plan) approved by VA. (Authority: 38 U.S.C. 3015, 3022, 3108(f))

(2) *Reelection of subsistence allowance.* Reelection of payment of benefits at the Chapter 31 subsistence allowance rate may be made only after completion of a term, quarter, semester, or other period of instruction unless:

(i) Chapter 30 eligibility or entitlement ends earlier;

(ii) Failure to approve immediate reelection would prevent the veteran from continuing in the rehabilitation program. (Authority: 38 U.S.C. 3015, 3022, 3108(f))

(3) *Services precluded.* A veteran entitled to vocational rehabilitation training or education who elects payment at the educational assistance rate payable under Chapter 30 shall be provided the same training and rehabilitation services as other veterans under Chapter 31, but may not be provided:

(i) Subsistence allowances

(ii) Loans from the revolving fund loan;

(iii) Payment of costs for:

(A) Vocational and other training services;

(B) Supplies; or

(C) Individualized tutorial assistance.

(Authority: 38 U.S.C. 3015, 3022, 3108(f))

(4) *Chapter 30 provisions applicable.* A veteran who has elected payment at the Chapter 30 educational assistance rate must meet the same terms and conditions as other veterans pursuing similar training under these programs. (Authority: 38 U.S.C. 3015, 3022, 3108(f))

(b) *Election of payment of Post-9/11 subsistence allowance.*

(1) *Eligibility.* Effective August 1, 2011, a veteran who applies and is eligible for training or education under chapter 31 may elect to receive payment of the *Post-9/11 subsistence allowance* under §21.260(c) in lieu of a subsistence allowance under §21.260(b), provided the veteran has remaining eligibility for, and entitlement to, educational assistance under chapter 33, Post-9/11 GI Bill.

(2) *Reelection of subsistence allowance under §21.260(b).* Reelection of payment of benefits at the chapter 31 subsistence allowance rate under §21.260(b) may be made only after completion of a term, quarter, semester, or other period of instruction unless:

(i) Chapter 33 eligibility or entitlement ends earlier; or

(ii) Failure to approve immediate reelection would prevent the veteran from continuing in the rehabilitation program.

(3) *Services under chapter 31.* A veteran who elects payment of the *Post-9/11 subsistence allowance* remains entitled to all other services and assistance under chapter 31.  
(Authority: 38 U.S.C. 3108(b))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992; 62 FR 17709, Apr. 11, 1997; 76 FR 45704, Aug. 1, 2011]

**Supplement *Highlights* reference:** 30(2), 87(1).

*Next Section is §21.266*

**21.264-3**

§21.264— Election of payment at the 38 U.S.C. chapter 30 educational assistance rate  
or election of payment of Post-9/11 subsistence allowance

**21.264-3**

Reserved

**§21.268 Employment adjustment allowance.**

(a) *General.* A veteran who completes a period of rehabilitation and reaches the point of employability will be paid an employment adjustment allowance for a period of two months at the full-time subsistence allowance rate for the type of program the veteran was last pursuing. (See §21.190(d)) (Authority: 38 U.S.C. 3108(a))

(b) *Reelection of subsistence allowance.* A veteran who has elected payment at the Chapter 30 educational assistance allowance rate may be paid an employment adjustment allowance only if he or she reelects subsistence allowance to become effective no later than the day following completion of the period of rehabilitation to the point of employability. (Authority: 38 U.S.C. 3108(f))

(c) *Special programs.* An employment adjustment allowance will be paid at the institutional rate of subsistence allowance for veterans in any of the following programs:

- (1) On-job training at no or nominal pay in a Federal agency;
- (2) Training in the home program;
- (3) Independent instructor program;
- (4) Cooperative program; or
- (5) Self-employment program.

(d) *Combination program.* A veteran who has pursued a combination program will be paid an employment adjustment allowance at the full-time rate for the type of training the veteran was actually pursuing at the completion of the period of rehabilitation to the point of employability.

(e) *Subsequent payments of employment adjustment allowance.* If a veteran has ever received an employment adjustment allowance following rehabilitation to the point of employability, he or she may, nevertheless, receive it again when completing an additional rehabilitation program to the point of employability if:

(1) The prior determination of rehabilitation to the point of employability is set aside; and

(2) The veteran is reinducted into a new vocational rehabilitation program as provided in §21.282.

(f) *Employment adjustment allowance not charged against entitlement.* An employment adjustment allowance will not be charged against the veteran's basic entitlement. (Authority: 38 U.S.C. 3108(a))

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

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

*Next Section is §21.270*

**§21.270 Payment of subsistence allowance during leave and other periods.**

(a) *Payment during leave.* VA will pay an eligible veteran a subsistence allowance during any period of approved leave including a veteran:

(1) Receiving medical or rehabilitation services on an outpatient basis at a VA medical center, and who provides his or her own room and board;

(2) Receiving service department retirement or retained pay while not on active duty;

(3) Hospitalized at a VA medical center while on approved leave. If the veteran becomes eligible for payment of disability compensation at the temporary 100 percent rate, under §3.401(h) of this title due to hospitalization, payment will be made under provisions of §21.266(a). (Authority: 38 U.S.C. 3110)

(b) *Payment for other periods.* Subsistence allowance will be paid for:

(1) Weekend and legal holidays, or customary vacation periods associated with them;

(2) Periods in which the school is closed temporarily under emergency conditions described in §21.4138(f). (Authority: 38 U.S.C. 3680(a))

[49 FR 40814, Oct. 18, 1984, as amended at 76 FR 45705, Aug. 1, 2011]

**Supplement *Highlights* reference:** 30(2), 87(1).

*Next Section is §21.272*

**§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 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]

**Supplement *Highlights* reference:** 87(1).

*Next Section is §21.276*