

Custom Federal Regulations Service™

**This is supplemental material
for Book G of your set of
Federal Regulations**

Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 91

Covering period of *Federal Register* issues
through February 1, 2019

Need Assistance?

Questions concerning **MISSING SUPPLEMENTS**, need for **ADDITIONAL BOOKS**, and other **DISTRIBUTION LIST** issues for this loose-leaf service should be directed to:

Department of Veterans Affairs
Veterans Benefits Administration
Administration
Mail Code: 20M33
810 Vermont Avenue, N.W.
Washington DC 20420
Telephone: 202/273-7588
Fax: 202/275-5947
E-mail: coarms@vba.va.gov

Questions concerning the **FILING INSTRUCTIONS** for this loose-leaf service, or the reporting of **SUBSTANTIVE ERRORS** in the text, may be directed to:

Jonathan Publishing
660 Laurel Street, B-103
Baton Rouge LA 70802
Telephone: 225-205-5873
Fax: 702-993-6003
E-mail: info@jonpub.com

GENERAL INSTRUCTIONS

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. 91

5 February 2019

Covering the period of Federal Register issues
through February 1, 2019

When **Book G** was originally prepared, it was current through final regulations published in the *Federal Register* of 25 February 1992. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page G-8 of Book G, *Vocational Rehabilitation and Education*.

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page G-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page G-2.
3. After filing, enter the relevant information on the Supplement Filing Record sheet (page G-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
5. Always retain the filing instructions (simply insert them at the back of the book) as a backup record of filing and for reference in case of a filing error.
6. Be certain that you *permanently discard* any pages indicated for removal in the filing instructions in order to avoid confusion later.

To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

Book G, Supplement No. 91 February 1, 2019

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
--	---------------------------------------	---------------------------------------

Do not file this supplement until you confirm that all prior supplements have been filed

G-11 to G-12	G-11 to G-12	Book G Lead Material
G-15 to G-16	G-15 to G-16	Book G Lead Material
21.57-1 to 21.58-1	21.57-1 to 21.58-1	§21.57
21.98-1 to 21.100-1	21.98-1 to 21.100-1	§21.98
21.184-1 to 21.194-1	21.184-1 to 21.194-1	§§21.184, 21.188, 21.190, 21.192 21.194
21.276-1 to 21.283-1	21.276-1 to 21.283-1	§§21.282
21.402-1 to 21.430-2	21.402-1 to 21.430-2	§§21.412, 21.414, 21.416, 21.420, 21.430
21.1029-1 to 21.1029-2	21.1029-1 to 21.1029-2	§21.1029
21.1032-4 to 21.1034-1	21.1032-4 to 21.1035-2	§§21.1033, 21.1034, 21.1035
21.6058-1 to 21.6058-2	21.6058-1 to 21.6058-2	§21.6058
21.6074-1 to 21.6080-1	21.6074-1 to 21.6080-1	§21.6080

**Be sure to complete the
Supplement Filing Record (page G-8)
when you have finished filing this material.**

HIGHLIGHTS

Book G, Supplement No. 91 February 1, 2019

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 18 January 2019, the VA published a final rule, effective 18 February 2019, to amend its claims adjudication, appeals, and Rules of Practice of the Board of Veterans' Appeals (Board) regulations. In addition, this rule revises VA's regulations with respect to accreditation of attorneys, agents, and Veterans Service Organization (VSO) representatives; the standards of conduct for persons practicing before VA; and the rules governing fees for representation. This rulemaking implements the Veterans Appeals Improvement and Modernization Act of 2017 (AMA), which amended the procedures applicable to administrative review and appeal of VA decisions on claims for benefits, creating a new, modernized review system. Unless otherwise specified in this final rule, VA amends its regulations applicable to all claims processed under the new review system, which generally applies where an initial VA decision on a claim is provided on or after the effective date or where a claimant has elected to opt into the new review system under established procedures. Changes:

- Removed §§21.59 and 21.98,
- In §21.184, removed the CROSS REFERENCE paragraph,
- In §21.188, revised paragraph (b),
- In §21.190, revised paragraph (b),
- In §21.192, revised paragraph (b),
- In §21.194, revised paragraph (b),

- In §21.282, revised paragraph (c)(4),
- In §21.412, revised paragraph (a)(2),
- In §21.414, revised paragraph (e) and added paragraph (f),
- Added §21.416,
- In §21.420, revised paragraphs (b) and (d), and added paragraph (e),
- In §21.430, revised paragraph (b),
- In §21.1033, revised paragraph (f)(2),
- Revised §21.1034
- Added §21.1035.



[Reserved]

G 91-8

21.45 Extending the period of eligibility for a program of independent living
beyond basic period of eligibility 21.45-1

21.46 Veteran ordered to active duty; extension of basic period of eligibility 21.46-1

21.47 Eligibility for employment assistance 21.47-1

21.48 Severance of service-connection—reduction to
noncompensable degree 21.48-1

Initial and extended evaluation

21.50 Initial evaluation 21.50-1

21.51 Employment handicap 21.51-1

21.52 Serious employment handicap 21.52-1

21.53 Reasonable feasibility of achieving a vocational goal 21.53-1

21.57 Extended evaluation 21.57-1

21.58 Redetermination of employment handicap and
serious employment handicap 21.58-1

21.59 [Removed]

Vocational Rehabilitation Panel

21.60 Vocational Rehabilitation Panel 21.60-1

21.62 Duties of the Vocational Rehabilitation Panel 21.62-1

Duration of rehabilitation programs

21.70 Vocational rehabilitation 21.70-1

21.72 Rehabilitation to the point of employability 21.72-1

21.73 Duration of employment assistance programs 21.73-1

21.74 Extended evaluation 21.74-1

21.76 Independent living 21.76-1

21.78 Approving more than 48 months of rehabilitation 21.78-1

21.79 Determining entitlement usage under chapter 31 21.79-1

Individualized written rehabilitation plan

21.80 Requirement for a rehabilitation plan 21.80-1

21.82 Completing the plan under Chapter 31 21.82-1

21.84 Individualized written rehabilitation plan 21.84-1

21.86 Individualized extended evaluation plan 21.86-1

21.88 Individualized employment assistance plan 21.88-1

21.90 Individualized independent living plan 21.90-1

21.92 Preparation of the plan 21.92-1

21.94 Changing the plan 21.94-1

21.96 Review of the plan 21.96-1

21.98 [Removed]

G-12

Counseling

21.100	Counseling	21.100-1
--------	------------------	----------

Educational and vocational training services

21.120	Educational and vocational training services.....	21.120-1
21.122	School course.....	21.122-1
21.123	On-job course.....	21.123-1
21.124	Combination course	21.124-1
21.126	Farm cooperative course	21.126-1
21.128	Independent study course.....	21.128-1
21.129	Home study course.....	21.129-1
21.130	Educational and vocational courses outside the United States	21.130-1
21.132	Repetition of the course	21.132-1
21.134	Limitations on flight training	21.134-1

Special rehabilitation services

21.140	Evaluation and improvement of rehabilitation potential	21.140-1
21.142	Adult basic education.....	21.142-1
21.144	Vocational course in sheltered workshop or rehabilitation facility.....	21.144-1
21.146	Independent instructor course	21.146-1
21.148	Tutorial assistance.....	21.148-1
21.150	Reader service	21.150-1
21.152	Interpreter service for the hearing impaired.....	21.152-1
21.154	Special transportation assistance.....	21.154-1
21.155	Services to a veteran's family	21.155-1
21.156	Other incidental goods and services.....	21.156-1

Independent Living Services

21.160	Independent living services.....	21.160-1
21.162	Participation in a program of independent living services.....	21.162-1

Case status

21.180	Case status system.....	21.180-1
21.182	“Applicant” status	21.182-1
21.184	“Evaluation and planning” status.....	21.184-1
21.186	“Ineligible” status.....	21.186-1
21.188	“Extended evaluation” status	21.188-1
21.190	“Rehabilitation to the point of employability” status.....	21.190-1
21.192	“Independent living program” status	21.192-1
21.194	“Employment services” status	21.194-1

21.362 Satisfactory conduct and cooperation 21.362-1
 21.364 Unsatisfactory conduct and cooperation 21.364-1

Interregional and intraregional travel of veterans

21.370 Intraregional travel at government expense 21.370-1
 21.372 Interregional transfer at government expense 21.372-1
 21.374 Authorization for travel of attendants 21.374-1
 21.376 Travel expenses for initial evaluation and counseling 21.376-1

Personnel training and development

21.380 Establishment of qualifications for personnel
 providing assistance under Chapter 31 21.380-1
 21.382 Training and staff development for personnel
 providing assistance under Chapter 31 21.382-1

Rehabilitation research and special projects

21.390 Rehabilitation research and special projects 21.390-1

Veterans Advisory Committee on Rehabilitation

21.400 Veterans’ Advisory Committee on Rehabilitation 21.400-1
 21.402 Responsibilities of the Veterans’ Advisory Committee
 on Rehabilitation 21.402-1

Additional administrative consideration

21.410 Delegation of authority 21.410-1
 21.412 Finality of decisions 21.412-1
 21.414 Revision of decision 21.414-1

Informing the veteran

21.416 Review of decisions 21.416-1
 21.420 Informing the veteran 21-420-1
 21.422 Reduction in subsistence allowance following
 loss of a dependent 21.422-1

Accountability

21.430 Accountability for authorization and payment of training
 and rehabilitation services 21.430-1

Veterans Employment Pay for Success Grant Program

21.440	Purpose and scope.....	21-440-1
21.441	Definitions.....	21-441-1
21.442	VEPFS grants--general	21-442-1
21.443	Permissible uses of VEPFS grant funds.....	21-443-1
21.444	Notice of funding availability	21-444-1
21.445	Application.....	21-445-1
21.446	Scoring and selection	21-446-1
21.447	VEPFS grant agreement.....	21-447-1
21.448	Recipient reporting requirements.....	21-448-1
21.449	Recovery of funds	21-449-1

Subpart B—Claims and Applications for Educational Assistance

Claims

21.1029	Definitions.....	21.1029-1
21.1030	Claims	21.1030-1
21.1031	VA responsibilities when a claim is filed	21.1031-1
21.1032	VA has a duty to assist claimants in obtaining evidence	21.1032-1
21.1033	Time limits	21.1033-1
21.1034	Appeals	21.1034-1
21.1035	Legacy review of benefit claims decisions	21.1035-1

**Subpart C—Survivors’ and Dependents’ Educational Assistance
Under 38 U.S.C. Chapter 35**

21.3001	Delegation of authority	21.3001-1
21.3002	Administration of Survivors’ and Dependents’ Educational Assistance Program	21.3002-1

General

21.3020	Educational assistance	21.3020-1
21.3021	Definitions	21.3021-1
21.3022	Nonduplication—programs administered by VA	21.3022-1
21.3023	Nonduplication; pension, compensation, and dependency and indemnity compensation	21.3023-1
21.3024	Nonduplication; Federal Employees’ Compensation Act	21.3024-1
21.3025	Nonduplication; Federal programs	21.3025-1

Claims

21.3030	Claims.....	21.3030-1
---------	-------------	-----------

Eligibility and entitlement

21.3040	Eligibility; child.....	21.3040-1
21.3041	Periods of eligibility; child	21.3041-1

§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 [Removed].

[49 FR 40814, Oct. 18, 1984, as amended at 66 FR 44053, Aug. 22, 2001; 84 FR 193, Jan. 18, 2019]

§21.98 [Removed].

[49 FR 40814, Oct. 18, 1994, as amended at 62 FR 17708, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 30(2), 91(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

§21.184 “Evaluation and planning” status.

(a) Purpose. The purpose of evaluation and planning status is to identify veterans for whom evaluation and planning services are needed to:

(1) Accomplish an initial evaluation as provided in §21.50;

(2) Develop an IWRP (Individualized Written Rehabilitation Plan), IEEP (Individualized Extended Evaluation Plan), IILP (Individualized Independent Living Plan) or IEAP (Individualized Employment Assistance Plan); or

(3) Reevaluate:

(i) Findings made in prior initial evaluations, or

(ii) Current or previous individualized rehabilitation plans.

(b) Assignment to evaluation and planning status. A veteran’s records will be assigned to evaluation and planning status for any of the purposes specified in paragraph (a) of this section.

(c) Termination of evaluation and planning status. The assignment of the veteran’s records to evaluation and planning status may be terminated under the following conditions:

(1) Evaluation and planning completed. The services necessary to complete evaluation and planning have been provided. These services are:

(i) Completion of an initial evaluation;

(ii) Development of an IWRP (Individualized Written Rehabilitation Plan) or other individual rehabilitation plan in those cases in which eligibility and entitlement to services provided under Chapter 31 are established; or

(iii) Completion of reevaluation of prior findings made in initial evaluation or modification of a rehabilitation plan.

(2) Evaluation and planning not completed. The VR&E Division shall make every reasonable effort to enable the veteran to complete the evaluation and planning phase of the rehabilitation process. A determination that every reasonable effort by VA has been made, and that little likelihood exists that continued efforts will lead to completion of planning and evaluation, may be made under the following conditions:

(i) The veteran writes VA and requests that his or her case be inactivated;

(ii) The veteran fails to keep scheduled appointments following his or her initial appointment; or

(iii) The veteran otherwise fails to cooperate with VA in the evaluation and planning process. If the veteran fails to cooperate, the provisions of §21.362 are applicable. (Authority: 38 U.S.C. 3106, 3107)

[49 FR 40814, Oct. 18, 1984, as amended at 66 FR 44053, Aug. 22, 2001; 84 FR 193, Jan. 18, 2019]

Next Section is §21.186

§21.186 “Ineligible” status.

(a) Purpose. The purpose of ineligible status is to identify the cases in which a veteran requests services under Chapter 31, but the request is denied by VA, usually, on the basis of information developed when the veteran was in *evaluation and planning* status. (Authority: 38 U.S.C. 3106)

(b) Assignment to ineligible status. A veteran’s case will be assigned to ineligible status following a finding by VA that the veteran is not eligible for or entitled to services under Chapter 31. The finding must preclude all possible Chapter 31 services. (Authority: 38 U.S.C. 3106, 3107)

(c) Termination of ineligible status. The assignment of the veteran’s case to ineligible status should be terminated if the veteran thereafter becomes eligible to receive any Chapter 31 service. Placement of the case in “ineligible” status is a bar to reconsideration of eligibility unless a material change in circumstances occurs. (Authority: 38 U.S.C. 3106)

Next Section is §21.188

§21.188 “Extended evaluation” status.

(a) Purpose. The purposes of extended evaluation status are to:

(1) Identify a veteran for whom a period of extended evaluation is needed; and

(2) Assure that necessary services are provided by VA during the extended evaluation. (Authority: 38 U.S.C. 3106)

(b) Assignment to extended evaluation status. A veteran’s case may be assigned or reassigned to extended evaluation status under provisions of §21.57, §21.74, §21.86, §21.94, §21.96. (Authority: 38 U.S.C. 3107)

(c) Continuation in extended evaluation status. A veteran’s case will be in extended evaluation status during periods in which:

(1) The veteran is pending induction into the facility at which rehabilitation services will be provided;

(2) The veteran is receiving rehabilitation services prescribed in the IEEP (§21.86); or

(3) The veteran is on authorized leave of absence during an extended evaluation. (Authority: 38 U.S.C. 3108)

(d) Termination of extended evaluation status. A veteran in *extended evaluation* status will remain in that status until one of the following events occur:

(1) Following notification of necessary arrangements to begin an extended evaluation, the date the extended evaluation begins, and instructions as to the next steps to be taken, the veteran:

(i) Fails to report and does not respond to followup contact by the case manager;

(ii) Declines or refuses to enter the program; or

(iii) Defers induction for a period exceeding 30 days beyond the scheduled date of induction, except where the deferment is due to illness or other sufficient reason;

(2) VA determines the reasonable feasibility of a vocational goal for the veteran before completion of all of the planned evaluation because the decision does not require the further evaluation;

(3) The veteran completes the extended evaluation;

(4) Either the veteran or VA interrupts the extended evaluation;

(5) Either the veteran or VA discontinues the extended evaluation; or

(6) Service-connection for the veteran’s service-connected disability is severed by VA or his or her continued eligibility otherwise ceases. (Authority: 38 U.S.C. 3106)

Cross references: See §§21.57 Extended evaluation, 21.322 Commencing dates, 21.324 Reduction or termination.

[49 FR 40814, Oct. 18, 1984, as amended at 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 91(1)

Next Section is §21.190

§21.190 “Rehabilitation to the point of employability” status.

(a) Purpose. The *rehabilitation* to the point of employability status serves to:

(1) Identify veterans who receive training and rehabilitation services to enable them to attain a vocational goal; and

(2) Assure that services specified in the veteran’s IWRP are provided in a timely manner by VA. (Authority: 38 U.S.C. 3101)

(b) Assignment. A veteran’s case may be assigned or reassigned to *rehabilitation to the point of employability* status under the provisions of §§21.84, 21.94, or 21.96. (Authority: 38 U.S.C. 3107)

(c) Continuation in rehabilitation to the point of employability status. A veteran will be assigned to *rehabilitation* to the point of employability status during periods in which:

(1) The veteran has progressed through applicant status and *evaluation and planning* status (including extended evaluation status when appropriate), and is pending induction into the facility at which training and rehabilitation services will be provided;

(2) The veteran is receiving training and rehabilitation services prescribed in the IWRP; or

(3) The veteran is on authorized leave of absence. (Authority: 38 U.S.C. 3104, 3108)

(d) Termination of rehabilitation to the point of employability status when goals of the IWRP for this period are achieved. VA will consider a veteran to have completed the period of rehabilitation to the point of employability, and will terminate this status under the following conditions:

(1) The veteran achieves the goals of, and has been provided services specified in, the IWRP;

(2) The veteran who leaves the program has completed a sufficient portion of the services prescribed in the IWRP to establish clearly that he or she is generally employable as a trained worker in the occupational objective established in the IWRP;

(3) The veteran, who has not completed all prescribed services in the IWRP, accepts employment in the occupational objective established in the IWRP with wages and other benefits commensurate with wages and benefits received by trained workers; or

(4) The veteran:

(i) Satisfactorily completes a prescribed program, the practice of which requires pursuing an examination for licensure, but

(ii) Is unable to take the licensure examination prior to the basic twelve-year termination date and there is no basis for extension of that date. (Authority: 38 U.S.C. 3107)

(e) Other conditions for termination of rehabilitation to the point of employability status. In addition to termination under conditions described in paragraph (d) of this section, the classification of the veteran’s records in this status may be terminated under any of the following conditions:

(1) A veteran who has been notified of necessary arrangements to begin the program, the date the program begins and instructions as to the next steps to be taken:

(i) Fails to report and does not respond to initial or subsequent followup by the case manager;

(ii) Declines or refuses to enter the program; or

(iii) Defers induction for a period exceeding 30 days beyond the scheduled beginning date of the program, except where the deferment is due to illness or other sufficient reason.

(2) Either the veteran or VA interrupts the period of rehabilitation to the point of employability;

(3) Either VA or the veteran discontinues the period of rehabilitation to the point of employability;

(4) The veteran reaches his or her termination date, and there is no basis for extension under §21.44;

(5) The veteran’s entitlement to training and rehabilitation services under Chapter 31 is exhausted, and there is no basis for extension under §21.78; or

(6) Service-connection for the veteran’s service-connected disability is served by VA or he or she otherwise ceases to be eligible. (Authority: 38 U.S.C. 3107)

(f) Payment of employment adjustment allowance. An employment adjustment allowance will be paid when the veteran’s classification in *rehabilitation to the point of employability* status is terminated under provisions of paragraph (d) of this section. An employment adjustment allowance will not be paid if termination is for one of the reasons specified in paragraph (e) of this section. (Authority: 38 U.S.C. 3108(a))

Cross references: See §§21.120 Educational and vocational trainings services, 21.282 Effective date of induction into a rehabilitation program, and 21.284 Reentering into a rehabilitation program.

[49 FR 40814, Oct. 18, 1984, as amended at 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 91(1)

Next Section is §21.192

§21.192 “Independent living program” status.

(a) Purpose. The independent living program status serves to:

(1) Identify veterans who are being furnished a program of independent living services by VA; and

(2) Assure that such veterans receive necessary services from VA in a timely manner.

(b) Assignment to independent living program status. A veteran may be assigned or reassigned to independent living program status under the provisions of §§21.88, 21.94, or 21.96. (Authority: 38 U.S.C. 3107)

(c) Continuation in independent living program status. A veteran will be in “independent living program” status during periods in which:

(1) The provisions of §21.282 for induction into a program are met, but the veteran is pending induction into the facility at which rehabilitation services will be provided;

(2) The veteran receives rehabilitation services prescribed in an IILP; or

(3) The veteran is on authorized leave of absence status. (Authority: 38 U.S.C. 3109, 3120)

(d) Termination of independent living program status. When a veteran’s case has been assigned to independent living program status, the case will be terminated from that status, if one of the following occurs:

(1) A veteran, who has been notified of necessary arrangements to begin a program, the date the program begins and instructions as to the next steps to be taken:

(i) Fails to report and does not respond to followup contact by the case manager;

(ii) Declines or refuses to enter the program; or

(iii) Defers entry for more than 30 days beyond the scheduled beginning date, unless the deferment is due to illness or other sufficient reason.

(2) The veteran completes the IILP;

(3) Either the veteran or VA interrupts the program;

(4) Either the veteran or VA discontinues the program; or

(5) Service-connection for the veteran’s service-connected disability is severed by VA or he or she otherwise ceases to be eligible. (Authority: 38 U.S.C. 3109, 3110)

Cross references: See §§21.160 Independent living services, 21.282 Effective date of induction into a rehabilitation program, 21.283 Rehabilitated, 21.322 Commencing date, and 21.324 Reduction or termination date.

[49 FR 40814, Oct. 18, 1984, as amended at 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 91(1)

Next Section is §21.194

§21.194 “Employment services” status.

(a) Purpose. The status employment services serves to:

- (1) Identify veterans who are being furnished employment services; and
- (2) Assure that these veterans receive necessary services in a timely manner.

(b) Assignment to employment services status. A veteran’s case may be assigned or reassigned to employment services status under the provisions of §§21.84, 21.88, and 21.94.

(c) Continuation in employment services status. A case will remain in employment services status for the period specified in the IEAP, subject to the limitations specified in paragraph (d) of this section.

(d) Termination of employment services status. The veteran will continue in employment services status until the earliest of the following events occurs:

- (1) He or she is determined to be rehabilitated under the provisions of §21.283; or
- (2) He or she is:
 - (i) Employed for at least 60 days in employment that does not meet the criteria for rehabilitation contained in §21.283, if the veteran intends to maintain this employment and declines further assistance; and
 - (ii) Adjusted to the duties and responsibilities of the job.
- (3) Either the veteran or VA interrupts the employment services program;
- (4) Either the veteran or VA discontinues the employment services program;
- (5) He or she reaches the end of the period for which employment services have been authorized and there is no basis for extension; or
- (6) Service-connection for the veteran’s service-connected disability is severed or he or she otherwise ceases to be eligible. (Authority: 38 U.S.C. 3117)

[49 FR 40814, Oct. 18, 1984, as amended at 58 FR 68768, Dec. 29, 1993; 84 FR 193, Jan. 18, 2019]

Cross references: See §§21.47 Eligibility for employment assistance, 21.250 Overview of employment services, and 21.326 Authorization of employment services.

Supplement *Highlights* references: 10(3), 91(1).

Next Section is §21.196

§21.276 Incarcerated veterans.

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

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

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

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

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

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

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

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

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

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

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

Supplement Highlights reference: 30(2)

Next Section is §21.282

Induction into a Rehabilitation Program

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

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

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

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

(1) The past period is within:

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

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

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

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

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (see §§21.80 through 21.88, and §§21.92 through 21.96).

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

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

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

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

[49 FR 40814, Oct. 18, 1984, as amended at 75 FR 3165, Jan. 20, 2010; 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 83(1), 91(1).

§21.283 Rehabilitated.

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

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

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

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

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

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

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

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

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

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

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

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

§21.402 Responsibilities of the Veterans' Advisory Committee on Rehabilitation.

(a) Consultation with the Secretary. The Secretary shall regularly, but not less than twice yearly, consult with and seek the advice of the committee with respect to the administration of veterans' rehabilitation programs authorized under Title 38, United States Code.

(b) Submission of an annual report. The committee shall:

(1) Submit to the Secretary an annual report on the rehabilitation programs and activities of the VA; and

(2) Submit such other reports and recommendations to the Secretary as the committee determines appropriate.

(c) Contents of the committee's annual report. The committee's annual report shall include:

(1) An assessment of the rehabilitation needs of veterans; and

(2) A review of the programs and activities of VA designed to meet needs identified in paragraph (c)(1) of this section.

(d) Secretary's annual report. The findings of the committee shall be incorporated in the Secretary's annual report submitted to the Congress under 38 U.S.C. 214. In addition the Secretary shall submit, together with this annual report, a copy of all reports and recommendations of the committee submitted to the Secretary since the previous annual report was submitted to the Congress. (Authority: 38 U.S.C. 3121(c))

Next Section is §21.410

Additional Administrative Consideration

§21.410 Delegation of authority.

The Secretary delegates authority to the Under Secretary for Benefits to make findings and decisions under 38 U.S.C. chapter 31 and regulations, precedents, and instructions that affect vocational rehabilitation services for disabled veterans. The Under Secretary for Benefits may further delegate this authority to supervisory and non-supervisory Vocational Rehabilitation and Employment staff members. (Authority: 38 U.S.C. 512(a))

[49 FR 40814, Oct. 18, 1994, as amended at 62 FR 17710, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001]

Cross reference: See §21.4001 Delegation of authority.

Supplement Highlights reference: 30(2)

§21.412 Finality of decisions.

(a) Facility of original jurisdiction. The decision of a VA facility in a given veteran's case:

(1) Will be final and binding upon all field stations of VA as to conclusions based on evidence on file at that time; and

(2) Will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §§21.410 and 21.414. (Authority: 38 U.S.C. 512(a), 7103)

(b) Adjudicative determinations. Current determinations of line of duty, character of discharge, relationship, and other pertinent elements affecting eligibility for training and rehabilitation services or payment of subsistence allowance under Chapter 31, made by an adjudicative activity by application of the same criteria and based on the same facts, are binding upon all other adjudicative activities in the absence of clear and unmistakable error. (Authority: 38 U.S.C. 512(a))

[49 FR 40814, Oct. 18, 1984, as amended at 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 91(1).

Next Section is §21.414

§21.414 Revision of decision.

The revision of a decision on which an action is based is subject to the following regulations:

- (a) Clear and unmistakable error, §3.105(a);
- (b) Difference of opinion, §3.105(b);
- (c) Character of discharge, §3.105(c);
- (d) Severance of service-connection, §3.105(d);
- (e) Reduction to less than compensable evaluation, ; (See §§21.48, 21.322, and 21.324)
- (f) Review of decisions, §21.416. (Authority: 38 U.S.C. 5104B, 5108, and 5112)

[49 FR 40814, Oct. 18, 1984, as amended at 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 91(1).

Next Section is §21.416

§21.416 Review of decisions.

(a) *Applicability.* This section applies where notice of a decision under this subpart or subpart M of this part was provided to a claimant or his/her representative on or after the effective date of the modernized review system as provided in §19.2(a) of this chapter, or where a claimant has elected review of a legacy claim under the modernized review system as provided in §3.2400(c) of this chapter.

(b) *Reviews available.* Within one year from the date on which VA issues notice of a decision on an issue contained within a claim, a claimant may elect one of the following administrative review options:

(1) *Supplemental Claim.* The nature of this review will accord with §3.2501 of this chapter, except that a complete application in writing on a form prescribed by the Secretary will not be required and a hearing will not be provided.

(2) *Appeal to the Board of Veterans' Appeals.* See 38 CFR part 20.

(3) *Higher-level Review.* The nature of this review will accord with §3.2601.

(c) *Notice requirements.* Notice of a decision made under paragraph (b)(1) or (3) of this section will include all of the elements described in §21.420(b). (Authority: 38 U.S.C. 5104B, 5108, 5109A, and 7105)

[84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 91(1).

Next Section is §21.420

Informing the Veteran

§21.420 Informing the veteran.

(a) *General.* VA will inform a veteran in writing of findings affecting receipt of benefits and services under Chapter 31. This includes veterans:

- (1) Requesting benefits and services; or
- (2) In receipt of benefits and services.

(b) *Notification:* Each notification should include the following:

- (1) Identification of the issues adjudicated.
- (2) A summary of the evidence considered by the Secretary.
- (3) A summary of the applicable laws and regulations relevant to the decision.
- (4) Identification of findings favorable to the veteran.
- (5) In the case of a denial of a claim, identification of elements not satisfied leading to the denial.
- (6) An explanation of how to obtain or access evidence used in making the decision.
- (7) A summary of the applicable review options available for the veteran to seek further review of the decision.

(c) *Adverse action.* An adverse action is one, other than an interim action such as a suspension of benefits pending development, which:

- (1) Denies Chapter 31 benefits, when such benefits have been requested;
- (2) Reduces or otherwise diminishes benefits being received by the veteran; or
- (3) Terminates receipt of benefits for reasons other than scheduled interruptions which are a part of the veteran's plan.

(d) *Prior notification of adverse action.* VA shall give the veteran a period of at least 30 days to review, prior to its promulgation, an adverse action other than one which arises as a consequence of a change in training time or other such alteration in circumstances. During that period, the veteran shall be given the opportunity to:

- (1) Meet informally with a representative of VA;
- (2) Review the basis for VA decision, including any relevant written documents or material; and
- (3) Submit to VA any material which he or she may have relevant to the decision.

(e) *Favorable findings.* Any finding favorable to the veteran is binding on all subsequent agency of original jurisdiction and Board of Veterans' Appeals adjudicators, unless rebutted by evidence that identifies a clear and unmistakable error in the favorable finding. (Authority: 38 U.S.C. 3102, 5104, 5104A, and 7105)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 40872, Oct. 4, 1989; 84 FR 193, Jan. 18, 2019]

Supplement *Highlights* references: 91(1).

Next Section is §21.422

§21.422 Reduction in subsistence allowance following the loss of a dependent.

(a) Notice of reduction required when a veteran loses a dependent.

(1) Except as provided in paragraph (a)(2) of this section, VA will not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:

(i) VA has notified the veteran of the adverse action, and

(ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;

(i) VA is not required to send a prereduction notice as stated in paragraph (a)(1) of this section, but;

(ii) VA will send notice contemporaneous with the reduction in subsistence allowance. (Authority: 38 U.S.C. 5112, 5113)

(b) Pre-reduction notice. Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, VA will:

(1) Prepared a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the proposed action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that VA receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level. (Authority: 38 U.S.C. 5112, 5113)

(c) Predetermination hearing.

(1) If VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility. (Authority: 38 U.S.C. 5112, 5113)

(d) Final action. VA will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days.

(2) If a predetermination hearing was conducted, VA will base final action upon:

(i) Evidence presented at the hearing;

(ii) Evidence contained in the claims file at the time of the hearing; and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see §3.103(c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of §21.324 of this part. (Authority: 38 U.S.C. 5112, 5113)

[54 FR 40872, Oct. 4, 1989]

Next Section is §21.430

Accountability

§21.430 Accountability for authorization and payment of training and rehabilitation services.

(a) General. VA shall maintain policies and procedures which provide accountability in the authorization and payment of program costs for training and rehabilitation services. The procedures established under this section are applicable to all program costs except subsistence allowance (or the optional allowance at Chapter 34 rates). Policies and procedures governing payment of subsistence allowance are governed by §§21.260 through 21.276, and §§21.320 through 21.334.

(b) Determining necessary costs for training and rehabilitation services. The estimates of program costs during a calendar year or lesser period shall be based upon the services necessary to carry out the veteran's rehabilitation plan during that period (§§21.80 through 21.96). The estimates will be developed by the VBA case manager. If additional approval is required, the VBA case manager shall secure such additional approval prior to authorization of services.

(c) Vocational Rehabilitation and Employment (VR&E) Officer's review of program costs. The VR&E Officer will review the program costs for the services in paragraphs (c)(1) through (c)(3) of this section if the case manager's program cost estimate for a calendar year exceeds \$25,000. The VR&E Officer may not delegate this responsibility. The case manager will neither sign a rehabilitation plan nor authorize expenditures before the VR&E Officer approves the program costs. The services subject to this review are:

- (1) Providing supplies to help establish a small business;
- (2) A period of extended evaluation; or
- (3) A program of independent living services.
(Authority: 38 U.S.C. 3115(b)(4))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 45767, Dec. 22, 1986; 55 FR 25975, June 26, 1990; 62 FR 17710, Apr. 11, 1997; 66 FR 44053, Aug. 22, 2001; 84 FR 194, Jan. 18, 2019]

Cross references: See §21.156. Other incidental goods and services. §21.258. Special assistance for veterans in self-employment.

Supplement *Highlights* references: 30(2), 91(1)

Next Section is §21.1020

Reserved

Subpart B—Claims and Applications for Educational Assistance

Authority: 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

Editorial Note: The regulations formerly appearing under this subpart were revoked at 30 FR 14103, Nov. 9, 1965. That order provided in part, “these regulations remain in force insofar as they are pertinent to any problems, appeals, litigation, or determinations of liability of educational institutions or training establishments for overpayments under 38 U.S.C. 3266.”

Claims

21.1029	Definitions.....	21.1029-1
21.1030	Claims	21.1030-1
21.1031	VA responsibilities when a claim is filed	21.1031-1
21.1032	VA has a duty to assist claimants in obtaining evidence	21.1032-1
21.1033	Time limits	21.1033-1
21.1034	Review of Decisions	21.1034-1
21.1035	Legacy review of benefit claims decisions	21.1035-1

Claims

§21.1029 Definitions.

The following definitions of terms apply to this subpart and subparts C, D, F, G, H, K, L, and P, to the extent that the terms are not otherwise defined in those subparts:

(a) *Abandoned claim.* A claim is an abandoned claim if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant:

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and:

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request. (Authority: 38 U.S.C. 5103(a))

(b) *Date of claim.* The date of claim is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by §21.1033, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim is as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate. (Authority: 38 U.S.C. 5103)

(c) *Educational institution.* The term *educational institution* means:

- (1) A vocational school or business school;
- (2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;
- (3) A public or private elementary school or secondary school;
- (4) Any entity, other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program;
- (5) An organization or entity offering a licensing or certification test; or
- (6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation. (Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

(d) *Formal claim.* A claim is a formal claim when the claimant (or his or her authorized representative) files the claim with VA, and:

- (1) The claim is a claim for:

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

- (i) The claimant;
- (ii) His or her fiduciary, if any; and
- (iii) His or her representative, if any. (Authority: 38 U.S.C. 5102(b), 5103(a), 5103A)

[72 FR 16965, Apr. 5, 2007, as amended at 74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* references: 42(1), 69(1), 73(1), 82(1).

§21.1033 Time limits.

The provisions of this section are applicable to informal claims and formal claims.

(a) *Failure to furnish form, information, or notice of time limit.* VA's failure to give a claimant or potential claimant any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the time periods allowed for these actions. (Authority: 38 U.S.C. 5101, 5113)

(b) [Reserved]

(c) *Time limit for filing a claim for an extended period of eligibility under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35.* VA must receive a claim for an extended period of eligibility provided by §21.3047, §21.5042, §21.7051, §21.7551, or §21.9535 by the later of the following dates:

(1) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education. (Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3321, 3512)

(d) *Time limit for filing for an extension of eligibility due to suspension of program (38 U.S.C. chapter 35).* VA must receive a claim for an extended period of eligibility due to a suspension of an eligible child's program of education as provided in §21.3043 by the later of the following dates.

(1) One year from the date on which the child's original period of eligibility ended; or

(2) One year from the date on which the condition that caused the suspension of the program of education ceased to exist. (Authority: 38 U.S.C. 3512(c))

(e) *Extension for good cause.*

(1) VA may extend for good cause a time limit within which a claimant or beneficiary is required to act to perfect a claim or challenge an adverse VA decision. VA may grant such an extension only when the following conditions are met:

(i) When a claimant or beneficiary requests an extension after expiration of a time limit, he or she must take the required action concurrently with or before the filing of that request; and

(ii) The claimant or beneficiary must show good cause as to why he or she could not take the required action during the original time period and could not have taken the required action sooner.

(2) Denials of time limit extensions are separately appealable issues. (Authority: 38 U.S.C. 5101, 5113)

(f) *Computation of time limit.*

(1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, VA will exclude the first day of the specified period, and will include the last day. This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, the VA will include the next succeeding day in the computation.

(2) The first day of the specified period referred to in paragraph (f)(1) of this section will be the date of the letter of notification to the claimant or beneficiary for purposes of computing time limits. As to appeals, see §§20.203 and 20.110 of this chapter. (Authority: 38 U.S.C. 501(a))

[38 FR 14930, June 7, 1973, as amended at 39 FR 43220, Dec. 11, 1974; 44 FR 62494, Oct. 31, 1979; 45 FR 67092, Oct. 9, 1980; 48 FR 37971, Aug. 22, 1983; 54 FR 28676, July 7, 1989; 64 FR 23771, May 4, 1999; 71 FR 1497, Jan. 10, 2006; redesignated and revised at 72 FR 16965, 16967, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009; 84 FR 194, Jan. 18, 2019]

Supplement *Highlights* references: 42(1), 69(1), 73(1), 82(1), 91(1).

§21.1034 Review of decisions.

(a) *Decisions.* A claimant may request a review of a decision on eligibility or entitlement to educational assistance under title 38, United States Code. A claimant may request review of a decision on entitlement to educational assistance under 10 U.S.C. 510, and 10 U.S.C. chapters 106a, 1606, and 1607. A claimant may not request review of a decision on eligibility under 10 U.S.C. 510, and 10 U.S.C. chapters 106a, 1606, and 1607 or for supplemental or increased educational assistance under 10 U.S.C. 16131(i) or 38 U.S.C. 3015(d), 3021, or 3316 to VA as the Department of Defense solely determines eligibility to supplemental and increased educational assistance under these sections.

(b) *Reviews available.* Except as provided in paragraph (d) of this section, within one year from the date on which the agency of original jurisdiction issues notice of a decision described in paragraph (a) of this section as subject to a request for review, a claimant may elect one of the following administrative review options:

(1) *Supplemental Claim Review.* See §3.2501 of this chapter.

(2) *Higher-level Review.* See §3.2601 of this chapter.

(3) *Board of Veterans' Appeals Review.* See 38 CFR part 20.

(c) *Part 3 provisions.* See §3.2500(b)-(d) of this chapter for principles that generally apply to a veteran's election of review of a decision described in paragraph (a) of this section as subject to a request for review.

(d) *Contested claims.* See subpart E of part 20 of this title for the timeline pertaining to contested claims.

(e) *Applicability.* This section applies where notice of a decision described in paragraph (a) of this section was provided to a veteran on or after the effective date of the modernized review system as provided in §19.2(a) of this chapter, or where a veteran has elected review of a legacy claim under the modernized review system as provided in §3.2400(c) of this chapter. (Authority: 38 U.S.C. 501, 5104B)

[74 FR 14665, Mar. 31, 2009; 84 FR 194, Jan. 18, 2019]

Supplement *Highlights* references: 82(1), 91(1).

§21.1035 Legacy review of benefit claims decisions.

(a) A claimant who has filed a Notice of Disagreement with a decision described in §21.1034(a) that does not meet the criteria of §21.1034(e) of this chapter has a right to a review under this section. The review will be conducted by the Educational Officer of the Regional Processing Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the legacy appeal process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under the version of §3.103(c) of this chapter predating Public Law 115-55.

(d) A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) The reviewer may grant a benefit sought in the claim, notwithstanding §3.105(b) of this chapter. The reviewer may not revise the decision in a manner that is less advantageous to the claimant than the decision under review, except that the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see §3.105(a) of this chapter).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the legacy appeal process by issuing a Statement of the Case. Authority: 38 U.S.C. 5109A and 7105(d)

[84 FR 194, Jan. 18, 2019]

Supplement *Highlights* references: 91(1).

Next Section is §21.3001

§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 §21.416 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))

[53 FR 4397, Feb. 16, 1988; as amended at 84 FR 194, Jan. 18, 2019]

Supplement *Highlights* References: 91(1)

Reserved

§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), and 21.96. (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 §21.416 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; 84 FR 194, Jan. 18, 2019]

Supplement *Highlights* References: 89(1), 91(1).

Next Section is §21.6082