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Medical

Book I

Title 38, Parts 17, 46, 47, 51–53,
58–64, 70, 71, and 200

Supplement No. 128

Covering period of *Federal Register* issues
through April 1, 2020

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book I*

Code of Federal Regulations

Title 38, Parts 17, 46, 47, 51–53, 58–64, 70, 71, and 200

Medical

Supplement No. 128

5 April 2020

Covering the period of Federal Register issues
through April 1, 2020

When **Book I** was originally prepared, it was current through final regulations published in the *Federal Register* of 15 January 2000. 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 I-8 of Book I, *Medical*.

**To ensure accuracy and timeliness of your materials,
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1. Always file your supplemental materials immediately upon receipt.
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3. After filing, enter the relevant information on the Supplement Filing Record sheet (page I-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
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FILING INSTRUCTIONS

**Book I, Supplement No. 128
April 5, 2020**

*Remove these
old pages*

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*Section(s)
Affected*

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

17.603-1 to 17.611-1

17.603-1 to 17.611-1

§§17.603, 17.607 &
17.610

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Supplement Filing Record (page I-9)
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HIGHLIGHTS

Book I, Supplement No. 128 April 5, 2020

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 §17.100, you will see a note at the end of that section which reads: “Supplement *Highlights* references—37(1).” This means that paragraph 1 of the *Highlights* section in Supplement No. 37 contains information about the changes made in §17.100. 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: Beginning 1 January 2000, supplements for this Book I 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 6 March 2020, the VA published a final rule effective 6 April 2020, to amend its regulations that govern the Health Professional Scholarship Program (HPSP). The amended regulations ensures that VA award not less than 50 HPSP scholarships each year to students who are accepted for enrollment or are enrolled in a program of education or training that leads to employment as a physician or dentist until such a date as VA determines the current staffing shortage is reduced. The amended regulation will also expand the number of years of obligated service that a HPSP participant would have to serve in VA as a physician or a dentist. This rulemaking implements the mandates of the VA MISSION Act of 2018. Changes:

- In §17.603, revised paragraph (b),
- In §17.607, revised paragraph (c)(1),
- In §17.610, re-designated paragraphs (b)(4) and (b)(5) as paragraphs (b)(5) and (b)(6), and added new paragraph (b)(4).

§17.603 Availability of HPSP scholarships.

(a) General. A HPSP scholarship will be awarded only when necessary to assist VA in alleviating shortages or anticipated shortages of personnel in the health professions stated in paragraph (b) of this section. VA will determine the existence of shortage of personnel in accordance with specific criteria for each health care profession. VA has the authority to establish the number of scholarships to be awarded in a fiscal year, and the number that will be awarded to full-time and part-time students.

(b) *Qualifying fields of education*

(1) Physicians and dentists--

(i) VA will award not less than 50 HPSP scholarships each year to individuals who are accepted for enrollment or are enrolled in a program of education or training leading to employment as a physician or dentist until such date as VA determines that the staffing shortage of physicians and dentists in VA is less than 500.

(ii) Once the staffing shortage of physicians and dentists is less than 500, VA will award HPSP scholarships to individuals in an amount equal to not less than ten percent of the staffing shortage of physicians and dentists in VA.

(2) *Other health care professions.* VA will grant HPSP scholarships in a course of study in those disciplines or programs other than physician or dentist where recruitment is necessary for the improvement of health care of veterans as listed in 38 U.S.C. 7401(1) and (3).

(Authority: 38 U.S.C. 7401(1), (3), 7612(b)(2), 7612(b)(4), and 7603(b)(1))

[54 FR 28674, July 7, 1989, as amended at 61 FR 21969, May 13, 1996; 78 FR 51070, Aug. 20, 2013; 85 FR 13053, March 6, 2020]

Supplement *Highlight Reference(s): 79(1), 128(1).*

§17.604 Application for the HPSP.

An applicant for the HPSP must submit an accurate and complete application, including a signed written acceptance agreement.

(Authority: 38 U.S.C. 7612(c)(1)(B))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0793.)

[47 FR 10810, Mar. 12, 1982; as amended at 78 FR 51070, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.605 Selection of participants.

(a) *General.* In deciding which HPSP application to approve, VA will first consider applications submitted by applicants entering their final year of education or training and applicants who previously received HPSP scholarships and who meet the conditions of paragraph (f) of this section. Except for paragraph (f) of this section, applicants will be evaluated and selected using the criteria specified in paragraph (b) of this section. If there are a larger number of equally qualified applicants than there are awards to be made, then VA will first select veterans, and then use a random method as the basis for further selection. In selecting participants to receive awards as part-time students, VA may, at VA's discretion: (Authority: 38 U.S.C. 7612(b)(5))

(1) Award scholarships geographically to part-time students so that available scholarships may be distributed on a relatively equal basis to students working throughout the VA health care system, and/or

(2) Award scholarships on the basis of retention needs within the VA health care system. (Authority: 38 U.S.C. 7603(d))

(b) *Selection.* In evaluating and selecting participants, the Secretary will take into consideration those factors determined necessary to assure effective participation in the Scholarship Program. The factors may include, but not be limited to:

- (1) Work/volunteer experience, including prior health care employment and Department of Veterans Affairs employment;
- (2) Faculty and employer recommendations;
- (3) Academic performance; and
- (4) Career goals. (Authority: 38 U.S.C. 7633)

(c) *Selection of part-time students.* Factors in addition to those specified in paragraph (b) of this section, which may be considered in awarding scholarships to part-time students may include, but are not limited to:

- (1) Length of service of a VA employee in a health care facility;
- (2) Honors and awards received from VA, and other sources;
- (3) VA work performance evaluation;
- (4) A recommendation for selection for a part-time scholarship from a VA Medical District. (Authority: 38 U.S.C. 7452(d)(1))

(d) *Notification of approval.* VA will notify the individual in writing that his or her application has been accepted and approved. An individual becomes a participant in the program upon receipt of such approval by VA.

(e) *Duration of scholarship award.* Subject to the availability of funds for the Scholarship Program, the Secretary will award a participant a full-time scholarship under these regulations for a period of from 1 to 4 school years and a participant of a part-time scholarship for a period of 1 to 6 school years. (Authority: 38 U.S.C. 7612(c)(1)(A) and 7614(3))

(f) *Continuation awards.* Subject to the availability of funds for the Scholarship Program and selection, the Secretary will award a continuation scholarship for completion of the degree for which the scholarship was awarded if:

(1) The award will not extend the total period of Scholarship Program support beyond 4 years for a full-time scholarship, and beyond 6 years for a part-time scholarship; and

(2) The participant remains eligible for continued participation in the Scholarship Program. (Authority: 38 U.S.C. 7603(d))

(Approved by the Office of Management and Budget under control number 2900 0352)

[48 FR 37399, Aug. 18, 1983, as amended at 54 FR 28674, July 7, 1989; 78 FR 51070, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)

§17.606 Award procedures.*(a) Amount of scholarship.*

(1) A scholarship award will consist of (i) tuition and required fees (ii) other educational expenses, including books and laboratory equipment, and (iii) except as provided in paragraph (a)(2) of this section, a monthly stipend, for the duration of the scholarship award. All such payments to scholarship participants are exempt from Federal taxation. (Authority: 38 U.S.C. 7636)

(2) No stipend may be paid to a participant who is a full-time VA employee.

(3) The Secretary may determine the amount of the stipend paid to participants, whether part-time students or full-time students, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 7613(b).

(4) In the case of a part-time student who is a part-time employee, the maximum stipend, if more than a nominal stipend is paid, will be reduced in accordance with the proportion that the number of credit hours carried by such participant bears to the number of credit hours required to be carried by a full-time student in the course of training being pursued by the participant.

(5) A full stipend may be paid only for the months the part-time student is attending classes. (Authority: 38 U.S.C. 7614(2))

(6) The Secretary may make arrangements with the school in which the participant is enrolled for the direct payment of the amount of tuition and or reasonable educational expenses on the participant's behalf. (Authority: 38 U.S.C. 7613(c))

(7) A participant's eligibility for a stipend ends at the close of the month in which degree requirements are met.

(b) Leave-of-absence, repeated course work. The Secretary may suspend scholarship payments to or on behalf of a participant if the school (1) approves a leave-of-absence for the participant for health, personal, or other reasons, or (2) requires the participant to repeat course work for which the Secretary previously has made payments under the Scholarship Program. Additional costs relating to the repeated course work will not be paid under this program. Any scholarship payments suspended under this section will be resumed by the Secretary upon notification by the school that the participant has returned from the leave-of-absence or has satisfactorily completed the repeated course work and is proceeding as a full-time student in the course of study for which the scholarship was awarded. (Authority: 38 U.S.C. 7633)

[48 FR 37400, Aug. 18, 1983, as amended at 55 FR 40170, Oct. 2, 1990]

§17.607 Obligated service.

(a) *General.* Except as provided in paragraph (d) of this section, each participant is obligated to provide service as a Department of Veterans Affairs employee in full-time clinical practice in the participant's discipline in an assignment or location determined by the Secretary. (Authority: 38 U.S.C. 7616(a))

(b) *Beginning of service*

(1) (i) *Date of employment.* Except as provided in paragraph (b)(2) of this section, a participant's obligated service will begin on the date VA appoints the participant as a full-time VA employee in a clinical occupation for which the degree prepared the participant. VA will appoint the participant to such position as soon as possible, but no later than 90 days after the date that the participant receives his or her degree, or the date the participant becomes licensed in a State or becomes certified, whichever is later. VA will actively assist and monitor participants to ensure State licenses or certificates are obtained in a minimal amount of time following graduation. If a participant fails to obtain his or her degree, or fails to become licensed in a State or become certified no later than 180 days after receiving the degree, the participant is considered to be in breach of the acceptance agreement.

(ii) *Notification.* VA will notify the participant of the work assignment and its location no later than 60 days before the date on which the participant must begin work.

(iii) *VA mentor.* VA will ensure that the participant is assigned a mentor who is employed at the same facility where the participant performs his or her obligated service at the commencement of such service. (Authority: 38 U.S.C. 7616(b), 7616(c), 7618(a))

(c) *Duration of service*

(1) *Full-time student.* –

(i) *Physician or dentist.* A participant who attended school as a full-time student will agree to serve as a full-time physician or dentist in the Veterans Health Administration for 18 months for each school year or part thereof for which a scholarship was awarded.

(ii) *Other health care profession.* A participant who attended school as a full-time student in a health care profession other than physician or dentist will agree to serve as a full-time clinical employee in the Veterans Health Administration for 1 calendar year for each school year or part thereof for which a scholarship was awarded, but for no less than 2 years.

(2) *Part-time student.* Obligated service to VA for a participant who attended school as a part-time student must be satisfied by full-time clinical employment. The period of obligated service will be reduced from that which a full-time student must serve under paragraph (c)(1) of this section in accordance with the proportion that the number of credit hours carried by the part-time student in any school year bears to the number of credit hours required to be carried by a full-time student who is pursuing the same degree; however, the period of obligated service will not be for less than 1 year. (Authority: 38 U.S.C. 7612(c)(1)(B), 7612(c)(3)(A), 7618(c))

(d) *Location for service.* VA reserves the right to make final decisions on the location for service obligation. A participant who receives a scholarship as a full-time student must be willing to relocate to another geographic location to carry out his or her service obligation according to the participant's mobility agreement. A participant who received a scholarship as a part-time student may be allowed to serve the period of obligated service at the health care facility where the individual was assigned when the scholarship was authorized, if there is a vacant position which will satisfy the individual's mobility agreement at that facility. (Authority: 38 U.S.C. 7616(a))

(e) *Creditability of advanced clinical training.* No period of advanced clinical training will be credited toward satisfying the period of obligated service incurred under the Scholarship Program. (Authority: 38 U.S.C. 7616(b)(3)(A)(ii))

[47 FR 10810, Mar. 12, 1982, as amended at 48 FR 37400, Aug. 18, 1983; 54 FR 28675, July 7, 1989; 78 FR 51070, Aug. 20, 2013; 85 FR 13053, March 6, 2020]

Supplement *Highlight* Reference(s): 79(1), 128(1)

§17.608 Deferment of obligated service.

(a) *Request for deferment.* A participant receiving a degree from a school of medicine, osteopathy, dentistry, optometry, or podiatry, may request deferment of obligated service to complete an approved program of advanced clinical training. The Secretary may defer the beginning date of the obligated service to allow the participant to complete the advanced clinical training program. The period of this deferment will be the time designated for the specialty training. (Authority: 38 U.S.C. 7616(b)(3)(A)(i))

(b) *Deferment requirements.* Any participant whose period of obligated service is deferred shall be required to take all or part of the advanced clinical training in an accredited program in an educational institution having an Affiliation Agreement with a Department of Veterans Affairs health care facility, and such training will be undertaken in a Department of Veterans Affairs health-care facility. (Authority: 38 U.S.C. 7616(b)(4))

(c) *Additional service obligation.* A participant who has requested and received deferment for approved advanced clinical training may, at the time of approval of such deferment and at the discretion of the Secretary and upon the recommendation of the Under Secretary for Health, incur an additional period of obligated service:

(1) At the rate of one-half of a calendar year for each year of approved clinical training (or a proportionate ratio thereof) if the training is in a specialty determined to be necessary to meet health care requirements of the Veterans Health Administration; Department of Veterans Affairs; or

(2) At the rate of three-quarters of a calendar year for each year of approved graduate training (or a proportionate ratio thereof) if the training is in a medical specialty determined not to be necessary to meet the health care requirements of the Veterans Health Administration. Specialties necessary to meet the health care requirements of the Veterans Health Administration will be prescribed periodically by the Secretary when, and if, this provision for an additional period of obligated service is to be used. (Authority: 38 U.S.C. 7616(b)(4)(B))

(d) *Altering deferment.* Before altering the length or type of approved advanced clinical training for which the period of obligated service was deferred under paragraphs (a) or (b) of this section, the participant must request and obtain the Secretary's written approval of the alteration. (Authority: 38 U.S.C. 7633)

(e) *Beginning of service after deferment.* Any participant whose period of obligated service has been deferred under paragraph (a) or (b) of this section must begin the obligated service effective on the date of appointment under title 38 in full-time clinical practice in an assignment or location in a Department of Veterans Affairs health care facility as determined by the Secretary. The assignment will be made by the Secretary within 120 days prior to or no later than 30 days following the completion of the requested graduate training for which the deferment was granted. Travel and relocation regulations will apply. (Authority: 38 U.S.C. 7616(b)(2))

[47 FR 10810, Mar. 12, 1982; 47 FR 13523, Mar. 31, 1982, as amended at 54 FR 28675, July 7, 1989; 61 FR 21969, May 13, 1996; 79 FR 54616, Sep. 12, 2014]

Supplement *Highlights* reference: 86(1).

§17.609 Pay during period of obligated service.

The initial appointment of physicians for obligated service will be made in a grade commensurate with qualifications as determined in 38 U.S.C. 7404(b). A physician serving a period of obligated service is not eligible for incentive special pay during the first three years of such obligated service. A physician may be paid primary special pay at the discretion of the Secretary upon the recommendation of the Under Secretary for Health. (Authority: 38 U.S.C. 7431-7433)

[47 FR 10810, Mar. 12, 1982, as amended at 54 FR 28676, July 7, 1989; 61 FR 21969, May 13, 1996; 79 FR 54616, Sep. 12, 2014]

Supplement *Highlights* reference: 86(1).

§17.610 Failure to comply with terms and conditions of participation.

(a) If a participant, other than one described in paragraph (b) of this section fails to accept payment or instructs the school not to accept payment of the scholarship provided by the Secretary, the participant must, in addition to any service or other obligation incurred under the contract, pay to the United States the amount of \$1,500 liquidated damages. Payment of this amount must be made within 90 days of the date on which the participant fails to accept payment of the scholarship award or instructs the school not to accept payment. (Authority: 38 U.S.C. 7617(a))

(b) If a participant:

(1) Fails to maintain an acceptable level of academic standing;

(2) Is dismissed from the school for disciplinary reasons;

(3) Voluntarily terminates the course of study or program for which the scholarship was awarded including in the case of a full-time student, a reduction of course load from full-time to part-time before completing the course of study or program;

(4) Who is enrolled in a program or education or training leading to employment as a physician, fails to successfully complete post-graduate training leading to eligibility for board certification in a specialty.

(5) Fails to become licensed to practice in the discipline for which the degree program prepared the participant, if applicable, in a State within 1 year from the date such person becomes eligible to apply for State licensure; or (Authority: 38 U.S.C. 7617(b)(4))

(6) Is a part-time student and fails to maintain employment in a permanent assignment in a VA health care facility while enrolled in the course of training being pursued; the participant must instead of performing any service obligation, pay to the United States an amount equal to all scholarship funds awarded under the written contract executed in accordance with §17.602. Payment of this amount must be made within 1 year from the date academic training terminates unless a longer period is necessary to avoid hardship. No interest will be charged on any part of this indebtedness. (Authority: 38 U.S.C. 7617(b))

(c) Participants who breach their contracts by failing to begin or complete their service obligation (for any reason) other than as provided for under paragraph (b) of this section are liable to repay the amount of all scholarship funds paid to them and to the school on their behalf, plus interest, multiplied by three, minus months of service obligation satisfied, as determined by the following formula:

$$A = 3 * \phi * [(t-s) / t]$$

in which:

“A” is the amount the United States is entitled to recover;

“ ϕ ” is the sum of the amounts paid to or on behalf of the applicant and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

“t” is the total number of months in the applicant’s period of obligated service;

and

“s” is the number of months of the period of obligated service served by the participant.

The amount which the United States is entitled to recover shall be paid within 1 year of the date on which the applicant failed to begin or complete the period of obligated service, as determined by the Secretary. (Authority: 38 U.S.C. 7617(c)(1)(2))

(Approved by the Office of Management and Budget under control number 2900-0352)

[47 FR 10810, Mar. 12, 1982; 47 FR 13523, Mar. 31, 1982, as amended at 48 FR 37400, Aug. 18, 1983; 54 FR 28676, July 7, 1989; 54 FR 46611, Nov. 6, 1989; 61 FR 24237, May 14, 1996; 85 FR 13053, March 6, 2020]

Supplement *Highlight* Reference(s): 128(1)

§17.611 Bankruptcy.

Any payment obligation incurred may not be discharged in bankruptcy under title 11 U.S.C. until 5 years after the date on which the payment obligation is due. This section applies to participants in the HPSP and the VIOMPSP. (Authority: 38 U.S.C. 7505(d), 7634(c))

[47 FR 10810, Mar. 12, 1982; as amended at 78 FR 51071, Aug. 20, 2013]

Supplement *Highlight* Reference(s): 79(1)