

(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3492, 3533(b))

(c) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed \$100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed \$1200.

(Authority: 38 U.S.C. 3019, 3492, 3533(b))

(d) *Entitlement charge.* VA will make no charge against the veteran's or eligible person's entitlement to educational assistance for any amount of tutorial assistance authorized.

(Authority: 38 U.S.C. 3019, 3492, 3533(b))

[48 FR 37989, Aug. 22, 1983, as amended at 50 FR 19935, May 13, 1985; 55 FR 28027, July 9, 1990; 61 FR 26114, May 24, 1996]

COURSES

§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.

(a) *General.* The statements made in this paragraph are subject to exceptions found in paragraph (c) of this section.

(1) If an educational institution offers a resident course in a State, only the State approving agency for the State where the course is being offered may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(2) If an educational institution with a main campus in a State offers a resident course not located in a State, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training. If the State approving agency chooses to ap-

prove a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(3) If an educational institution offers a course by independent study or by correspondence, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training.

(4) If a training establishment offers a program of apprenticeship or other on-job training, only the State approving agency for the State where the training will take place may approve the course for VA training.

(5) Except as provided in paragraph (a)(6)(ii) of this section, if a State or political subdivision of a State offers a licensing test, only the State approving agency for the State where the license will be valid may approve the test for VA payment.

(6)(i) If an organization or entity offers a licensing or certification test and applies for approval of that test, only the State approving agency for the State where the organization or entity has its headquarters may approve the test and the organization or entity offering the test for VA payment. This approval will be valid wherever the test is given.

(ii) If the organization or entity offering a licensing or certification test does not apply for approval, and a State or political subdivision of a State requires that an individual take the test in order to obtain a license, the State approving agency for the State where the license will be valid may approve the test for VA payment. This approval will be valid for the purpose of VA payment only if the veteran takes the test in the State or political subdivision of the State where the license is valid.

(7) A course approved under 38 U.S.C. chapter 36 will be deemed to be approved for purposes of 38 U.S.C. chapter 35.

(8) Any course that was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 before March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters, will be

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deemed to be approved for purposes of 38 U.S.C. chapter 36.

(9) VA may make tuition assistance top-up payments of educational assistance to an individual to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance, even though a State approving agency has not approved the course in which the individual was enrolled.

(Authority: 38 U.S.C. 3014(b), 3670, 3672(a))

(b) *State approving agencies.* Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. Chapter 36 and such regulations and policies as the agency may adopt not in conflict therewith.

(1) *Notice of approval.* (i) Each State approving agency must provide to VA:

(A) A list of schools specifying which courses it has approved;

(B) A list of licensing and certification tests and organizations and entities offering these tests that it has approved; and

(C) Any other information that it and VA may determine to be necessary.

(ii) The lists and information must be provided on paper or electronically as VA may require.

(2) *Notice of suspension of approval or disapproval.* Each State approving agency will notify the Department of Veterans Affairs of the suspension of approval or disapproval of any course or licensing or certification test previously approved and will set forth the reasons for such suspension of approval or disapproval. See § 21.4259.

(Authority: 38 U.S.C. 3672(a))

(3) *Failure to act.* If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Department of Veterans Affairs.

(c) *Department of Veterans Affairs approval.* (1) The Director, Vocational Rehabilitation and Employment Service may approve special restorative training in excess of 12 months to overcome or lessen the effects of a physical or mental disability to enable an eligible child to pursue a program of education under 38 U.S.C. chapter 35.

(2) The Director, Education Service may approve—

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapters 30, 32, 35, or 36 offered by a school located in the Canal Zone, Guam or Samoa;

(iii) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36;

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of Title 29 U.S.C. as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State; and

(vi) Any licensing or certification test and any organization or entity offering such a test if—

(A) The organization or entity is an agency of the Federal government;

(B) The headquarters of the organization or entity offering the test is not located in a State; or

(C) The State approving agency that would, under paragraph (a)(5) or (a)(6) of this section, have approval jurisdiction for the test has declined to perform the approval function for licensing or certification tests and the organizations or entities offering these tests.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3476, 3523, 3672, 3673, 3689)

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CROSS REFERENCE: *Designation.* See § 21.4150.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051)

[31 FR 6774, May 6, 1966, as amended at 35 FR 9816, June 16, 1970; 41 FR 30640, July 26, 1976; 44 FR 54707, Sept. 21, 1979; 48 FR 37990, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 62 FR 55760, Oct. 28, 1997; 72 FR 16973, Apr. 5, 2007]

§ 21.4251 Minimum period of operation requirement for educational institutions.

The provisions of this section do not apply to licensing or certification tests or to the organizations or entities offering those tests. For information on the minimum period of operation requirement that applies to licensing or certification tests, see § 21.4268.

(a) *Definitions.* The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control.* The term *control* (including the term *controlling*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) *Person.* The term *person* means an individual, corporation, partnership, or other legal entity.

(Authority: 38 U.S.C. 3680A(e))

(b) *Some educational institutions must be in operation for 2 years.* Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution—

(1) Has been operating for less than 2 years;

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general local-

ity, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution, after such change or move, has been in operation for at least 2 years.

(Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the 2-year operation requirement.* Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that—

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for 2 years.* VA will consider, for the purposes of paragraph (b) of this section, that a proprietary educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution)—

(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and

(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students.

(Authority: 38 U.S.C. 3680A(e) and (g))

(e) *Move outside the same general locality.* A proprietary educational institution (or a branch or extension thereof)

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will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, *i.e.*, 55 miles or more from the original location.

(Authority: 38 U.S.C. 3680A(e))

(f) *Change of ownership.* (1) A change of ownership of a proprietary educational institution occurs when—

(i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or

(ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

(i) The sale of the educational institution;

(ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;

(iii) The merger of 2 or more educational institutions; and

(iv) The division of one educational institution into 2 or more educational institutions.

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

(i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or

(ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer.

(Authority: 38 U.S.C. 3680A(e))

(g) *Substantially the same faculty, student body, and courses.* VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and

(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution after the move or change in ownership.

(Authority: 38 U.S.C. 3680A(e) and (f)(1))

[65 FR 81741, Dec. 27, 2000, as amended at 72 FR 16974, Apr. 5, 2007]

§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

(a) *Bartending and personality development.* Enrollment will not be approved in any bartending or personality development course.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraphs (b)(1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or

(2) Any music course, instrumental or vocal, public speaking course, or

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course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(3) Any other type of course which the Department of Veterans Affairs determines to be avocational or recreational.

(Authority: 38 U.S.C. 3523(a), 3680A(b))

(4) To overcome the presumption that a course is avocational or recreational in character, the veteran or eligible person will be required to establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(c) *Flight training.* The Department of Veterans Affairs may approve an enrollment in any of the following types of courses of flight training if an institution of higher learning offers the course for credit toward the standard college degree the veteran or eligible person is pursuing. The Department of Veterans Affairs otherwise will not approve an enrollment in:

(1) A course of flight training to obtain a private pilot's license or equivalent level training; or

(2) Any course of flight training under Chapter 35.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3034(d), 3241(b), 3523(b), 3680A(b))

(d) *Courses by radio.* Enrollment in such courses will not be approved.

(e) *Correspondence courses.* (1) VA will not approve the enrollment of an individual under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapter 30, 32, or 35 in a correspondence course or the correspondence portion of a correspondence-residence course unless the course is accredited and meets the requirements of §§ 21.4253, 21.4256, and 21.4279, as appropriate.

(2) VA will not approve the enrollment of an eligible child under 38 U.S.C. Chapter 35 in a correspondence

course or the correspondence portion of a correspondence-residence course.

(Authority: 38 U.S.C. 3534(b))

(f) *Alternative teacher certification program.* VA will not approve the enrollment of an eligible person under 38 U.S.C. Chapter 35 in an alternative teacher certification program unless that program is offered by an institution of higher learning as defined in § 21.4200(h).

(Authority: 38 U.S.C. 3452(c), 3501(a)(6))

(g) *Independent study.* (1) Effective October 29, 1992, VA may pay educational assistance to a veteran who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if—

(i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran to complete his or her program of education; and the veteran—

(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and

(B) Has remained continuously enrolled in that program of education from October 29, 1992, to the date the veteran enrolls in the nonaccredited independent study course or unit subject; or

(ii) Was enrolled in and receiving educational assistance for the nonaccredited independent study course or unit subject on October 29, 1992, and remains continuously enrolled in that course or unit subject.

(2) Whether or not the veteran is enrolled will be determined by the regularly prescribed standards and practices of the educational institution.

(Authority: 38 U.S.C. 3680A; sec. 313(b), Pub. L. 102-568, 106 Stat. 4331-4332)

(h) *Erroneous, deceptive, or misleading practices.* For the purposes of this paragraph, "educational institution" includes an organization or entity offering licensing or certification tests.

(1) If an educational institution uses advertising, sales, enrollment practices, or candidate handbooks that are erroneous, deceptive, or misleading by

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actual statement, omission, or intimation, VA will not approve:

(i) An enrollment in any course such an educational institution offers; and

(ii) Payment of educational assistance as reimbursement to a veteran or eligible person for taking a licensing or certification test that the educational institution offers.

(2) VA will use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement:

(i) To carry out investigations; and

(ii) To decide whether an educational institution uses advertising, sales, or enrollment practices, or candidate handbooks, described in paragraph (h)(1) of this section.

(3) Any educational institution offering courses approved for the enrollment of veterans, reservists, and/or eligible persons, or offering licensing or certification tests approved for payment of educational assistance as reimbursement to veterans or eligible persons who take the tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks (and copies of each) that the educational institution or its agents have used during the preceding 12-month period. The State approving agency and VA may inspect this record. The materials in this record shall include but are not limited to:

(i) Any direct mail pieces,

(ii) Brochures,

(iii) Printed literature used by sales people,

(iv) Films, video cassettes and audio tapes disseminated through broadcast media,

(v) Material disseminated through print media,

(vi) Tear sheets,

(vii) Leaflets,

(viii) Handbills,

(ix) Fliers, and

(x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution.

(Authority: 38 U.S.C. 3689, 3696)

(i) *Audited courses.* The school's certifications shall exclude courses which are being audited by the veteran or eli-

gible person, since no educational assistance allowances shall be paid for such courses.

(Authority: 38 U.S.C. 3680(a))

(j) *Nonpunitive graded courses.* The school shall report any course for which a nonpunitive grade is assigned and no payment shall be authorized for such a course. If payment has already been made, in whole or in part, by the Department of Veterans Affairs at the time the grade is assigned, an overpayment shall be created against the account of the student for such a course, unless the Department of Veterans Affairs determines there are mitigating circumstances.

(Authority: 38 U.S.C. 3680(a))

(k) *Courses with suspended approval.* When a State approving agency has suspended the approval of a course for new enrollments, new enrollments in the course shall not be approved until the suspense is lifted. If the State approving agency does not lift the suspense, but disapproves the course instead, new enrollments beginning on or after the date the suspense was effective shall not be approved. See § 21.4259.

(Authority: 38 U.S.C. 3672(a))

(1) *Courses taken by a nonmatriculated student who is pursuing a degree.* The provisions of this paragraph apply to veterans and eligible persons who are pursuing a degree, but who have not matriculated. The Department of Veterans Affairs considers a student to have matriculated when he or she has been formally admitted to a college or university as a degree-seeking student.

(1) Some colleges or universities admit students provisionally, pending receipt of test results or transcripts. The Department of Veterans Affairs may approve such a veteran's or eligible person's enrollment in a course or subject only if the veteran or eligible person matriculates during the first two terms, quarters or semesters following his or her admission.

(2) The first portion of the courses leading to a single degree may be offered at one college or university. The remaining courses are not offered at

the college or university, but are offered at a second college or university which grants the degree based upon the combined credits earned by the student. If the student is not required to matriculate during the portion of the program offered at the first college or university, VA may approve an enrollment in a course or subject that is part of that portion of the program only when the certifications described in either paragraph (1)(2)(i) or (ii) of this section are made.

(i) The college or university granting the degree certifies concurrently with the student's enrollment in the first portion of the program, that

(A) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university;

(B) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program;

(C) At least 90 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted;

(D) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

(ii) The college or university offering the first part of the program:

(A) Certifies to the appropriate State approving agency that as a result of an agreement between that college or university and the college or university offering the second part of the program, all of the courses taken by the veteran or eligible person in the first part of the program, will be accepted by the college or university offering the second part of the program without any loss of credit in partial fulfillment of the requirements for an associate or higher degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person has stated to an appropriate official of the college or university offering the first part of the program that he or she is pursuing the program.

(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an associate degree may be given at a 2-year college, while the remainder may be offered at a 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional study at the 2-year college, VA may approve an enrollment in a course offered in the program at the 2-year college only if the certifications described in either paragraph (1)(3)(i) or (ii) of this section are made.

(i) The college or university granting the baccalaureate degree certifies that:

(A) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree,

(B) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and

(C) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.

(ii) Either the 2-year college or the college or university granting the baccalaureate degree:

(A) Certifies to the appropriate State approving agency that as a result of agreement between the 2-year college and the college or university offering the baccalaureate degree all of the courses pursued beyond the associate degree will be accepted without any loss of credit in partial fulfillment of the requirements for a baccalaureate degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person is enrolled in courses covered by the agreement.

(4) Except as provided in paragraphs (1)(1), (2), and (3) of this section, the Department of Veterans Affairs will not approve a veteran's or eligible person's enrollment in a course or subject if the veteran or eligible person:

(i) Is pursuing a degree, and

(ii) Is not matriculated.

(5) Nothing in this paragraph shall prevent a State approving agency from

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including more restrictive matriculation requirements in its approval criteria.

(Authority: 38 U.S.C. 3452)

(m) *Courses offered under contract.* VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by §§ 21.4253, 21.4254, 21.4256, 21.4257, 21.4260, 21.4261, 21.4263, 21.4264, 21.4265, 21.4266, or 21.4267, as appropriate.

(Authority: 38 U.S.C. 3680A(f) and (g))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0073, 2900-0156, and 2900-0682)

[31 FR 6774, May 6, 1966, as amended at 32 FR 13404, Sept. 23, 1967; 35 FR 9817, June 16, 1970; 40 FR 31763, July 29, 1975; 43 FR 35302, Aug. 9, 1978; 45 FR 31063, June 12, 1980; 48 FR 14379, Apr. 4, 1983; 48 FR 37991, Aug. 22, 1983; 49 FR 5116, Feb. 10, 1984; 49 FR 8439, Mar. 7, 1984; 51 FR 19331, May 29, 1986; 55 FR 28028, July 9, 1990; 61 FR 6783, Feb. 22, 1996; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 65 FR 81742, Dec. 27, 2000; 72 FR 16974, Apr. 5, 2007]

§ 21.4253 Accredited courses.

(a) *General.* A course may be approved as an accredited course if it meets one of the following requirements:

(1) The course has been accredited and approved by a nationally recognized accrediting agency or association. "Candidate for accreditation" status is not a basis for approval of a course as accredited.

(2) Credit for such course is approved by the State department of education for credit toward a high school diploma.

(3) The course is conducted under the Act of February 23, 1917 (20 U.S.C. 11 *et seq.*).

(4) The course is accepted by the State department of education for credit for a teacher's certificate or teacher's degree.

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(5) The course is approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).

(Authority: 38 U.S.C. 3675(a))

(b) *Course objective.* Any curriculum offered by an educational institution which is a member of one of the nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will be accepted as an accredited course when approved as such by the State approving agency. Any curriculum accredited by one of the specialized nationally recognized accrediting agencies or associations and which leads to a degree, diploma, or certificate will also be accepted as an accredited course when approved as such by the State approving agency. Approval of the individual subjects, required or elective, which are designated as a part of a degree curriculum will not be necessary. Such approval may include noncredit subjects that are prescribed as a required part of the curriculum. The course objective may be educational (high school diploma or a standard college degree) or it may be vocational or professional (an occupation).

(c) *Accrediting agencies.* A nationally recognized accrediting agency or association is one that appears on the list published by the Secretary of Education as required by 38 U.S.C. 3675(a). The State approving agencies may use the accreditation of these accrediting agencies or associations for approval of the course specifically accredited and approved by the agency or association.

(d) *School qualification.* A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency:

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(1) The institution (other than an elementary or secondary school) has submitted to the State approving agency copies of its catalog or bulletin which are certified as true and correct in content and policy by an authorized representative, and the publication shall:

(i) State with specificity the requirements of the institution with respect to graduation;

(ii) Include institution policy and regulations relative to standards of progress required of the student by the institution (this policy will define the grading system of the institution, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, a description of the probationary period, if any, allowed by the institution, conditions of reentrance for those students dismissed for unsatisfactory progress, and a statement regarding progress records kept by the institution and furnished the student);

(iii) Include institution policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct; and

(iv) Include any attendance standards of the institution if the institution has and enforces such standards.

(Authority: 38 U.S.C. 3675(a), 3676(b))

(2) Adequate records are kept by the school to show the progress of each veteran or eligible person. The records must be sufficient to show continued pursuit at the rate for which enrolled and the progress being made. They must include final grade in each subject for each term, quarter, or semester; record of withdrawal from any subject to include the last date of attendance for a resident course; and record of reenrollment in subjects from which there was a withdrawal; and may include such records as attendance for resident courses, periodic grades and examination results.

(3) The school maintains a written record of previous education and training of the veteran or eligible person which clearly indicates that appropriate credit has been given by the school for previous education and training, with the training period shortened proportionately. The record must be cumulative in that the results

of each enrollment period (term, quarter or semester) must be included so that it shows each subject undertaken and the final result, *i.e.*, passed, failed, incomplete or withdrawn.

(Authority: 38 U.S.C. 3675(b))

(4) The school enforces a policy relative to standards of conduct and progress required of the student. The school policy relative to standards of progress must be specific enough to determine the point in time when educational benefits should be discontinued, pursuant to 38 U.S.C. 3474 when the veteran or eligible person ceases to make satisfactory progress. The policy must include the grade or grade point average that will be maintained if the student is to graduate. For example, a 4-year college may require a 1.5 grade point average the first year, a 1.75 average at mid-year the second year, and a cumulative average of 2.0 thereafter on the basis of 4.0 for an A.

(5) If the school has a standard of attendance, it maintains records of attendance for veterans and eligible persons enrolled in resident courses which are adequate to show the student meets the school's standard of attendance.

(Authority: 38 U.S.C. 3474, 3675)

(6) The accredited courses, the curriculum of which they form a part, and the instruction connected with those courses are consistent in quality, content, and length with similar courses in public educational institutions and other private educational institutions in the State with recognized accepted standards.

(7) There is in the educational institution offering the course adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(8) The educational and experience qualifications of directors, and administrators of the educational institution offering the courses, and instructors teaching the courses for which approval is sought, are adequate.

(Authority: 38 U.S.C. 3675(b), 3676(c)(1), (2), (3))

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(e) *College level.* Under the provisions of paragraph (a)(1) of this section, any course at college level approved by the State approving agency as an accredited course will be accepted by the Department of Veterans Affairs as an accredited course when all of the following conditions are met:

(1) The college or university is accredited by a nationally recognized regional accrediting agency listed by the Secretary of Education or the course is accredited at the college level by a specialized accrediting agency or association recognized by the Secretary of Education; and

(Authority: 38 U.S.C. 3675)

(2) The course has entrance requirements of not less than the requirements applicable to the college level program of the school; and

(3) Credit for the course is awarded in terms of standard semester or quarter hours or by recognition at completion by the granting of a standard college degree.

(f) *Courses not leading to a standard college degree.* Any course in a school approved by the State approving agency will be accepted as an accredited course when all of the following conditions are met:

(1) The course or the school offering such course is accredited by the appropriate accrediting agency; and

(2) The course offers training in the field for which the accrediting agency is recognized and at a level for which it is recognized; and

(3) The course leads to a high school diploma or a vocational objective.

(Paperwork requirements in § 21.4253(d)(1) were approved by the Office of Management and Budget under control number 2900-0566.)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14938, June 7, 1973; 40 FR 33825, Aug. 12, 1975; 43 FR 35302, Aug. 9, 1978; 48 FR 37992, Aug. 22, 1983; 50 FR 43135, Oct. 24, 1985; 60 FR 32272, June 21, 1995; 61 FR 6783, Feb. 22, 1996; 62 FR 35424, July 1, 1997; 65 FR 81742, Dec. 27, 2000; 73 FR 1077, Jan. 7, 2008]

§ 21.4254 Nonaccredited courses.

(a) *General.* Nonaccredited courses are courses which are not approved as accredited courses and which are offered by a public or private, profit or nonprofit, educational institution.

These include nonaccredited courses offered by extension centers or divisions, or vocational or adult education departments of institutions of higher learning.

(b) *Application.* Any school desiring to enroll veterans or eligible persons in nonaccredited courses will submit a written application to the appropriate State approving agency for approval of such courses (38 U.S.C. 3676(a)). Such application will be accompanied by not less than two copies of the current catalog or bulletin which is certified as true and correct in content and policy by an authorized owner or official of the school and will include the following:

(1) Identifying data, such as volume number, and date of publication;

(2) Names of the school and its governing body, officials, and faculty;

(3) A calendar of the school showing legal holidays, beginning and ending date of each quarter, term, or semester, and other important dates;

(4) School policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course;

(5) School policy and regulations relative to leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;

(6) School policy and regulations relative to standards of progress required of the student. This policy will define the grading system of the school, the minimum grades considered satisfactory conditions for interruption for unsatisfactory grades or progress, and a description of the probationary period, if any, allowed by the school, and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the school and furnished the student;

(7) School policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct;

(8) Detailed schedule of fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges;

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(9) Policy and regulations relative to the refund of the unused portion of tuition, fees, and other charges in the event the student does not enter the course, or withdraws, or is discontinued therefrom;

(10) A description of the available space, facilities, and equipment;

(11) A course outline for each course for which approval is requested, showing subjects or units in the course, type of work, or skill to be learned, and approximate time and clock hours to be spent on each subject or unit; and

(12) Policy and regulations relative to granting credit for previous education and training.

(Authority: 38 U.S.C. 3676(b))

(c) *Approval criteria.* The appropriate State approving agency may approve the application of such school when the school and its nonaccredited courses are found upon investigation to have met the following criteria:

(1) The courses, curriculum, and instruction are consistent in quality, content, and length with similar recognized accepted standards.

(2) There is in the school adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(3) Educational and experience qualifications of directors, administrators, and instructors are adequate.

(4) The school maintains a written record of the previous education and training of the veteran or eligible person and clearly indicates that appropriate credit has been given for previous education and training, with the training period shortened proportionately, and the veteran or eligible person and the Department of Veterans Affairs so notified.

(5) A copy of the course outline, schedule of tuition, fees, and other charges, regulations pertaining to absences, grading policy, and rules of operation and conduct will be furnished the veteran or eligible person upon enrollment.

(6) Upon completion of training, the veteran or eligible person is given a certificate by the school indicating the approved course and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State approving agency are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

(8) The school complies with all local, city, county, municipal, State, and Federal regulations, such as fire codes, building, and sanitation codes. The State approving agency may require such evidence of compliance as it deemed necessary.

(9) The school is financially sound and capable of fulfilling its commitments for training.

(10) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission, or intimation. The school will not be deemed to have met this requirement until the State approving agency:

(i) Has ascertained from the Federal Trade Commission whether the Commission has issued an order to the school to cease and desist from any act or practice, and

(ii) Has, if such an order has been issued, given due weight to that fact.

(11) The school does not exceed its enrollment limitations as established by the State approving agency.

(12) The school administrators, directors, owners, and instructors are of good reputation and character.

(13) The school either: (i) Has and maintains a policy for the pro rata refund of the unused portion of tuition, fees and charges if the veteran or eligible person fails to enter the course or withdraws or is discontinued from it before completion, or

(ii) Has obtained a waiver of this requirement. See § 21.4255.

(Authority: 38 U.S.C. 3676)

(14) Such additional reasonable criteria as may be deemed necessary by the State approving agency.

(Authority: 38 U.S.C. 3676(c))

(d) *Limitations on course approval.* Notwithstanding any other provision of this section, a State approving agency shall not approve a nonaccredited

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course if it is to be pursued in whole or in part by independent study.

(Authority: 38 U.S.C. 3676(e))

[31 FR 6774, May 6, 1966, as amended at 33 FR 9546, June 29, 1968; 47 FR 42733, Sept. 29, 1982; 61 FR 6783, Feb. 22, 1996]

§ 21.4255 Refund policy; nonaccredited courses.

(a) *Acceptable refund policy.* A refund policy meets the requirements of § 21.4254(c)(13), if it provides that the amount charged for tuition, fees, and other charges for a portion of the course does not exceed the approximate pro rata portion of the total charges for tuition, fees, and other charges that the length of the completed portion of the course bears to the total length. The school may make provision for refund within the following limitations:

(1) *Registration fee.* An established registration fee in an amount not to exceed \$10 need not be subject to proration. Where the established registration fee is more than \$10, the amount in excess of \$10 will be subject to proration.

(2) *Breakage fee.* Where the school has a breakage fee, it may provide for the retention of only the exact amount of the breakage, with the remaining part, if any, to be refunded.

(3) *Consumable instructional supplies.* Where the school makes a separate charge for consumable instructional supplies, as distinguished from laboratory fees, the exact amount of the charges for supplies consumed may be retained but any remaining part must be refunded.

(4) *Books, supplies and equipment.* (i) A veteran or eligible person may retain or dispose of books, supplies and equipment at his or her discretion when:

(A) He or she purchased them from a bookstore or other source, and

(B) Their cost is separate and independent from the charge made by the school for tuition and fees.

(ii) The school will make a refund in full for the amount of the charge for unissued books, supplies and equipment when:

(A) The school furnishes the books, supplies and equipment.

(B) The school includes their cost in the total charge payable to the school for the course.

(C) The veteran or eligible person withdraws or is discontinued before completing the course.

(iii) The veteran or eligible person may dispose of issued items at his or her discretion even if they were included in the total charges payable to the school for the course.

(5) *Tuition and other charges.* Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran or eligible person than the approximate pro rata basis as provided in this paragraph, such established policy will be applicable. Otherwise, the school may charge a sum which does not vary more than 10 percent from the exact pro rata portion of such tuition, fees, and other charges that the length of the completed portion of the course bears to its total length. The exact proration will be determined on the ratio of the number of days of instruction completed by the student to the total number of instructional days in the course.

(6) *Prompt refund.* In the event that the veteran, spouse, surviving spouse or child fails to enter the course or withdraws or is discontinued therefrom at any time prior to completion of the course, the unused portion of the tuition, fees and other charges paid by the individual shall be refunded promptly. Any institution which fails to forward any refund due within 40 days after such a change in status, shall be deemed, prima facie, to have failed to make a prompt refund, as required by this paragraph.

(b) *Waiver.* (1) An educational institution may apply through the appropriate State approving agency to the Director of the VA facility of jurisdiction for a waiver of the requirements of paragraph (a) of this section as they apply to a veteran or eligible person. The State approving agency shall forward the application to the Director along with its recommendations. The Director shall consider the recommendations and shall grant a waiver only when he or she finds that the educational institution:

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(i) Is a college, university, or similar institution offering post-secondary level academic instruction leading to an associate or higher degree;

(ii) Is operated by an agency of a State or a unit of local government;

(iii) If operated by an agency of a State, is located within that State;

(iv) If operated by a unit of local government, is located within the boundaries of the area over which that unit has taxing jurisdiction;

(v) Is a candidate for accreditation by a regional accrediting agency; and

(vi) Charges the veteran or eligible person no more than \$120 per quarter, \$180 per semester or \$360 per school year in tuition, fees and other charges for the course.

(2) If an educational institution disagrees with a decision of a Director of a VA facility, it may ask that the Director, Education Service review the decision. In reviewing the decision the Director must consider the evidence of record. He or she may not grant a waiver unless all the criteria of paragraph (b)(1) of this section are met.

(Authority: 38 U.S.C. 3676(d))

[47 FR 42733, Sept. 29, 1982]

§ 21.4256 Correspondence programs and courses.

(a) *Approval of correspondence programs and courses.* (1) An educational institution desiring to enroll veterans under 38 U.S.C. chapter 30 or 32, spouses and/or surviving spouses under 38 U.S.C. chapter 35, and/or reservists under 10 U.S.C. chapter 1606 in a program of education to be pursued exclusively by correspondence, or in the correspondence portion of a combination correspondence-residence course, may have the program or course approved only when the educational institution meets the requirements of §§ 21.4252(e), 21.4253, and 21.4279, as applicable.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0575)

(Authority: 38 U.S.C. 3672(e))

(2) The application of an educational institution for approval of a program of education to be pursued exclusively by correspondence or the correspondence

portion of a combined correspondence-residence course must demonstrate that the program or course is satisfactory in all elements. The educational institution must certify to the State approving agency that at least 50 percent of those pursuing the program or course require six months or more to complete it. For applications for approval that are pending approval by the State approving agency on February 2, 1995, and for applications received by the State approving agency after that date, the required certification shall be based on the experience of students who completed the program or course during the six-month period immediately preceding the educational institution's application for approval.

(Authority: 38 U.S.C. 3672(e))

(3) State approving agencies have the authority to review periodically the length of time needed to complete each approved correspondence program or approved correspondence-residence course in order to determine whether the program or course should continue to be approved. In implementing this authority, a State approving agency will examine the results over a prior two-year period reasonably related to the date on which such a review is conducted.

(Authority: 38 U.S.C. 3672(e))

(b) *Enrollment agreement.* (1) An educational institution offering a program of education to be pursued exclusively by correspondence must enter into an enrollment agreement with the veteran, spouse, surviving spouse, or reservist who wishes to receive educational assistance from VA while pursuing the program. The enrollment agreement shall disclose fully the obligations of the institution and the veteran, spouse, surviving spouse, or reservist, and shall display in a prominent place on the agreement the conditions for affirmance, termination, refund, and payment of the educational assistance by VA.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(a)(1), 3686(b))

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(2) A copy of the agreement shall be given to the veteran, spouse, surviving spouse, or reservist when it is signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(3) The agreement shall not be effective unless the veteran, spouse, surviving spouse, or reservist after the expiration of 10 days after the agreement is signed, shall have signed and submitted to VA a written statement, with a signed copy to the institution, specifically affirming the agreement.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900–0576)

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(b))

(c) *Mandatory refund policy.* (1) Upon notification of the educational institution by the veteran, spouse, surviving spouse, or reservist of an intention not to affirm the enrollment agreement, any fees paid by the individual shall be returned promptly in full to him or her.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(2) Upon termination of enrollment under an affirmed enrollment agreement for training in the accredited course by the veteran, spouse, surviving spouse, or reservist, without having completed any lessons, a registration fee not in excess of 10 percent of the tuition for the course or \$50, whichever is less, may be charged him or her. When the individual terminates the agreement after completion of less than 25 percent of the lessons of the course, the institution may retain the registration fee plus 25 percent of the tuition. When the individual terminates the agreement after completing 25 percent but less than 50 percent of the lessons, the institution may retain the registration fee plus 50 percent of the tuition for the course. If 50 percent or more of the lessons are completed, no refund of tuition is required.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(3) Where the school either has or adopts an established policy for the refund of the unused portion of tuition, fees, and other charges subject to proration, which is more favorable to the veteran, spouse, surviving spouse, or reservist than the pro rata basis as provided in paragraph (b)(2) of this section, such established policy will be applicable.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

(4) Any institution that fails to forward any refund due to the veteran, spouse, surviving spouse, or reservist within 40 days after receipt of a notice of termination or disaffirmance, shall be deemed, prima facie, to have failed to make a prompt refund as required by this section.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3686(c))

[62 FR 63849, Dec. 3, 1997]

§ 21.4257 Cooperative courses.

A cooperative course may be approved when the course meets the requirement of § 21.4233(a).

§ 21.4258 Notice of approval.

(a) *General; letter of approval and other notice of approval requirements.* The State approving agency, upon determining that an educational institution, training establishment, or organization or entity offering a licensing or certification test has complied with all the requirements for approval will—

(1) Notify by letter, as described in paragraph (b) of this section, each such educational institution, training establishment, or organization or entity offering a licensing or certification test; and

(2) Furnish VA an official copy of the letter, any attachments, and any subsequent amendments. In addition, the State approving agency will furnish VA a copy of each such—

(i) Educational institution's approved catalog or bulletin;

(ii) Training establishment's application requesting approval; or

(iii) Organization's or entity's candidate handbook.

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(b) *Contents of letter of approval.* The letter of approval will include the following:

(1) For an educational institution: (i) Date of the letter and effective date of approval of courses;

(ii) Proper address and name of the educational institution;

(iii) Authority for approval and conditions of approval, referring specifically to the approved catalog or bulletin;

(iv) Name of each course approved, except that a State approving agency, in lieu of listing the name of each course approved at an institution of higher learning, may identify approved courses by reference to page numbers in the school catalog or bulletin;

(v) Where applicable, enrollment limitations, such as maximum number of students authorized and student-teacher ratio;

(vi) Signature of responsible official of State approving agency; and

(vii) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency.

(2) For a training establishment: (i) Date of the letter and effective date of approval of the apprentice or other on-the-job training;

(ii) Proper address and name of the training establishment;

(iii) Authority for approval and conditions of approval;

(iv) Name of the approved program of apprenticeship or other on-the-job training;

(v) Where applicable, enrollment limitations, such as maximum number of trainees authorized;

(vi) Such other fair and reasonable provisions as are considered necessary by the appropriate State approving agency; and

(vii) Signature of responsible official of State approving agency.

(3) For an organization or entity offering a licensing or certification test:

(i) Date of the letter and effective date of approval of test(s);

(ii) Proper name of the organization or entity offering the licensing or certification test(s);

(iii) Name of each test approved indicating whether it is a licensing test or certification test;

(iv) Where applicable, enrollment limitations such as maximum numbers authorized and test taker-test proctor ratio; and

(v) Signature of responsible official of State approving agency.

(Authority: 38 U.S.C. 3672, 3678, 3689)

(c) *Compliance with equal opportunity laws.* (1) The State approving agency shall solicit assurance of compliance with:

(i) Title VI, Civil Rights Act of 1964,

(ii) Title IX, Education Amendments of 1972, as amended,

(iii) Section 504, Rehabilitation Act of 1973,

(iv) The Age Discrimination Act of 1975, and

(v) All Department of Veterans Affairs regulations adopted to carry out these laws.

(2) The State approving agency shall solicit this assurance from:

(i) Proprietary vocational, trade, technical, or other institutions and such schools not a part of a public elementary or secondary school.

(ii) All other educational institutions which the Department of Education has not determined to be in compliance with the equal opportunity laws listed in paragraph (c)(1) of this section.

(3) Whenever a State approving agency forwards to VA a Notice of Approval for a course offered by an institution described in paragraph (c)(2) of this section, it shall also forward the institution's signed statement of compliance with these equal opportunity laws.

(20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794; 38 U.S.C. 501, 3671; 42 U.S.C. 2000d, 6101 *et seq.*; 38 CFR parts 18, 18a, 18b)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051)

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13405, Sept. 23, 1967; 51 FR 26158, July 21, 1986; 72 FR 16974, Apr. 5, 2007]

§ 21.4259 Suspension or disapproval.

(a) The appropriate State approving agency, after approving any course or licensing or certification test:

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(1) May suspend the approval of a course for new enrollments, or approval of a licensing or certification test, for a period not to exceed 60 days to allow the institution to correct any deficiencies, if the evidence of record establishes that the course or licensing or certification test fails to meet any of the requirements for approval.

(2) Will immediately disapprove the course or licensing or certification test, if any of the requirements for approval are not being met and the deficiency cannot be corrected within a period of 60 days.

(3) Upon suspension or disapproval, the State approving agency will notify the educational institution by certified or registered letter with a return receipt secured (38 U.S.C. 3679). It is incumbent upon the State approving agency to determine the conduct of courses and to take immediate appropriate action in each case in which it is found that the conduct of a course in any manner fails to comply with the requirements for approval.

(b) Each State approving agency will immediately notify VA of each course, or licensing or certification test, that it has suspended or disapproved.

(c) The Department of Veterans Affairs will suspend approval for or disapprove courses or licensing or certification tests under conditions specified in paragraph (a) of this section where it functions for the State approving agency. See § 21.4150(c).

(d) The Department of Veterans Affairs will immediately notify the State approving agency in each case of Department of Veterans Affairs suspension or disapproval of any school under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 3679, 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051)

[41 FR 30640, July 26, 1976, as amended at 72 FR 16975, Apr. 5, 2007]

§ 21.4260 Courses in foreign countries.

(a) *Approval of postsecondary courses in foreign countries.* (1) In order to be approved a postsecondary course offered in a foreign country must meet all the provisions of this paragraph. A

course offered by a foreign medical school (other than one located in Canada) must also meet all of the provisions of paragraph (b) of this section.

(i) The educational institution offering the course is an institution of higher learning, and

(ii) The course leads to a standard college degree or its equivalent.

(2) For the purpose of this paragraph, a degree is the equivalent of a standard college degree when the program leading to the degree has the same entrance requirements as one leading to a degree granted by a public degree-granting institution of higher learning in that country.

(b) *Approval of courses offered by a foreign medical school.* In addition to meeting all the criteria stated in paragraph (a) of this section, a course offered by a foreign medical school (other than one located in Canada) must also meet all of the following criteria:

(1) The school satisfies the criteria for listing as a medical school in the World Directory of Medical Schools published by the World Health Organization (WHO).

(2) The evaluating bodies (such as medical associations or educational agencies) whose views are considered relevant by the Director, Education Service, and which are located in the same country as the school—

(i) Recognize the school as a medical school, and

(ii) Approve the school.

(3) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom instruction at least 32 months long. This program must be—

(i) Supervised closely by members of the school's faculty, and

(ii) Provided either.

(A) Outside the United States in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom medical instruction, or

(B) Inside the United States, through a training program for foreign medical students which has been approved by all the medical licensing boards and evaluating bodies whose views are considered relevant by the Director, Education Service.

(4) The school has graduated classes during each of the two 12-month periods immediately preceding the date on which VA receives the school's application for approval of its courses.

(5) The Director, Education Service, shall withdraw approval of any course when the course or the school offering it fails to meet any of the approval criteria in this section or in Chapter 36, Title 38 U.S.C.

(6) In making the decisions required by this paragraph, the Director, Education Service, may consult with the Secretary of Education. The Director may review any information about a foreign medical school which the Secretary may make available.

(c) *Approval of enrollments in foreign courses.* (1) Except as provided in paragraph (c)(2) of this section, the Department of Veterans Affairs will approve the enrollment of a veteran or eligible person in a course offered by an educational institution not located in a State when—

(i) The eligible person, serviceperson, veteran, or reservist meets the eligibility and entitlement requirements of either §§ 21.3040 through 21.3046, §§ 21.5040 and 21.5041, §§ 21.7040 through 21.7045, or § 21.7540, as appropriate;

(ii) The eligible person's, serviceperson's, veteran's, or reservist's program of education meets the requirements of either § 21.3021(h), § 21.5230, § 21.7020(b)(23), or § 21.7520(b)(17), as appropriate; and

(iii) The course meets the requirements of this section and all other applicable VA regulations.

(2) VA may deny or discontinue the payment of educational assistance allowance to a veteran, serviceperson, eligible person or reservist pursuing a course in an institution of higher learning not located in a State when VA finds that the veteran's, serviceperson's, eligible person's, or reservist's enrollment is not in his or her best interest or the best interest of the Federal Government.

(Authority: 38 U.S.C. 3687)

[52 FR 13239, Apr. 22, 1987, as amended at 61 FR 29296, June 10, 1996]

§ 21.4261 Apprentice courses.

(a) *General.* An apprentice course is any training on-the-job course which has been established as an apprentice course by a training establishment as defined in § 21.4200(c) and which has been approved as an apprentice course by the State approving agency.

(b) *Application.* Any training establishment desiring to furnish a course of apprentice training will submit a written application to the appropriate State approving agency setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(2) The length of the training period;

(3) A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;

(4) The number of hours of supplemental related instruction required; and

(5) Any additional information required by the State approving agency.

(c) *Approval criteria.* The appropriate State approving agency may approve a course of apprentice training when the training establishment and its apprentice courses are found upon investigation to have met the following criteria:

(1) The standards of apprenticeship published by the Secretary of Labor pursuant to 29 U.S.C. 50a;

(2) A signed copy of the training agreement for each veteran or eligible person, making reference to the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Department of Veterans Affairs and the State approving agency by the employer; and

(3) The course meets such other reasonable criteria as may be established by the State approving agency.

(Authority: 38 U.S.C. 3687)

(d) *Promotion.* As funding permits, Department of Veterans Affairs employees will promote the development of apprenticeships. They will:

(1) Visit employers and joint apprenticeship committees,

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(2) Coordinate their efforts with activities of any State approving agencies that may choose to promote the development of apprenticeships, and

(3) Avoid duplicating the efforts of others by coordinating their promotional efforts with similar activities of the Department of Labor and State employment security agencies as provided by written agreements covering these activities, including utilization of disabled veterans' outreach program specialists.

(Authority: 38 U.S.C. 3672(d))

[32 FR 13405, Sept. 23, 1967, as amended at 33 FR 9546, June 29, 1968; 38 FR 14938, June 7, 1973; 47 FR 42731, Sept. 29, 1982]

§ 21.4262 Other training on-the-job courses.

(a) *General.* An "other training on-the-job" course is any training on the job which does not qualify as an apprentice course, as defined in § 21.4261, but which otherwise meets the requirements of paragraph (c) of this section.

(b) *Application.* Any training establishment desiring to furnish a course of other training on-the-job will submit to the appropriate State approving agency a written application setting forth the following:

(1) Title and description of the specific job objective for which the veteran or eligible person is to be trained;

(2) The length of the training period;

(3) A schedule listing various operations for major kinds of work or tasks to be learned and showing for each job operations or work, tasks to be performed, and the approximate length of time to be spent on each operation or task;

(4) The number of hours of supplemental related instruction required;

(5) The entrance wage or salary paid by the training establishment to employees already trained in the kind of work for which the veteran or eligible person is to be trained;

(6) A certification that the wages to be paid the veteran or eligible person upon entrance into training are not less than wages paid nonveterans in the same training position and are at least 50 percent of the wages paid for the job for which he or she is to be trained, and will be increased in reg-

ular periodic increments until, not later than the last full month of the scheduled training period they will be at least 85 percent of the wages paid for the job for which the veteran or eligible person is being trained;

(7) A certification that there is reasonable certainty that the job for which the veteran or eligible person is to be trained will be available to him or her at the end of the training period; and

(8) Any additional information required by the State approving agency.

(c) *Approval criteria.* The appropriate State approving agency may approve the application submitted under paragraph (b) of this section, when the training establishment and its courses are found upon investigation to have met the criteria outlined in this paragraph. Approval will not be granted for training in occupations which require a relatively short period of experience for a trainee to obtain and hold employment at the market wage in the occupation. This includes occupations such as automobile service station attendant or manager, soda fountain attendant, food service worker, salesman, window washer, building custodian or other unskilled or common labor positions as well as clerical positions for which on-the-job training is not the normal method of procuring qualified personnel.

(1) The job which is the objective of the training is one in which progression and appointment to the next higher classification are based upon skills learned through organized and supervised training on-the-job and not on such factors as length of service and normal turnover;

(2) The training content of the course is adequate to qualify the veteran or eligible person for appointment to the job for which he or she is to be trained;

(3) The job customarily requires a period of training of not less than 6 months and not more than 2 years of full-time training;

(4) The length of the training period is not longer than that customarily required by the training establishments in the community to provide the veteran or eligible person with the required skills, arrange for the acquiring

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of job knowledge, technical information, and other facts which the veteran or eligible person will need to learn in order to become competent on the job for which he or she is being trained;

(5) Provision is made for related instruction for the individual veteran or eligible person who may need it;

(6) There is in the training establishment adequate space, equipment, instructional material, and instructor personnel to provide satisfactory training on-the-job;

(7) Adequate records are kept to show the progress made by each veteran or eligible person toward his or her job objective;

(8) The veteran or eligible person is not already qualified by training and experience for the job;

(9) The requirements of paragraphs (b)(6) and (7) of this section are met;

(10) A signed copy of the training agreement for each veteran or eligible person, including the training program and wage schedule as approved by the State approving agency, is provided to the veteran or eligible person and the Department of Veterans Affairs and the State approving agency by the employer; and

(11) The course meets such other reasonable criteria as may be established by the State approving agency.

(Authority: 38 U.S.C. 3677)

(d) *Promotion.* As funding permits, Department of Veterans Affairs employees will promote the development of on-the-job training courses. They will:

(1) Visit employers,

(2) Coordinate their efforts with activities of any State approving agencies that may choose to promote the development of on-the-job training courses, and

(3) Avoid duplicating the efforts of others by coordinating their promotional efforts with similar activities of the Department of Labor and State employment security agencies as provided by written agreements covering these activities, including utilization

of disabled veterans' outreach program specialists.

(Authority: 38 U.S.C. 3672(d))

[32 FR 13405, Sept. 23, 1967, as amended at 33 FR 9546, June 29, 1968; 35 FR 9817, June 16, 1970; 38 FR 14939, June 7, 1973; 45 FR 51778, Aug. 5, 1980; 47 FR 42731, Sept. 29, 1982; 60 FR 32272, June 21, 1995]

§ 21.4263 Approval of flight training courses.

(a) *A flight school or institution of higher learning are the only entities that can offer flight courses.* A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it. The provisions of § 21.4150 shall determine the proper State approving agency for approving a flight course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b), 3671, 3672, 3676)

(b) *Definition of flight school.* A *flight school* is a school, other than an institution of higher learning, or is an entity, such as an aero club; is located in a State; and meets one of the following sets of requirements:

(1) The Federal Aviation Administration has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141;

(2) The entity is either a flight training center or an air carrier that does not have a pilot school certificate or provisional pilot school certificate issued by the Federal Aviation Administration under 14 CFR part 141, but pursuant to a grant of exemption letter issued by the Federal Aviation Administration under 14 CFR part 61 is permitted to offer pilot training by a flight simulator instead of an actual aircraft; or

(3) The Federal Aviation Administration has issued the school or entity a training center certificate under 14 CFR part 142.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452(c))

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(c) *Aero club courses.* An aero club, established, formed, and operated under authority of service department regulations as a nonappropriated sundry fund activity, is an instrumentality of the Federal government. Consequently, VA has exclusive jurisdiction over approval of flight courses offered by such aero clubs.

(Authority: 38 U.S.C. 3671, 3672)

(d) *Approval of flight training as part of a degree program.* A State approving agency may approve a flight training course that is part of a program of education leading to a standard college degree provided the course and program meet the requirements of §21.4253 or §21.4254, as appropriate. The institution of higher learning offering the course need not be a flight school.

(Authority: 38 U.S.C. 3675, 3676)

(e) *Approval of flight training courses that are not part of a degree program.* A flight course is subject to the same approval requirements as any other course. In addition, the State approving agency must apply the following provisions to the approval of flight courses:

(1) The Federal Aviation Administration must approve the course; and

(2)(i) The course must meet the requirements of 14 CFR part 63 or 141, and a flight school described in paragraph (b)(1) or (b)(3) of this section must offer it; or

(ii) The course must meet the requirements of 14 CFR part 61, and either be offered—

(A) By a flight school described in paragraph (b)(3) of this section; or

(B) In whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the Federal Aviation Administration to the flight school offering the course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b), 3676, 3680A)

(f) *Application of 38 U.S.C. 3680A(e)(2) to flight training.* Notwithstanding the fact that the Federal Aviation Administration will permit flight schools to conduct training at a base other than the main base of operations if the requirements of either 14 CFR 141.91 or 14

CFR 142.17 are met, the satellite base is considered under 38 U.S.C. 3680A(e)(2) to be a branch of the principal school, and must meet the requirements of 38 U.S.C. 3680A(e)(2).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3680A))

(g) *Providing a flight course under contract between schools or entities.* When a school or entity offers all or part of a flight course under a contract with another school or entity, the State approving agency must apply §21.4233 in the following manner:

(1) The requirements of §21.4233(e) must be met for all contracted flight instruction, instruction by flight training device, flight simulator instruction, and ground school training. Ground school training may be given through a ground school facility operated jointly by two or more flight schools in the same locality; and

(2) The responsibility for providing the instruction lies with the flight school. The degree of affiliation between the flight school and the entity or other school that actually does the instructing must be such that all charges for instruction are made by, and paid to, one entity having jurisdiction and control over both the flight and ground portions of the program.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b))

(h) *Nonaccredited courses—(1) Application of §21.4254 to flight training.* The provisions of §21.4254 are applicable to approval of flight training courses.

(2) *Additional instruction requirements.* The State approving agency will apply the following additional requirements to a flight course:

(i) All flight instruction, instruction by flight training device, flight simulator instruction, preflight briefings and postflight critiques, and ground school training in a course must be given by the flight school or under suitable arrangements between the school and another school or entity such as a local community college.

(ii) All ground school training connected with the course must be in residence under the direction and supervision of a qualified instructor providing an opportunity for interaction

between the students and the instructor. Simply making provision for having an instructor available to answer questions does not satisfy this requirement.

(3) A flight school must keep at a minimum the following records for each eligible veteran, servicemember, or reservist pursuing flight training:

(i) A copy of his or her private pilot certificate;

(ii) Evidence of completion of any prior training that may be a prerequisite for the course;

(iii) A copy of the medical certificate required by paragraph (a)(2) of this section for the courses being pursued and copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction received at the current school;

(iv) A daily flight log or copy thereof;

(v) A permanent ground school record;

(vi) A progress log;

(vii) An invoice of flight changes for individual flights or flight lessons for training conducted on a flight simulator or advanced flight training device;

(viii) Daily flight sheets identifying records upon which the 85-15 percent ratio may be computed;

(ix) A continuous meter record for each aircraft;

(x) An invoice or flight tickets signed by the student and instructor showing hour meter reading, type of aircraft, and aircraft identification number;

(xi) An accounts receivable ledger;

(xii) Individual instructor records;

(xiii) Engine log books;

(xiv) A record for each student above the private pilot level stating the name of the course in which the student is currently enrolled and indicating whether the student is enrolled under 14 CFR part 61, part 63, part 141, or part 142;

(xv) Records of tuition and accounts which are evidence of tuition charged and received from all students; and

(xvi) If training is provided under 14 CFR part 141, the records required by that part, or if training is provided under 14 CFR part 142, the records required by that part.

(Authority: 38 U.S.C. 3671, 3672, 3676, 3690(c))

(i) *Hourly limitations.* A flight course approved pursuant to paragraph (e) of this section shall be approved only for those hours of instruction generally considered necessary for a student to obtain an identified vocational objective. This requirement is met only if the number of hours approved does not exceed the maximum set forth in paragraph (i)(1) through (3) of this section. Flight instruction may never be substituted for ground training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(1) *Flight or flight simulator instruction.* Except as provided in paragraph (i)(4) of this section, the maximum number of hours of flight instruction or flight simulator instruction which may be approved for a flight course shall not exceed the number determined by this paragraph.

(i) The maximum number of hours of solo flight instruction shall not exceed the minimum number of hours required for the course provided by FAA regulations.

(ii) The maximum number of hours of dual flight instruction shall not exceed the lesser of—

(A) The number of hours of dual flight instruction in the course outline approved by the FAA, or

(B) 120% of the minimum number of hours of dual flight instruction required for the course by FAA regulations.

(iii) The maximum number of hours of instruction by flight simulator or flight training device that a State approving agency may approve is the maximum number of hours of instruction by flight simulator or flight training device permitted by 14 CFR part 61 for that course when:

(A) A course is offered in whole or in part by flight simulator or flight training device conducted by a training center certificated under 14 CFR part 142; and

(B) 14 CFR part 61 contains a maximum number of hours of instruction by flight simulator or flight training device that may be credited toward the requirements of the rating or certificate that is the objective of the course.

(iv) If a course is offered in whole or in part by flight simulator or flight

training device, and the course is not described in paragraph (i)(1)(iii) of this section, either because the course is offered by a flight training center with a grant of exemption letter, or because 14 CFR part 61 does not contain a maximum number of hours of instruction by flight simulator or flight training device, the maximum number of hours of instruction by flight simulator or flight training device that may be approved may not exceed the number of hours in the Federal Aviation Administration-approved outline.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3032(f), 3231(f))

(2) *Ground school.* The ground training portion of a flight course may include two forms of ground training instruction, ground school and preflight briefings and postflight critiques. The minimum hours for ground training, as specified in 14 CFR part 141, appendixes C through J refer only to ground school and not to preflight briefings and postflight critiques. If the ground school training consists of units using kits containing audiovisual equipment, quizzes and examinations, the maximum number of units approved shall not exceed the number on the course outline approved by the FAA. For all other ground school training, the number of hours of training shall not exceed the number of hours on the course outline approved by the FAA.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(3) *Preflight briefings and postflight critiques.* Hours spent in preflight briefings and postflight critiques need not be approved by the FAA.

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques shall not exceed the number of hours on the outline exclusive of the preflight briefings and post-flight critiques which are attributable to solo flying hours that exceed the minimum number of solo flying hours for the course in 14 CFR part 141.

(ii) If these hours are not on the FAA-approved outline, they may not be approved unless the State approving agency finds that the briefings and critiques are an integral part of the

course and do not precede or follow solo flying hours which exceed the minimum number of solo flying hours for the course in 14 CFR part 141. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not, when added together, exceed 25 percent of the approved hours of flight instruction.

(Authority: 10 U.S.C. 16131(f)(4); 16136(c), 38 U.S.C. 3002(3), 3032(f)(4), 3202(2), 3231(f)(4), 3452(b))

(4) *Waiver of limitation in approvable course hours.* (i) Flight schools that wish to have a greater number of hours of dual flight instruction approved than are permitted by paragraph (i)(1)(ii) of this section, may seek an administrative review of their approval by the Director, Education Service. Requests for such a review should be made in writing to the Director of the VA facility having jurisdiction over the flight school. The request should—

(A) State the reasons why the flight school believes that the approval should extend to a greater number of hours, and

(B) Include any evidence tending to show that the greater number of hours should be approved.

(ii) The Director, Education Service shall base her or his decision upon the evidence submitted, the recommendation of the Director of the VA facility, and, if appropriate, the recommendation of the State approving agency having jurisdiction over the flight school.

(iii) The limit on the number of hours of solo flight instruction found in paragraph (i)(1)(i) of this section may not be waived.

(Authority: 10 U.S.C. 16131(f)(4); 38 U.S.C. 3032(f)(4), 3231(f)(4))

(j) *Charges.* The appropriate State approving agency shall approve charges for tuition and fees for each flight course exclusive of charges for tuition and fees for solo flying hours which exceed the maximum permitted under paragraph (i)(1)(i) of this section and for preflight briefings and postflight

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critiques which precede or follow the excess solo hours.

(Authority: 38 U.S.C. 3672)

(1) The approved charges for tuition and fees shall be based upon the charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay. Charges for books, supplies and lodging may not be reimbursed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(2) For the ground school portion of ground training, the State approving agency should approve group charges or unit prices if audio-visual equipment is used. For the preflight briefings and postflight critiques, the State approving agency should approve individual instructor rates for individual training flights. An average charge per hour based upon total hours and cost of all training given on the ground may not be approved.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(3) A veteran, servicemember or reservist or group (all or part of whom are veterans, servicemembers or reservists) owning an airplane may lease it to an approved flight school and have exclusive use of the aircraft for flight training. The aircraft should meet the requirements prescribed for all airplanes to be used in the course, and should be shown in the approval by the State approving agency. The leasing arrangement should not result in charges for flight instruction for those owning the airplane greater than charges made to others not leasing an aircraft to the school.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(4) If membership in a flight club entitles a veteran, servicemember or reservist to flight training at less than the standard rate, his or her educational allowance will be based on the reduced rate. No payments will be made for the cost of joining the flight

club, since it is not a charge for the flight course.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(k) *Substitute aircraft.* Except for minor substitutions a veteran, servicemember or reservist enrolled in a flight course may train only in the aircraft approved for that course. If a particular aircraft is not available for some compelling reason, the veteran, servicemember or reservist may be permitted to train in an aircraft different from that approved for the particular course, provided the aircraft substituted will adequately meet the training requirements for this particular phase of the course. Substitutions should be explained on the monthly certifications of flight training. If this shows that the charge for the substituted aircraft is different from the charge approved for the regular aircraft, the reimbursement will be based on the lesser charge. When substitution becomes the practice rather than the exception, VA will suspend payments and notify the veterans, servicemembers, reservists and the school. VA will refer the matter to the State approving agency for appropriate action.

(Authority: 10 U.S.C. 16136(b), 16136(c); 38 U.S.C. 3034(d), 3672(a))

(1) *Enrollment limitations.* A flight course must meet the 85-15 percent ratio requirement set forth in § 21.4201 before VA may approve new enrollments in the course. The contracted portion of a flight course must meet all the requirements of § 21.4201 for each subcontractor.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3680A(d))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0613)

[45 FR 51778, Aug. 5, 1980, as amended at 48 FR 37992, Aug. 22, 1983; 57 FR 29801, July 7, 1992; 59 FR 21938, Apr. 28, 1994; 61 FR 20728, May 8, 1996; 63 FR 34130, June 23, 1998; 67 FR 12474, Mar. 19, 2002]

§ 21.4264 Farm cooperative courses.

(a) *Description of a farm cooperative course.* A farm cooperative course is an institutional agricultural course. It provides training on a reduced basis to those engaged in farming, compared to other types of training. Part-time benefits are provided for students whose farming operation will not permit them to attend class at least 10 hours per week.

(b) *Farm cooperative students must be farmers.* In order to receive educational assistance allowance an eligible person must be engaged concurrently in agricultural employment for an average of at least 40 hours per week. This agricultural employment must be relevant to the farm cooperative course.

(c) *Acceptable class schedules.* (1) The institutional portion of a farm cooperative course:

(i) May be on a term, quarter or semester basis, or

(ii) May consist of courses which:

(A) Are offered during at least 44 weeks of the year, and

(B) Require a minimum of 5 clock hours per week.

(2) The time involved in field trips and individual and group instruction, sponsored and conducted by the educational institution offering farm cooperative courses may be counted toward meeting the clock-hour requirements. See § 21.4270(c) of this part for measurement of farm cooperative courses.

(Authority: 38 U.S.C. 3482, 3532)

(d) *Application.* (1) Any school desiring to enroll spouses or children in farm cooperative courses:

(i) Will submit to the appropriate State approving agency a written application for approval in accordance with § 21.4253 or § 21.4254 as appropriate; and

(ii) Must submit statements of fact showing at least the following:

(A) That the course is set up in the school catalog or other literature of the school;

(B) That the agricultural course is offered concurrently with agricultural employment; and

(C) That the school itself verifies on a continuing basis that students are engaged for an average of at least 40 hours per week in suitable agricultural

employment which is relevant to the institutional agricultural course offered by the school and is in an area consistent with their institutional training program.

(2) For the purposes of this paragraph suitable agricultural employment must include employment on a farm or other agricultural establishment where the basic activity is either:

(i) The cultivation of the ground such as the raising and harvesting of crops including fruits, vegetables and pastures, or

(ii) The feeding, breeding and managing of livestock, including poultry and other specialized farming.

(3) The Department of Veterans Affairs does not consider employment in training establishments which are engaged primarily in the processing, distribution or sale of agricultural products or combinations thereof, such as dairy processing plants, grain elevators, packing plants, hatcheries, stockyards or florists shops to be suitable agricultural employment.

(e) *Approval criteria.* The appropriate State approving agency may approve the school's application when the agency finds upon investigation that the school and its courses have met the following conditions:

(1) The criteria specified in § 21.4253 or § 21.4254, as appropriate; and

(2) The requirements of paragraph (d) of this section.

(Authority: 38 U.S.C. 3482, 3532)

[46 FR 16101, Mar. 11, 1981, as amended at 54 FR 33890, Aug. 17, 1989; 61 FR 26115, May 24, 1996]

§ 21.4265 Practical training approved as institutional training or on-job training.

(a) *Medical-dental internships and residencies.* (1) Medical residencies (other than residencies in podiatric medicine), dental residencies, and osteopathic internships and residencies may be approved and recognized as institutional courses only when an appropriate accrediting agency accredits and approves them as leading to certification for a recognized professional objective.

(2) The appropriate accrediting agencies are:

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(i) The Accreditation Council for Graduate Medical Education, or where the Accreditation Council for Graduate Medical Education has delegated accrediting authority, the appropriate Residency Review Committee,

(ii) The American Osteopathic Association, and

(iii) The Commission on Dental Accreditation of the American Dental Association.

(3) These residency programs—

(i) Must lead to certification by an appropriate Specialty or Subspecialty Board, the American Osteopathic Association, or the American Dental Association; and

(ii) Will not be approved to include a period of practice following completion of the education requirements even though the accrediting agency requires the practice.

(4) Except as provided in paragraph (a)(5) of this section, no other medical or dental residency or osteopathic internship or residency will be approved or recognized as institutional training.

(5) A residency in podiatric medicine may be approved and recognized as institutional training only when it has been approved by the Council on Podiatry Education of the American Podiatry Association.

(Authority: 38 U.S.C. 3688(b))

(b) *Nursing courses.* (1) Courses for the objective of registered nurse or registered professional nurse will be assessed as institutional training when they are provided in autonomous schools of nursing, hospital schools of nursing, or schools of nursing established in other schools or departments of colleges and universities, if they are accredited by a nationally recognized accrediting agency or if they meet the requirements of the licensing body of the State in which the school is located. The hospital or fieldwork phase of a nursing course, including a course leading to a degree in nursing, will be assessed as an institutional course when the hospital or fieldwork phase is an integral part of the course, the completion thereof is a prerequisite to the successful completion of the course, the student remains enrolled in the school during the period, and the train-

ing is under the direction and supervision of the school.

(2) Courses offered by schools which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be assessed as institutional training including both the academic subjects and the clinical training if the clinical training is offered by an affiliated or cooperating hospital and the student is enrolled in and supervised by the school during the period of such clinical training. Also they must be accredited by a nationally recognized accrediting agency or meet the requirements of the licensing body of the State in which the school is located.

(3) Except for enrollment in a nurse's aide course approved pursuant to § 21.4253(a)(5), VA shall not approve an enrollment in a nonaccredited nursing course which does not meet the licensing requirements of the State where the course is offered.

(Authority: 38 U.S.C. 3452, 3688)

(c) *Medical and dental specialty courses.* (1) Required clinical training included in a school course given in an affiliated hospital, clinic, laboratory, or medical center as a part of a medical or dental specialty course whether accredited or nonaccredited offered by a school such as X-ray technician, medical technician, medical records administrator, physical therapist or dental technician shall be assessed as institutional training provided:

(i) The student remains enrolled in the course during the clinical period;

(ii) The clinical training is;

(a) An integral part of the course;

(b) A prerequisite to the successful completion of the course; and

(c) Under the direction and supervision of the school; and

(iii) The course includes substantial technical or professional training and does not consist of training preliminarily directed to clerical, administrative, secretarial, or receptionist duties.

(2) Medical and dental specialty courses offered in hospitals, clinics, laboratories, or medical centers which are accredited as institutional courses by a nationally recognized accrediting agency will be assessed as institutional training.

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(3) Clinical training included in a school course given in a physician's office or a dentist's office, also called externship, will be recognized as part of the institutional training if the course is accredited by a nationally recognized accrediting agency and meets the other requirements of paragraph (c)(1) of this section. If the course is not so accredited such practical or on-the-job training or experience in a physician's office may not be included unless the program is approved as a cooperative course.

(4) Nonaccredited courses offered in hospitals, clinics, laboratories, or medical centers will be considered on-the-job training when the courses meet the requirements of § 21.4262.

(d) *Medical and dental assistants courses for the Department of Veterans Affairs.* A course prescribed by the Secretary for full-time physicians' assistants or for full-time expanded-function auxiliaries (formerly referred to as dentists' assistants) may be approved as institutional training, if the course is conducted at Department of Veterans Affairs facilities or in facilities operated by hospitals, medical schools, or medical installations pursuant to a contract with the Department of Veterans Affairs.

(Authority: 38 U.S.C. 7407)

(e) *Professional training courses.* (1) Any non-medically related professional internship program, such as a clinical pastoral course, will be recognized as an institutional course when it is accredited as an institutional course by a nationally recognized accrediting agency, and

(2) The approved facility for such a course must be the institution or other facility where the training is given.

(f) *Other practical training courses.* (1) Other off-campus job experience included in a school course, variously described by schools as internship, residency, practicum, externship, et cetera, may be included as a part of a cooperative program when the course meets the requirements of § 21.4233(a).

(2) However, such off-campus courses may be considered as resident institutional training only if all of the following conditions are met. The course is:

(i) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting associations;

(ii) A part of the approved curriculum of the school;

(iii) Directly supervised by the school;

(iv) Measured in the same unit as other courses;

(v) Required for graduation; and

(vi) Has a planned program of activities described in the school's official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least:

(A) A unit subject description;

(B) A provision for an assigned instructor;

(C) A statement that the planned program of activities is controlled by the school, not by the officials of the job establishment;

(D) A requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student;

(E) A statement that appropriate assignments are required for completion of the course;

(F) A grading system similar to the system used for other resident subjects offered by the school; and

(G) A schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the school for its other resident courses.

(g) *Nonaccredited courses.* Any non-accredited internship program not given in a school will be recognized as other on-the-job training when it meets the requirements of § 21.4262 and when the program is required for licensure by the State in which it is offered. (See § 21.4275 for measurement.)

[41 FR 26683, June 29, 1976, as amended at 43 FR 25429, June 13, 1978; 49 FR 39545, Oct. 9, 1984; 54 FR 34984, Aug. 23, 1989; 61 FR 6783, Feb. 22, 1996]

§ 21.4266 Approval of courses at a branch campus or extension.

(a) *Definitions.* The following definitions apply to the terms used in this section.

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(1) *Administrative capability* means the ability to maintain all records and accounts that § 21.4209 requires.

(2) *Certifying official* means a representative of an educational institution designated to provide VA with the reports and certifications that §§ 21.4203, 21.4204, 21.5810, 21.5812, 21.7152, and 21.7652 require.

(3) *Main campus* means the location where the primary teaching facilities of an educational institution are located. If an educational institution has only one teaching location, that location is its main campus. If it is unclear which of the educational institution's teaching facilities is primary, the main campus is the location of the primary office of its Chief Executive Officer.

(4) *Branch campus* means a location of an educational institution that—

- (i) Is geographically apart from and operationally independent of the main campus of the educational institution;
- (ii) Has its own faculty, administration and supervisory organization; and
- (iii) Offers courses in education programs leading to a degree, certificate, or other recognized education credential.

(5) *Extension* means a location of an educational institution that is geographically apart from and is operationally dependent on the main campus or a branch campus of the educational institution.

(Authority: 38 U.S.C. 3675, 3676, 3684)

(b) *State approving agency jurisdiction.*

(1) The State approving agency for the State where a residence course is being taught has jurisdiction over approval of that course for VA education benefit purposes.

(2) The fact that the location where the educational institution is offering the course may be temporary will not serve to change jurisdictional authority.

(3) The fact that the main campus of the educational institution may be located in another State from that in which the course is being taught will not serve to change jurisdictional authority.

(Authority: 38 U.S.C. 3672)

(c) *Approving a course offered by a branch campus or an extension of an edu-*

cational institution. Before approving a course or a program of education offered at a branch campus or an extension of an educational institution, the State approving agency must ensure that—

(1) Except as provided in paragraph (d) of this section, each location where the course or program is offered has administrative capability; and

(2) Except as provided in paragraph (f) of this section, each location where the course or program is offered has a certifying official on site.

(Authority: 38 U.S.C. 3672)

(d) *Exceptions to the requirement that administrative capability exist at each location.* (1) A State approving agency may approve a course or program offered by a branch campus that does not have its own administrative capability if—

(i) The main campus of the educational institution within the same State maintains a centralized record-keeping system that includes all records and accounts that § 21.4209 requires for each student attending the branch campus without administrative capability. These records may be originals, certified copies, or in an electronically formatted record keeping system; and

(ii) The main campus can identify the records of students at the branch campus for which it maintains centralized records.

(2) The State approving agency may approve a course or program offered by an extension that does not have its own administrative capability if—

(i) The extension and the main campus or branch campus it is dependent on are located within the same State;

(ii) The main campus or branch campus the extension is dependent on has administrative capability for the extension; and

(iii) The State approving agency combines the approval of the course(s) offered by the extension with the approval of the courses offered by the main campus or branch campus the extension is dependent on.

(e) *Combined approval.* The State approving agency may combine the approval of courses offered by an extension of an educational institution with

the approval of the main campus or the branch campus that the extension is dependent on, if the extension is within the same State as the campus it is dependent on. Combining the approval of courses offered by an extension, with the approval of courses offered by the main campus or branch campus the extension is dependent on, does not negate the minimum period of operation requirements in § 21.4251 for courses that do not lead to a standard college degree offered by an extension of a proprietary educational institution. The State approving agency will list the extension and courses approved on the notice of approval sent to the educational institution pursuant to § 21.4258 of this part.

(f) *Exceptions to the requirement that each location where the course or program is offered must have a certifying official on site.* Exceptions to the requirement in paragraph (c) of this section, that each location with an approved course or program of education must have a certifying official on site, will be permitted for—

(1) Extensions of an educational institution when the State approving agency combines the approval of the courses offered by the extension with a branch campus or main campus. (See paragraph (e) of this section.)

(2) Educational institutions with more than one campus within the same State if the main campus—

(i) Maintains a centralized record-keeping system. (See paragraph (d)(1) of this section.);

(ii) Has administrative capability for the branch campus (or branch campuses) within the same State; and

(iii) Centralizes its certifying official function at the main campus.

(3) Educational institutions with multi-state campuses when an educational institution wants to centralize its certifying official function into one or more locations if:

(i) The educational institution submits all required reports and certifications that §§ 21.4203, 21.4204, 21.5810, 21.5812, 21.7152, and 21.7652 require via electronic submission through VA's Internet-based education certification application;

(ii) The educational institution designates an employee, at each teaching

location of the educational institution that does not have a certifying official present, to serve as a point-of-contact for veterans, servicemembers, reservists, or other eligible persons; the certifying official(s); the State approving agency of jurisdiction; and VA. The designated employee must have access (other than to transmit certifications) to VA's Internet-based education certification application to provide certification information to veterans, servicemembers, reservists, or other eligible persons, State approving agency representatives, and VA representatives;

(iii) Each certifying official uses the VA facility code for the location that has administrative capability for the teaching location where the student is training when submitting required reports and certifications to VA; and

(iv) Each certifying official has full access to the administrative records and accounts that § 21.4209 requires for each student attending the teaching location(s) for which the certifying official has been designated responsibility. These records may be originals, certified copies, or in an electronically formatted record keeping system.

(Authority: 38 U.S.C. 3672)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0073)

[72 FR 20427, Apr. 25, 2007]

§ 21.4267 Approval of independent study.

(a) *Overview.* Except as provided in §§ 21.4252(g), 21.7120(d), and 21.7622(f), VA may not pay educational assistance for a nonaccredited course which is offered in whole or in part by independent study. Hence, it is necessary to differentiate independent study from similar courses.

(Authority: 38 U.S.C. 3014, 3523, 3672, 3676(e), 3680A(a))

(b) *Definition of independent study.* (1) VA considers a course to be offered entirely by independent study when—

(i) It consists of a prescribed program of study with provision for interaction between the student and the regularly employed faculty of the institution of

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higher learning. The interaction may be personally or through use of communications technology, including mail, telephone, videoconferencing, computer technology (to include electronic mail), and other electronic means;

(ii) It is offered without any regularly scheduled, conventional classroom or laboratory sessions; and

(iii) It is not a course listed in paragraph (c), (d), or (e) of this section.

(2) VA considers a course to be offered in part by independent study when—

(i) It is not classified as one of the three types of courses listed in paragraph (c) of this section;

(ii) It has some weeks when standard class sessions are scheduled; and

(iii) It consists of independent study as defined in paragraph (b)(1) of this section during those weeks when there are no regularly scheduled class sessions.

(Authority: 38 U.S.C. 3523, 3676(e), 3680A(a))

(c) *Scope of independent study.* VA does not consider any of the following courses to be courses offered by independent study.

(1) A cooperative course as defined in § 21.4233(a);

(2) A farm cooperative course; or

(3) A course approved as a correspondence course.

(Authority: 38 U.S.C. 3676(e), 3680A(a))

(d) *Undergraduate resident training.* VA considers the following undergraduate courses to be resident training.

(1) A course which meets the requirements for resident institutional training found in § 21.4265(f);

(2) A course which requires regularly scheduled, standard class sessions at least once every two weeks and which has a total number of class sessions equal to the number of credit hours awarded for the course, times the number of weeks in a standard quarter or semester, as applicable;

(3) A course of student teaching; and

(4) Flight training which is an integral part of a standard undergraduate college degree.

(e) *Graduate resident training.* VA considers a graduate course to be resident training if the course—

(1) Is offered through regularly scheduled, conventional classroom or laboratory sessions; or

(2) Consists of research (either on campus or in absentia) necessary for the preparation of the student's—

(i) Master's thesis,

(ii) Doctoral dissertation, or

(iii) Similar treatise which is prerequisite to the degree being pursued; or

(3) Consists of a combination of training as described in paragraphs (e)(1) and (e)(2) of this section.

(Authority: 38 U.S.C. 3676(e), 3680A(a))

(f) *Course approval.* A State approving agency may approve a course offered by independent study or a combination of independent study and resident training only if the course—

(1) Is accredited;

(2) Meets the requirements of § 21.4253; and

(3) Either—

(i) Leads to a standard college degree; or

(ii) For courses approved on or after December 27, 2001, leads to a certificate that reflects educational attainment offered by an institution of higher learning.

(Authority: 38 U.S.C. 3672, 3675, 3680A(a)(4))

(g) *Remedial and deficiency courses.* Remedial and deficiency courses offered by independent study cannot be approved.

(Authority: 38 U.S.C. 3672, 3675, 3680A(a)(4))

[61 FR 6783, Feb. 22, 1996, as amended at 62 FR 40280, July 28, 1997; 73 FR 2426, Jan. 15, 2008]

§ 21.4268 Approval of licensing and certification tests.

(a) *Authority to approve licensing and certification tests.* (1) Except for approval of the licensing and certification tests and the organizations or entities offering these tests that, as provided in § 21.4250(c)(2), are VA's responsibility, the Secretary of Veterans Affairs delegates to each State approving agency the authority, within the

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respective State approving agency's jurisdiction provided in § 21.4250(a), to approve licensing and certification tests and to approve the organizations or entities offering licensing and certification tests.

(2) The Secretary of Veterans Affairs delegates to the Under Secretary for Benefits, and to personnel the Under Secretary for Benefits may designate within the Education Service of the Veterans Benefits Administration, the authority to approve the licensing and certification tests and the organizations or entities offering these tests that, as provided in § 21.4250(c)(2)(vi), are VA's responsibility.

(Authority: 38 U.S.C. 512(a), 3689(a)(2))

(b) *Approval of tests.* (1) If an organization or entity wants a licensing or certification test that it offers to be approved for payment of educational assistance, it must apply for approval to the State approving agency having jurisdiction over the locality where the organization or entity has its headquarters. The application must be in the form the State approving agency requires.

(2) In order to be approved for payment of educational assistance to veterans and eligible persons, a licensing or certification test must meet the requirements of paragraph (b) of this section, and the organization or entity offering the test must meet the requirements of paragraph (c) of this section and, if appropriate, the requirements of paragraph (d) of this section.

(i) The State approving agency may approve a licensing or certification test only if—

(A) The test is required under Federal, State, or local law or regulation for an individual to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession; or

(B) The State approving agency decides that the test is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession.

(ii) If a State or political subdivision of a State offers a licensing or certification test, the State approving agency will deem the test to have met the requirements of paragraph (b) of this section.

(3) In considering whether the test is generally accepted, a State approving agency may consider the following:

(i) The nature and number of the entities that recognize the certificate awarded to candidates who pass the test;

(ii) The degree to which employers in the relevant industry accept the certification test;

(iii) Whether major employers in an industry require that their employees obtain the certificate awarded to candidates who pass the test;

(iv) The percentage of people employed in the vocation or profession who have taken the test and obtained the certificate; or

(v) Any other reasonable criterion that the State approving agency believes will clarify whether the test is generally accepted.

(4) Generally, if a State approving agency approves a certification test, VA will consider that the test is approved for any veteran or eligible person even if he or she takes the test at a location outside the State where the organization or entity offering the test has its headquarters. However, a certification test approval is valid only in the State where the State approving agency has jurisdiction if—

(i) A State licensing agency recognizes the certification test as meeting a requirement for a license and has sought approval for that test; and

(ii) The State approving agency for the State where the licensing agency is located approves that test.

(Authority: 38 U.S.C. 3689)

(c) *Approval of organizations or entities offering licensing or certification tests.* An organization or entity must meet the requirements of this paragraph and, if a nongovernmental organization, of paragraph (d) of this section, in order for the State approving agency to approve a licensing or certification test that the organization or entity offers for payment of educational assistance to veterans and eligible persons who

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take the test. The organization or entity must—

(1) Maintain appropriate records with respect to all candidates who take the test for a period of not less than three years from the date the organization or entity administers the test to the candidates;

(2) Promptly issue notice of the results of the test to the candidate for the license or certificate;

(3) Have a process to review complaints submitted against the organization or entity with respect to the test or the process for obtaining a license or certificate required for a vocation or profession;

(4) Give to the State approving agency the following information:

(i) A description of the licensing or certification test that the organization or entity offers, including the purpose of the test, the vocational, professional, governmental, and other entities that recognize the test, and the license or certificate issued upon passing the test;

(ii) The requirements to take the test, including the amount of the fee charged for the test and any prerequisite education, training, skills, or other certification; and

(iii) The period for which the license or certificate is awarded is valid, and the requirements for maintaining or renewing the license or certificate; and

(5) Agree to give the following information to VA at VA's request:

(i) The amount of the fee a candidate pays to take a test;

(ii) The results of any test a candidate takes; and

(iii) Personal identifying information of any candidate who applies for reimbursement from VA for a test.

(Authority: 38 U.S.C. 3689(c))

(d) *Approval of nongovernmental organizations or entities offering certification tests.* (1) In addition to complying with the requirements of paragraph (c) of this section, a nongovernmental organization or entity must meet the requirements of paragraph (d) of this section before a certification test it offers can be approved for payment of educational assistance to veterans and eligible persons who take the test. Except as provided in paragraphs (d)(3) and

(d)(4) of this section, the organization or entity—

(i) Certifies to the State approving agency that the licensing or certification test offered by the organization or entity is generally accepted, in accordance with relevant government, business, or industry standards, employment policies, or hiring practices, as attesting to a level of knowledge or skill required to qualify to enter into, maintain, or advance in employment in a predetermined and identified vocation or profession;

(ii) Is licensed, chartered, or incorporated in a State and has offered the test for a minimum of two years before the date on which the organization or entity first submits to the State approving agency an application for approval under this section;

(iii) Employs, or consults with, individuals with expertise or substantial experience with respect to all areas of knowledge or skill that are measured by the test and that are required for the license or certificate issued; and

(iv) Has no direct financial interest in—

(A) The outcome of the test; or

(B) An organization that provides the education or training of candidates for licenses or certificates required for a vocation or profession.

(2) At the request of the State approving agency, the organization or entity seeking approval for a licensing or certification test must give such information to the State approving agency as the State approving agency decides is necessary to perform an assessment of—

(i) The test the organization or entity conducts as compared to the level of knowledge or skills that a license or certificate attests; and

(ii) The applicability of the test over such periods of time as the State approving agency decides is appropriate.

(3) The provisions of paragraph (d)(1)(ii) of this section will not prevent the approval of a test if the organization or entity has offered a reasonably related test for at least two years.

(4) The provisions of paragraph (d)(1)(iv) of this section will not prevent the approval of a test if the organization or entity—

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(i) Offers a sample test or preparatory materials to a candidate for the test but does not otherwise provide preparatory education or training to the candidate; or

(ii) Has a financial interest in an organization that provides preparatory education or training of a candidate for a test, but that test is advantageous in but not required for practicing a vocation or profession.

(Authority: 38 U.S.C. 3689(c))

(e) *Notice of approval and withdrawal of approval.* The State approving agency must provide notice of an approval of a test as required in § 21.4250(b). If the State approving agency wishes to withdraw approval of a test, it must follow the provisions of § 21.4259.

(Authority: 38 U.S.C. 3689(d))

(f) *A decision to disapprove a test or an organization or entity offering a test may be reviewed.* (1) If an organization or entity offering a test disagrees with a State approving agency's decision to disapprove a test or to disapprove the organization or entity offering the test, it may seek a review of the decision from the Director, Education Service. If the Director, Education Service has acted as the State approving agency, the organization or entity may seek a review of the decision from the Under Secretary for Benefits.

(2) The organization or entity must make its request for a review in writing to the State approving agency. The State approving agency must receive the request within 90 days of the date of the notice to the organization or entity that the test or the organization or entity is disapproved.

(3) The review will be based on the evidence of record at the time the State approving agency made its initial decision. It will not be *de novo* in character.

(4) The Director, Education Service or the Under Secretary for Benefits may seek the advice of the Professional Certification and Licensure Advisory Committee, established under 38 U.S.C. 3689(e), as to whether the State approving agency's decision should be reversed.

(5) The decision of the Director, Education Service or the Under Secretary

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for Benefits is the final administrative decision. It will not be subject to further administrative review.

(Authority: 38 U.S.C. 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0697)

[72 FR 16975, Apr. 5, 2007]

ASSESSMENT AND PURSUIT OF COURSES

§ 21.4270 Measurement of courses.

(a) *Measurement of trade, technical, and high school courses.* Trade, technical, high school, and high school preparatory courses shall be measured as stated in this paragraph.

(1) *Trade and technical courses.* (i) Except as provided in paragraph (b) of this section, if shop practice is an integral part of a trade or technical course not leading to a standard college degree—

(A) A full-time enrollment is 22 clock hours per week (exclusive of supervised study) with not more than 2½ hours rest period allowance;

(B) A three-quarter-time enrollment is 16 through 21 clock hours per week (exclusive of supervised study) with not more than 2 hours rest period allowance;

(C) A one-half-time enrollment is 11 through 15 clock hours per week (exclusive of supervised study) with not more than 1¼ hours rest period allowance;

(D) A less than one-half-time but more than one-quarter-time enrollment is 6 through 10 clock hours per week (exclusive of supervised study) with not more than ¾ hour rest period allowance; and

(E) A quarter-time enrollment is 1 through 5 clock hours per week (exclusive of supervised study).

(ii) Except as provided in paragraph (b) of this section, if theory and class instruction constitute more than 50 percent of the required hours in a trade or technical course not leading to a standard college degree, enrollments will be measured as follows. In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in a school's shops and the time involved in