

TABLE II—Continued

Year	Limit
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000
2000	4,650,000

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AJ54

Child; Educational Institution

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the definition of a child for purposes of establishing entitlement to additional monetary benefits for a dependent. The amendments are necessary to clarify the definition of a child for VA purposes and to bring the regulations into conformance with the governing statutes as interpreted by VA's General Counsel. This document also makes non-substantive changes for purposes of clarity.

DATES: Effective Date: March 8, 2000.

FOR FURTHER INFORMATION CONTACT:

Warren M. Jones, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7167.

SUPPLEMENTARY INFORMATION: A veteran who is entitled to compensation under the provisions of 38 U.S.C. 1114 or 1134 is also entitled, under certain circumstances, to additional compensation for dependents, including a child. A veteran who is entitled to pension under the provisions of 38 U.S.C. 1521 is entitled to a higher annual rate of pension because of dependents, including a child. Dependency and indemnity compensation and death pension are also monetary benefits affected by the number of the surviving spouse's dependent children, who, under certain circumstances, may be entitled to these benefits in their own right.

A "child" is defined in 38 U.S.C. 101(4)(A)(iii) to include a person who is unmarried, and after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years) is pursuing a course of instruction at an approved educational institution. The implementing regulation is at 38 CFR 3.57(a)(1)(iii).

Section 104(a) of title 38, United States Code, provides that for the purpose of determining whether or not benefits are payable (except those under chapter 35, title 38, United States Code) for a child over the age of eighteen and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institute, university, or other educational institution, the Secretary may approve or disapprove such educational institutions.

In a precedent opinion dated March 19, 1998 (VAOPGCPREC 3-98), VA's General Counsel held that the term "educational institution" should be interpreted as including only institutions which are similar in type to the institutions specifically enumerated in 38 U.S.C. 104(a). According to the General Counsel, a home-school program differs from those institutions because the home-school program is not offered to a number of students, but rather is created to serve the needs of a particular student. Also, a home-school is not a permanent organization but rather disbands at completion of the student's program or withdrawal of the student. The General Counsel concluded, therefore, that a person who is receiving instruction in a home-school program is not pursuing a course of instruction at an educational institution and therefore does not qualify as a child within the meaning of 38 U.S.C. 101(4)(A)(iii). This document amends 38 CFR 3.57(a)(1)(iii) accordingly. This document also amends 38 CFR 3.667 to use statutory terminology and to make clarifying changes.

This final rule interprets statutory provisions and makes non-substantive changes. Accordingly, there is a basis under 5 U.S.C. 553 to dispense with prior notice and comment and a delayed effective date.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 29, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.57, paragraph (a)(1)(iii) is revised to read as follows:

§ 3.57 Child.

(a) * * *

(1) * * *

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution. For the purposes of this section and § 3.667, the term "educational institution" means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria. The term includes schools, colleges, academies, seminaries, technical institutes, and universities, but does not include home-school programs.

(Authority: 38 U.S.C. 101(4)(A), 104(a))

* * * * *

§ 3.667 [Amended]

3. Section 3.667 is amended by removing "approved school" and "approved course of instruction" wherever they appear and adding, in their place, "approved educational institution".

4. Section 3.667 is further amended as follows:

a. Paragraphs (a)(2) and (a)(4) are amended by removing "based upon a course which" and adding, in its place, "based upon a course of instruction at an approved educational institution which";

b. The first sentence of paragraph (b) is amended by removing "attending

school” and adding, in its place, “attending an approved educational institution”; and

c. The last sentence of paragraph (a)(5) and paragraph (d) are revised to read as follows:

§ 3.667 School attendance.

(a) * * *

(5) * * * Where the child was receiving dependency and indemnity compensation in its own right prior to age 18 and was not attending an approved educational institution on the 18th birthday but commences attendance at an approved educational institution after the 18th birthday, payments may be resumed from the commencing date of the course if evidence of such school attendance is filed within 1 year from that date.

* * * * *

(d) *Transfers to other schools.* When benefits have been authorized based upon school attendance and it is shown that during a part or all of that period the child was pursuing a different course in the same approved educational institution or a course in a different approved educational institution, payments previously made will not be disturbed.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 21

RIN 2900-A176

Criteria for Approving Flight Courses for Educational Assistance Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, an interim final rule amending the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The interim final rule revised the criteria to be used in approving flight courses for the education benefits programs VA administers. In large part, those amendments brought the approval criteria into agreement with various provisions of the Veterans' Benefits Improvement Act of 1996 and with the revised regulations of the Federal Aviation Administration. Without the changes made by the interim final rule, VA would not be able to provide educational assistance for veterans to attend affected flight courses. This

document makes changes to the interim final rule to clarify certain provisions and to reflect new statutory changes.

DATES: *Effective Date:* This final rule is effective March 8, 2000.

FOR FURTHER INFORMATION CONTACT:

William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, 202-273-7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on June 23, 1998 (63 FR 34127), VA published an interim final rule amending subparts D and K of 38 CFR part 21, regarding criteria for flight training courses as stated in the **SUMMARY** portion of this document.

Interested persons were given 60 days to submit comments. VA received no comments. Based on the rationale set forth in the interim final rule and in this document, we are adopting the provisions of the interim final rule as a final rule, except as stated below.

The provisions of section 204(a) of Public Law 105-368 amended 38 U.S.C. 3034 to change the requirement that an individual enrolling in a flight course needs to have a qualifying medical certificate. Formerly, the individual needed to show evidence of having the certificate throughout the training period. Now, for flight courses beginning on or after October 1, 1998, the individual only needs to have the certificate at the time the course begins. The provisions of 38 CFR 21.4235(a)(2) and (3) in this final rule reflect this statutory change.

In addition, this final rule makes changes in § 21.4235(c) for purposes of clarification. In particular, this final rule clarifies the meaning of the interim final rule provisions in § 21.4235(c) when an individual already has a commercial pilot certificate or instrument rating, or both, for one category and wants a commercial pilot certificate or instrument rating, or both, for an additional category. The interim final rule provided, with certain exceptions, that if an individual “wants to obtain a commercial pilot certification course in an airplane or powered lift category and does not already have an instrument rating, he or she must also enroll in an instrument rating course simultaneously.” We intended § 21.4235(c) to mean that if you want to enroll in a commercial pilot certification course for a particular category (airplane, helicopter, or powered lift) and do not have an instrument rating for that category, or if you want to enroll in an instrument rating course for a particular category (airplane, helicopter, or powered lift) and do not have a

commercial pilot certificate for the same category, you must enroll in the commercial pilot certification course for the particular category and instrument rating course for that category at the same time. This document makes amendments to clarify this concept.

This document also makes other nonsubstantive changes for purposes of clarification.

Administrative Procedure Act

This document makes changes that are restatements of statutory provisions and nonsubstantive changes for purposes of clarification. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Regulatory Flexibility Act

We affirm the information in the interim final rule document concerning the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance numbers for programs affected by this rule are 64.120 and 64.124. This rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Educational institutions, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 22, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim final rule amending 38 CFR part 21 (subparts D and K), which was published at 63 FR 34127 on June 23, 1998, is adopted as a final rule with the following changes:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.