than 20 percent under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of a serious employment handicap.

(c) *Servicemembers awaiting discharge.* The individual is a servicemember who, while waiting for discharge from the active military, naval, or air service, is hospitalized, or receiving outpatient medical care, services, or treatment, for a disability that VA will likely determine to be service-connected. In addition, VA must have determined that:

(1) The hospital or other medical facility providing the hospitalization, care, service, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned;

(2) The individual is in need of rehabilitation because of an employment handicap; and

(3) The individual has a disability or combination or disabilities that will likely be:

(i) At least 10 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; or

(ii) At least 20 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 on or after November 1, 1990.

(d) *Exception for veterans who first applied after March 31, 1981, and before November 1, 1990.* The individual is a veteran who:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11;

(2) Originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; and

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

Authority: 38 U.S.C. ch. 11, 3102, 3103, 3106; sec. 8021(b), Pub. L. 101–508, 104 Stat. 1388–347; sec. 404(b), Pub. L. 102–568, 106 Stat. 4338, as amended by sec. 602, Pub. L. 103–446, 108 Stat. 4671.

■ 4. In §§ 21.42 and 21.47, remove "§ 21.40(a)" each place that it appears and add, in its place, "§ 21.40".

■ 5. Revise § 21.50(d) to read as follows:

§ 21.50 Initial evaluation.

* * * * *

(d) *Need for cooperation in the initial evaluation process.* The individual's cooperation is essential in the initial evaluation process. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will suspend the initial evaluation process (*see* § 21.362, regarding satisfactory conduct and cooperation, and § 21.364, regarding unsatisfactory conduct and cooperation).

Authority: 38 U.S.C. 3111.

■ 6. Revise the undesignated center heading immediately preceding § 21.282 and that section to read as follows:

Induction into a Rehabilitation Program

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

(a) *Entering a rehabilitation program.* The effective date of induction into a rehabilitation program is governed by the provisions of §§ 21.320 through 21.334, except as provided in this section.

Authority: 38 U.S.C. 3108, 5113.

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

Authority: 38 U.S.C. 3108, 3113, 3681, 5113.

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

(1) The past period is within—

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

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

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

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

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (*see* §§ 21.80 through 21.88, and §§ 21.92 through 21.98).

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

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

(7) A period of extended evaluation is not needed to be able to determine the reasonable feasibility of the achievement of a vocational goal.

Authority: 38 U.S.C. 3102, 3103, 3108, 5113.

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

Authority: 38 U.S.C. 5113.

[FR Doc. 2010–886 Filed 1–19–10; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM84

Vocational Rehabilitation and Employment Program—Periods of Eligibility

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts without change the proposed rule published in the **Federal Register** on March 9, 2009, amending regulations of the Department of Veterans Affairs (VA) concerning periods of eligibility applicable to VA's provision of

Vocational Rehabilitation and Employment benefits and services. The amendments clarify program requirements, interpret and incorporate new statutory requirements, and make clarifying non-substantive changes.

DATES: *Effective Date:* This final rule is effective February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9613.

SUPPLEMENTARY INFORMATION: On March 9, 2009, VA published a proposed rule in the **Federal Register** (74 FR 9975). We proposed to amend VA's regulations in 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31. The amendments in the proposed rule concerned periods of eligibility applicable to VA's provision of Vocational Rehabilitation and Employment (VR&E) benefits and services.

VA provided a 60-day comment period for the proposed rule that ended May 8, 2009. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Specifically, in 38 CFR 21.41, we are clarifying the term "basic period of eligibility." We are revising § 21.42 to clarify who is authorized to determine that a veteran's participation in a vocational rehabilitation program is reasonably feasible and when a basic period of eligibility would begin or resume. We are revising § 21.44 to more clearly state the length of time that an extension of the basic period of eligibility for a veteran with a serious employment handicap may be granted. Section 21.45 is being revised to clearly state the length of extension of the basic period of eligibility for a veteran in a program of independent living services. Finally, we are adding a new § 21.46 to reflect and interpret an amendment to 38 U.S.C. 3103 that extends the period of eligibility for a veteran who VA determines "was prevented from participating" in a vocational rehabilitation program because the veteran was recalled to active duty.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

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, 5 U.S.C. 601–612. This final rule will not affect any small entities. Only individuals will be affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The program that this final rule will affect has the following Catalog of Federal Domestic Assistance number and title: 64.116, Vocational Rehabilitation for Disabled Veterans.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, 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: December 8, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subpart A) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

■ 1. Revise the authority citation for part 21, subpart A to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

■ 2. Revise the subpart A heading as set forth above.

■ 3. Revise §§ 21.41, 21.42, 21.44, and 21.45 to read as follows:

§ 21.41 Basic period of eligibility.

(a) *Time limit for eligibility to receive vocational rehabilitation.* (1) For purposes of §§ 21.41 through 21.46, the term *basic period of eligibility* means the 12-year period beginning on the date of a veteran's discharge or release from his or her last period of active military, naval, or air service, and ending on the date that is 12 years from the veteran's discharge or release date, but the beginning date may be deferred or the ending date extended under the sections referred to in paragraph (b) of this section. (*See* §§ 21.70 through 21.79 concerning duration of rehabilitation programs.)

(2) Except as provided in paragraph (b) or (c) of this section, the period during which an individual may receive a program of vocational rehabilitation

benefits and services under 38 U.S.C. chapter 31 is limited to his or her basic period of eligibility.

(b) *Deferral and extension of the basic period of eligibility.* VA may defer the beginning date of a veteran's basic period of eligibility under § 21.42. VA may extend the ending date of a veteran's basic period of eligibility under § 21.42 (extension due to medical condition); § 21.44 (extension for a veteran with a serious employment handicap), § 21.45 (extension during a program of independent living services and assistance), and § 21.46 (extension for a veteran recalled to active duty).

(Authority: 38 U.S.C. 3103)

(c) *Servicemember entitled to vocational rehabilitation services and assistance before discharge.* The basic period of eligibility for a servicemember who is entitled to vocational rehabilitation services and assistance under 38 U.S.C. chapter 31 for a period before discharge does not run while the servicemember remains on active duty, but begins on the date of discharge from the active military, naval, or air service. The period of eligibility requirements of this section are not applicable to provision of vocational rehabilitation services and assistance under chapter 31 during active duty.

(Authority: 38 U.S.C. 3102, 3103)

§ 21.42 Deferral or extension of the basic period of eligibility.

The basic period of eligibility does not run as long as any of the following reasons prevents the veteran from commencing or continuing a vocational rehabilitation program:

(a) *Qualifying compensable service-connected disability(ies) not established.* The basic period of eligibility does not commence until the day VA notifies a veteran of a rating determination by VA that the veteran has a qualifying compensable service-connected disability under § 21.40.

(Authority: 38 U.S.C. 3103(b)(3))

(b) *Character of discharge is a bar to benefits.*

(1) The basic period of eligibility does not commence until the veteran meets the requirement of a discharge or release under conditions other than dishonorable. (For provisions regarding character of discharge, see § 3.12 of this chapter.)

(2) If VA has considered a veteran's character of discharge to be a bar to benefits, the basic period of eligibility commences only when one of the following happens:

(i) An appropriate authority changes the character of discharge or release; or

(ii) VA determines that the discharge or release was under conditions other than dishonorable or that the discharge or release was, but no longer is, a bar to benefits.

(3) If there is a change in the character of discharge, or the discharge or release otherwise is determined, as provided in paragraph (b)(2) of this section, not to be a bar to benefits, the beginning date of the basic period of eligibility will be the effective date of the change or VA determination.

(Authority: 38 U.S.C. 3103(b)(2))

(c) *Commencement or continuation of participation prevented by medical condition(s).*

(1) The basic period of eligibility does not run during any period when a veteran's participation in a vocational rehabilitation program is determined to be infeasible for 30 days or more because of any medical condition(s) of the veteran, including the disabling effects of chronic alcoholism (see paragraphs (c)(2) through (c)(5) of this section).

(2) For purposes of this section, the term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations that:

(i) Have been diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Have been determined to prevent the affected veteran from beginning or continuing in a program of vocational rehabilitation and employment.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, or chronic alcohol abuse, in and of itself, does not satisfy the definition of disabling effects of chronic alcoholism.

(4) Injuries sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication are not considered disabling effects of chronic alcoholism. An injury itself, however, may prevent commencement or continuation of a rehabilitation program.

(5) For purposes of this section, after November 17, 1988, the disabling effects of chronic alcoholism do not constitute willful misconduct. See 38 U.S.C. 105(c).

(6) If the basic period of eligibility is delayed or interrupted under this paragraph (c) due to any medical condition(s) of the veteran, it will begin or resume on the date a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) notifies the veteran in writing that the CP or VRC has determined, based on the evidence of record, that participation in a vocational rehabilitation program is reasonably feasible for the veteran.

(Authority: 38 U.S.C. 3103(b)(1))

§ 21.44 Extension of the basic period of eligibility for a veteran with a serious employment handicap.

(a) *Conditions for extension.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the basic period of eligibility of a veteran with a serious employment handicap when the veteran's current employment handicap and need for rehabilitation services and assistance necessitate an extension under the following conditions:

(1) *Not rehabilitated to the point of employability.* The veteran has not been rehabilitated to the point of employability; or

(Authority: 38 U.S.C. 3103(c))

(2) *Rehabilitated to the point of employability.* The veteran was previously declared rehabilitated to the point of employability, but currently meets one of the following three conditions:

(i) One or more of the veteran's service-connected disabilities has worsened, preventing the veteran from working in the occupation for which he or she trained, or in a related occupation;

(ii) The veteran's current employment handicap and capabilities clearly show that the occupation for which the veteran previously trained is currently unsuitable; or

(iii) The occupational requirements in the occupation for which the veteran trained have changed to such an extent that additional services are necessary to enable the veteran to work in that occupation, or in a related field.

(Authority: 38 U.S.C. 3103(c))

(b) *Length of eligibility extension.* For a veteran with a serious employment handicap, a CP or VRC may extend the basic period of eligibility for such additional period as the CP or VRC determines is needed for the veteran to accomplish the purposes of his or her individualized rehabilitation program.

(Authority: 38 U.S.C. 3103(c))

§ 21.45 Extending the period of eligibility for a program of independent living beyond basic period of eligibility.

A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the period of eligibility for a veteran's program of

independent living services beyond the veteran's basic period of eligibility if the CP or VRC determines that an extension is necessary for the veteran to achieve maximum independence in daily living. The extension may be for such period as the CP or VRC determines is needed for the veteran to achieve the goals of his or her program of independent living. (*See* § 21.76(b) concerning duration of independent living services.)

(Authority: 38 U.S.C. 3103(d))

■ 4. Add § 21.46 to read as follows:

§ 21.46 Veteran ordered to active duty; extension of basic period of eligibility.

If VA determines that a veteran is prevented from participating in, or continuing in, a program of vocational rehabilitation as a result of being ordered to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, the veteran's basic period of eligibility will be extended by the length of time the veteran serves on active duty plus 4 months.

(Authority: 38 U.S.C. 3103(e); sec. 308(h), Pub. L. 107–330, 116 Stat. 2829)

[FR Doc. 2010–879 Filed 1–19–10; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AN31

Vocational Rehabilitation and Employment Program—Self-Employment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the vocational rehabilitation and employment regulations of the Department of Veterans Affairs (VA) concerning self-employment for individuals with qualifying disabilities. We are making changes to conform VA's regulations for self-employment programs for veterans, and for servicemembers awaiting discharge, to statutory provisions, including provisions limiting eligibility for certain supplies, equipment, stock, and license fees to individuals with the most severe service-connected disabilities. We are also making related changes in VA's regulations affecting eligibility for such assistance for certain veterans' children with birth defects in self-employment programs. In addition, we are amending our regulations regarding the approval authority for self-employment plans to make certain requirements less restrictive and less burdensome, to remove a vague and overly broad requirement, to make changes to reflect longstanding VA policy, and to make nonsubstantive clarifying changes.

DATES: *Effective Date:* This final rule is effective February 19, 2010.

Applicability Dates: Except as noted in the Supplementary Information section, this final rule applies to claims pending on or after February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9613 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 28, 2009 (74 FR 19164), we proposed to amend VA's regulations concerning self-employment in 38 CFR part 21 that are applicable to benefits and services under 38 U.S.C. chapter 31, Training and Rehabilitation for Veterans with Service-Connected Disabilities, and 38 U.S.C. chapter 18, Benefits for Children of Vietnam Veterans and Certain Other Veterans. We provided a 60-day comment period that ended on June 29, 2009. We received comments from one individual in support of the proposed changes. Consequently, we make no changes based on the commenter's submission.

The Veterans' Benefits Act of 1996, Public Law 104–275 (enacted October 9, 1996), amended 38 U.S.C. 3104(a)(12) regarding the special assistance and supplies that VA can provide for individuals pursuing self-employment programs. Prior to the enactment of Public Law 104–275, only "the most severely disabled" individuals who required self-employment were, under 38 CFR 21.258, entitled to the special supplies, equipment, stock, and license fees described in 38 CFR 21.214(e). Public Law 104–275 amended 3104(a)(12) by restricting the provision of those special supplies, equipment, stock, and license fees to individuals "with the most severe service-connected disabilities who require homebound training or self employment." VA implemented the statutory amendments upon enactment but until this rulemaking did not incorporate them in VA's regulations. This rule conforms VA's regulations to the statutory provisions and prescribes (in § 21.257 rather than current § 21.258) criteria for providing such special supplies, equipment, stock, and license fees for individuals who require self-employment.

We are revising some of the requirements under § 21.254 pertaining to a service-disabled veteran trained for self-employment under a State rehabilitation agency. We are eliminating the burdensome and restrictive requirement under § 21.254 for certification by an official of the State rehabilitation agency with responsibility for administration of self-employment programs. Instead, we are listing the conditions under which an individual who has trained for self-employment under a State rehabilitation agency may be provided special supplies, equipment, stock, and license fees if there is a VA determination that the qualifying criteria are met.

In addition, we are eliminating the requirement currently in § 21.254 that, prior to authorization of any supplies, the Director, Vocational Rehabilitation and Education (VR&E) Service, must approve the request if the cost of supplies is more than $2,500.

We are amending the criteria for approval of self-employment as a vocational goal for an individual. Current § 21.257(a) is overly restrictive because it maintains that self-employment is only available to an individual if access to the normal channels for suitable employment is limited by his or her disability(ies). Current § 21.257(b) is vague because it does not specify what other circumstances in the individual's situation warrant consideration of self-employment. Self-employment as a mode of employment is authorized for all program participants for whom it is deemed appropriate for achieving rehabilitation. We are revising § 21.257 to remove the above-referenced restriction on authorizing self-employment as a suitable vocational goal and to limit consistent with the amendment to section 3104(a)(12) the self-employment special assistance under 38 CFR 21.214(e) to "individuals with the most severe service-connected disability(ies) who require self-employment."

The approval requirement of costs related to self-employment programs is in accordance with 38 U.S.C. 3104(a)(12). We are amending § 21.258 to reflect existing VA policy that requires approval of costs of the provision of special supplies, equipment, stock, and license fees for self-employment programs. Section 21.258 will require that a self-employment plan having an actual or estimated cost of $25,000 or more must be approved by the Director, VR&E Service.

Many of the amendments to 38 CFR part 21, subpart A, in this final rule are