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)

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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

also applicable to the vocational rehabilitation program under 38 U.S.C. chapter 18 regarding benefits for children of Vietnam veterans and certain other veterans (see 38 CFR part 21, subpart M). In subpart M, §§ 21.8020, 21.8210, and 21.8380 provide for the applicability of §§ 21.214, 21.254, 21.256, 21.257, 21.258, and 21.430 in a manner comparable to their application for a veteran under the chapter 31 program. Accordingly, we are amending § 21.8020 to clarify how we will apply § 21.257 to the provision of services and assistance under subpart M in a manner that we consider to be comparable to its application for a veteran under the 38 U.S.C. chapter 31 program. Under § 21.8020, an individual who has been determined to have limitations affecting employability arising from the effects of the individual's spina bifida or other covered birth defects, which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual, will also be deemed to have met the requirements for application of § 21.257(e)(1) and (2). We are making a related clarifying change in § 21.8020(d), intended to remove the possible implication that self-employment is not among the employment options for a participant's program under subpart M.

This final rule conforms VA's regulations to the provisions of 38 U.S.C. 3104(a)(12), as amended, and regarding those provisions is applicable to claims pending on or after the effective date of the amendments, October 9, 1996.

For the reasons stated above and in the notice of proposed rulemaking, the proposed rule is adopted as a final rule without change.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (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 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 directly affect any small entities. Only individuals will be directly 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 Catalog of Federal Domestic Assistance numbers and titles for the programs that will be affected by this final rule are 64.116, Vocational Rehabilitation for Disabled Veterans; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Defects.

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 30, 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 (subparts A and M) 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. Amend § 21.214 by:
■ a. In paragraph (e) introductory text, removing "services" and adding, in its place, "related assistance" and removing "§ 21.258" and adding, in its place, "§§ 21.257 and 21.258".
■ b. In paragraph (e)(3), removing "incidental services" and adding, in its place, "related assistance".
■ c. Revising the authority citation for paragraph (e).

The revision reads as follows:

§ 21.214 Furnishing supplies for special programs.

* * * * *

(Authority: 38 U.S.C. 3104(a)(12))

* * * * *

■ 4. In § 21.254, revise paragraph (c) to read as follows:

§ 21.254 Supportive services.

* * * * *

(c) *Individuals with service-connected disability(ies) trained for self-employment under a State rehabilitation agency.* An individual with service-connected disability(ies) who has trained for self-employment under a State rehabilitation agency may be provided supplemental equipment and initial stocks and supplies similar

to the materials supplied under 38 U.S.C. chapter 31 to individuals with the most severe service-connected disability(ies) who require self-employment as defined in § 21.257(b) if VA determines that the following conditions are met:

(1) The individual is eligible for employment assistance under the provisions of § 21.47;

(2) Evidence of record indicates that the individual has successfully completed training for a self-employment program under a State rehabilitation agency;

(3) No other non-VA sources of assistance are known to be available for the individual to complete his or her self-employment program; and

(4) The individual meets the requirements of the definition in § 21.257(b).

(Authority: 38 U.S.C. 3104, 3117(b)(2))

■ 5. Revise § 21.257 to read as follows:

§ 21.257 Self-employment.

(a) *Approval of self-employment as a vocational goal.* A program of vocational rehabilitation benefits and services may include self-employment for an individual if VA determines that such an objective is a suitable vocational goal. VA will make this determination based on—

(1) The results of the individual's initial evaluation conducted in accordance with the provisions of § 21.50; and

(2) The provisions of this section.

(Authority: 38 U.S.C. 3104(a))

(b) *Definition.* For purposes of this subpart, *individuals with the most severe service-connected disability(ies) who require self-employment* means individuals who have been determined by VA to have limitations affecting employability arising from the effects of each individual's service-connected disability(ies), which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individuals.

(Authority: 38 U.S.C. 3104)

(c) *Scope of self-employment benefits and services.*

(1) VA may provide the self-employment services listed in paragraph (d) of this section to program participants who are pursuing the vocational goal of self-employment.

(2) VA may provide the more extensive services listed in paragraph (e) of this section to individuals with the most severe service-connected disability(ies) who require self-employment.

(Authority: 38 U.S.C. 3104(a))

(d) *Assistance for other individuals in self-employment.* Subject to the provisions of § 21.258, VA may provide the following assistance to any individual for whom self-employment is determined to be a suitable vocational goal—

(1) Vocational training;

(2) Incidental training in the management of a business;

(3) License or other fees required for self-employment;

(4) Necessary tools and supplies for the occupation; and

(5) Services described in § 21.252.

(Authority: 38 U.S.C. 3104(a))

(e) *Special self-employment services for individuals with the most severe service-connected disability(ies) who require self-employment.* Individuals described in paragraph (b) of this section who are in a self-employment program may receive—

(1) The services described in paragraph (d) of this section; and

(2) The assistance described in § 21.214.

(Authority: 38 U.S.C. 3104, 3116, 3117)

(f) *Feasibility analysis of a proposed self-employment business plan.* VA will conduct a comprehensive review and analysis of the feasibility of a proposed business plan, as submitted by the individual or developed with VA's assistance, prior to authorizing a rehabilitation plan leading to self-employment (a "self-employment plan"). The feasibility analysis must include—

(1) An analysis of the economic viability of the proposed business;

(2) A cost analysis specifying the amount and types of assistance that VA will provide;

(3) A market analysis for the individual's proposed services or products;

(4) Availability of financing from non-VA sources, including the individual's personal resources, local banks, and other sources;

(5) Evidence of coordination with the Small Business Administration to secure special consideration under section 8 of the Small Business Act, as amended;

(6) The location of the site for the proposed business and the cost of the site, if any; and

(7) A training plan to operate a successful business.

(Authority: 38 U.S.C. 3104)

■ 6. Section 21.258 is revised to read as follows:

§ 21.258 Cost limitations on approval of self-employment plans.

A self-employment plan with an estimated or actual cost of less than $25,000 may be approved by the VR&E Officer with jurisdiction. Any self-employment plan with an estimated or actual cost of $25,000 or more must be approved by the Director, VR&E Service.

(Authority: 38 U.S.C. 3104)

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

■ 7. The authority citation for part 21, subpart M continues to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

■ 8. Amend § 21.8020 by:

■ a. Revising paragraph (b).

■ b. In paragraph (d), removing "obtains a suitable job" and adding, in its place, "becomes suitably employed".

The revision reads as follows:

§ 21.8020 Entitlement to vocational training and employment assistance.

* * * * *

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a).

(1) The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

(i) Section 21.250(a) and (b)(2);

(ii) Section 21.252;

(iii) Section 21.254;

(iv) Section 21.256 (not including paragraph (e)(2));

(v) Section 21.257; and

(vi) Section 21.258.

(2) For purposes of this subpart, the requirements for application of § 21.257(e)(1) and (2) are deemed met for an individual in a self-employment program regardless of whether the individual is described in § 21.257(b), if the individual has been determined by VA to have limitations affecting employability arising from the effects of the individual's spina bifida and/or other covered birth defect(s) which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual.

(Authority: 38 U.S.C. 1804, 1814)

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