



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 21

RIN 2900-AQ61

Elimination of On-the-Job Training and Apprenticeship Trainee Certification

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that contain the requirements for certification of attendance at on-the-job training and apprenticeship programs. This final rule adopts without change a proposed rule implementing a section of the “Veterans Apprenticeship and Labor Opportunity Reform Act” (VALOR Act), which eliminated the requirement that veterans and other eligible persons certify attendance at an on-the-job or apprentice training program prior to disbursement of a training assistance allowance. This final rule also eliminates the certification requirement for trainees in a program of apprenticeship or on-the-job training under chapter 30 of title 38, United States Code.

DATES: This rule is effective on [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Cheryl Amitay, Chief, Policy and Regulation Development Staff (225C), Education Service, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 461-9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On February 28, 2020, VA published a proposed rule in the *Federal Register* (85 FR 11906), which would amend its regulations that

contain the requirements for certification of attendance at on-the-job training and apprenticeship programs. VA provided a 60-day comment period, which ended on April 28, 2020. We received 2 comments on the proposed rule. This rule adopts as a final rule, without changes, the proposed rule published in the *Federal Register* on February 28, 2020.

Section 3 of the “Veterans Apprenticeship and Labor Opportunity Reform Act” (VALOR Act), Pub. L. 115-89, amended 38 U.S.C. 3680(c) to eliminate the requirement that veterans and other eligible persons who receive on-the-job training or apprenticeship training (“trainees”) certify attendance at on-the-job or apprenticeship training prior to disbursement of a training assistance allowance, thereby placing the responsibility solely on employers to certify attendance in on-the-job and apprenticeship programs. VA proposed to implement the VALOR Act by amending 38 CFR 21.4138(e)(2)(ii), 21.5133(b)(2), and 21.7640(a)(3)(ii) to remove references to the trainee certification requirement, revising the authority citation for §§ 21.4138(e) and 21.5133, and revising the information collection approval parenthetical at the end of §§ 21.4138, 21.5133, and 21.7640.

VA also proposed to revise 38 CFR 21.7140(c)(2)(ii) to eliminate the trainee certification requirement for trainees in a program of apprenticeship or on-the-job training under 38 U.S.C. chapter 30, add an authority citation for paragraph (c)(2), and revise the information collection approval parenthetical at the end of the section.

Both comments on the notice of proposed rulemaking that VA received were supportive in part or in whole and lauded VA for reducing the administrative burden on veterans pursuing apprenticeship or on-the job training programs eligible for GI Bill

benefits. One commenter pointed out that the rule codifies Congressional intent in enacting the VALOR Act and eliminates an obstacle to obtaining training. VA agrees with the commenter.

The other commenter stated that, because a trainee would no longer be required to sign a certification under the proposed rule, a disagreement could arise if the trainee does not agree with the training establishment or trainer's calculation of hours.

However, VA finds that there should rarely, if ever, be a discrepancy as to the number of hours earned by a trainee because the total amount of program hours is already prescribed in the established, documented training plan for the program. The periodic certification merely indicates to VA that the correct apportioned amount has been completed, *i.e.*, that the trainee remains in the program and has not terminated training. Indeed, Congress eliminated the dual certification requirement because experience had shown it to be unnecessary. H.R. Rep. 115-398, at 3-4 (2017). In the unlikely event a discrepancy does arise, VA would, of course, take appropriate steps to resolve the discrepancy with the trainee and the training establishment or trainer, and we would reassess the need for specific regulations on that issue in the future if such need arises.

No changes are warranted based on the two comments.

Based on the rationale set forth in the notice of proposed rulemaking and in this document, VA adopts the proposed rule as a final rule.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its regulatory impact analysis are available on VA's Web site at <http://www.va.gov/orpm/> by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This final rule is not an EO 13771 regulatory action because the rule is not significant under EO 12886.

Regulatory Flexibility Act

The Secretary hereby certifies that this 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 rulemaking does not change VA's policy or provisions involving any small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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 one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

This final rule contains provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). As required by 44 U.S.C. 3507(d), VA submitted this information collection to the Office of Management and Budget (OMB) for review. OMB approved the information collection requirement in 38 CFR 21.4138(e)(2), 21.5133(b), 21.7140(c)(2), and 21.7640(a)(3) and assigned OMB control number 2900-0178.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and

Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

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; 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.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on August 11, 2020, for publication.

Luvenia Potts,
Regulation Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 21 as follows:

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, 33, 34, 35, 36, and as noted in specific sections.

2. Amend § 21.4138 by:

a. Revising paragraph (e)(2)(ii).

b. Revising the authority citation for paragraph (e).

c. Revising the information collection approval parenthetical at the end of the section.

The revisions read as follows:

§ 21.4138 Certifications and release of payments.

* * * * *

(e) * * *

(2) * * *

(ii) VA has received from the training establishment a certification of hours worked.

* * * * *

(Authority: 38 U.S.C. 5113, 3680(b), 3680(c), 3680(g))

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(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0178 and 2900-0604)

Subpart G—Post-Vietnam Era Veterans’ Educational Assistance Under 38 U.S.C.

Chapter 32

3. The authority citation for part 21, Subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

4. Amend § 21.5133 by:

a. Revising paragraph (b)(2).

b. Revising the information collection approval parenthetical at the end of the section.

c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 21.5133 Certifications and release of payments.

* * * * *

(b) * * *

(2) VA has received from the training establishment a certification of hours worked. Generally, this certification will be required monthly, resulting in monthly payments.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2900-0178 and 2900-0465)

(Authority: 38 U.S.C. 3680(c), 3680(g), 3689)

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

5. The authority citation for part 21, Subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

6. Amend § 21.7140 by:

a. Revising paragraph (c)(2)(ii).

b. Adding an authority citation for paragraph (c)(2).

c. Revising the information collection approval parenthetical at the end of the section.

The revisions and addition read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(c) * * *

(2) * * *

(ii) VA has received from the training establishment a certification of hours worked.

(Authority: 38 U.S.C. 3034, 3680(g))

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(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0178, 2900-0695, and 2900-0698)

Subpart L—Educational Assistance for Members of the Selected Reserve

7. The authority citation for part 21, Subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, and as noted in specific sections.

8. Amend § 21.7640 by:

a. Revising paragraph (a)(3)(ii).

b. Revising the information collection approval parenthetical at the end of the section.

The revisions read as follows:

§ 21.7640 Release of payments.

* * * * *

(a) * * *

(3) * * *

(ii) VA has received certification by the training establishment of the reservist's hours worked.

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(Approved by the Office of Management and Budget under control numbers 2900-0073 and 2900-0178)