



38 CFR Part 21

[Docket No. VA-2021-VBA-0024]

RIN 2900-AQ89

State Approving Agency Jurisdiction Rule

AGENCY: Department of Veterans Affairs.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) publishes a supplemental notice of proposed rulemaking (SNPRM) to amend its definitions of the terms “independent study,” “distance learning,” and “resident learning,” and to establish a new term, “standard curriculum.” These proposed amendments, which distinguish distance learning from resident learning and independent study from standard curriculum, address concerns from VA stakeholders who view independent study and distance learning as having distinct and separate meanings and clarify State Approving Agency (SAA) jurisdiction over courses taken solely by distance learning.

DATES: Comments must be received by VA on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments through www.regulations.gov under RIN 2900-AQ89. That website includes a plain-language summary of this rulemaking. Instructions for accessing agency documents, submitting comments, and viewing the rulemaking docket, are available on www.regulations.gov under “FAQ.”

FOR FURTHER INFORMATION CONTACT: Thomas Alphonso, Veterans Benefits Administration, (202) 461-9800.

SUPPLEMENTARY INFORMATION: On October 14, 2021, VA published a notice of proposed rulemaking to amend its regulations that govern State Approving Agencies’ (SAA) jurisdiction for approval of courses, including online distance learning courses, to

distinguish online distance learning courses from resident training and independent study-resident training courses, to clarify SAA authority and jurisdiction regarding the approval or disapproval of any course, and to clarify the adjudicatory outcomes available to an SAA when reviewing an approval application. 86 FR 57094. In response to the notice of proposed rulemaking, two commenters questioned the appropriateness of VA's categorization of online distance learning and recommended that VA "modernize" its definitions to improve oversight of distance education programs. One commenter stated that distance education is an alternative delivery mode to in-person instruction and must include regular and substantive interactions with qualified faculty. Another commenter also stated that distance learning must include regularly scheduled interaction between student and instructor, whether synchronously or asynchronously, and that the rules governing independent study are not applicable to distance learning.

Furthermore, in the past, our stakeholder partners, including SAAs and veterans' advocacy organizations, have expressed concern with the potential negative impacts of defining all distance learning as independent study. They have asserted that considering distance learning as a subset of independent study has effectively barred SAA approval of non-college degree (NCD) programs, which are not accredited, conducted via distance learning. Because VA is not authorized to approve enrollment in independent study programs unless they are accredited and lead to a standard college degree or certificate offered by an institution of higher learning, see 38 CFR 21.4267(f), under current regulations that define distance learning as independent study, VA cannot approve enrollment in NCD programs conducted via distance learning, even though such programs may be high quality and provide many vocational and economic opportunities to veterans. There is a comprehensive set of rules that govern SAA approval of non-accredited programs to ensure the integrity of the programs that are available to veterans. Specifically, 38 U.S.C. 3676(c)(1) requires that non-accredited

“courses, curriculum, and instruction [be] consistent in quality, content, and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.” Thus, considering distance learning as a subset of independent study limits the otherwise many worthwhile vocational and economic opportunities available to veterans.

Moreover, classifying all distance learning programs, which are often offered as programs with regularly scheduled classes, as “independent study,” when a student does not have independence over what he or she studies, is confusing for VA beneficiaries and educational institution partners, as the commenters expressed, because it contradicts the plain meaning of the term “independent study” and VA’s interpretation of that term in 38 CFR 21.4267(b)(1) in implementing 38 U.S.C. 3680A(a)(4). Merriam-Webster defines “independent study” as “a course of study done by a student without an instructor or with help from an instructor but not as part of an organized class.” See Merriam-Webster.com Dictionary, www.merriam-webster.com/dictionary/independent%20study, accessed August 14, 2025. And VA currently considers a course to be offered by independent study if it includes interaction between student and faculty, whether the interaction is in person or through use of communications technology, and the course is offered without any regularly scheduled, conventional classroom or laboratory sessions. 38 CFR 21.4267(b)(1). Thus, considering distance learning as a subset of independent study is in conflict with our current interpretation of the term “independent study” in § 21.4267(b)(1).

VA agrees with the points raised by commenters and stakeholders and believes it is not appropriate to continue classifying all online training as independent study merely because the training is online (i.e., not conducted within a traditional classroom setting). Finding no basis for continuing to define distance learning as independent study, VA proposes to amend the definitions of the terms “independent study,” “distance

learning,” “resident learning” and add a new term, “standard curriculum,” to round out the modalities of learning and to distinguish distance learning from resident learning and independent study from standard curriculum. The proposed changes would allow VA to approve enrollment in NCD programs conducted via distance learning if otherwise warranted and would improve veterans’ opportunities without diminishing safeguards.

Proposed definition of standard curriculum

VA proposes to include four modalities of training in our regulations to encompass all possible modalities, which would require adding a new term, “standard curriculum,” at 38 CFR 21.4200(mm). We would define standard curriculum as a class in which the instructor dictates a uniform structure for all students and which would accordingly not meet the definition of independent study. Current 38 CFR 21.4267, which governs approval of independent study courses, treats “resident training” and “independent study” as mutually exclusive by describing “resident training” courses as requiring “regularly scheduled, standard class sessions” and “independent study” courses as not having “any regularly scheduled, conventional classroom or laboratory sessions.” However, educational institutions do not view these modalities as mutually exclusive, and we understand there can be an independent study program that involves some resident training. VA believes the new differentiation of standard curriculum from independent study, which would more accurately describe the different modalities of learning for purposes of more accurately approving courses, would best serve our beneficiaries, as well as our educational partners, and would help us to better administer 38 U.S.C. 3680A(a)(4) with its limitation on enrollments in independent study programs.

Proposed definition of independent study

VA proposes adding a new definition for “independent study” at 38 CFR 21.4200(nn) that bases the classification of “independent study” on the level of

autonomy a student has regarding the subject matter and content of the course and allows for periodic and substantive interaction with an instructor. We propose to allow a student to pursue independent study through either resident or distance learning. We also propose to remove the distinction between a course offered entirely by independent study and in part by independent study as unnecessary. This approach better aligns with how our educational partners, including those who commented on the proposed rule, understand the term “independent study,” and is consistent with the commonly accepted definition of that term.

Accordingly, we would remove the paragraph (a) designation and heading and paragraphs (b) and (c) from current § 21.4267 and incorporate the content of those paragraphs, which provide the definition of independent study, in the new definition of “independent study” in § 21.4200(nn) with appropriate cross references. We further propose to remove paragraphs (d) and (e) from current § 21.4267 and incorporate the examples of undergraduate and graduate resident training from those paragraphs in § 21.4200(nn)(2) as examples of training that would not be independent study. Paragraphs (f) and (g) would be retained in § 21.4267 as new paragraphs (b) and (c) since they contain course approval rules not related to the proposed definition.

Proposed definition of distance learning

We currently define the term “distance learning” in 38 CFR 21.9505 as any program that satisfies the Department of Education’s (ED) definition of “distance education” in 20 U.S.C. 1003(7). ED’s definition of distance learning, which involves use of technology to deliver instruction to students who are separated from the instructor to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously, does not include information such as requirements related to classroom attendance, which VA needs to administer monthly housing payments under the Post-9/11 GI Bill. Pursuant to 38 U.S.C. 3313(c)(1)(B)(iii) and 38

CFR 21.9640(b)(1)(ii), monthly housing payments under the Post-9/11 GI Bill are different depending on whether a student attends any amount of any training in a classroom setting. Under section 3313(c)(1)(B)(iii) and § 21.9640(b)(1)(ii), a reduced housing allowance is paid to students who receive training solely through distance learning. We would continue to pay a reduced housing allowance to students who receive training solely through distance learning under VA's new definition for "distance learning" in § 21.4200(oo).

VA proposes to remove the current regulatory definition of "distance learning" from 38 CFR 21.9505 and add a new definition at 38 CFR 21.4200(oo), which would incorporate ED's definition of "distance education" from 20 U.S.C. 1003(7) (as referenced in § 21.9505), but add an exception stating that we will not consider training to be distance learning when the student is required to be in a physical classroom at a designated time to access the technology, instructional materials, or the like. See 38 CFR 21.4233(c)(2).

Proposed definition of resident learning

VA stakeholders view resident learning as involving any "classroom instruction" with an instructor physically co-located in the same classroom with the students, or with the student required to be in a classroom to access technology to receive distance learning instruction regardless of where the instructor is located. Conversely, stakeholders would not view correspondence training (e.g., instruction through letter or mail) as "resident learning." These views are rational, and we agree to change our definition to reflect this understanding. Thus, VA proposes a simplified definition of resident learning at new 38 CFR 21.4200(pp) to distinguish resident learning from distance learning and correspondence training. We do not believe it is necessary to specify types of resident training, such as resident institutional and flight training, and are accordingly proposing to remove those examples from current § 21.4267(d)(1) and

(4) without incorporating them in the new definition in § 21.4200(pp). In addition, we would make conforming amendments in 38 CFR 21.4200(o)(1)(i) and (ii).

Additionally, we propose conforming amendments to § 21.4250(a)(3). Current § 21.4250(a)(3) provides that, if an educational institution offers a course by independent study or by correspondence, only the SAA for the State where the main campus is located may approve the course for VA training. Under this provision, because all distance learning has until now been considered independent study, the SAA for the school's main campus has had jurisdiction over approval of distance learning programs. With the changes to the definitions of "independent study" and "distance learning," it would no longer be the case that all distance learning would be independent study and "distance learning" is not separately mentioned in § 21.4250. Thus, our regulations would not address which SAA would hold jurisdiction over distance learning programs that are not independent study. To make clear that we would continue to require the SAA for the State in which a school's main campus is located to approve all programs, including distance learning programs, we propose to add "or solely through distance learning" to § 21.4250(a)(3). In addition, we propose revisions to § 21.4250(a)(3) to clarify that independent study can be either resident or distance learning.

Finally, in the proposed rule, in § 21.4250(a)(2), we inadvertently stated that if a school with a main campus in a State offers a resident course not located in the "same" State, only the SAA for the State where the school's main campus is located may approve the course. The proposal to include the word "same" was unintentional. We are now proposing to correct the error in the proposed rule and instead make no changes to current § 21.4250(a)(2).

Safeguarding veterans and beneficiaries from predatory practices

The Department seeks feedback about how to provide flexibility to institutions that offer quality distance learning programs that are ineligible to qualify as GI Bill

approved programs under the current rule but provide value to students (like remedial and vocational courses and FAA approved distance learning modules) while ensuring that we preserve program quality and integrity, protecting VA educational beneficiaries from fraudulent and predatory schools.

Coordination of SNPRM comments and NPRM comments

Before making a final decision on the proposed changes and the issuance of a final rulemaking, VA will consider all comments received during the comment period ending on December 13, 2021, in response to the October 2021 notice of proposed rulemaking, and all comments received in response to this SNPRM by the closing date. If you submitted a comment regarding the October 2021 notice of proposed rulemaking, you do not need to submit the same comment again. This SNPRM does not reopen the other proposals that were contained in the October 2021 notice of proposed rulemaking or request further comments on those proposals. VA plans to publish a final rulemaking based on this SNPRM and comments we receive in response to this notice, and on the original notice of proposed rulemaking and comments we received in response to that notice.

Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. This proposed rule is expected to be a deregulatory action under Executive Order 14192. The regulatory impact analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this SNPRM would 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). VA has determined there are no small entities involved with the approval of online distance learning courses or with the administration of VA's educational benefits. Neither SAAs nor VA, when acting in the role of a SAA, qualify as "small" per NCAIS size standards. 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

This proposed rule would not 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.

Paperwork Reduction Act

Although this action contains provisions (38 CFR 21.4250 and 21.4259) constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), no new or revised collection of information is associated with this SNPRM. The collection of information for §§ 21.4250 and 21.4259 is currently approved by the Office of Management and Budget (OMB) and has been assigned OMB control number 2900-0051.

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.027-64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; 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, 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

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on July 24, 2025, 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.

Jennifer D. Williams,

Alternate Federal Register Liaison Officer, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 21 as set forth below:

PART 21—VETERANS READINESS AND EMPLOYMENT 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 § 21.4200 by:

a. In paragraph (o)(1)(i), removing “Resident courses” and adding in its place “Resident or distance learning courses”.

b. In paragraph (o)(1)(ii), removing “Independent study courses” and adding in its place “Standard curriculum or independent study courses”.

c. Adding paragraphs (mm), (nn), (oo), and (pp) after the authority citation for paragraph (ll).

The additions read as follows:

§ 21.4200 Definitions.

* * * * *

(mm) Standard curriculum. A standard curriculum class is a class (i.e., unit subject) in which an instructor dictates a uniform structure for all students, determining tasks, such as required readings, research, and work products, setting standards for evaluation of students’ work, and establishing the timeframe for completion of the work, without consultation with the student or tailoring on a student-by-student basis.

(nn) Independent study. (1) An independent study class is a class (i.e., unit subject) in which the student follows a course of study with predefined objectives and works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member together agree on the student's tasks required for meeting the objectives (e.g., required readings, research, and work products, any scheduled classes), the criteria for evaluating the student's work, and the relative timeframe for completion of the work. The student interacts with the faculty member on a periodic and substantive basis to assure progress towards the objectives. Completion of coursework and interaction between the student and faculty member may be in-person through resident learning, virtually through distance learning, or a combination of both.

(2) Notwithstanding any of the above requirements, the following courses are never considered independent study:

- (i) A cooperative course (see 38 CFR 21.4233(a) and 21.4257);
- (ii) A farm cooperative course (see 38 CFR 21.4233(d) and 21.4264);
- (iii) A course approved as a correspondence course (see 38 CFR 21.4256);
- (iv) A course of student teaching;
- (v) A graduate-level class (i.e., unit subject) consisting of research (either on campus or in absentia) necessary for the preparation of the student's—
 - (A) Master's thesis,
 - (B) Doctoral dissertation, or
 - (C) Similar treatise which is prerequisite to the degree being pursued.

(oo) Distance learning. (1) Distance learning means any modality of instruction for a class (i.e., unit subject) that satisfies the following criteria:

- (i) Instruction is delivered exclusively through the use of one or more of the technologies described in paragraph (2);

(ii) Students are physically separated from the instructor; and

(iii) There is regular and substantive interaction between the student and the instructor.

(2) For the purposes of paragraph (1), the technologies used may include—

(i) The Internet;

(ii) One-way and two-way transmissions (such as through open broadcast/open-circuit, closed broadcast/closed-circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices), but not letter or mail;

(iii) Audio conferencing; or

(iv) Recorded media (such as video cassettes, CD-ROMs, DVDs).

(3) A modality of instruction for a class (i.e., unit subject) will not be considered distance learning if it requires any classroom attendance when the instructional material and technologies described in paragraph (2) are only accessible at the educational institution during the regularly scheduled times synchronous with the times that other students enrolled in the same class must attend, even if there are multiple simultaneous training sessions at multiple classrooms of the same educational institution, and even if the classrooms are geographically dispersed; however, the classrooms must be located at the main campus, a branch campus, or an extension, as those terms are defined in 38 CFR 21.4266, of the same educational institution.

(pp) Resident learning. Resident learning is resident training (as used in 38 U.S.C. 3313(g)(3)(A)(ii)(I)(aa)) for a class (i.e., unit subject) that does not meet the definition of distance learning in paragraph (oo) and does not qualify as a correspondence course.

3. Amend § 21.4250 by:

a. Revising paragraph (a)(3);

b. Revising in paragraph (b) the introductory text following the paragraph heading;

c. Revising paragraph (b)(2); and

d. Removing paragraph (b)(3).

The revisions read as follows:

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

(a) * * *

* * * * *

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

* * * * *

(b) *State approving agencies.* State approving agencies may make four types of decisions: Approval of an Application for Approval; Denial of an Application for Approval; Suspension of Approval; and Withdrawal of Approval.

* * * * *

(2) *Notice of denial, suspension, or withdrawal.* See § 21.4259(a)(3) and (b).

* * * * *

4. Revise § 21.4259 to read as follows:

§ 21.4259 Denial of an Application for Approval, Suspension of Approval, Withdrawal of Approval.

(a)(1) A State approving agency will deny an application for approval of any course, or licensing or certification test, after reviewing the application and determining that either:

(i) The course, or licensing or certification test, fails to meet any of the requirements for approval; or

(ii) The State approving agency lacks jurisdiction under § 21.4250.

(2) With respect to any approved course, or licensing or certification test, it is incumbent upon the State approving agency to determine whether the course continues to comply with the requirements for approval and to take immediate appropriate action in each case in which the evidence of record establishes that the conduct of a course fails to comply with the requirements for approval. If so found, the State approving agency:

(i) Will 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; or

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

(3) Upon denying an application for approval, or suspending or withdrawing an approval, the State approving agency will notify the educational institution by certified or registered letter with a return receipt secured (38 U.S.C. 3679). The notification will set forth the reasons for such denial, suspension, or withdrawal.

(b) Each State approving agency will immediately notify VA of each course, or licensing or certification test, for which it has denied an application for approval, or suspended or withdrawn the approval and set forth the reasons for such action.

(c) VA will deny an application for approval, or suspend or withdraw the approval, of courses, or licensing or certification tests, under conditions specified in paragraph (a) of this section where it functions for the State approving agency. See 38 CFR 21.4150(c).

(d) VA will immediately notify the respective State approving agency, if applicable, in each case VA suspends or withdraws approval of any school under 38 U.S.C. chapter 31.

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

(Authority: 38 U.S.C. 3672, 3679, 3689)

5. Amend § 21.4267 by:

- a. Revising the section heading;
- b. Removing the paragraph (a) heading;
- c. Revising paragraph (a);
- d. Removing paragraphs (b) through (e);
- e. Redesignating current paragraphs (f) and (g) as paragraphs (b) and (c);
- f. Removing the headings for redesignated paragraphs (b) and (c); and
- g. Revising redesignated paragraph (b) introductory text.

The revisions read as follows:

§ 21.4267 Approval of nonaccredited independent study courses.

(a) Except as provided in §§ 21.4252(g), 21.7120(d), and 21.7622(f) of this part, VA may not pay educational assistance for a nonaccredited course which is offered in whole or in part by independent study (as defined in § 21.4200(nn)).

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

(b) A State approving agency may approve a course offered by independent study only if the course—

* * * * *

6. Amend § 21.9505 by removing the entry for “Distance learning”.

[FR Doc. 2025-16836 Filed: 9/2/2025 8:45 am; Publication Date: 9/3/2025]