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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

[Docket No. VA-2026-VBA-0463]

RIN 2900-AS94

Veteran Readiness and Employment Program: Update to Reduced Work Tolerance and Basic Eligibility Period

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Veteran Readiness and Employment (VR&E) regulations to align with current practice and statute. The rule would expand the list of approved providers for reduced work tolerance (RWT) documentation, allowing for more accurate and timely processing by a Vocational Rehabilitation Counselor (VRC). VA also proposes to clarify that a veteran who is subject to a basic period of eligibility would receive a new 12-year period of eligibility if such veteran obtains a compensable service-connected disability rating based on a subsequent period of active-duty service. Finally, the rule would remove the eligibility termination date for veterans discharged on or after January 1, 2013, consistent with the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020.

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

ADDRESSES: You may submit comments through *www.regulations.gov* under RIN 2900-AS94. That website includes a plain-language summary of this rulemaking. Comments will be posted for viewing by the public on www.regulations.gov, including any personally identifiable information (e.g., a social security number or address) within

a comment and its supporting materials. However, VA retains discretion to redact personal or sensitive information, including but not limited to personal or sensitive information pertaining to third parties. Additionally, VA will not post public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. Instructions for accessing agency documents, submitting comments, and viewing the rulemaking docket, are available on www.regulations.gov under “FAQ.” Any public comment received after the comment period’s closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Kathryn Upham, Policy Analyst, Veterans Benefits Administration, (202) 461-9600.

SUPPLEMENTARY INFORMATION:

Reduced Work Tolerance

In accordance with 38 U.S.C. 3100, the purpose of the Chapter 31 VR&E program is to provide for all services and assistance necessary to enable veterans with one or more compensable service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent possible, to become employable and to obtain and maintain suitable employment.

In some instances, a veteran’s functional limitations, as a result of his or her disability(ies), impact his or her ability to participate in a rehabilitation program on a full-time basis. VA may approve a veteran for RWT following documentation from an approved medical provider. VA considers a veteran with an RWT to be pursuing his or her rehabilitation program full time when he or she is devoting as much time to the program as the effects of his or her disability(ies) permit. This allows VA, under certain circumstances, to pay the veteran a subsistence allowance at the full-time rate for the type of program being pursued when he or she meets the standard for full-time pursuit,

i.e., the rate of pursuit that VA considers to be equivalent to full-time pursuit, established for the veteran in his or her rehabilitation plan.

Section 21.312(e) of title 38 Code of Federal Regulations, currently requires a VA physician to make the RWT determination or redetermination. However, because an RWT determination or redetermination is an appealable benefits determination that is based on the evidence of record, VA proposes to revise the regulation to require a VRC to make the final determination or redetermination of RWT and to document such determination in the case file.

VA also proposes to amend 38 CFR 21.312(e) to allow for documentation to support an RWT to be provided by a veteran's medical provider rather than being limited to a VA physician. The documentation is necessary for a VRC to determine the veteran's ability to pursue a rehabilitation program under the VR&E program and to specify the rate of pursuit that VA will consider to be equivalent to full-time pursuit, so that the veteran may participate in a program of rehabilitation and receive a subsistence allowance at the full-time rate. Expanding the list of approved medical providers to those who have knowledge of the veteran's disability conditions would allow a VRC to make a more accurate and timely RWT determination or redetermination that is consistent with the veteran's regular care.

Furthermore, VA seeks to clarify in proposed § 21.312(f) that a veteran generally may not be approved for RWT and also be employed, to include participating in work study, because it would further reduce the veteran's ability to fully participate in a program of rehabilitation. RWT is developed relative to the current impact of the veteran's disabilities and the amount of time the veteran needs to spend treating their disabilities. However, if a veteran accepts employment while receiving RWT, he or she may maintain the RWT rate until the end of the semester or term.

Finally, approval for an RWT redetermination under § 21.312(c) would be contingent on the veteran's documented cooperation and participation in line with his or her medical treatment plan and on his or her ability to participate in a rehabilitation plan. A feasibility determination would be required with each yearly evaluation. This is to ensure the veteran continues to benefit from, and is in need of, RWT. The RWT program is not intended for the life of the case, but only until such a time as when the veteran establishes enough stability in his or her condition to return to the normal rate of pursuit approved by his or her VRC or case manager, as established under 38 CFR 21.310.

VA also proposes to amend § 21.312(d) to remove the outdated reference to electing benefits at the Chapter 34 rate. Chapter 34 benefits are not payable beyond December 31, 1989, and any previous election of benefits at the Chapter 34 rate terminated as of that date. 38 U.S.C. 3462(e); 38 CFR 21.334(e). VA also proposes grammatical updates to § 21.312.

Basic Period of Eligibility

Under 38 U.S.C. 3103(a), (b)(3), and (g), VA generally may not provide a Chapter 31 rehabilitation program to a veteran after the end of the 12-year period beginning on the date of the veteran's discharge or release from active military, naval, air, or space service or the date the veteran receives a compensable service-connected disability rating, whichever is later, if the discharge occurred before January 1, 2013. VA implemented section 3103(a) in 38 CFR 21.41(a) by referring to the 12-year period as beginning on the date of the veteran's discharge or release from his or her "last" period of service, which is calculated at the time of the veteran's initial application for Chapter 31 benefits. Based on VA's interpretation of 38 U.S.C. 3102 and 3103(a), VA proposes adding § 21.41(d) to establish a new 12-year period of eligibility for a veteran who is

subject to a basic period of eligibility and who has a subsequent period of service that independently gives rise to a new qualifying disability for Chapter 31 benefits.

Under 38 U.S.C. 3103(f) and 38 CFR 21.46, if VA determines that a veteran who is subject to a basic period of eligibility is prevented from participating in, or continuing in, a program of vocational rehabilitation as a result of being ordered to active duty, VA will extend the veteran's basic period of eligibility by the length of time the veteran serves on active duty plus 4 months. However, as reflected in proposed §§ 21.41(d) and 21.46, VA does not interpret section 3103(f) as precluding the application of section 3103(a) to establish a new 12-year period of eligibility when the veteran could qualify for Chapter 31 benefits based independently on the new period of service. This is a veteran-friendly interpretation that is consistent with both 38 U.S.C. 3103(a) and (f) and would allow such veterans the time needed to pursue a rehabilitation program, despite being rated for their first condition potentially many years ago. We revised the authority citation for 38 CFR 21.46 to refer to both 38 U.S.C. 3102 and 3103.

Additionally, on January 5, 2021, section 1025 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Pub. L. 116-315, added 38 U.S.C. 3103(g). Section 3103(g) eliminated the 12-year eligibility termination date for veterans discharged or released from active military, naval, or air service on or after January 1, 2013. VA proposes adding 38 CFR 21.41(e) to reflect the elimination of the eligibility termination date for veterans discharged or released from active military, naval, air, or space service on or after January 1, 2013. VA interprets section 3103(g) as eliminating the eligibility termination date for all veterans who were discharged or released on or after January 1, 2013, including veterans who were discharged or released from space service. We note that section 3103(a) refers to an eligibility termination date applying to veterans "discharge[d] or release[d] from active military, naval, air, or space service" and believe that the omission of the reference to

space service in section 3103(g) was a Congressional oversight. See Pub. L. 116-283, sec. 926 (adding space service to title 38 references to “military, naval, or air service”); Pub. L. 116-315, sec. 1025 (adding section 3103(g)). VA also proposes adding a reference to proposed paragraph (e) in § 21.41(a)(2).

We also propose a technical revision in proposed § 21.46 to refer to 10 U.S.C. 12304a and 12304b as additional authority under which a veteran may be ordered to active duty, to make the regulation consistent with 38 U.S.C. 3103(f), to which section 12034a and 12304b were added by Pub. L. 115-48 after VA had promulgated § 21.46.

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 an Executive Order 14192 deregulatory action.

Economic Impact: VA has determined that this rule does not create any new entitlements, expand benefit levels, or alter existing payments under Chapter 31. All proposed regulatory updates reflect practices that VR&E has already implemented since fiscal year 2021, such as eliminating the eligibility termination date for veterans discharged on or after January 1, 2013, and applying the updated 12-year eligibility period when a new qualifying service-connected disability is incurred. Expanding the list of medical providers who may determine RWT also does not change the amount or nature of benefits; it simply allows more timely and accurate documentation by providers who already work with the veteran. Because the rule updates regulations to

match current law and existing VA practice, there are no new expenditures, transfers, or burdens on veterans, providers, small entities, or governments.

VA characterizes the rule as deregulatory because it removes outdated restrictions and reduces administrative barriers. By eliminating unnecessary limitations, such as requiring RWT determinations solely from VA physicians and maintaining an obsolete eligibility termination date, the rule streamlines program administration and reduces compliance burdens on both veterans and VA. These changes make the regulations clearer, more efficient, and more aligned with current statutory authority, thereby reducing regulatory friction without imposing any costs.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This certification is based on the fact that the technical changes made by this rule would affect individuals but would not affect any small entities. Therefore, under 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

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

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Claims, Colleges and universities, Education, Employment, Manpower training programs, Reporting and

recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on November 13, 2026, 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.

Marie Chung,

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—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

Subpart A—Veteran Readiness and Employment

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

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

§ 21.41 [Amended]

2. Amend § 21.41 by revising paragraph (a)(2), adding paragraphs (d) and (e), removing the authority citation after paragraphs (b) and (c), and adding an authority citation after paragraph (e) to read as follows:

§ 21.41 Basic period of eligibility.

(a) * * *

* * * * *

(2) Except as provided in paragraph (b), (c), or (e) 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.

* * * * *

(d) *New period of eligibility.* If a veteran who is subject to a basic period of eligibility has a subsequent period of active military, naval, air, or space service, the veteran may receive a new 12-year period of eligibility under paragraph (a)(1) if the veteran receives a service-connected disability rating of 10 percent or more based on this new active-duty period.

(e) *Elimination of eligibility termination date.* Veterans who are discharged or released from active military, naval, air, or space service on or after January 1, 2013, are not subject to a time limit for eligibility to receive vocational rehabilitation and will therefore not be subject to a 12-year period of eligibility.

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

§ 21.46 [Amended]

3. Revise § 21.46 to read as follows:

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

Extension of basic eligibility period. If VA determines that a veteran who is subject to a basic period of eligibility 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, 12304, 12304a, or 12304b, the veteran's basic period of eligibility will be extended by the length of time the veteran serves on active duty plus 4 months. However, if the veteran receives a service-connected disability rating of 10 percent or more based on this new active-duty period, the veteran may receive a new 12-year period of eligibility under § 21.41(a)(1).

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

§ 21.312 [Amended]

4. Amend § 21.312 by revising paragraphs (c), (d), and (e) and adding paragraph (f) to read as follows:

§ 21.312 Reduced Work Tolerance

* * * * *

(c) *Redetermination of work tolerance.* The veteran’s work tolerance will be reevaluated one time per year, or more frequently if needed. The rate of pursuit required for VA to consider it equivalent to full-time pursuit will be modified if there is either an increase or decrease in the work tolerance of the veteran. Continued approval for reduced work tolerance is contingent on the veteran’s documented cooperation and participation in line with his or her treatment plan and on his or her ability to participate in a rehabilitation plan. Feasibility determination is required with each yearly evaluation.

(d) *Payment of allowance.* A veteran with a reduced work tolerance will be paid a subsistence allowance at the full-time rate for the type of program being pursued when the veteran meets the standard for full-time pursuit established for the veteran in the rehabilitation plan.

(e) *Determining work tolerance.* Documentation must be submitted by a licensed or certified medical or mental health professional, to include but not limited to a physician, physician assistant, nurse practitioner, psychiatrist, or psychologist, and must support a determination or redetermination regarding the veteran's work tolerance. A Vocational Rehabilitation Counselor will make the final determination based on the evidence of record.

(f) *Limitations.* A veteran may not be approved for reduced work tolerance and participate in employment, including work study. If a veteran with a determined reduced work tolerance accepts employment, the veteran may maintain the reduced work tolerance rate until the end of the current term or semester.

(Authority: 38 U.S.C. 3108(d))

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