

**DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 21**

RIN 2900-AI76

**Criteria for Approving Flight Courses for Educational Assistance Programs****AGENCY:** Department of Veterans Affairs.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This document amends the educational assistance and education benefit regulations of the Department of Veterans Affairs (VA). It revises the criteria to be used in approving flight courses for the education benefits programs VA administers. In large part, these amendments bring the approval criteria into agreement with various provisions of the Veterans' Benefits Improvements Act of 1996 and with the current regulations of the Federal Aviation Administration. Without the changes made by this document, VA would not be able to provide educational assistance for veterans to attend affected flight courses. This document also makes other changes for the purpose of clarification.

**DATES:** Effective Date: This rule is effective June 23, 1998.

**Applicability Date:** August 1, 1996, for provisions affecting approval of courses or enrollments at flight training centers certificated under 14 CFR part 142.

**Comments:** Comments must be received on or before August 24, 1998.

**ADDRESSES:** Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AI76." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, 202-273-7187.

**SUPPLEMENTARY INFORMATION:** VA administers education benefit programs, including benefit programs for flight training courses. This document amends subparts D and K of 38 CFR part 21, regarding criteria for flight training courses.

Flight training courses may be approved for individuals entitled to

educational assistance under the Montgomery GI Bill—Active Duty (MGIB) (38 U.S.C. chapter 30) and the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) (38 U.S.C. chapter 32), as well as for certain individuals under the Montgomery GI Bill—Selected Reserve (MGIB-SR) (10 U.S.C. chapter 1606).

By statute, flight training courses are required to meet Federal Aviation Administration (FAA) standards and be FAA approved (10 U.S.C. 1613(c)(1)(c); 38 U.S.C. 3034(d)(3) and 3241(b)(3)). VA regulations are changed to reflect changes to FAA standards as follows:

- FAA is changing the requirements for approving flight courses at flight training centers using flight simulators or advanced flight training devices. These courses now may be approved at flight training centers certificated under the new FAA standards.
- FAA no longer will approve training for both an instrument rating and a commercial pilot's certificate as a single course.
- FAA established a maximum for the number of hours of training in a flight simulator that could be counted toward the required minimum number of hours of experience needed for each rating.
- FAA has reorganized various provisions and changed terminology.

Previously, by statute, VA could not approve the enrollment in a course offered by an educational institution when such course had been in operation for less than two years, subject to a number of exceptions. Public Law 104-275 repealed these statutory provisions (formerly at 38 U.S.C. 3689) and established new provisions at 38 U.S.C. 3680A which state:

(e) The Secretary may not approve the enrollment of an eligible veteran in a course not leading to a standard college degree offered by a proprietary profit or proprietary nonprofit educational institution if—

- (1) The educational institution has been operating for less than two years;
- (2) The course is offered at a branch of the educational institution and the branch has been operating for less than two years; or
- (3) Following either a change in ownership or a complete move outside its original general locality, the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality (as determined in accordance with regulations the Secretary shall prescribe) unless the educational institution following such change or move has been in operation for at least two years.

The regulations regarding flight courses are amended to reflect changes in the "two-year" statutory provisions. Moreover, we are interpreting the term

"branch" to include a flight school satellite base.

This document also amends the regulations regarding the "85-15 percent" requirement. Generally, VA is prohibited by statute (38 U.S.C. 3680A(d)) from approving an enrollment of a veteran in a course when more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by VA. Under the provisions of 38 U.S.C. 3680A(d)(1), the Secretary may waive the "85-15" requirement, in whole or in part, if the Secretary determines, pursuant to regulations, it to be in the interest of the eligible veteran and the Federal government. Pursuant to this authority, amended 38 CFR 21.4201(e)(3)(ii) provides for purposes of this enrollment computation that approved flight training under 14 CFR parts 141 and 142 at a flight school or flight training center will be considered as one course and all other approved training at a flight school or flight training center will be considered as one course. In many cases only one or two students will be enrolled in a particular flight course at a given flight school at any point in time. If all of the students were veterans, application of the "85-15" requirement for each course would produce in many instances the result of requiring disapproval of the enrollment of veterans in such courses. We believe that 38 CFR 21.4201, as amended, is a reasonable approach in keeping with the statutory purpose of requiring a training establishment to demonstrate that its training is of sufficient quality to attract a certain percentage of nonveterans before VA will approve education benefits for enrollment in that training. We also believe that the rule will protect the right of veterans to receive this type of training while assuring that these courses could stand the test of the marketplace.

Changes are also made regarding medical requirements. As amended, the regulations do not impose the medical requirements for a commercial pilot license on an individual enrolled in either a ground instructor certification course or a flight course which is pursued as a part of a standard college degree program. In our view, the VA statutory provisions were not intended to impose these stringent medical requirements for such individuals who would not be required to meet such medical requirements for FAA certification.

FAA certifies flight schools to offer courses that may be given at certified pilot schools or certified flight training

centers, which also meet the basic requirements needed for course approval for VA training; i.e., the training is offered at an educational institution and the courses are generally accepted as necessary to qualify for a vocational objective. However, FAA standards also authorize instruction for various courses from a flight instructor who is not affiliated with either a certificated pilot school or a certificated training center. That authorization would not meet the basic statutory requirements needed for approval for VA training, in that the training would not be offered by an "educational institution." Therefore, under 38 CFR 21.4263(e), instruction by a non-affiliated flight instructor would not be approved for VA purposes.

FAA standards require that a student either enroll in an instrument rating course before enrolling in a commercial pilot certification course, or that a student enroll in both courses simultaneously and finish the instrument rating course first. VA regulations are amended, with certain exceptions, to provide that, in order to receive VA educational assistance, a student must enroll in both courses simultaneously. By statute (38 U.S.C. 3452), an individual receiving VA educational assistance must be pursuing a vocational, educational, or professional objective. If the instrument rating course were allowed to be taken first, there would be no assurance that it was taken for purposes of reaching a vocational, educational, or professional objective. Instead, it could be taken merely to add a rating to a private pilot certificate, which is not considered evidence of such an objective. By requiring that both courses be taken simultaneously, VA is helping to ensure that a student has made a commitment and is using his or her benefits to achieve a vocational objective.

There are three exceptions to the requirement for enrollment in an instrument rating course simultaneously with the commercial pilot certification course. These exceptions apply to an individual who is pursuing a standard college degree and who is taking flight training as part of the degree program; to an individual who already has a commercial pilot certificate; and to an individual who is enrolling in a ground instructor certification course. The respective reasons for the exceptions are: an individual who is pursuing a college degree is pursuing an educational objective; an individual who adds an instrument rating to a commercial pilot certificate is following recognized and accepted industry requirements for an advanced

vocational objective in the field of aviation; and an individual becoming a qualified ground instructor, by definition, is pursuing a vocational objective.

Nonsubstantive changes are made for purposes of clarification and consistency with FAA terminology.

Consistent with the effective date of the FAA regulations adding 14 CFR part 142, the date of applicability for provisions affecting approval of courses or enrollments at flight training centers certificated under 14 CFR part 142 is August 1, 1996.

#### Administrative Procedure Act

Many of the changes made by this interim final rule constitute nonsubstantive changes and interpretations of law. Those changes are not subject to the requirements of 5 U.S.C. 553 for notice and comment and 30-day delay of effective date. For the remainder of the changes, pursuant to 5 U.S.C. 553, we have found good cause to dispense with notice and comment on this interim final rule and to dispense with a 30-day delay of its effective date and have found that notice and comment and a 30-day delay of its effective date would be unnecessary, impracticable, and contrary to the public interest. Those changes are based on the critical need to conform VA rules to FAA rules and practice to enable VA to provide educational assistance for training needed for certain educational objectives. In the absence of the amendments to VA regulations, VA is unable, due to changes in FAA rules and practice, to provide educational assistance for certain flight course enrollments.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Even so, the Secretary of Veterans Affairs 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 rule would permit VA to continue to pay educational assistance for veterans enrolled in flight courses at pilot schools, flight training centers, and institutions of higher education that offer flight courses. While changes caused by this rule would affect how many veterans would be enrolled in flight courses, the change in the number of veterans would not significantly

affect the total number of students enrolled in flight courses, nor would this rule otherwise have more than a minuscule economic impact on any entity. Pursuant to 5 U.S.C. 605(b), this rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this rule are 64.120 and 64.124. This rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

#### 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, Educational institutions, 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: May 12, 1998.

**Togo D. West, Jr.,**

Secretary.

For the reasons set forth in the preamble, 38 CFR part 21 (subparts D and K) is amended as set forth below:

### PART 21—VOCATIONAL REHABILITATION AND EDUCATION

#### Subpart D—Administration of Educational Assistance Programs

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

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4200, paragraphs (x) and (y) are added to read as follows:

#### § 21.4200 Definitions.

\* \* \* \* \*

(x) *State*. The term *State* has the same meaning as provided in § 3.1(i) of this chapter.

(Authority: 38 U.S.C. 101(20))

(y) *Pilot certificate*. A *pilot certificate* is a pilot certificate issued by the Federal Aviation Administration. The term means a pilot's license as that term is used in 10 U.S.C. chapter 1606 and 38 U.S.C. chapters 30 and 32.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

3. In § 21.4201, paragraph (e)(3)(ii) is revised to read as follows:

**§ 21.4201 Restrictions on enrollment; percentage of students receiving financial support.**

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(ii) The 85–15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All approved courses offered under 14 CFR parts 141 and 142 at a flight school will be considered to be one course for the purpose of making this computation. Similarly, all other approved courses offered at a flight school will be considered to be one course for the purpose of making this computation. In this computation hours of training or tuition charges for students enrolled—

(A) In the recreational pilot certification course and the private pilot certification course will be excluded;

(B) In a ground instructor certification course will be included;

(C) In courses approved under 14 CFR part 141, other than a ground instructor certification course, will be actual hours of logged instructional flight time or the charges for those hours; and

(D) In courses not approved under 14 CFR part 141, such as courses offered by flight simulator or courses for navigator or flight engineer, shall include ground training time or charges; actual logged instructional flight time or charges; and instructional time in a flight simulator or charges for that training.

\* \* \* \* \*

4. In § 21.4233, paragraph (e) is revised; and an authority citation is added to paragraph (e) to read as follows:

**§ 21.4233 Combination.**

\* \* \* \* \*

(e) *Contract.* All or part of the program of education of a school may be provided by another school or entity under contract. Such school or entity actually providing the training must obtain approval of the course from the State approving agency in the State having jurisdiction of that school or entity. If the course is a course of flight training, the school or entity actually providing the training must also obtain approval of the course from the Federal Aviation Administration. Measurement of the course and payment of an allowance will be appropriate for the

course as offered by the school or entity actually providing the training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3202(4), 3241(b), 3452(c), 3501(a)(6), 3675, 3676)

5. Section 21.4235 is added to read as follows:

**§ 21.4235 Programs of education that include flight training.**

VA will use the provisions of this section to determine whether an individual may be paid educational assistance for pursuit of flight training. See § 21.4263 for approval of flight courses for VA training.

(a) *Eligibility.* A veteran or servicemember who is otherwise eligible to receive educational assistance under 38 U.S.C. chapter 30 or 32, or a reservist who is eligible for expanded benefits under 10 U.S.C. chapter 1606 as provided in § 21.7540(b), may receive educational assistance for flight training in an approved course provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (f) of this section, the individual must—

(1) Possess a valid private pilot certificate or higher pilot certificate such as a commercial pilot certificate;

(2) Hold a second-class medical certificate on the first day of training, and continuously during training unless the individual is enrolled in an Airline Transport Pilot (ATP) certification course; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and continuously during training.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(b) *Approval of program.* VA may approve the individual's program of education as described on the individual's application if:

(1) The flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; and

(2) The flight training included in the program—

(i) Is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(ii) Is given by an educational institution of higher learning for credit toward a standard college degree that the individual is pursuing.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(c) *Pursuit of a program of education.*

(1) Except as provided in paragraph (c)(2) of this section, an individual who is pursuing a program of education described in paragraph (b)(2)(i) of this section must first enroll in a commercial pilot certification course. If the individual wants to obtain a commercial pilot certification course in an airplane or powered lift category and does not already have an instrument rating, he or she must also enroll in an instrument rating course simultaneously with the commercial pilot course.

(2) The provisions of paragraph (c)(1) of this section do not apply to an individual who—

(i) Already has a commercial pilot certificate; or

(ii) Wishes to become a ground instructor through an enrollment in a ground instructor certification course.

(3) Unless the provisions of paragraph (b)(1)(ii), (c)(2)(i), or (c)(2)(ii) of this section apply to an individual's enrollment, VA will not pay for any enrollment in a flight course that precedes enrollment in a commercial pilot certification course.

(4) Except for the enrollment described in paragraph (c)(1) of this section, the individual must enroll in only one flight course at a time.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(d) *Some individuals are already qualified for a flight course objective.* (1) The provisions of §§ 21.5230(a)(4), 21.7110(b)(4), and 21.7610(b)(4), prohibiting payment of educational assistance for enrollment in a course for whose objective the individual is already qualified, apply to enrollments in flight courses.

(2) A former military pilot with the equivalent of a commercial pilot certificate and an instrument rating may obtain a commercial pilot certificate and instrument rating from the Federal Aviation Administration without a flight exam within 12 months of release from active duty. Therefore, VA will consider such a veteran to be already qualified for the objectives of a commercial pilot certification course and an instrument rating course if begun within 12 months of the individual's release from active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3471(4))

(e) *Some flight courses are refresher training.* The provisions of §§ 21.5230(c), 21.7020(b)(26),

21.7122(b), 21.7520(b)(20), and 21.7610(b)(4) that provide limitations on payment for refresher training that is needed to update an individual's knowledge and skill in order to cope with technological advances while he or she was on active duty service apply to flight training.

(1) An individual who held a Federal Aviation Administration certificate before or during active duty service may have surrendered that certificate or the Federal Aviation Administration may have canceled it. The individual may receive the equivalent of the number of months of educational assistance necessary to complete the course that will qualify him or her for the same grade certificate.

(2) A reservist is not eligible for refresher training unless he or she has had prior active duty.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

(f) *Flight training at an institution of higher learning.* (1) An individual who is eligible for educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 is exempt from the provisions of paragraphs (a)(2) through (d) of this section when his or her courses include flight training that is part of a program of education that leads to a standard college degree.

(2) An individual described in paragraph (f)(1) of this section may pursue courses that may result in the individual eventually receiving recreational pilot certification or private pilot certification, provided that the courses also lead to a standard college degree.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

6. In § 21.4263, paragraphs (h), (i), (j), and (k) are redesignated as paragraphs (i), (j), (k), and (l), respectively; newly redesignated paragraph (i) introductory text is amended by removing "(g)(3)" and adding, in its place, "(e)" and by removing "(h)(1)" and adding, in its place, "(i)(1)"; newly redesignated paragraph (i)(1) introductory text is amended by removing "(h)(4)" and adding, in its place, "(i)(4)"; newly redesignated paragraph (i)(2) is amended by removing "H" and adding, in its place "J"; newly redesignated paragraph (i)(4)(i) is amended by removing "(h)(1)(ii)" and adding, in its place "(i)(1)(ii)"; the authority citation for newly redesignated paragraph (i)(4)(ii) is removed; newly redesignated paragraph (i)(4)(iii) is amended by removing "(h)(1)(i)" and adding, in its place, "(i)(1)(i)"; newly redesignated

paragraph (j) introductory text is amended by removing "(h)(1)(i)" and adding, in its place, "(i)(1)(i)"; the section heading, paragraphs (a), (b), (c), (d), (e), (f), and (g), newly redesignated paragraphs (i)(1)(iii), and (l), and the authority citations for newly redesignated paragraphs (i) introductory text, (i)(1), (i)(2), (i)(3), (i)(4), (j)(3), (j)(4), and (k) are revised; and new paragraphs (h) and (i)(1)(iv), and authority citations for newly redesignated paragraphs (j)(1) and (j)(2) are added, to read as follows:

**§ 21.4263 Approval of flight training courses.**

(a) *A flight school or institution of higher learning are the only entities that can offer flight courses.* A State approving agency may approve a flight course only if a flight school or an institution of higher learning offers the course. A State approving agency may not approve a flight course if an individual instructor offers it. The provisions of § 21.4150 shall determine the proper State approving agency for approving a flight course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b), 3671, 3672, 3676)

(b) *Definition of flight school.* A flight school is a school, other than an institution of higher learning, or is an entity, such as an aero club; is located in a State; and meets one of the following sets of requirements:

(1) The Federal Aviation Administration has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141;

(2) The entity is either a flight training center or an air carrier that does not have a pilot school certificate or provisional pilot school certificate issued by the Federal Aviation Administration under 14 CFR part 141, but pursuant to a grant of exemption letter issued by the Federal Aviation Administration under 14 CFR part 61 is permitted to offer pilot training by a flight simulator instead of an actual aircraft; or

(3) The Federal Aviation Administration has issued the school or entity a training center certificate under 14 CFR part 142.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3452(c))

(c) *Aero club courses.* An aero club, established, formed, and operated under authority of service department regulations as a nonappropriated sundry fund activity, is an instrumentality of the Federal government. Consequently, VA has exclusive jurisdiction over

approval of flight courses offered by such aero clubs.

(Authority: 38 U.S.C. 3671, 3672)

(d) *Approval of flight training as part of a degree program.* A State approving agency may approve a flight training course that is part of a program of education leading to a standard college degree provided the course and program meet the requirements of § 21.4253 or § 21.4254, as appropriate. The institution of higher learning offering the course need not be a flight school.

(Authority: 38 U.S.C. 3675, 3676)

(e) *Approval of flight training courses that are not part of a degree program.* A flight course is subject to the same approval requirements as any other course. In addition, the State approving agency must apply the following provisions to the approval of flight courses:

(1) The Federal Aviation Administration must approve the course; and

(2)(i) The course must meet the requirements of 14 CFR part 63 or 141, and a flight school described in paragraph (b)(1) or (b)(3) of this section must offer it; or

(ii) The course must meet the requirements of 14 CFR part 61, and either be offered—

(A) By a flight school described in paragraph (b)(3) of this section; or

(B) In whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the Federal Aviation Administration to the flight school offering the course.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b), 3676, 3680A)

(f) *Application of 38 U.S.C. 3680A(e)(2) to flight training.* Notwithstanding the fact that the Federal Aviation Administration will permit flight schools to conduct training at a base other than the main base of operations if the requirements of either 14 CFR 141.91 or 14 CFR 142.17 are met, the satellite base is considered under 38 U.S.C. 3680A(e)(2) to be a branch of the principal school, and must meet the requirements of 38 U.S.C. 3680A(e)(2).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3680A))

(g) *Providing a flight course under contract between schools or entities.* When a school or entity offers all or part of a flight course under a contract with another school or entity, the State approving agency must apply § 21.4233 in the following manner:

(1) The requirements of § 21.4233(e) must be met for all contracted flight

instruction, instruction by flight training device, flight simulator instruction, and ground school training. Ground school training may be given through a ground school facility operated jointly by two or more flight schools in the same locality; and

(2) The responsibility for providing the instruction lies with the flight school. The degree of affiliation between the flight school and the entity or other school that actually does the instructing must be such that all charges for instruction are made by, and paid to, one entity having jurisdiction and control over both the flight and ground portions of the program.

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3032(d), 3241(b))

(h) *Nonaccredited courses.* (1) *Application of § 21.4254 to flight training.* The provisions of § 21.4254 are applicable to approval of flight training courses.

(2) *Additional instruction requirements.* The State approving agency will apply the following additional requirements to a flight course:

(i) All flight instruction, instruction by flight training device, flight simulator instruction, preflight briefings and postflight critiques, and ground school training in a course must be given by the flight school or under suitable arrangements between the school and another school or entity such as a local community college.

(ii) All ground school training connected with the course must be in residence under the direction and supervision of a qualified instructor providing an opportunity for interaction between the students and the instructor. Simply making provision for having an instructor available to answer questions does not satisfy this requirement.

(Authority: 38 U.S.C. 3676)

(i) \* \* \*

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(1) \* \* \*

(iii) The maximum number of hours of instruction by flight simulator or flight training device that a State approving agency may approve is the maximum number of hours of instruction by flight simulator or flight training device permitted by 14 CFR part 61 for that course when:

(A) A course is offered in whole or in part by flight simulator or flight training device conducted by a training center certificated under 14 CFR part 142; and

(B) 14 CFR part 61 contains a maximum number of hours of instruction by flight simulator or flight

training device that may be credited toward the requirements of the rating or certificate that is the objective of the course.

(iv) If a course is offered in whole or in part by flight simulator or flight training device, and the course is not described in paragraph (i)(1)(iii) of this section, either because the course is offered by a flight training center with a grant of exemption letter, or because 14 CFR part 61 does not contain a maximum number of hours of instruction by flight simulator or flight training device, the maximum number of hours of instruction by flight simulator or flight training device that may be approved may not exceed the number of hours in the Federal Aviation Administration-approved outline.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3032(f), 3231(f))

(2) \* \* \*

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(3), 3202(2), 3452(b))

(3) \* \* \*

(Authority: 10 U.S.C. 16131(f)(4); 16136(c), 38 U.S.C. 3002(3), 3032(f)(4), 3202(2), 3231(f)(4), 3452(b))

(4) \* \* \*

(Authority: 10 U.S.C. 16131(f)(4); 38 U.S.C. 3032(f)(4), 3231(f)(4))

(j) \* \* \*

(1) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(2) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(3) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(4) \* \* \*

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3690(a)(1))

(k) \* \* \*

(Authority: 10 U.S.C. 16136(b), 16136(c); 38 U.S.C. 3034(d), 3672(a))

(l) *Enrollment limitations.* A flight course must meet the 85–15 percent ratio requirement set forth in § 21.4201 before VA may approve new enrollments in the course. The contracted portion of a flight course must meet all the requirements of § 21.4201 for each subcontractor.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(d), 3241(c), 3680A(d))

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

7. The authority for part 21, subpart K continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

8. In § 21.7220, paragraph (c) is amended by removing “Flight training when administering” and adding, in its place, “when approving”.

[FR Doc. 98–16579 Filed 6–22–98; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR PART 21

RIN 2900–AI88

### Veterans' Education: Effective Date for Awards of Educational Assistance to Veterans Who Were Voluntarily Discharged

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the educational-assistance and educational-benefit regulations of the Department of Veterans Affairs (VA). It establishes effective dates of awards of educational assistance to certain voluntarily discharged veterans who are eligible for the Montgomery GI Bill—Active Duty (MGIB). The effective dates correspond with a statutory mandate for the effective dates. The final rule also clarifies that these veterans may not receive educational assistance for training that occurs before they pay the Federal government \$1,200.

**DATES:** *Effective Date:* July 23, 1998.

*Applicability Dates:* The effective dates are retroactive from the effective dates of the statutory provisions.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, (202) 273–7187.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on December 18, 1997 (62 FR 66320), VA proposed to amend the “All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)” regulations as set forth in the **SUMMARY** portion of this document.

Interested persons were given 60 days to submit comments. No comments were received. Based on the rationale set forth in the proposed rule, we are