## DEPARTMENT OF DEFENSE

## Department of the Air Force

## 32 CFR Part 818

## Personal Financial Responsibility

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Final rule, removal.

**SUMMARY:** The Department of the Air Force is amending the Code of Federal Regulations (CFR) by removing its rule on Personal Financial Responsibility. This rule is removed, as the current information contained in it does not reflect current policy of AFI 36–2906, January 1998.

**EFFECTIVE DATE:** January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** MSgt Pamela Martin, HQ AFPC/DPSFM, 550 C Street West, Suite 37, Randolph Air Force Base, Texas, 78148–4737, 210–565–3415.

### List of Subjects in 32 CFR Part 818

Alimony, Child support, Claims, Credit, Military personnel.

## PART 818—[REMOVED]

Accordingly, and under the authority of 10 U.S. C. 8013, 15 U.S.C. 1073, 42 U.S.C. 659, 660, 665, 32 CFR, Chapter VII is amended by removing Part 818.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–32949 Filed 12–26–00; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF DEFENSE

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 21

**RIN 2900–AI67**

## New Criteria for Approving Courses for VA Educational Assistance Programs

**AGENCIES:** Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) educational assistance and educational benefit regulations by adding new criteria for VA to use in approving enrollments in courses under the educational programs VA administers. These changes implement provisions of the Veterans' Benefits Improvements Act of 1996 and the Veterans' Benefits Act of 1997. This document also amends the regulations to conform to statutory provisions and makes changes for the purpose of clarification.

**DATES:** *Effective Date:* This final rule is effective December 27, 2000.

*Applicability Date:* October 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service (225), Veterans Benefits Administration, 202–273–7187.

**SUPPLEMENTARY INFORMATION:** On February 2, 2000, VA published a proposed rule in the **Federal Register** (65 FR 4914) to amend the VA educational assistance and educational benefit regulations in 38 CFR part 21, subparts D, K, and L to conform with provisions of the Veterans' Benefits Improvement Act of 1996 (Pub. L. 104–275) and with section 401(e) of the Veterans' Benefits Act of 1997 (Pub. L. 105–114).

Interested persons were given 60 days to submit comments. We received three comments: One from a veterans service organization, one from an educational institution, and one from an association of educational institutions. The service organization indicated that it had no comments.

The educational institution wrote that the provisions of 38 CFR 21.4251, as currently written, concerning (a) courses that were similar in character to other courses and (b) courses offered at additional facilities, should be added to the proposed rule.

The regulations previously provided that VA could approve the enrollment of a veteran or eligible person in a course offered by a school other than a job-training establishment only if the course had been in operation for 2 years or more immediately prior to the date of enrollment of the person. There were two exceptions to this rule which are the subject of the comment. The first exempted courses similar in character to instruction previously offered by the school for more than 2 years. (38 CFR 21.4251(a)(2)). The second exempted courses at additional facilities acquired by a school in the same general locality because of space limitations, since those were not considered to be courses at a subsidiary branch or extension, otherwise required to be offered for 2 years. (38 CFR 21.4251(f)(3)).

The ''similar in character'' requirement was derived from 38 U.S.C. 3689, which was specifically rescinded by Congress in the enactment of Pub. L. 104–275. The proposed rule is based on 38 U.S.C. 3680A(e), as added by Pub. L. 104–275, which bars approval of enrollment in courses not leading to a standard college degree offered by propriety schools that have operated on site for less than two years. Under the amended statute it does not matter how long the courses themselves have been offered at that site or whether they are similar in character to courses formerly offered at other sites. Rather, VA need only verify that the educational institution has been in operation at the site for two years. Therefore, we believe that adopting the commenter's suggestion to include the ''similar in character'' exemption of the old rule is unnecessary.

Similarly, we find no support in law for the old rule exempting courses at additional facilities created as a result of space limitations, because, as amended by Pub. L. 104–275, the law now requires that enrollment in all courses not leading to a standard college degree offered at a branch of a proprietary educational institution must be disapproved if the branch has been operating for less than two years. (38 U.S.C. 3680A(e)(2)).

The association of educational institutions objected that the definition of ''change of ownership'' in 38 CFR 21.4251(f)(2) was too vague. Specifically, the association stated that the language ''Transactions that may cause a change of ownership include, but are not limited to the following * * *'' made it difficult for institutions to decide if a change of ownership has taken place. The association suggested that we consider a change of ownership as having taken place when the Department of Education believes this occurred.

After careful consideration, we have decided not to adopt this suggestion. Under the previous rule, VA made the final decision whether changes in ownership had taken place. Thus, we believe VA has sufficient experience in making change-in-ownership decisions. Moreover, we expect that changes in ownership not specifically included in the definition would be extremely rare and approval would be barred only if the facts clearly show a change in ownership did occur.

The association of educational institutions also questioned the final-rule requirement in 38 CFR 21.4251(g) that an educational institution use substantially the same instructional methods and offer courses leading to the same educational objectives following a change of ownership or following a

move outside its general locality. Among the requirements of 38 U.S.C. 3680A(e) is a requirement that VA cannot approve an enrollment for VA training in a course not leading to a standard college degree offered by a proprietary educational institution if the institution offering the course completely moves outside its original general locality or has changed ownership and does not retain substantially the same courses as before the change in ownership or move, unless the institution has operated for two years following the change in ownership or move. The association of educational institutions suggested that it would be better policy to permit the use of different instructional methods and the teaching of additional courses if the institution's accrediting body so permits.

We believe that 38 U.S.C. 3680A(e), which establishes the applicable policy as a matter of law, may not be interpreted to permit adoption of this suggestion. We do not believe that courses could be ''substantially the same'' if they used different instructional methods or had different educational objectives.

Based on the rationale stated in this document and the proposed rule, we are adopting the provisions of the proposed rule as a final rule with one nonsubstantive change.

The Department of Defense (DOD), the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

The Secretary of Defense, Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not cause educational institutions to make changes in their activities and would have minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule will affect the Montgomery GI Bill—Selected Reserve 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, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Educational institutions, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 10, 2000.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

Approved: October 20, 2000.

**Col. Curtis B. Taylor,**

*U.S. Army, Principal Director, (Military Personnel Policy) Department of Defense.*

Approved: December 12, 2000.

**F.L. Ames,**

*Assistant Commandant for Human Resources.*

For the reasons set forth in the preamble, 38 CFR part 21 (subparts D, K, and L) 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, paragraph (z) is added to read as follows:

**§ 21.4200 Definitions.**

* * * * *

(z) *Proprietary educational institution.* The term *proprietary educational institution* (including a proprietary profit or proprietary nonprofit educational institution) means an educational institution that:

(1) Is not a public educational institution;

(2) Is in a State; and

(3) Is legally authorized to offer a program of education in the State where the educational institution is physically located.

(Authority: 38 U.S.C. 3680A(e))

3. Section 21.4251 is revised to read as follows:

**§ 21.4251 Minimum period of operation requirement for educational institutions.**

(a) *Definitions.* The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control.* The term *control* (including the term controlling) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) *Person.* The term *person* means an individual, corporation, partnership, or other legal entity.

(Authority: 38 U.S.C. 3680A(e))

(b) *Some educational institutions must be in operation for 2 years.* Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution—

(1) Has been operating for less than 2 years;

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and 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 unless the educational institution, after such change or move, has been in operation for at least 2 years.

(Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the 2-year operation requirement.* Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that—

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for 2 years.* VA will consider, for the purposes of paragraph (b) of this section, that a proprietary

educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution)—

(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and

(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students.

(Authority: 38 U.S.C. 3680A(e) and (g))

(e) *Move outside the same general locality.* A proprietary educational institution (or a branch or extension thereof) will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, i.e., 55 miles or more from the original location.

(Authority: 38 U.S.C. 3680A(e))

(f) *Change of ownership.* (1) A change of ownership of a proprietary educational institution occurs when—

(i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or

(ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

(i) The sale of the educational institution;

(ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;

(iii) The merger of 2 or more educational institutions; and

(iv) The division of one educational institution into 2 or more educational institutions.

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

(i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or

(ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer.

(Authority: 38 U.S.C. 3680A(e))

(g) *Substantially the same faculty, student body, and courses.* VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and

(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution after the move or change in ownership.

(Authority: 38 U.S.C. 3680A(e) and (f)(1))

4. In § 21.4252, paragraph (m) is added to read as follows:

**§ 21.4252 Courses precluded.**

* * * * *

(m) *Courses offered under contract.* VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by §§ 21.4253, 21.4254, 21.4256, 21.4257, 21.4260, 21.4261, 21.4263, 21.4264, 21.4265, 21.4266, or 21.4267, as appropriate.

(Authority: 38 U.S.C. 3680A(f) and (g))

5. In § 21.4253, paragraphs (d)(6), (d)(7), and (d)(8) are added to read as follows:

**§ 21.4253 Accredited courses.**

* * * * *

(d) * * *

(6) The accredited courses, the curriculum of which they form a part, and the instruction connected with those courses are consistent in quality, content, and length with similar courses in public educational institutions and other private educational institutions in the State with recognized accepted standards.

(7) There is in the educational institution offering the course adequate space, equipment, instructional material, and instructor personnel to provide training of good quality.

(8) The educational and experience qualifications of directors, and administrators of the educational institution offering the courses, and instructors teaching the courses for which approval is sought, are adequate.

(Authority: 38 U.S.C. 3675(b), 3676(c)(1), (2), (3))

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

6. 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.

7. Section 21.7122 is amended by:

a. In paragraph (e)(6), removing ''school, or'' and adding, in its place, ''school;''.

b. In paragraph (e)(7), removing ''course.'' and adding, in its place, ''course; or''.

c. Revising paragraphs (e)(1) through (e)(5), and the authority citation for paragraph (e).

d. In paragraph (e)(6), removing from the end of the paragraph '', or'' and adding, in its place, '';''.

e. In paragraph (e)(7), removing the period at the end of the paragraph and adding, in its place, ''; or''.

f. Adding paragraph (e)(8).

The addition and revisions read as follows:

**§ 21.7122 Courses precluded.**

* * * * *

(e) *Other courses.* VA shall not pay educational assistance for—

(1) An enrollment in an audited course (see § 21.4252(i));

(2) An enrollment in a course for which the veteran or servicemember received a nonpunitive grade in the absence of mitigating circumstances (see § 21.4252(j));

(3) New enrollments in a course where approval has been suspended by a State approving agency;

(4) An enrollment in certain courses being pursued by nonmatriculated students as provided in § 21.4252(l);

(5) Except as provided in § 21.4252(j), an enrollment in a course from which the veteran or servicemember withdrew without mitigating circumstances;

* * * * *

(8) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a), 3680A(f), 3680A(g))

### Subpart L—Educational Assistance for Members of the Selected Reserve

8. The authority for part 21, subpart L continues to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501, unless otherwise noted.

9. Section 21.7622 is amended by:

a. In paragraph (f)(4)(v), removing ''or''.

b. In paragraph (f)(4)(vi), removing ''course.'' and adding, in its place, ''course; or''.

c. Adding a new paragraph (f)(4)(vii).

d. Revising the authority citation for paragraph (f).

The addition and revision read as follows:

**§ 21.7622 Courses precluded.**

* * * * *

(f) * * *

(4) * * *

(vii) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 10 U.S.C. 16131(c), 16136(b); 38 U.S.C. 3672(a), 3676, 3680(a), 3680A(f), 3680A(g); § 642, Public Law 101–189, 103 Stat. 1458)

[FR Doc. 00–32810 Filed 12–26–00; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[R1–7218a; A–1–FRL–6894–6]**

### Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Massachusetts and Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving and promulgating State Implementation Plan (SIP) revisions submitted by the States of Connecticut, Massachusetts and Rhode Island. The SIP revisions for each of these states establishes a nitrogen oxides budget and trading program in response to EPA's regulation ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the '' $NO_X$ SIP Call.'' The SIP revision for each of the States includes a narrative description and regulation establishing a statewide $NO_X$ budget and $NO_X$ allowance trading program for large electricity generating and industrial sources beginning in the year 2003. The Massachusetts SIP also included revisions to existing regulations to assure consistency with the $NO_X$ budget and allowance trading program.

The intended effect of these actions is to approve these SIP strengthening measures for the Connecticut, Massachusetts and Rhode Island ozone SIP's. This action is being taken in accordance with section 110 of the Clean Air Act (CAA). Further, we determined that the submittal from each of these three states meets the air quality objective of the $NO_X$ SIP call requirements and we will take action in a future rulemaking on whether these submittals meet all the applicable $NO_X$ SIP call requirements.

**DATES:** This rule is effective on January 26, 2001.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA. Copies of the documents specific to the SIP approval for CT are available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630. Copies of the documents specific to the SIP approval for Massachusetts are available at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108. Copies of the documents specific to the SIP approval for Rhode Island are available at the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

**FOR FURTHER INFORMATION CONTACT:** Dan Brown at (617) 918–1532 or via E-mail at brown.dan@epa.gov.

**SUPPLEMENTARY INFORMATION:** We published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut, Massachusetts and Rhode Island in the **Federal Register** on July 12, 2000 (at 65 FR 42900, 65 FR 42907, and 65 FR 42913 for CT, MA and RI, respectively). The NPR proposed approval and promulgation of each States SIP revision for a Nitrogen Oxides Budget and Allowance Trading Program.

The formal SIP revision was submitted by Connecticut in September 1999 and included CT's $NO_X$ control regulation, section 22a–174–22b, ''Post-2002 Nitrogen Oxides ( $NO_X$) Budget Program,'' and the CT's SIP narrative, ''Connecticut State Implementation Plan Revision to Implement the $NO_X$ SIP Call,'' September 1999. The formal SIP revision was submitted by Massachusetts in November 1999 and included MA's $NO_X$ control regulation, 310 CMR 7.28, '' $NO_X$ Allowance Trading Program,'' and the SIP narrative materials: ''Background Document and Technical Support for Public Hearings on the Proposed Revisions to State Implementation Plan for Ozone,'' July 1999; ''Supplemental Background Document for Public Hearings on Modification to the July 1999 Proposal to Revise the State Implementation Plan for Ozone, including Proposed 310 CMR 7.28.'' Massachusetts' submittal also included amendments to 310 CMR 7.19, ''Reasonably Available Control Technology (RACT) for sources of Oxides of Nitrogen ( $NO_X$),'' and 310 CMR 7.27, '' $NO_X$ Allowance Program,'' which allowed for consistent requirements and a smooth transition to the program under 310 CMR 7.28 in 2003. The formal SIP revision was submitted by Rhode Island in October 1999 and included RI's $NO_X$ control regulation, Regulation No. 41, ''Nitrogen Oxides Allowance Program,'' and the SIP narrative materials, '' $NO_X$ State Implementation Plan (SIP) Call Narrative.''

Connecticut, Massachusetts and Rhode Island submitted these SIP revisions in order to strengthen their one-hour ozone SIP and to comply with the $NO_X$ SIP call. The $NO_X$ SIP call originally required 23 jurisdictions, including CT, MA and RI, to meet statewide $NO_X$ emission budgets during each ozone season, i.e., May 1 to October 1 beginning in 2003. Implementation of the $NO_X$ SIP call will reduce the amount of ground level ozone that is transported across the eastern United States. The $NO_X$ SIP Call originally set out a schedule that required the affected states to adopt