any, with which the employer has an agreement to provide all or part of the job training program (supported by a copy of that agreement included with the application);

(v) If all or part of a job training program is provided by an educational institution, a statement that VA will have access to the training records,

(vi) The objective of the program,

(vii) The address of the location where the records described in paragraph (a)(3)(x) of this section will be kept, and

(viii) If the employer desires to be paid monthly, the number of the training establishment's employees.

(5) The certifications required in paragraphs (a)(3)(i) through (xi) shall be considered to be a requirement established under subtitle G of the Service Members Occupational Conversion and Training Act, and for purposes of § 21.4832(c) regarding payment for tools and other work-related materials and paragraphs (a)(3)(i) through (x) shall be considered to be a requirement established under subtitle G of the Service Members Occupational Conversion and Training Act.

(Authority: 106 Stat. 2760, Pub. L. 102–484, secs. 4486(e), 4487(b); 10 U.S.C. 1143 note)

(b) VA action upon receipt of the application. (1) Upon receipt of the application, the Director of the VA facility of jurisdiction will approve the

job training program if:

(i) The application contains all requisite information and certifications needed to enable the Director to determine whether the proposed job training program meets the approval requirements of the Service Members Occupational Conversion and Training Act.

(ii) The Director finds no basis for conducting an investigation under § 21.4852 that would warrant withholding approval of the employer's proposed program of job training pending the outcome of that investigation.

(2) In determining whether the certifications required in paragraphs (a)(3) and (a)(4) of this section are complete and accurate, the Director of the VA facility of jurisdiction—

(i) Will consider that the provisions have been met and that the certification is accurate if the job training program for which the employer is seeking approval has already been approved for training under § 21.4261 or § 21.4262, or the entire job training program consists of a course or courses offered at an educational institution and approved under § 21.4253 or § 21.4254;

(ii) Will consider any information the Department of Labor or the State Employment Security Agency may have concerning the employer and the job training program;

(iii) Will consider any other evidence which may show whether or not the certification is accurate and whether or not the provisions of § 21.4820(a) are met; and

(iv) May withhold approval pending

an investigation.

(3) The Director of the VA facility will notify the employer in writing of the approval or disapproval of the employer's program. If the program is disapproved, the notice will state the reasons therefor and the employer's right to seek review of the decision as provided in paragraph (c) of this section. If no review is sought, the decision of the Director of the VA facility of jurisdiction will be final.

(c) Review of a decision not to approve a program. (1) If an employer disagrees with a decision of a Director of a VA facility not to approve the program, the employer, within 60 days after receipt of notice of the decision, may ask that the decision be reviewed by the Director, Education Service.

(2) A review by the Director, Education Service, of a disapproval decision of the Director of the VA field facility will be based upon the evidence of record when the original decision not to approve a program was made. It will not be de novo in nature and no hearing will be held. The Director, Education Service, has the authority to affirm, reverse, or remand the original decision. The reviewing official's action, other than a remand, shall be the final Department decision on the issue presented.

(Authority: 38 U.S.C. 512(a))

§ 21.4823 Disapproval of entry into programs having unsatisfactory completion rates.

(a) Disapproval of payments on behalf of new participants. The Director of a VA field facility may disapprove entry into an employer's approved job training program under this subpart when the Director finds that the rate of veterans' successful completion of the job training program is disproportionately low as a result of deficiencies in the quality of the job training program.

(Authority: 106 Stat. 2765, Pub. L. 102–484, sec. 4491(a), 10 U.S.C. 1143 note)

(b) Notice: effective date of disapproval. An eligible person who has not begun a job training program to which a disapproval under paragraph (a) of this section applies, will be barred from entering that program effective on the date the employer receives the

notification provided pursuant to paragraph (e) of this section.

(Authority: 106 Stat. 2764; Pub. L. 101–484, sec. 4490(b); 10 U.S.C. 1143 note)

(c) Successful completion rate for job training programs. VA will determine whether the successful completion rate for a job training program is disproportionately low as follows.

(1) If fewer than five eligible persons either successfully completed the particular job training program or terminated that program (voluntarily or involuntarily) during the three-year period immediately preceding the calculation, VA will consider that the completion rate of the job training program is not disproportionately low unless there is strong evidence to the contrary

(2) If five or more eligible persons either successfully completed the particular job training program or terminated that program, or if the number is less than five and there is compelling evidence of deficiencies in the quality of the program that may have adversely affected the completion rate, VA will—

(i) Calculate a percentage by dividing the number of eligible persons who have successfully completed the job training program during the three-year period immediately preceding the calculation by the number of eligible persons who have either successfully completed or otherwise terminated that program during the three-year period immediately preceding the calculation;

(ii) Calculate a second percentage by dividing the number of eligible persons who have ever successfully completed any job training program approved for veterans' training under the Service Members Occupational Conversion and Training Act by the number of eligible persons who have ever either successfully completed or otherwise terminated such a job training program, and

(iii) Compare the two percentages. If the percentage determined in paragraph (c)(2)(i) of this section is less than onehalf the percentage determined in paragraph (c)(2)(ii) of this section, the successful completion rate of the job training program is disproportionately low, and shall be considered with the data described in paragraphs (b) through (d) of this section and the results of any investigation VA or the Department of Labor may conduct in determining whether the disproportionately low completion rate is a result of deficiencies in the quality of the program.

(Authority: 106 Stat. 2764, Pub. L. 102–484, sec. 4490(b), 10 U.S.C. 1143 note)