

Policy Advisory: Providing the Training Agreement for Apprenticeship (APP) and On-the-Job Training (OJT) Programs to the Department of Veterans Affairs (VA)

July 28, 2020

Purpose: Education Service (EDU) is clarifying how and when approved On-the-Job Training (OJT) and Apprenticeship (APP) program providers should comply with the regulatory and statutory requirements to provide to VA a signed copy of the training agreement (e.g., the VA Form 22-8864, Training Agreement for Apprenticeship and Other On-the-Job Training Programs, or the Department of Labor (DOL) Form ETA-671, Program Registration and Apprenticeship Agreement).

Issue: Sections 21.4261 and 21.4262 of title 38, Code of Federal Regulations (C.F.R.), and 38 U.S. Code § 3677(c) permit State Approving Agencies (SAAs) to approve an employer or training establishment's application to provide APP and OJT when, "upon investigation" by the SAA, the employer/training facility has met certain criteria. Among these criteria is that a "signed copy of the training agreement for each eligible Veteran or person, including the training program and wage schedule as approved by the State Approving Agency, [be] **provided to** the Veteran or eligible person and **the Department of Veterans Affairs and** the State Approving Agency by the employer." 38 C.F.R. § 21.4261(c)(3), 21.4262(c)(10) (emphasis added).

Questions have arisen about the necessity to provide the applicable training agreement form for OJT and APP programs when submitting the VA Form 22-1999, Instructions and Certifications for VA Enrollment Certification (hereinafter "certification") – the certification that the employer/trainer completes to report a trainee's program, length of program and continued enrollment. Currently, the primary purpose of submitting the applicable training agreement form is to ensure compliance with OJT or APP requirements, including the beneficiary's signing of the training agreement form to indicate his or her awareness of the type of training he or she will be trained in by the provider. Because there is a specific compliance oversight process for OJT and APP programs then the more appropriate juncture for VA to view the signed copy of the training agreement is during the compliance survey and not during the certification.

Discussion/Answer: An analysis of the authorizing statute and the regulations regarding the course type at issue in VA's course requirement regulations at 38 C.F.R. § 21.4250, et. seq. (specifically, § 21.4261 and 21.4262) indicates that there is no legal reason why the provision of the training agreement form needs to occur in conjunction with completing the VA Form 22-1999 certification. VA regulations at sections 21.4261(c) and 21.4262(c), and the latter's authorizing statute at 38 U.S.C. § 3677(c)(10), currently require the training agreement form be provided to the beneficiary and VA by the employer/training establishment so that it is available should an SAA investigation be warranted, but do not further specify how and when the document be provided to VA. Rather, the statutory and regulatory language indicate that the requirement to provide the training agreement form is so that VA can confirm compliance to VA statute and regulations of employers and training establishments.

Additionally, under current VA procedures, RPO staff, when provided the agreement during the course of processing OJT and APP claims, sometimes find training agreement form issues. Such issues are discrepancies or concerns with the training establishment's completion of the agreement, based on the information in the form itself or when compared to other training establishment submissions, or, a failure of the employer/training facility to timely submit the training agreement altogether. When these situations occur, under the current process, claims processing for the training benefits are delayed because completion issues and submission delays necessitate that Veterans Claims Examiners further develop the claim for clarification.

It therefore seems more sensible that VA's oversight and compliance personnel confirm that the content of training agreement complies with requirements, rather than claims processors. Moreover, the statutory and regulatory language's focus of "upon investigation" also supports the interpretation that the relevant form be provided in the course of VA's compliance and oversight work.

Therefore, to prevent processing delays and more sensibly deliver the applicable training agreement, EDU has determined that the requirement to provide the training agreement to VA will be satisfied by providing the applicable training agreement form to VA in the course of a compliance survey; ELRs and RPOs no longer need to receive the form as a prerequisite to VA's processing enrollment certification. Therefore, as of the effective date of this advisory, employers/training establishments are only required to provide a copy of the signed training agreement upon request (e.g., during a compliance survey).

Effective Date: July 28, 2020

Questions: If you have any questions, please direct them to the Education Service Policy & Regulations Team via email at POLPROC.VBACO@va.gov.