DATE: 07-18-90

CITATION: VAOPGCPREC 46-90
Vet. Aff. Op. Gen. Couns. Prec. 46-90

TEXT:

Subject: Application of 38 U.S.C. § 1775, VAR 14200, and VAR 14280

(This opinion, previously issued as General Counsel Opinion 14-76, dated April 28, 1976, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

QUESTIONS PRESENTED:

(1) Should 38 U.S.C. § 1775 be applied when approving courses offered by educational institutions which are candidates for accreditation by a nationally recognized accrediting agency?

(2) May eligible persons enrolled in independent study courses offered by a school which is a candidate for accreditation by one of the six regional accrediting agencies be paid on the basis of VAR 14280?

COMMENTS:

The pertinent portion of 38 U.S.C. § 1775 reads as follows:

"§ 1775. Approval of accredited courses

"(a) A State approving agency may approve the courses offered by an educational institution when--

"(1) such courses <u>have been accredited and approved</u> by a nationally recognized accrediting agency or association;" (Emphasis supplied.)

The pertinent portion of VAR 14253(A)(1) referred to in your memorandum reads as follows:

"14253 (s 21.4253). ACCREDITED COURSES

"(A) General. A course may be approved as an accredited course if it meets one of the following requirements:

"(1) The course has been accredited and approved by a nationally recognized

accrediting agency or association. 'Candidate for Accreditation' status is not a basis for approval of a course as accredited ..." (Emphasis supplied.)

The pertinent portion of VAR 14280 referred to in your memorandum reads as follows:

"14280 (s 21.4280). INDEPENDENT STUDY LEADING TO A STANDARD COLLEGE DEGREE

"(A) An eligible veteran or person may receive an educational assistance allowance for pursuit of an independent study course under the following conditions:

"(1) The course is offered by a college or university which is fully accredited by one of the six regional accrediting agencies;

"(2) The course leads to or is fully creditable toward a standard college degree which may include external degree programs given by accredited colleges and universities;" (Emphasis supplied.)

Under the World War II GI Bill program, State approving agencies were delegated the responsibility of listing educational institutions and training establishments as being qualified and equipped to offer education and training. Public Law 610, 81st Congress, enacted July 13, 1950, established, for the first time, national standards for certain schools operated for profit. This law provided that the findings of the State approving agency as to whether a school met the requirements of the standards would be final. During this period, a variety of attitudes were exhibited by the State in assuming the obligation created by the World War II program. In some instances, adequate funds were immediately made available; in other cases where the State had financial difficulties, little or no funds were provided, and the task of approving educational institutions and training establishments was undertaken by the regular staff of the Department of Public Instruction and other existing State agencies. This led to the law providing reimbursement by the VA to the State approving agencies for salaries and expenses of persons necessary to carry out the VA law.

The first legislative proposals presented to the Congress at the time the Korean conflict GI Bill program was being considered would have continued the system set up under the World War II program. In the introduction of H.R. 6425, 82d Congress, on February 5, 1952, by Congressman Olin E. Teague, the first provisions appeared which separated the accredited from the nonaccredited courses with the State approving agencies being given the authority to approve both types of such courses. It is noteworthy to observe that the basic language inserted in H.R. 6425 is identical to that approved in the enactment of section 253 of Public Law 550, 82d Congress, as well as that contained in current law. A proposal offered by the Administrator's Special Committee on Vocational

Rehabilitation, Education and Training, on March 25, 1952, which would have altered this approach, was not accepted. The language contained in H.R. 6425 was subsequently included in H.R. 7656, the measure which was eventually enacted as Public Law 550. The VA, in its report to the House Committee on Veterans' Affairs on May 16, 1952, on this latter bill, had the following to say:

"The system of approving courses is basically similar to that provided by the Servicemen's Readjustment Act; in that it would look to the State approving agencies primarily to discharge this important function. However, the bill contains a number of detailed minimum standards in connection with all types of courses--institutional, institutional on- farm, and apprentice or other on-job training--which the State approving agency would perforce apply in testing the qualifications of courses to provide suitable education or training to eligible veterans. In the field of purely institutional training these detailed standards would be somewhat more extensive than those which were established for profit schools under the Servicemen's Readjustment Act by Public Law 610, 81st Congress. It is of especial interest that approval on the basis of detailed statutory standards would not be required in the case of certain well-recognized and established courses. The bill contains a separate provision to the effect that an approving agency may approve institutional courses <u>which have been accredited by a nationally recognized accrediting agency or association</u>...." (Emphasis supplied.)

The House Committee on Veterans' Affairs in its report on H.R. 7656 (House Report No. 1943, 82d Congress) did not provide much in the way of legislative history, merely stating (p. 36) that section 253 of the bill "permits the approval by the State agencies of certain institutional courses which meet high established standards." Nor does the report of the Senate Committee on Labor and Public Welfare (Senate Report No. 1824, 82d Congress) contribute anything to the understanding of the provision, discussing primarily the changes being made in the measure by that group which were unrelated to this issue. Examination of the House and Senate debates also fails to disclose any new contribution to this history--merely reiteration.

The approval requirements enacted in the Korean conflict law (section 253) were carried forward into the War Orphans' Educational Assistance Act of 1956 by reference in section 312 of that Act (Public Law 634, 84th Congress) and into current law (Public Law 89-358). The House Committee on Veterans' Affairs, in its report on H.R. 12410 (House Committee Report No. 1258, 89th Congress, page 7), had the following to say:

"The educational assistance and home loan guarantee provisions of the reported bill are patterned closely after Public Law 550, 82d Congress (the Veterans' Readjustment Assistance Act of 1952) which gave these benefits to veterans of the Korean conflict. Insofar as the provisions of the reported bill are the same as Public Law 550, it is expected that they will be administered in the same manner. In addition to patterning the bill after Public Law 550, particular care has been

taken to achieve consistency between the program of educational assistance provided in the reported bill and the War Orphans Educational Assistance program (Public Law 634, 84th Cong.) in effect under chapter 35 of title 38, United States Code."

The House Committee, on page 14 of the same report, also stated:

"The system of approval of educational institutions by State approving agencies, which has proved its worth in connection with the World War II and Korean GI bills and the War Orphans' Educational Assistance Act, has been continued with respect to the new program. The committee looks to the approval function as one of the basic safeguards against abuse and therefore expects that these approval and supervisory efforts will be fully supported by the Veterans' Administration."

It is clear from the language of the statute itself that the Congress provided that State approving agencies should approve courses offered by educational institutions only when the educational institution has been fully accredited and approved by a nationally recognized accrediting agency. Therefore, until an educational institution, which is a candidate for accreditation, has been accredited, it is our view the school must continue to meet the criteria as a nonaccredited educational institution as provided in section 1776 of title 38. We believe the legislative history makes clear that at the time the language of section 1775 was enacted the Congress had in mind fully accredited institutions. It is also clear from the legislative history that the Congress, in enacting the current GI Bill program, intended that it was to be administered in the same way as the Korean conflict program, unless provided otherwise.

Candidates for accreditation have never been recognized by the VA as being fully accredited. It is axiomatic that, where a federal agency has interpreted a statute in a particular way over a number of years, the Congress is considered to have approved the interpretation given to the Federal statute by the Federal agency where the Congress has failed to enact legislation to change such an interpretation or has failed to indicate in some form a differing interpretation.

We believe it is worthy to note that, when the Middle States Association of Colleges and Secondary Schools (a nationally recognized accrediting agency) informs a school, it has been accepted as a candidate for accreditation, it tells the school that it may utilize the following statement for catalog and publicity purposes:

"Candidate for Accreditation is a status of affiliation with a regional accrediting commission which indicates that an institution has achieved initial recognition and is progressing toward but is not assured of accreditation. It has provided evidence of sound planning, seems to have the resources to implement the plans, and appears to have the potential for attaining its goals within a

reasonable time." (Emphasis supplied.)

In addition, the Office of Education, in its publication entitled "Accredited Postsecondary Institutions and Programs, 1972" states, in Appendix B (p. 185):

"Recognized Candidate for Accreditation--The classification given to a fully operative collegiate institution which, as attested to by a higher educational commission of a regional accrediting agency, appears to be offering students on at least a minimally satisfactory level the educational opportunities implied by its objectives. In the commission's view the institution's organization, structure, and staffing are acceptable for its state of development, its sponsors are committed to supplying its needs and are able to do so, its governing board is functioning properly, and its academic and financial plans are well designed. Candidacy is not accreditation. It indicates that an institution is progressing steadily and properly toward accreditation but does not assure or even imply eventual accreditation." (Emphasis supplied.)

We believe that this makes it clear that a school which has been recognized as a candidate for accreditation is not assured of reaching its final goal of accreditation but is merely progressing toward such a goal.

HELD:

(1) Section 1775 of title 38 should not be applied to educational institutions which are candidates for accreditation until such time as they are fully accredited.

(2) Eligible persons enrolled in independent study courses offered by a school which is a candidate for accreditation may not be paid on the basis of VAR 14280 until the institution is fully accredited.

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