

August 30, 2018

Advisory: Acceptance of Certifications by Other Appropriately Authorized Agencies or Offices that Applicable Standards Have Been Met.

Purpose: To provide guidance to State Approving Agencies (SAAs) on the acceptance of certifications issued by other agencies or offices duly authorized, appointed or designated by state or Federal law or regulations as the agency or office responsible for certifying compliance with applicable laws, regulations, or non-governmental standards. This guidance is being provided in order to ensure the consistent application of GI Bill approval requirements and to improve the efficiency of the approval process by conserving resources.

Background and Discussion: There are numerous provisions of title 38, United States Code, and title 38, Code of Federal Regulations, that require educational institutions or specific programs of education to satisfy criteria established and/or adjudicated by an entity other than the Department of Veterans Affairs (VA) or the State Approving Agency. Examples of such provisions include the following:

- 38 U.S.C. § 3452(b)(f) -- the term “institution of higher learning” means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree;
- 38 U.S.C. § 3675(a)(1)(A) -- ...such courses have been accredited and approved by a nationally recognized accrediting agency or association;
- 38 U.S.C. § 3676(c)(14)(A) – in the case of a course designed to prepare an individual for licensure or certification in a State, the course meets all instructional curriculum licensure or certification requirements of such State;
- 38 U.S.C. § 3676(c)(14)(B) -- in the case of a course designed to prepare an individual for licensure to practice law in a State, is accredited by an accrediting agency or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b);
- 38 U.S.C. § 3676(c)(15)(A) -- in the case of a course designed to prepare an individual for employment pursuant to standards developed by a board or agency of a State in an occupation that requires approval, licensure, or certification, the course meets such standards;
- 38 U.S.C. § 3676(c)(15)(B) -- in the case of a course designed to prepare an individual for licensure to practice law in a State, is accredited by an accrediting

agency or association recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965 (20 U.S.C. 1099b);

- 38 C.F.R. § 21.4251(d)(1) -- VA will consider...that a proprietary educational institution...will be deemed to have been operating for 2 years when the educational institution...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;
- 38 C.F.R. § 21.4263(b)(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;

In many, if not all, of the situations above, there exists an agency or office (either Federal, state or non-governmental) outside of the SAA which is duly authorized, appointed or designated by state or Federal law or regulations as the agency or office responsible for certifying compliance with the applicable laws, regulations, or non-governmental standards. For example, most states have a licensure board specifically designated as the state entity responsible for certifying whether a program meets “such standards” as required in § 3676(c)(14) and (15). Likewise, accrediting agencies or associations are explicitly recognized by the Secretary of Education under subpart 2 of part H of title IV of the Higher Education Act of 1965, as the sole entities capable for determining whether a program “has been accredited” as required by § 3675(a)(1)(A). In addition, many states’ laws require certain educational institutions to be licensed in order to operate within the borders of the state. In those instances, state law or regulations generally designate a specific state agency or office to be the agency or office responsible for ensuring that these educational institutions meet certain state law or regulatory requirements before issuing the required licenses.

In all instances where an agency or office (either Federal, state or non-governmental) outside of the SAA has been duly authorized, appointed or designated by state or Federal law or regulations as the agency or office responsible for certifying compliance with applicable laws, regulations, or non-governmental standards, those offices have already expended resources to ensure compliance with the standards. Therefore, it is inefficient and a waste of VA resources for a SAA to repeat their work and expend further resources in an attempt to confirm or overrule their determinations. Furthermore, these agencies and offices are presumed to be the authoritative experts on these requirements, and the same cannot be presumed of the SAA. Consequently, it seems illogical for a SAA to assume the roles and responsibility of these agencies and offices in an effort to overrule their adjudicatory findings. Finally, given that fact that the Federal or a state government has already determined that such agencies or offices are competent

and capable of ensuring compliance, VA likewise has confidence in their abilities to ensure compliance.

Given all of these factors, it is VA's opinion that SAAs should accept the determinations made (and licenses, certifications, etc., issued) by such other agencies or offices duly authorized, appointed or designated by state or Federal laws or regulations to be the agency or office responsible for certifying compliance with applicable laws, regulations, or non-governmental standards.

Actions Required: SAAs should discontinue current practices of re-adjudicating certification (including, but not limited to: certifications; business licenses; licenses, approvals, or authorizations to operate; accreditation; authorization to provide post-secondary education; authorization to confer degrees, etc.) issued by an agency or office duly authorized, appointed or designated by state or Federal laws or regulations as the agency or office responsible for certifying compliance with applicable laws, regulations, or non-governmental standards.

Questions: If you have any questions, please direct them to the Compliance and Liaison Team at 223B.VBAVACO@va.gov.

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