

Act does not specifically provide for a withdrawal of program approval, withdrawal of approval is implicit in the law. Since program approval is predicated upon the employer's meeting certain approval requirements, it clearly follows that such approval cannot be maintained if the approval requirements for the employer's program were not or are not met.

Continued compliance with approval requirements is required. For example, one requirement is that there be enough space available to train the trainees. It is conceivable that, after having obtained approval, the employer may move to a new place of business where space is inadequate, thus bringing the employer into noncompliance.

Similarly, VA may discover that an employer's certification was false. For example, an employer may falsely certify that there are sufficient instructor personnel available to train the trainees. Compliance monitoring may reveal that this is not the case. In that event approval should be withdrawn. To continue approval would make meaningless the compliance monitoring provided for in the law.

The Service Members Occupational Conversion and Training Act (sec. 4487(a)(2)) and § 21.4822(a)(3)(xv) provide that employers may be paid monthly if being paid quarterly would be burdensome. Section 21.4832(a) provides for monthly payments if the employer has less than 75 employees and wants to be paid monthly.

As noted above, VA has had experience administering a similar Act, the Veterans' Job Training Act, which had a similar provision, and the department found that the burden was related to the number of employees the employer had, because of the need of these employers to maintain their cash flow. VA believes from its administrative experience that employers with fewer than 75 employees may well find it burdensome to be paid quarterly.

The Service Members Occupational Conversion and Training Act provides that no periodic payment may be made to an employer until the veteran certifies that he or she was employed full time in the training program during the period to be certified, and the employer confirms the certification and states the number of hours the employee worked. However, § 21.4832(a)(3) provides for an exception for the employee's certification if the employee quit or died during the payment period or is similarly unavailable to make the certification. VA does not believe it equitable to withhold a payment which would otherwise be due an employer if

circumstances beyond the employer's control make it difficult or impossible for the employer to obtain the certification, particularly if the employee refuses to cooperate.

Similarly, the Service Members Occupational Conversion and Training Act forbids reimbursement of an employer for expenses for tools and other work-related materials until the employer and the employee certify the need for the tools and work-related materials, that the veteran bought them, and that the employer reimbursed the veteran for them. Section 21.4832(c) contains two provisions not made explicit in the Act. First, it provides for payment in certain circumstances if the employee is unavailable to make the certification. Again VA does not believe it is equitable to withhold payment to which an employer otherwise would be entitled, if the employee is unavailable to make the certification.

Second, the regulation requires the employer and veteran to submit a copy of the receipt or other proof of purchase and cost which the employer used to determine the amount for which the veteran was reimbursed. Although not expressly required by the Service Members Occupational Conversion and Training Act, VA believes that its successful monitoring of this program requires documentation for this certification.

Section 21.4832(d)(2) provides that if the employer reduces a trainee's pay below that of his or her starting wage, reimbursement will be made to the employer on the basis of the new lower wage rather than on the basis of the starting wage. This is not stated specifically in the Service Members Occupational Conversion and Training Act but it is implicit in the law.

Occasionally, a trainee begins job training at a project where the Davis-Bacon Act applies. The Davis-Bacon Act provides a two-tier system of wages, a journeyman wage and a training wage, both of which may be higher than the starting wage which the employer usually pays employees. When the project is completed, the trainee may revert to the usual starting wage. Section 21.4802(j) defines normal starting wage in such a way that reimbursement to the employer in this situation would be based on the Davis-Bacon training wage while such a wage was being paid to the eligible person and would be based on the usual starting wage when the eligible person's training wage was not governed by that Act.

VA believes paying the employer at the Davis-Bacon training wage rate even though the employer may be paying the journeyman rate is implicit in the law.

The Service Members Occupational Conversion and Training Act provides that job training programs approved under 38 U.S.C. chapter 36 will be considered to meet the approval requirements of the Act. These programs require a graduated wage scale. VA has always considered that someone who has reached the journeyman wage rate may not be considered to be a trainee entitled to educational assistance for training.

The Service Members Occupational Conversion and Training Act requires that employers keep records adequate to show the progress of the veteran and make these records available to authorized representatives of the government. However, that Act does not state the length of time the records must be kept. Section 21.4850(b) would require the employer to keep those records for 3 years following the last month or quarter for which the employer received payment on behalf of the veteran.

Another record retention period could be adopted. However, VA believes that given the limited resources for program oversight, a period of less than 3 years will make it difficult to monitor compliance effectively. On the other hand, the department realizes that retention of records for an indefinite time may well be unduly costly for the employer. Accordingly, the interim rule requires a 3-year retention as a compromise between VA's need to properly monitor compliance and the need to minimize expenses for the employer.

Section 21.4832(b) would allow VA to pay an employer a lump-sum incentive payment after the trainee had worked full-time for 4 months in the job for which the training program was designed to provide training or in a related job. A related job is defined in § 21.4820(m) as one which is found in the Dictionary of Occupational Titles as being in the same occupational work group.

In permitting payment for employment in a related job, VA is reacting to concerns that in some instances a trainee may be promoted before the four months have expired or changing business conditions may force an employer to place the eligible person in a related job. VA believes that this is tantamount to placing the eligible person in the job for which the training program is designed to provide training. The employer should not be placed in a position of losing the payment for essentially carrying out the purpose of the Service Members Occupational Conversion and Training Act. Neither should the eligible person be placed in