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Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 90

Covering period of *Federal Register* issues
through September 1, 2016

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Code of Federal Regulations

Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 90

5 September 2016

Covering the period of Federal Register issues
through September 1, 2016

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3. After filing, enter the relevant information on the Supplement Filing Record sheet (page G-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
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FILING INSTRUCTIONS

**Book G, Supplement No. 90
September 1, 2016**

*Remove these
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G-15 to G-20

G-15 to G-20

Book G Lead
Material

(none)

21.440-1 to 21.449-2
(following 21.430-2)

§§21.440 through
21.449

**Be sure to complete the
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HIGHLIGHTS

Book G, Supplement No. 90 September 1, 2016

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book G (*Rehabilitation and Education*) was originally supplemented six times a year, in February, April, June, August, October, and December. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 10 August 2016, the VA published an interim final rule effective that same day, to establish a grant program (Veterans Employment Pay for Success (VEPFS)) under the authority of the U.S.C. to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. VA will award grants on the basis of an eligible entity's proposed use of a Pay for Success (PFS) strategy to achieve goals. This interim final rule establishes regulations for awarding a VEPFS grant, including the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program. Changes:

- Added Sections 21.440 through 21.449



21.362 Satisfactory conduct and cooperation 21.362-1
 21.364 Unsatisfactory conduct and cooperation 21.364-1

Interregional and intraregional travel of veterans

21.370 Intraregional travel at government expense 21.370-1
 21.372 Interregional transfer at government expense 21.372-1
 21.374 Authorization for travel of attendants 21.374-1
 21.376 Travel expenses for initial evaluation and counseling 21.376-1

Personnel training and development

21.380 Establishment of qualifications for personnel
 providing assistance under Chapter 31 21.380-1
 21.382 Training and staff development for personnel
 providing assistance under Chapter 31 21.382-1

Rehabilitation research and special projects

21.390 Rehabilitation research and special projects 21.390-1

Veterans Advisory Committee on Rehabilitation

21.400 Veterans’ Advisory Committee on Rehabilitation 21.400-1
 21.402 Responsibilities of the Veterans’ Advisory Committee
 on Rehabilitation 21.402-1

Additional administrative consideration

21.410 Delegation of authority 21.410-1
 21.412 Finality of decisions 21.412-1
 21.414 Revision of decision 21.414-1

Informing the veteran

21.420 Informing the veteran 21-420-1
 21.422 Reduction in subsistence allowance following
 loss of a dependent 21.422-1

Accountability

21.430 Accountability for authorization and payment of training
 and rehabilitation services 21.430-1

Veterans Employment Pay for Success Grant Program

21.440	Purpose and scope.....	21-440-1
21.441	Definitions.....	21-441-1
21.442	VEPFS grants--general	21-442-1
21.443	Permissible uses of VEPFS grant funds.....	21-443-1
21.444	Notice of funding availability	21-444-1
21.445	Application.....	21-445-1
21.446	Scoring and selection	21-446-1
21.447	VEPFS grant agreement.....	21-447-1
21.448	Recipient reporting requirements.....	21-448-1
21.449	Recovery of funds	21-449-1

Subpart B—Claims and Applications for Educational Assistance

Claims

21.1029	Definitions.....	21.1029-1
21.1030	Claims	21.1030-1
21.1031	VA responsibilities when a claim is filed	21.1031-1
21.1032	VA has a duty to assist claimants in obtaining evidence	21.1032-1
21.1033	Time limits	21.1033-1
21.1034	Appeals	21.1034-1

**Subpart C—Survivors’ and Dependents’ Educational Assistance
Under 38 U.S.C. Chapter 35**

21.3001	Delegation of authority.....	21.3001-1
21.3002	Administration of Survivors’ and Dependents’ Educational Assistance Program	21.3002-1

General

21.3020	Educational assistance	21.3020-1
21.3021	Definitions	21.3021-1
21.3022	Nonduplication—programs administered by VA.....	21.3022-1
21.3023	Nonduplication; pension, compensation, and dependency and indemnity compensation	21.3023-1
21.3024	Nonduplication; Federal Employees’ Compensation Act	21.3024-1
21.3025	Nonduplication; Federal programs	21.3025-1

Claims

21.3030	Claims.....	21.3030-1
---------	-------------	-----------

Eligibility and entitlement

21.3040	Eligibility; child.....	21.3040-1
21.3041	Periods of eligibility; child	21.3041-1

21.3042	Service with Armed Forces	21.3042-1
21.3043	Suspension of program; child	21.3043-1
21.3044	Entitlement.....	21.3044-1
21.3045	Entitlement charges	21.3045-1
21.3046	Periods of eligibility; spouses and surviving spouses.....	21.3046-1
21.3047	Extended period of eligibility due to physical or mental disability	21.3047-1

Counseling

21.3100	Counseling.....	21.3100-1
21.3102	Required counseling	21.3102-1
21.3103	Failure to cooperate	21.3103-1
21.3104	Special training	21.3104-1
21.3105	Travel expenses	21.3105-1

Payments

21.3130	Educational assistance	21.3130-1
21.3131	Rates—educational assistance allowance—38 U.S.C. chapter 35	21.3131-1
21.3132	Reductions in Survivors’ and Dependents’ educational assistance.....	21.3132-1
21.3133	Payment procedures.....	21.3133-1
21.3135	Reduction or discontinuance dates for awards of educational assistance allowance.....	21.3135-1

Special restorative training

21.3300	Special restorative training	21.3300-1
21.3301	Need.....	21.3301-1
21.3302	Agreements.....	21.3302-1
21.3303	Extent of training	21.3303-1
21.3304	Assistance during training	21.3304-1
21.3305	“Interrupted” status	21.3305-1
21.3306	Reentrance after interruption	21.3306-1
21.3307	“Discontinued” status	21.3307-1

Payments; special restorative training

21.3330	Payments.....	21.3330-1
21.3331	Commencing date	21.3331-1
21.3332	Discontinuance dates	21.3332-1
21.3333	Rates	21.3333-1

Special assistance and training

21.3344	Special assistance for the educationally disadvantaged.....	21.3330-1
---------	---	-----------

Subpart D—Administration of Educational Assistance Programs

Administrative

21.4001	Delegations of authority.....	21.4001-1
21.4002	Finality of decisions.....	21.4002-1
21.4003	Revision of decisions.....	21.4003-1
21.4005	Conflicting interests.....	21.4005-1
21.4006	False or misleading statements	21.4006-1
21.4007	Forfeiture	21.4007-1
21.4008	Prevention of overpayments	21.4008-1
21.4009	Waiver or recovery of overpayments.....	21.4009-1

General

21.4020	Two or more programs	21.4020-1
21.4022	Nonduplication—programs administered by VA.....	21.4022-1

Payments; educational assistance allowance

21.4131	Commencing dates	21.4131-1
21.4135	Discontinuance dates	21.4135-1
21.4136	Withdrawals or nonpunitive grades may result in nonpayment.....	21.4136-1
21.4137	Rates; educational assistance allowance; 38 U.S.C. Chapter 35	21.4137-1
21.4138	Certifications and release of payments	21.4138-1
21.4145	Work-study allowance	21.4145-1
21.4146	Assignments of benefits prohibited	21.4146-1

State approving agencies

21.4150	Designation.....	21.4150-1
21.4151	Cooperation	21.4151-1
21.4152	Control by agencies of the United States.....	21.4152-1
21.4153	Reimbursement of expenses	21.4153-1
21.4154	Report of activities.....	21.4154-1
21.4155	Evaluations of State approving agency performance.....	21.4155-1

Schools

21.4200	Definitions	21.4200-1
21.4201	Restrictions on enrollment; percentage of students receiving financial support	21.4201-1
21.4202	Overcharges; restrictions on enrollments	21.4202-1
21.4203	Reports—requirements	21.4203-1
21.4204	Periodic certifications	21.4204-1
21.4206	Reporting fee	21.4206-1
21.4209	Examination of records.....	21.4209-1
21.4210	Suspension and discontinuance of educational assistance	

	payments, and of enrollments or reenrollments for pursuit of approved courses	21.4210-1
21.4211	Composition, jurisdiction, and duties of Committee on Educational Allowances	21.4211-1
21.4212	Referral to Committee on Educational Allowances	21.4212-1
21.4213	Notice of hearing by Committee on Educational Allowances.....	21.4213-1
21.4214	Hearing rules and procedures for Committee on Educational Allowances	21.4214-1
21.4215	Decision of Director of VA Regional Processing Office of jurisdiction....	21.4215-1
21.4216	Review of decision of Director of VA Regional Processing Office of jurisdiction.....	21.4216-1

Programs of education

21.4231	Educational plan—38 U.S.C. Chapter 35—child.....	21.4231-1
21.4232	Specialized vocational training—38 U.S.C. Chapter 35	21.4232-1
21.4233	Combination	21.4233-1
21.4234	Change of program	21.4234-1
21.4235	Programs of education that include flight training	21.4235-1
21.4236	Tutorial assistance	21.4236-1

Courses

21.4250	Course and licensing and certification test approval; jurisdiction and notices.....	21.4250-1
21.4251	Period of operation of course.....	21.4251-1
21.4252	Courses precluded; erroneous, deceptive, or misleading practices	21.4252-1
21.4253	Accredited courses.....	21.4253-1
21.4254	Nonaccredited courses	21.4254-1
21.4255	Refund policy; nonaccredited courses	21.4255-1
21.4256	Correspondence programs and courses.....	21.4256-1
21.4257	Cooperative courses.....	21.4257-1
21.4258	Notice of approval	21.4258-1
21.4259	Suspension or disapproval	21.4259-1
21.4260	Courses in foreign countries	21.4260-1
21.4261	Apprentice courses.....	21.4261-1
21.4262	Other training on-the-job courses	21.4262-1
21.4263	Approval of flight training courses.....	21.4263-1
21.4264	Farm cooperative courses	21.4264-1
21.4265	Practical training approved as institutional training or on-job training.....	21.4265-1
21.4266	Approval of courses at a branch campus or extension	21.4266-1
21.4267	Approval of independent study.....	21.4267-1
21.4268	Approval of licensing and certification tests	21.4268-1

Assessment and pursuit of courses

21.4270	Measurement of courses	21.4270-1
21.4271	[Reserved]	
21.4272	Collegiate course measurement	21.4272-1

G-20

21.4273	Collegiate graduate	21.4273-1
21.4274	Law courses	21.4274-1
21.4275	Practical training courses; measurement	21.4275-1
21.4277	Discontinuance: unsatisfactory progress, conduct and attendance	21.4277-1
21.4278	Reentrance after discontinuance	21.4278-1
21.4279	Combination correspondence-residence program	21.4279-1
21.4280	[Reserved]	

Subpart E—[Removed]

Subpart F—Education loans

21.4500	Definitions	21.4500-1
21.4501	Eligibility	21.4501-1
21.4502	Applications.....	21.4502-1
21.4503	Determination of loan amount	21.4503-1
21.4504	Promissory note	21.4504-1
21.4505	Check delivery	21.4505-1
21.4507	Advertising	21.4507-1

Subpart F-1—[Removed]

Subpart F-2 — [Removed]

Subpart F-3 — [Removed]

Subpart G—Post-Vietnam Era Veterans’ Educational Assistance Under 38 U.S.C. Chapter 32

Administrative

21.5001	Administration of benefits: 38 U.S.C. Chapter 32	21.5001-1
---------	--	-----------

General

21.5020	Post-Vietnam era veterans’ educational assistance	21.5020-1
21.5021	Definitions	21.5021-1
21.5022	Eligibility under more than one program.....	21.5022-1
21.5023	Nonduplication; Federal programs	21.5023-1

Claims and applications

21.5030	Applications, claims, and time limits	21.5030-1
---------	---	-----------

Eligibility

21.5040	Basic eligibility.....	21.5040-1
21.5041	Periods of entitlement.....	21.5041-1
21.5042	Extended period of eligibility	21.5042-1

Participation

21.5050	Application requirements for participation.....	21.5050-1
21.5052	Contribution requirements	21.5052-1

Veterans Employment Pay for Success Grant Program

Authority: 38 U.S.C. 501(a), ch. 18, 31, and as noted in specific sections.

21.440	Purpose and scope.....	21.440-1
21.441	Definitions.	21.441-1
21.442	VEPFS grants—general.....	21.442-1
21.443	Permissible uses of VEPFS grant funds.....	21.443-1
21.444	Notice of funding availability.....	21.444-1
21.445	Application.....	21.445-1
21.446	Scoring and selection.....	21.446-1
21.447	VEPFS grant agreement.....	21.447-1
21.448	Recipient reporting requirements.....	21.448-1
21.449	Recovery of funds.....	21.449-1

§21.440 Purpose and scope.

Sections 21.440 through 21.449 establish and implement the Veterans Employment Pay for Success (VEPFS) grant program, which provides grants to eligible entities to fund outcomes payments for projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. These sections apply only to the administration of the VEPFS grant program, unless specifically provided otherwise. (Authority: 38 U.S.C. 501(d), 3119)

[81 FR 52775, July 11, 2016]

Supplement *Highlights* Reference: 90(1)

§21.441 Definitions.

For the purposes of §§21.440 through 21.449, and any Notices of Funding Availability (NOFA) issued pursuant to §§21.440 through 21.449, the following definitions apply:

Applicant is an eligible entity that submits an application for a VEPFS grant announced in a NOFA.

Eligible entity is a public or nonprofit agency, to include institutions of higher learning.

Employment outcome is the employment or earnings of a participant in the intervention or control group member after the service period. Improving employment outcomes means creating positive impact in terms of these outcomes, where the results for individuals that receive the intervention are better than the results for a valid control group that did not receive the intervention.

Intervention is a service or technology that is provided to individuals and is intended to achieve certain results.

Outcomes payments are funds that are paid to an investor or service provider and that are released only for the achievement of outcomes, as compared to those of a control group, that meet target levels that have been agreed to in advance of the provision of intervention (i.e., if positive impact has been created by the intervention in terms of these outcomes). When investors have provided the upfront capital for the project, these payments generally cover repayment of the principal investment and provide a modest return on investment for any associated risks of paying for the intervention upfront.

Pay for Success (PFS) agreement is a multi-party agreement to deliver an innovative or evidence-based intervention intended to improve outcomes for a targeted population signed by the entities that constitute the project partnership.

Project partnership is a collaboration among entities that negotiate an agreement and execute a project to improve employment outcomes for Veterans with service-connected disabilities. The entities that may be involved in a project partnership include:

- (1) (i) *Outcomes payor*. Entity that receives a VEPFS grant and pays for outcomes of services that meet target levels that have been agreed to in advance of the provision of the intervention.

-
- (ii) *Project coordinator*. Facilitates, coordinates, and executes a PFS agreement to improve employment outcomes for Veterans with service-connected disabilities. With respect to other PFS projects, project coordinators are sometimes referred to as intermediaries.

-
-
- (iii) *Evaluator*. Independent entity that determines the impact of the services provided, including whether the services have resulted in employment outcomes that meet target levels that have been agreed to in advance of the provision of the intervention.

(iv) *Investor*. Person or entity that provides upfront capital to cover costs of providing services/delivering an intervention and other associated costs before a determination has been made as to whether certain employment outcomes have been achieved at pre-set target levels.

(v) *Service provider*. Entity that delivers an intervention designed to achieve improved employment outcomes for Veterans with service-connected disabilities.

(2) A full project partnership is a project partnership that includes an outcomes payor, evaluator, investor (if the PFS agreement involves PFS financing), and service provider. A partial project partnership includes an outcomes payor and at least one of the following: Evaluator, investor (if the PFS agreement involves PFS financing), or service provider.

Recipient is the entity that receives a VEPFS grant under §§21.440 through 21.449. The recipient is also the outcomes payor.

Secretary refers to the Secretary of Veterans Affairs.

Service-connected disability is a disability that is "service-connected" as defined in 38 CFR 3.1.

Social finance strategy is a method for securing financial resources using an investment approach that focuses on achieving positive social and/or environmental impact with some form of financial return.

Strong evidence constitutes results from previous studies, the designs of which can support causal conclusions (i.e., studies with high internal validity), that include enough of the range of participants and settings to support scaling up to the state, regional, or national level (i.e., studies with high external validity).

Veteran has the same definition as provided in 38 CFR 3.1.

Veterans Employment Pay for Success (VEPFS) agreement is a PFS agreement to deliver an innovative, evidence-based intervention intended to improve Veteran employment outcomes.

Veterans Employment Pay for Success (VEPFS) project is a project with a strategy for delivering a service with a goal to significantly improve a current condition with respect to unemployment of a target Veteran population and sufficient evidence to support the theory behind the project using a financial model that includes cost savings by funding the project only if it is successful.

Work-plan is a document that articulates tasks and milestones with regard to a particular project.

(Authority: 38 U.S.C. 3119)

[81 FR 52775, July 11, 2016]

Supplement *Highlights Reference*: 90(1)

§21.442 VEPFS grants--general.

- (a) VA may award a VEPFS grant only to an eligible entity selected under §21.446.
- (b) The amount of Federal funding available to be awarded in a VEPFS grant will be specified in the NOFA.
- (c) A VEPFS grant will be awarded for a minimum of 5 years and a pre-determined maximum number of years, beginning on the date on which the VEPFS grant is awarded, with the availability of no-cost extensions.
- (d) As a condition of receiving a VEPFS grant, a recipient will be required to provide matching funds from non-Federal sources equal to or greater than the amount of Federal grant funds awarded, to be combined with the amount of Federal grant funds awarded and used as specified in §21.443.
- (e) A VEPFS grant award is not a Veterans' benefit. Decisions of the Secretary are final and not subject to the same appeal rights as decisions related to Veterans' benefits. (Authority: 38 U.S.C. 3119)

[81 FR 52776, July 11, 2016]

Supplement *Highlights* Reference: 90(1)

§21.443 Permissible uses of VEPFS grant funds.

(a) VEPFS grant funds may be used only to fund outcomes payments if an intervention achieves outcomes at a pre-set target level that has been agreed to in a PFS agreement before service delivery begins for a PFS project with a goal to improve employment outcomes for Veterans with service-connected disabilities.

(b) To pay for the indirect costs of administering a grant, regardless of whether an intervention achieves outcomes at a pre-set target level, a recipient may:

(1) Use a Federally approved indirect cost rate (a rate already negotiated with the Federal Government);

(2) Use a 10% de minimis rate of modified total direct costs;

(3) Negotiate an indirect cost rate for the first time; or

(4) Claim certain costs directly following 2 CFR 200.413.

(Authority: 38 U.S.C. 3119, 2 CFR 200.414)

[81 FR 52776, July 11, 2016]

Supplement *Highlights* Reference: 90(1)

§21.444 Notice of funding availability.

When funds are available for a VEPFS grant, VA will publish a NOFA in the *Federal Register* and on [Grants.gov](http://www.grants.gov) (<http://www.grants.gov>). The NOFA will identify:

- (a) The location for obtaining grant applications and the specific forms that will be required;
- (b) The date, time, and place for submitting completed grant applications;
- (c) The total amount and type of funds available and the maximum amount available to a single applicant;
- (d) Information regarding eligibility and the scoring process;
- (e) Any timeframes and manner for payments under the grant; and
- (f) Other information necessary for the VEPFS grant application process, as determined by VA, including contact information for the VA office that will oversee the VEPFS grant.

(Authority: 38 U.S.C. 501(d), 3119)

[81 FR 52776, July 11, 2016]

Supplement *Highlights Reference*: 90(1)

§21.445 Application.

To apply for a VEPFS grant, eligible entities must submit to VA a complete application package in accordance with the instructions in the NOFA and include the forms specified in the NOFA. Applications will be accepted only through [Grants.gov](http://www.grants.gov) (<http://www.grants.gov>). A complete grant application package, as further described in the NOFA, includes standard forms specified in the NOFA and the following:

(a) Project description, including a description of the intervention, the Veteran population to be served, and anticipated employment outcomes;

(b) Description of anticipated project partnership(s), including the responsibilities of each of the partner entities, the experience of any involved entities with serving Veteran populations, and other qualifications of the involved entities that may be relevant in carrying out responsibilities of the project partnership. In procuring partners such as the project coordinator and investor, procurement standards set forth in 2 CFR 200.317 through 200.326 must be followed;

(c) A work plan, including a budget and timelines;

(d) Description of applicant's expertise or experience with PFS or other social finance strategies or experience administering programs that serve Veterans with disabilities;

(e) Documentation of applicant's ability and capacity to administer the project;

(f) Proof of matching funds already secured, ability to secure matching funds, or commitments received; and

(g) Any additional information as deemed appropriate by VA and set forth in the NOFA.

(Authority: 38 U.S.C. 3119)

[81 FR 52777, July 11, 2016]

Supplement *Highlights* Reference: 90(1)

§21.446 Scoring and selection.

(a) *Scoring.* VA will score only complete applications received from eligible entities by the deadline established in the NOFA. VA will score applications using the following criteria:

(1) *Project description.* Applicant identifies and describes an intervention that is designed to improve employment outcomes for Veterans with service-connected disabilities through a PFS agreement and demonstrates with strong evidence the ability of the intervention to meet objectives. Project description should explain and justify the need for the intervention, and include concept, size and scope of the project, and the Veteran population to be served.

(2) *Project partnership.* Applicant provides a description of the partnership and the level of partnership (full, partial, or none) attained at the time of application.

(3) *Work plan and budget.* Applicant provides a work plan that describes in detail the timeline for the tasks outlined in the project description and proposed milestones. Applicant provides a budget that specifies amount of outcome payments and indirect and other relevant costs.

(4) *Expertise and capacity.* Applicant provides evidence of its past experience with PFS or other social finance strategies or experience administering programs that serve Veterans with disabilities, and of its ability and capacity to successfully administer the project.

(5) *Match.* Applicant provides evidence of secured cash matching (1:1) funds or of its ability to secure or commitments to receive such funds.

(b) *Selection of recipients.* All complete applications from eligible entities will be scored using the criteria in paragraph (a) of this section and ranked in order from highest to lowest total score. NOFA announcements may also clarify the selection criteria in paragraph (a). The relative weight (point value) for each selection criterion will be specified in the NOFA. Point values will be assigned according to the criterion's importance in ensuring the successful development and implementation of a VEPFS project. VA will award any VEPFS grant on the primary basis of scores but will also consider a risk assessment evaluation.

(Authority: 38 U.S.C. 3119)

[81 FR 52777, July 11, 2016]

Supplement *Highlights Reference:* 90(1)

§21.447 VEPFS grant agreement.

After an applicant is selected to receive a VEPFS grant in accordance with §21.446, VA will draft a grant agreement to be executed by VA and the applicant. Upon execution of the VEPFS grant agreement, VA will obligate grant funds to cover the amount of the approved grant, subject to the availability of funding. The VEPFS grant agreement will provide that the recipient agrees, and will ensure that each subcontractor (if applicable) agrees, to:

(a) Operate the program in accordance with the provisions of §§21.440 through 21.449, 2 CFR part 200, and the applicant's VEPFS grant application;

(b) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish in the Terms and Conditions of the grant agreement for purposes of carrying out the VEPFS program in an effective and efficient manner; and

(c) Provide additional information that VA requests with respect to:

(1) Program effectiveness, as defined in the Terms and Conditions of the grant agreement;

(2) Compliance with the Terms and Conditions of the grant agreement; and

(3) Criteria for evaluation, as defined in the Terms and Conditions of the grant agreement.

(Authority: 38 U.S.C. 501(d), 3119)

[81 FR 52777, July 11, 2016]

Supplement *Highlights Reference*: 90(1)

§21.448 Recipient reporting requirements.

(a) Recipients must submit to VA a quarterly report 30 days after the close of each Federal fiscal quarter of the grant period. The report must include the following information:

- (1) A detailed record of the time involved and resources expended administering the VEPFS program.
- (2) The number of Veterans served, including demographics of this population.
- (3) The types of employment assistance provided.
- (4) A full accounting of VEPFS grant funds used or unused during the quarter.
- (5) A comparison of accomplishments related to the objectives of the award.
- (6) An explanation for any goals not met.
- (7) An analysis and explanation for any cost overruns.

(b) VA may request additional reports in the Terms and Conditions of the grant agreement if necessary to allow VA to fully and effectively assess program accountability and effectiveness.

(Authority: 38 U.S.C. 501(d), 3119, 2 CFR 200.327-200.328)

[81 FR 52777, July 11, 2016]

Supplement *Highlights* Reference: 90(1)

§21.449 Recovery of funds.

If a recipient fails to comply with any Federal statutes or regulations or the terms and conditions of an award made under §§21.440 through 21.449, VA may impose additional conditions as specified in 2 CFR 200.207 or, if non-compliance cannot be remedied, take any appropriate actions specified in 2 CFR part 200 as remedies for non-compliance.

(Authority: 38 U.S.C. 501(d), 3119, 2 CFR 200.338 through 200.342)

[81 FR 52777, July 11, 2016]

Supplement *Highlights* Reference: 90(1)

[Reserved]