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B-56585 May 1, 1946

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Administrator of Veterans' Affairs, Veterans' Administration.

My dear General Bradley:

There has been considered your letter of March 15, 1946, requesting decision as to whether advance payments of tuition and other allowable charges may be made by the Veterans' Administration to educational institutions for vocational training authorized by the act of March 24, 1943 (Public Law No. 16, 78th Congress), 57 Stat. 43, and for education or training authorized by the Serviceman's Readjustment Act of 1944 (Public Law No. 346, 78th Congress), 58 Stat. 284, notwithstanding the provisions of section 3648, Revised Statutes, which provides, in pertinent part, as follows:

"No advance of public moneys shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment. * * *"

You state that the requirement of schools, colleges and universities that tuition for the ensuring semester be paid in advance at the beginning of the semester is a practice almost universally followed and of long standing. Owing to the large number of veterans enrolled for vocational rehabilitation under part VII of the act of March 24, 1943, as amended, and for education or training under part VIII, Title II of the Servicemen's Readjustment Act of 1944, as amended, you report that the established practice of making payments in arrears to certain educational institutions has imposed a financial burden upon them of such proportions as to create serious hardship. You make reference to paragraph 5, part VIII, Title II, of the Serviceman's Readjustment Act of 1944, which in pertinent part, provides:

"The Administrator shall pay to the educational or training institution for each person enrolled in full time or part time course of education or training, the customary cost of tuition * * * and other similar fees as are customarily charged, and may pay for books, supplies, equipment, and other necessary expenses * * * as are generally required for the successful pursuit and completion of the course by other students in the institution * * *."

In view of the language of the statute just quoted and the practice generally followed by educational institutions requiring tuition payments in advance, it appears to be your view that the Congress intended to confer authority upon the

Veterans' Administration to make payments in advance for tuition and other proper charges in those cases where payment in advance is required by law, by regulation, or by the general prevailing practice.

Section 1500 of the Serviceman's Readjustment Act of 1944, in part, provides:

"* * * For the purpose of carrying out any of the provisions of Public, Numbered 2, as amended, and this Act, the Administrator shall have authority to accept uncompensated services, and to enter into contracts or agreements with private or public agencies, or persons, for necessary services, including personal services, as he may deem practicable."

Section 3 of the act of March 24, 1943 (Public Law No. 16), as amended, provides:

"The appropriations for the Veterans' Administration, 'Salaries and expenses, medical and hospital, and compensation and pensions', shall be available for necessary expenses, under part VII as amended, or part VIII of Veterans Regulation Numbered 1(a), and there is hereby authorized to be appropriated such additional amount or amounts as may be necessary to accomplish the purposes thereof. * * *"

Both statutes just quoted authorize the Administrator of Veterans' Affairs to prescribe and promulgate such rules and regulations as may be deemed necessary to accomplish the purposes thereof. It is noted that paragraph 7, part VIII, Title II, as amended, provides that any person eligible for benefits under the provisions of part VIII and part VIIII, may elect either benefit or may be provided an approved combination of such courses, not to exceed the maximum period of eligibility therein prescribed. Thus, it would appear that a veteran may be eligible to pursue combined courses of training prescribed by those statutes while enrolled at a particular institution. Consequently, even though the provisions of paragraph 5, part VIII, referred to herein, were not incorporated in the act authorizing vocational rehabilitation, no reason is apparent why such provisions should not govern the payment of tuition vocational training authorized by the earlier statute.

Existing regulations (Veterans' Administration Instruction No. 6, Title II, Serviceman's Readjustment Act of 1944) provide:

"3. Payments to Training Institutions. Payments for tuition, incidental fees, books, supplies and equipment will be made in arrears only, and will be prorated in installments over the school year or over the length of the course as provided herein."

* * *

"(E) Payment when a course is discontinued or interrupted will be prorated for veteran students on the same basis as for other students in the case of an institution charging regularly established fees, or the alternate charges stated in paragraph 2(A)(1) and (2), except that in the case of an institution which has no published refund policy or makes no refunds of tuition when a student withdraws, payment will be prorated on the basis of the period of the veteran's attendance. * * *"

The primary purpose of section 3648, Revised Statutes, is obvious. The danger

inherent in a payment of moneys prior to the rendition of services incident to an agreement or contract, is the possibility that the contractor will refuse to make refund of amounts not earned due to discontinuance or interruption of a veteran's education or training (a) when he withdraws from the institution at the request of the institution or the Veterans' Administrator as a result of unsatisfactory reports of conduct or progress; (b) when he abandons his course without proper notice to the Veterans Administration; (d) when the course of training is interrupted due to illness or death of the enrollee, or by reason of his negligence or misconduct.

While, ordinarily, a Government contract may not be modified so as to provide for payment prior to the performance of all the services required as a prerequisite to such payment, in this case it appears that in view of the authority vested in the Administrator to carry out the provisions of the above-cited statutes, that the proposed arrangement for payment of tuition and other similar fees in advance for the ensuing semester, if necessary, may be regarded as within your administrative discretion. Prior to any advance payments, however, in order to avoid the possibility of loss to the United States, it would appear desirable that supplemental agreements or contracts, wherever possible or feasible, be entered into with educational institutions whereby they would agree to make proper refund of unearned tuition and other similar fees for services contemplated but not rendered, due to the discontinuance or interruption of an enrollee's education or training for any cause whatsoever.

Respectfully

Comptroller General of the United States