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Federal Regulations**

Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 84

Covering period of *Federal Register* issues
through June 22, 2010

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GENERAL INSTRUCTIONS

Custom Federal Regulations Service™

Supplemental Materials for *Book G*

Code of Federal Regulations

Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 84

5 July 2010

Covering the period of Federal Register issues
through June 22, 2010

When **Book G** was originally prepared, it was current through final regulations published in the *Federal Register* of 25 February 1992. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page G-8 of Book G, *Vocational Rehabilitation and Education*.

**To ensure accuracy and timeliness of your materials,
it is important that you follow these simple procedures:**

1. Always file your supplemental materials immediately upon receipt.
2. Before filing, always check the Supplement Filing Record (page G-8) to be sure that all prior supplements have been filed. If you are missing any supplements, contact the Veterans Benefits Administration at the address listed on page G-2.
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.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
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To execute the filing instructions, simply remove *and throw away* the pages listed under *Remove These Old Pages*, and replace them in each case with the corresponding pages from this supplement listed under *Add These New Pages*. Occasionally new pages will be added without removal of any old material (reflecting new regulations), and occasionally old pages will be removed without addition of any new material (reflecting rescinded regulations)—in these cases the word *None* will appear in the appropriate column.

FILING INSTRUCTIONS

**Book G, Supplement No. 84
July 5, 2010**

<i>Remove these <u>old pages</u></i>	<i>Add these <u>new pages</u></i>	<i>Section(s) <u>Affected</u></i>
Do not file this supplement until you confirm that all prior supplements have been filed		
21.3022-1 to 21.3024-1	21.3022-1 to 21.3024-1	§21.3023

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HIGHLIGHTS

Book G, Supplement No. 84 July 5, 2010

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 8 June 2010, the VA published a correcting amendment, effective that same date, to amend a cross reference in §21.3023. Change:

- In §21.3023, under *Cross References* at the end of the section, revised the reference for *Discontinuance*.



§21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must choose which benefit he or she will receive for the particular period(s) of training during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

- (a) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);
- (b) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);
- (c) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (d) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);
- (e) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);
- (f) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);
- (g) 10 U.S.C. chapter 106a (Educational Assistance Test Program);
- (h) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note.);
- (i) The Hostage Relief Act of 1980 (Pub. L. 96-449, 5 U.S.C. 5561 note.); and
- (j) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399). (Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

[54 FR 33886, Aug. 17, 1989; 57 FR 29798, July 7, 1992, as amended at 61 FR 20728, May 8, 1996; 74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* reference: 82(1)

§21.3023 Nonduplication; pension, compensation, and dependency and indemnity compensation.

(a) *Child; age 18.* A child who is eligible for educational assistance and who is also eligible for pension, compensation or dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation.

(1) An election of educational assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of the child based on school attendance on or after the age of 18 years. The bar is equally applicable where the child has eligibility from more than one parent.

(2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance.

(3) An election of educational assistance will not preclude the allowance of pension, compensation, or dependency and indemnity compensation based on school attendance for periods, including vacation periods, prior to the commencement of educational assistance.

(b) *Child; under 18 or helpless.* Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line.

(c) *Child; election.* An election by a child under this section must be submitted to VA in writing.

(1) Except as provided in paragraph (c)(2) of this section, an election to receive Survivors' and Dependents' Educational Assistance (DEA) is final when the eligible child commences a program of education under DEA (38 U.S.C. chapter 35). Commencement of a program of education under DEA will be deemed to have occurred for VA purposes on the date the first payment of DEA educational assistance is made, as evidenced by negotiation of the first check or receipt of the first payment by electronic funds transfer.

(2) An election based on erroneous information furnished by an authorized representative of the Department of Veterans Affairs is not considered final.

(3) A child other than a helpless child, whose eligibility was based on a finding that the veteran had a permanent total service-connected disability and who commenced a program of education under DEA may not thereafter qualify as a dependent for disability compensation purposes if the veteran is later found to be less than permanently and totally disabled, or for pension, compensation or dependency and indemnity compensation after the veteran's death.

(d) *Spouse or surviving spouse.* Educational assistance allowance may be paid for an eligible spouse or surviving spouse concurrently with pension, compensation or dependency and indemnity compensation.

(The information collection requirements in this section have been approved by the Office of Management and Budget under control number 2900-0595)

(Authority: 38 U.S.C. 3562)

Cross references: *Discontinuance.* See 3.503(a)(8) of this chapter. *Concurrent payments.* See §3.707 of this chapter. *Certification.* See §3.807 of this chapter.

[30 FR 15631, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 34 FR 842, Jan. 18, 1969; 40 FR 42879, Sept. 17, 1975; 50 FR 27826, July 8, 1985; 63 FR 45718, Aug. 27, 1998; 75 FR 32293, June 8, 2010]

Supplement *Highlight* references: 40(1), 84(1)

§21.3024 Nonduplication; Federal Employees' Compensation Act.

(a) *Civilian employment.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based on the disability or death as a result of civilian employment of the veteran from whom eligibility for educational assistance is derived.

(1) *Child, spouse or surviving spouse.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive.

(2) *Veteran, spouse and child—surviving spouse and child.* An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

(3) *Election.* An election of Office of Workers' Compensation Programs benefits, under the Federal employees' Compensation Act (FECA), by or for a child filed on or after July 4, 1966, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility. An election of Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) by a surviving spouse filed on or after December 1, 1968, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility.

(b) *Military service.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from Office of Workers' Compensation Program, under the Federal Employee's Compensation Act (FECA) based on the disability or death as a result of military service by the veteran from whom eligibility for educational assistance is derived.

(1) *Child, spouse or surviving spouse.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive. The election may be made at any time.

(2) *Veteran, spouse and child—surviving spouse and child.* An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

Cross reference: Federal Employees' Compensation. See §3.708 of this chapter.

[40 FR 42879, Sept. 17, 1975, as amended at 50 FR 27826, July 8, 1985]