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Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 82

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Code of Federal Regulations

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Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 82

5 August 2009

Covering the period of Federal Register issues
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Rook G, Supplement No. 82 August 5, 2009

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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 31 March 2009, the VA published a final rule, effective 1 August 2009, to establish regulations regarding a new educational assistance program, known as the *Post-9/11* GI Bill, for individuals who serve on active duty after September 10, 2001, as authorized by title V of the Supplemental Appropriations Act, 2008 (*Post-9/11* Veterans Educational Assistance Act of 2008). A correction was published on 20 April 2009. Substantive changes:

- In §21.1029, revised the introductory text;
- In 521.1031, revised paragraph (b)(1);
- In 521.1032, revised paragraph (a)(1) introductory text;
- In 521.1033, revised paragraph (c);
- Added a new 521.1034;
- Revised 521.3022;
- In 521.4005, revised paragraphs (a)(1)(ii), (a)(2)(ii), and (e) heading;
- In §21.4020, revised paragraph (a)(4)–(5);
- Revised 521.4022;
- In 521.4145, revised paragraph (a)(1);
- In 521.4146, revised paragraph (a);

- In 921.4153, revised paragraph (c)(4)(i);
- In 921.4200, revised the introductory text;
- In 921.4201, revised paragraphs (a), (c)(4), (e)(2), (f)(1)(ii), and (g)(2);
- In 921.4206, revised the introductory text and paragraphs (a) and (e)(1);
- In 921.4209, revised paragraphs (a)(1) and (c);
- In 921.4210, revised the section heading and paragraphs (a)(1), (b)(1)(i), (d)(2)(ii), and (d)(4)(ii);
- In 921.4211, revised paragraphs (a)(1)(i) and (b)(2);
- In §21.4234, revised paragraphs (a)(1), (b), (c), (d)(1) introductory text, (d)(1)(i), (d)(2)(i)–(ii), (d)(3) introductory text, and (d)(3)(iii);
- In 921.4250, revised paragraphs (c)(2)(ii)–(iii);
- In 921.5022, revised paragraphs (a), and (b)(1)(i)–(vii), and added new paragraphs (b)(1)(viii)–(ix);
- In 921.7143, revised paragraphs (a) and (b);
- In 921.7642, revised paragraphs (a) and (b);
- Added and reserved new Subparts N and O to Part 21; and
- Added a new Subpart P (§§21.9500–21.9770) to Part 21.

2. On 6 July 2009, the VA published a final rule, effective 5 August 2009, to amend the vocational rehabilitation and employment regulations concerning VA's responsibility to provide notification regarding information or evidence needed for an individual to substantiate a claim for vocational rehabilitation benefits and services, and regarding applicable time periods. Changes:

- Revised 921.32; and
- Added a §§21.33 and 21.8015.

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**Subpart A— Vocational Rehabilitation and Employment
Under 38 U.S.C. Chapter 31**

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

Source: 49 FR 40814, Oct. 18, 1984, unless otherwise noted.

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§21.32 Notification by VA of necessary information or evidence when a claim is filed; time for claimant response and VA action.

The provisions of this section apply to claims that are governed by this subpart or subpart M of this part.

(a) *VA has a duty to notify claimants of necessary information or evidence.* Except when a claim cannot be substantiated because there is no legal basis for the claim, or undisputed facts render the claimant ineligible for the claimed benefit, when VA receives a complete or substantially complete application for vocational rehabilitation benefits and services provided under this subpart or subpart M of this part VA will:

(1) Notify the claimant of any information and evidence that is necessary to substantiate the claim;

(2) Inform the claimant which information and evidence, if any, the claimant is to provide to VA and which information and evidence, if any, VA will try to obtain for the claimant; and

(3) Inform the claimant of the time limit, as provided in paragraph (c) of this section, for responding to VA's notification, and of actions, as provided in paragraph (d) of this section, that VA may take to decide the claim if the claimant does not respond to such notification within 30 days.

(b) *Definitions for purposes of §§21.32 and 21.33.* For purposes of this section and §21.33:

(1) The term application does not include a notice of disagreement.

(2) The term notification means the notice described in paragraph (a) of this section.

(3) The term substantially complete application means, for an individual's first application for vocational rehabilitation benefits and services administered by VA, an application containing:

(i) The claimant's name;

(ii) His or her relationship to the veteran, if applicable;

(iii) Sufficient information for VA to verify the claimed service, if applicable; and

(iv) The benefit claimed.

(4) The term information means nonevidentiary facts, such as the claimant's Social Security number or address, or the name of the educational institution the claimant is attending.

(c) *Time limit.* Any information and evidence described in the notification as information and evidence that the claimant is to provide must be received by VA within one year from the date of the notification. If VA does not receive the information and evidence from the claimant within that time period, VA may adjudicate the claim based on the information and evidence in the file.

(d) *Actions VA may take after 30 days if no response from claimant.* If the claimant has not responded to the notification within 30 days, VA may decide the claim before the expiration of the one-year period, based on all the information and evidence in the file, including information and evidence it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information and evidence specified in the notification within one year of the date of the notification, VA must readjudicate the claim. If VA's decision on a readjudication is favorable to the claimant, the award of vocational rehabilitation benefits and services shall take effect as if the prior decision by VA on the claim had not been made.

(e) *Incomplete applications.* If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. If the information necessary to complete the application is not received by VA within one year from the date of such notice, VA cannot pay or provide any benefits based on that application.

(f) *Who VA will notify.* For the purpose of this section, when VA seeks to notify a claimant, it will provide such notice to:

- (1) The claimant;
- (2) His or her fiduciary, if any; and
- (3) His or her representative, if any. (Authority: 38 U.S.C. 5102, 5103, 5103A(a)(3))

[49 FR 40814, Oct. 18, 1984, as amended at 55 FR 12821, Apr. 6, 1990; 62 FR 17707, Apr. 11, 1997; 74 FR 31855, July 6, 2009]

Supplement *Highlights* references: 30(2), 82(2).

§21.33 VA has a duty to assist claimants in obtaining evidence.

The provisions of this section apply to claims that are governed by this subpart or subpart M of this part.

(a) *VA's duty to assist begins when VA receives a complete or substantially complete application.*

(1) Except as provided in paragraph (d) of this section, upon receipt of a complete or substantially complete application for vocational rehabilitation benefits and services under this subpart or subpart M of this part, VA will:

(i) Make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim; and

(ii) Give the assistance described in paragraphs (b) and (c) of this section to an individual attempting to reopen a finally decided claim.

(2) VA will not pay any fees a custodian of records may charge to provide the records VA requests. (Authority: 38 U.S.C. 5103A)

(b) *Obtaining records not in the custody of a Federal department or agency.*

(1) VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency. These records include relevant records from:

(i) State or local governments;

(ii) Private medical care providers;

(iii) Current or former employers; and

(iv) Other non-Federal governmental sources.

(2) The reasonable efforts described in paragraph (b)(1) of this section will generally consist of an initial request for the records and, if VA does not receive the records, at least one follow-up request. The following are exceptions to this provision concerning the number of requests that VA generally will make:

(i) VA will not make a follow-up request if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile.

(ii) If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, reasonable efforts will include an initial request and, if VA does not receive the records, at least one follow-up request to the new source or an additional request to the original source.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including:

- (i) The person, company, agency, or other custodian holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records. (Authority: 38 U.S.C. 5103A)

(c) Obtaining records in the custody of a Federal department or agency.

(1) Subject to paragraphs (c)(2) through (c)(4) of this section, VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to:

- (i) Military records;
- (ii) Medical and other records from VA medical facilities;
- (iii) Records from non-VA facilities providing examination or treatment at VA expense; and
- (iv) Records from other Federal agencies.

(2) VA will cease its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include cases in which the Federal department or agency advises VA that the requested records do not exist or that the custodian of such records does not have them.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal department or agency custodians. At VA's request, the claimant must provide enough information to identify and locate the existing records, including:

- (i) The custodian or agency holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records. (Authority: 38 U.S.C. 5103A)

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete or complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently not credible or clearly lack merit;

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law; and

(4) The claimant's lack of cooperation in providing or requesting information or evidence necessary to substantiate the claim. (Authority: 38 U.S.C. 5103A)

(e) *Duty to notify claimant of inability to obtain records.*

(1) VA will notify the claimant either orally or in writing when VA:

(i) Has made reasonable efforts to obtain relevant non-Federal records, but is unable to obtain them; or

(ii) After continued efforts to obtain Federal records, concludes that it is reasonably certain they do not exist or that further efforts to obtain them would be futile.

(2) For non-Federal records requests, VA may provide the notice to the claimant at the same time it makes its final attempt to obtain the relevant records.

(3) VA will make a written record of any oral notice conveyed under this paragraph to the claimant.

(4) The notice to the claimant must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) The fact described in paragraph (e)(1)(i) or (e)(1)(ii) of this section;

(iv) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

(i) The claimant;

(ii) His or her fiduciary, if any; and

(iii) His or her representative, if any. (Authority: 38 U.S.C. 5102, 5103(a), 5103A)

[74 FR 31856, July 6, 2009]

Cross reference: Due Process. See §3.103.

Supplement *Highlights* reference: 82(2)

Next Section is 21.35

Reserved

Definitions

§21.35 Definitions.

(a) *Employment handicap.* This term means an impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests. (Authority: 38 U.S.C. 3101(1), 3102)

(b) *Independence in daily living.* This term means the ability of a veteran, without the service of others, or with a reduced level of the services of others, to live and function within such veteran's family and community. (Authority: 38 U.S.C. 3101(2))

(c) *Program of education.* This term means:

(1) A combination of subjects or unit courses pursued at a school which is generally acceptable to meet requirements for a predetermined educational, professional or vocational objective; or

(2) Such subjects or courses which are generally acceptable to meet requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; or

(3) Any unit course or subject, or combination of courses or subjects, pursued by an eligible veteran at any educational institution required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of section (7)(i)(1) of the Small Business Act. (Authority: 15 U.S.C. 636(i)(1), 38 U.S.C. 3252(b))

(d) *Program of independent living services and assistance.* This term includes:

(1) The services provided in this program that are needed to enable a veteran to achieve maximum independence in daily living, including counseling, diagnostic, medical, social, psychological, and educational services determined by the Department of Veterans Affairs to be necessary, and

(2) The monthly allowance authorized by 38 U.S.C. Chapter 31 for such a veteran. (Authority: 38 U.S.C. 3101(4))

(e) *Rehabilitated to the point of employability.* This term means that the veteran is employable in an occupation for which a vocational rehabilitation program has been provided under this program. (Authority: 38 U.S.C. 3101(5))

(f) *Rehabilitation program.* This term includes, when appropriate:

(1) A vocational rehabilitation program (see paragraph (i) of this section);

Subpart B—Claims and Applications for Educational Assistance

Authority: 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

Editorial Note: The regulations formerly appearing under this subpart were revoked at 30 FR 14103, Nov. 9, 1965. That order provided in part, “these regulations remain in force insofar as they are pertinent to any problems, appeals, litigation, or determinations of liability of educational institutions or training establishments for overpayments under 38 U.S.C. 3266.”

Claims

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Claims

§21.1029 Definitions.

The following definitions of terms apply to this subpart and subparts C, D, F, G, H, K, L, and P, to the extent that the terms are not otherwise defined in those subparts:

(a) *Abandoned claim.* A claim is an abandoned claim if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant:

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and:

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request. (Authority: 38 U.S.C. 5103(a))

(b) *Date of claim.* The date of claim is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by §21.1033, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim is as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate. (Authority: 38 U.S.C. 5103)

(c) *Educational institution.* The term *educational institution* means:

- (1) A vocational school or business school;
- (2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;
- (3) A public or private elementary school or secondary school;
- (4) Any entity, other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program;
- (5) An organization or entity offering a licensing or certification test; or
- (6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation. (Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

(d) *Formal claim.* A claim is a formal claim when the claimant (or his or her authorized representative) files the claim with VA, and:

- (1) The claim is a claim for:

- (i) Educational assistance;
- (ii) An increase in educational assistance; or
- (iii) An extension of the eligibility period for receiving educational assistance; and

(2) If there is a form (either paper or electronic) prescribed under this part, the claim is filed on that form. (Authority: 38 U.S.C. 5101(a))

(e) *Informal claim.*

(1) If a form (either paper or electronic) has been prescribed under this part to use in claiming the benefit sought, the term informal claim means:

(i) Any communication from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance; or

(ii) A claim from an individual or from an authorized representative on that individual's behalf for a benefit described in paragraph (d)(1)(i) of this section that is filed in a document other than in the prescribed form.

(2) If a form (either paper or electronic) has not been prescribed to use in claiming the benefit sought, the term informal claim means any communication, other than a formal claim, from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance.

(3) When VA requests evidence in connection with a claim, and the claimant submits that evidence to VA after having abandoned the claim, the claimant's submission of the evidence is an informal claim.

(4) The act of enrolling in an approved educational institution or training establishment is not an informal claim.

(5) VA will not consider a communication received from a service organization, an attorney, or agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(f) *Information.* The term *information* means nonevidentiary facts, such as the claimant's Social Security number or address, or the name of the educational institution the claimant is attending. (Authority: 38 U.S.C. 5101, 5102, 5103)

(g) *Substantially complete application.*

(1) The term *substantially complete application* means, for an individual's first application for educational assistance administered by VA, an application containing:

- (i) The claimant's name;
- (ii) His or her relationship to the veteran, if applicable;
- (iii) Sufficient information for VA to verify the claimed service, if applicable;
- (iv) The benefit claimed;
- (v) The program of education, if applicable; and
- (vi) The name of the educational institution or training establishment the claimant intends to attend, if applicable.

(2) For subsequent applications for educational assistance administered by VA, a *substantially complete application* means an application containing the information specified in paragraphs (g)(1)(i) through (g)(1)(vi) of this section, except that the application may omit any information specified in paragraphs (g)(1)(ii) or (g)(1)(iii) of this section that is already of record with VA. (Authority: 38 U.S.C. 5102, 5103, 5103A)

(h) *Training establishment*. The term *training establishment* means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training. (Authority: 38 U.S.C. 3452(e), 3501(a)(9))

(i) *VA*. The term VA means the United States Department of Veterans Affairs. (Authority: 38 U.S.C. 301)

[64 FR 23770, May 4, 1999, as amended at 72 FR 16964, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* references: 42(1), 73(1), 82(1).

§21.1030 Claims.*(a) Claim for educational assistance.*

(1) The first time an individual claims educational assistance administered by VA for pursuit of a program of education, he or she must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If an individual changes his or her program of education or place of training after filing his or her first application for educational assistance, he or she must file an application requesting the change of program or place of training using a form the Secretary prescribes for that purpose.

(3) A servicemember must consult with his or her education service officer before filing an application for educational assistance, whether it is the first application or an application to request a change of program or place of training. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(b) Filing a claim for educational assistance to pay for a licensing or certification test. To receive educational assistance to pay for a licensing or certification test, an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose and must include the information described in paragraphs (b)(2)(i) through (b)(2)(vi) of this section.

(2) If the claim is the second or subsequent claim for educational assistance, the claim must include:

- (i) The name of the test;
- (ii) The name and address of the organization or entity issuing the license or certificate;
- (iii) The date the claimant took the test;
- (iv) The cost of the test;
- (v) A statement authorizing release of the claimant's test information to VA, such as: "I authorize release of my test information to VA"; and
- (vi) Such other information as the Secretary may require. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(c) *Filing a claim for educational assistance to supplement tuition assistance provided under a program administered by the Secretary of a military department.* To receive tuition assistance top-up as defined in §21.4200(hh), an individual must file a claim for educational assistance.

(1) If the claim is the first claim for educational assistance administered by VA, the individual must file an application for educational assistance using a form the Secretary prescribes for that purpose.

(2) If the claim is the second or subsequent claim for educational assistance, the claimant may submit a statement that he or she wishes to receive tuition assistance top-up.

(3) The claimant must also submit a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the claimant wants tuition assistance top-up. Examples of these forms include:

- (i) DA Form 2171, Request for Tuition Assistance-Army Continuing Education System;
- (ii) AF Form 1227, Authority for Tuition Assistance-Education Services Program;
- (iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization or NAVMC (page 2), Tuition Assistance Authorization;
- (iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and
- (v) Request for Top-Up: eArmyU Program.

(4) The claimant must also provide to VA the following information, to the extent it is not contained on any form filed under paragraph (c)(1) or (c)(3) of this section:

- (i) His or her name;
- (ii) His or her Social Security number;
- (iii) The name of the educational institution;
- (iv) The name of the course or courses for which the claimant wants educational assistance;
- (v) The number of the course or courses;
- (vi) The number of credit hours for each course;

- (vii) The beginning and ending date of each course;
- (viii) The cost of the course or courses; and
- (ix) If the claimant doesn't want to receive the full amount of that cost not met by the Secretary of the military department concerned, the portion that the claimant wishes to receive.

(5) If the claimant's military department uses an electronic tuition assistance application process with electronic signatures, VA will accept an electronic transmission of the approved tuition assistance application directly from the military department concerned on behalf of the claimant if:

- (i) The electronic tuition assistance application indicates the servicemember's intent to claim tuition-assistance top-up; and
- (ii) The information described in paragraph (c)(4) of this section is included in the electronic application. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0074, 2900-0098, 2900-0099, 2900-0154, 2900-0695, and 2900-0698.)

[48 FR 37971, Aug. 22, 1983, as amended at 64 FR 23771, May 4, 1999; 72 FR 16964, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* references: 42(1), 73(1).

§21.1031 VA responsibilities when a claim is filed.

(a) *VA will furnish forms.* VA will furnish all necessary VA claim forms and instructions, and, if appropriate, a description of any supporting evidence required upon receipt of an informal claim. (Authority: 38 U.S.C. 5102)

(b) *VA has a duty to notify claimants of necessary information or evidence.*

(1) Except when a claim cannot be substantiated because there is no legal basis for the claim, or undisputed facts render the claimant ineligible for the claimed benefit, when VA receives a complete or substantially complete application for educational assistance provided under subpart C, D, G, H, K, L, or P of this part VA will:

(i) Notify the claimant of any information and evidence that is necessary to substantiate the claim; and

(ii) Inform the claimant which information and evidence, if any, the claimant is to provide to VA and which information and evidence, if any, VA will try to obtain for the claimant.

(2) The information and evidence that VA, pursuant to paragraph (b)(1) of this section informs the claimant that the claimant must provide, must be provided within one year from the date of the notice. If VA does not receive such information and evidence from the claimant within that time period, VA may adjudicate the claim based on the information and evidence in the file.

(3) If the claimant has not responded to the request within 30 days, VA may decide the claim before the expiration of the one-year period prescribed in paragraph (b)(2) of this section, based on all the information and evidence in the file, including information and evidence it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the request, VA must readjudicate the claim. If VA's decision on a readjudication is favorable to the claimant, the award shall take effect as if the prior decision by VA on the claim had not been made.

(4) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. If the information necessary to complete the application is not received by VA within one year from the date of such notice, VA cannot pay or provide any benefits based on that application.

(5) For the purpose of this paragraph, if VA must notify the claimant, VA will provide notice to:

(i) The claimant;

(ii) His or her fiduciary, if any; and

(iii) His or her representative, if any. (Authority: 38 U.S.C. 5102, 5103, 5103A(a)(3))

[31 FR 6771, May 6, 1966, as amended at 48 FR 37971, Aug. 22, 1983; 64 FR 23771, May 4, 1999; 72 FR 16965, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* references: 42(1), 73(1), 82(1).

§21.1032 VA has a duty to assist claimants in obtaining evidence.

(a) *VA's duty to assist begins when VA receives a complete or substantially complete application.*

(1) Except as provided in paragraph (d) of this section, upon receipt of a complete or substantially complete application for educational assistance under subpart C, D, G, H, K, L, or P of this part, VA will:

(i) Make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim; and

(ii) Give the assistance described in paragraphs (b) and (c) of this section to an individual attempting to reopen a finally decided claim.

(2) VA will not pay any fees a custodian of records may charge to provide the records VA requests. (Authority: 38 U.S.C. 5103A)

(b) *Obtaining records not in the custody of a Federal department or agency.*

(1) VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency. These records include relevant records from:

(i) State or local governments;

(ii) Private medical care providers;

(iii) Current or former employers; and

(iv) Other non-Federal governmental sources.

(2) The reasonable efforts described in paragraph (b)(1) of this section will generally consist of an initial request for the records and, if VA does not receive the records, at least one follow-up request. The following are exceptions to this provision concerning the number of requests that VA generally will make:

(i) VA will not make a follow-up request if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile.

(ii) If VA receives information showing that subsequent requests to the initial or another custodian could result in obtaining the records sought, reasonable efforts will include an initial request and, if VA does not receive the records, at least one follow-up request to the new source or an additional request to the original source.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including:

- (i) The person, company, agency, or other custodian holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records. (Authority: 38 U.S.C. 5103A)

(c) Obtaining records in the custody of a Federal department or agency.

(1) VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to:

- (i) Military records;
- (ii) Medical and other records from VA medical facilities;
- (iii) Records from non-VA facilities providing examination or treatment at VA expense; and
- (iv) Records from other Federal agencies.

(2) VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include cases in which the Federal department or agency advises VA that the requested records do not exist or that the custodian of such records does not have them.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal department or agency custodians. At VA's request, the claimant must provide enough information to identify and locate the existing records, including:

- (i) The custodian or agency holding the records;
- (ii) The approximate time frame covered by the records; and
- (iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records. (Authority: 38 U.S.C. 5103A)

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete or complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently not credible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law. (Authority: 38 U.S.C. 5103A)

(e) *Duty to notify claimant of inability to obtain records.*

(1) VA will notify the claimant either orally or in writing when VA:

(i) Makes reasonable efforts to obtain relevant non-Federal records, but is unable to obtain them; or

(ii) After continued efforts to obtain Federal records, concludes that it is reasonably certain they do not exist or that further efforts to obtain them would be futile.

(2) For non-Federal records requests, VA may provide the notice to the claimant at the same time it makes its final attempt to obtain the relevant records.

(3) VA will make a record of any oral notice conveyed under paragraph (e) of this section to the claimant.

(4) The notice to the claimant must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) The fact described in paragraph (e)(1)(i) or (e)(1)(ii) of this section;

(iv) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

- (i) The claimant;
- (ii) His or her fiduciary, if any; and
- (iii) His or her representative, if any. (Authority: 38 U.S.C. 5102(b), 5103(a), 5103A)

[72 FR 16965, Apr. 5, 2007, as amended at 74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* references: 42(1), 69(1), 73(1), 82(1).

§21.1033 Time limits.

The provisions of this section are applicable to informal claims and formal claims.

(a) *Failure to furnish form, information, or notice of time limit.* VA's failure to give a claimant or potential claimant any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the time periods allowed for these actions. (Authority: 38 U.S.C. 5101, 5113)

(b) [Reserved]

(c) *Time limit for filing a claim for an extended period of eligibility under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35.* VA must receive a claim for an extended period of eligibility provided by §21.3047, §21.5042, §21.7051, §21.7551, or §21.9535 by the later of the following dates:

(1) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education. (Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3321, 3512)

(d) *Time limit for filing for an extension of eligibility due to suspension of program (38 U.S.C. chapter 35).* VA must receive a claim for an extended period of eligibility due to a suspension of an eligible child's program of education as provided in §21.3043 by the later of the following dates.

(1) One year from the date on which the child's original period of eligibility ended; or

(2) One year from the date on which the condition that caused the suspension of the program of education ceased to exist. (Authority: 38 U.S.C. 3512(c))

(e) *Extension for good cause.*

(1) VA may extend for good cause a time limit within which a claimant or beneficiary is required to act to perfect a claim or challenge an adverse VA decision. VA may grant such an extension only when the following conditions are met:

(i) When a claimant or beneficiary requests an extension after expiration of a time limit, he or she must take the required action concurrently with or before the filing of that request; and

(ii) The claimant or beneficiary must show good cause as to why he or she could not take the required action during the original time period and could not have taken the required action sooner.

(2) Denials of time limit extensions are separately appealable issues. (Authority: 38 U.S.C. 5101, 5113)

(f) *Computation of time limit.*

(1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, VA will exclude the first day of the specified period, and will include the last day. This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, the VA will include the next succeeding day in the computation.

(2) The first day of the specified period referred to in paragraph (f)(1) of this section will be the date of the letter of notification to the claimant or beneficiary for purposes of computing time limits. As to appeals, see §§20.302 and 20.305 of this chapter. (Authority: 38 U.S.C. 501(a))

[38 FR 14930, June 7, 1973, as amended at 39 FR 43220, Dec. 11, 1974; 44 FR 62494, Oct. 31, 1979; 45 FR 67092, Oct. 9, 1980; 48 FR 37971, Aug. 22, 1983; 54 FR 28676, July 7, 1989; 64 FR 23771, May 4, 1999; 71 FR 1497, Jan. 10, 2006; redesignated and revised at 72 FR 16965, 16967, Apr. 5, 2007; 74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* references: 42(1), 69(1), 73(1), 82(1).

§21.1034 Appeals.

A claimant may appeal a decision of eligibility or entitlement to educational assistance under title 38, U.S.C., to the Board of Veterans Appeals in accordance with the provisions of 38 CFR Part 20. A claimant may appeal a decision of entitlement to educational assistance under 10 U.S.C. 510 and 10 U.S.C. chapters 106a, 1606, and 1607 to the Board of Veterans Appeals in accordance with the provisions of 38 CFR Part 20. A claimant may not appeal a decision of eligibility under 10 U.S.C. 510 or 10 U.S.C. chapters 106a, 1606, or 1607 or for supplemental or increased educational assistance under 10 U.S.C. 16131(i) or 38 U.S.C. 3015(d), 3021, or 3316 to VA as the Department of Defense solely determines eligibility to supplemental and increased educational assistance under those sections. (Authority: 38 U.S.C. 501(a), 7105, 7105A)

[74 FR 14665, Mar. 31, 2009]

Supplement *Highlights* reference: 82(1)

Next Section is §21.3001

§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.

Subpart D—Administration of Educational Assistance Programs

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

Source: 31 FR 6774, May 6, 1966, unless otherwise noted.

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§21.4005 Conflicting interests.

For the purposes of this section, a person will be considered to be an “officer” of the State approving agency or VA when he or she has authority to exercise supervisory authority, and “educational institution” includes an organization or entity offering licensing or certification tests. (Authority: 38 U.S.C. 3683, 3689)

(a) A conflict of interest can cause the dismissal of a VA or State approving agency officer or employee and other adverse consequences.

(1) An officer or employee of VA will be immediately dismissed from his or her office or employment, if while such an officer or employee he or she has owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from any educational institution operated for profit:

(i) In which a veteran or eligible person was pursuing a course of education under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36; or

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

(2) Except as provided in paragraph (a)(3) or (c) of this section, VA will discontinue payments under §21.4153 to a State approving agency when the Secretary finds that any individual who is an officer or employee of a State approving agency has, while he or she was such an officer or employee, owned any interest in, or received any wages, salary, dividends, profits, gratuities, or services from any educational institution operated for profit:

(i) In which a veteran or eligible person was pursuing a course of education or training under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36; or

(ii) Offering a licensing or certification test that is approved for payment of educational assistance under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, or 35 to veterans, reservists, or eligible individuals who take that test.

(3) VA will not discontinue payments to a State approving agency under paragraph (a)(2) of this section if the State approving agency, after learning that it has any officer or employee described in that paragraph, acts without delay to end the employment of that individual.

(4) If VA discontinues payments to a State approving agency pursuant to paragraph (a)(2) of this section, VA will not resume these payments while such an individual is an officer or employee of the:

(i) State approving agency;

(ii) State Department of Veterans Affairs; or

(iii) State Department of Education.

(5) A State approving agency will not approve any course offered by an educational institution operated for profit and, if any such course has been approved, will disapprove each such course, if it finds that any officer or employee of the Department of Veterans Affairs, or the State approving agency owns an interest in, or receives any wages, salary, dividends, profits, gratuities, or service from, such educational institution.

(6) If a State approving agency finds that any officer or employee of VA or of the State approving agency owns an interest in, or receives wages, salary, dividends, profits, gratuities, or services from an organization or entity, operated for profit, that offers licensing or certification tests, the State approving agency:

(i) Will not approve any licensing or certification test that organization or entity offers; and

(ii) Will withdraw approval of any licensing or certification test that organization or entity offers.

(7) The Secretary may, after reasonable notice, and public hearings if requested, waive in writing the application of this paragraph in the case of any officer or employee of the Department of Veterans Affairs or of a State approving agency, if it is found that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(b) *Waiver.*

(1) Where a request is made for waiver of application of paragraph (a)(1) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee of the Department of Veterans Affairs, if the officer or employee:

(i) Acquired his or her interest in the educational institution by operation of law, or before the statute became applicable to the officer or employee, and his or her interest has been disposed of and his or her connection discontinued, or

(ii) Meets all of the following conditions:

(A) His or her position involves no policy determinations, at any administrative level, having to do with matters pertaining to payment of educational assistance allowance, or special training allowance.

(B) His or her position has no relationship with the processing of any veteran's or eligible person's application for education or training.

(C) His or her position precludes him or her from taking any adjudicative action on individual applications for education or training.

(D) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of educational institutions or veterans or eligible persons in connection with 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 33, 35, or 36.

(E) His or her position is not connected with the processing of claims by, or payments to, schools, or their students enrolled under the provisions of 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 33, 35, or 36.

(F) His or her position is not connected in any way with the inspection, approval, or supervision of educational institutions desiring to train veterans or eligible persons or to offer a licensing or certification test; or with the processing of claims by or making payments to veterans and eligible persons for taking an approved licensing or certification test.

(2) Where a request is made for waiver of application of paragraph (a)(2) of this section, it will be considered that no detriment will result to the United States or to veterans or eligible persons by reason of such interest or connection of such officer or employee of a State approving agency, if the officer or employee:

(i) Acquired his or her interest in the educational institution by operation of law, or before the statute became applicable to the officer or employee, and his or her interest has been disposed of and his or her connection discontinued, or

(ii) Meets all of the following conditions:

(A) His or her position does not require him or her to perform duties involved in the investigation of irregular actions on the part of educational institutions or veterans or eligible persons in connection with 10 U.S.C. chapter 1606 or 38 U.S.C. chapters 30, 32, 33, 35, or 36.

(B) His or her work is not connected in any way with the inspection, approval, or supervision of educational institutions desiring to train veterans or eligible persons, or desiring to offer licensing or certification tests to veterans or eligible persons. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(c) *Authority.*

(1) Authority is delegated to the Director, Education Service, and to the facility head in the cases of VA employees under his or her jurisdiction, to waive the application of paragraph (a)(1) of this section in the case of any VA employee who meets the criteria of paragraph (b)(1) of this section, and to deny requests for a waiver which do not meet those criteria. If the circumstances warrant, a waiver request may be submitted to the Secretary for a decision.

(2) Authority is delegated to the Director, Education Service, in cases of State approving agency employees to waive the application of paragraph (a)(2) of this section in the case of anyone who meets the criteria of paragraph (b)(2) of this section, and to deny requests for a waiver which do not meet those criteria. If the circumstances warrant a waiver request may be submitted to the Secretary for a decision.

(3) Authority is reserved to the Secretary to waive the requirement of paragraphs (a)(1) and (2) of this section in the case of an officer of the Department of Veterans Affairs or a State approving agency and in the case of any employee of either who does not meet the criteria of paragraph (b) of this section. (Authority: 38 U.S.C. 512(a), 3683)

(d) *Notice when VA does not grant a requested waiver.* When VA has denied a request for waiver of application of paragraph (a)(1) or (a)(2) of this section, VA will immediately notify the State approving agency and the educational institution:

(1) That the approval of courses or licensing and certification tests offered by the educational institution must be withdrawn;

(2) The reasons for the withdrawal of approval; and

(3) The conditions that will permit the courses or such tests to be approved again. (Authority: 38 U.S.C. 3683, 3689(d))

(e) *Notice to veterans, reservists, and eligible individuals.*

(1) The veteran or eligible person will be notified in writing sent to his or her latest address of record when, in circumstances involving a finding of conflicting interests:

(i) The course or courses are disapproved by the State approving agency,
or

(ii) The State approving agency fails to disapprove the course or courses within 15 days after the date of written notice to the agency, and no waiver has been requested, or

(iii) Waiver has been denied.

(2) The veteran or eligible person will be informed that he or she may apply for enrollment in an approved course in another educational institution, but that in the absence of such transfer, educational assistance allowance payments will be discontinued effective the date of discontinuance of the course, or the 30th day following the date of such letter, whichever is earlier. (Authority: 38 U.S.C. 3683, 3690, 5104)

[31 FR 6774, May 6, 1966, as amended at 43 FR 3707, Jan. 27, 1978; 51 FR 16315, May 2, 1986; 61 FR 20728, May 8, 1996; 66 FR 44053, Aug. 22, 2001; 72 FR 16967, Apr. 5, 2007; 74 FR 14666, Mar. 31, 2009]

Supplement *Highlights* references: 73(1), 82(1).

Reserved

§21.4006 False or misleading statements.

(a) *Payments may not be based on false statements.* Except as provided in this section payments may not be authorized based on a claim where it is found that the school or any person has willfully submitted a false or misleading claim, or that the veteran or eligible person with the complicity of the school or other person has submitted such a claim. A complete report of the facts will be made to the State approving agency, and if in order to the Attorney General of the United States. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(1) Where it is determined prior to payment that a certification or claim is false or misleading, payment will be authorized for only that portion of the claim to which entitlement is established on the basis of other evidence of record.

(2) When the Department of Veterans Affairs discovers that a certification or claim is false after it has released payment, the Department of Veterans Affairs will establish an overpayment for only that portion of the claim to which the claimant was not entitled. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

(b) *Effect of false statements on subsequent payments.* A claimant's false or misleading statements are not a bar to payments based on further training. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

(c) *Forfeiture.* The provisions of this section do not apply when forfeiture of all rights has been or may be declared under the provisions of §21.4007. (Authority: 38 U.S.C. 6103)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14932, June 7, 1973; 48 FR 37976, Aug. 22, 1983; 74 FR 14666, Mar. 31, 2009]

§21.4007 Forfeiture.

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter. (Authority: 38 U.S.C. 6103, 6104 and 6105)

[54 FR 4286, Jan. 30, 1989]

§21.4008 Prevention of overpayments.

(a) *Prevention of overpayments to veterans and eligible persons enrolled in educational institutions.* When approval of a course may be withdrawn, and overpayments may exist or may be created, VA may suspend further payments to veterans and eligible persons enrolled in the educational institution offering the course until the question of withdrawing approval is resolved. See §21.4210. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

(b) *Prevention of overpayments to veterans and eligible persons taking licensing and certification tests.* When approval of a licensing or certification test may be withdrawn, and overpayments may exist or may be created, VA may suspend payments to veterans and eligible persons taking that test until the question of withdrawing approval is resolved. See §21.4210. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

[48 FR 37976, Aug, 22, 1983, as amended at 63 FR 35831, July 1, 1998; 72 FR 16968, Apr. 5, 2007; 74 FR 14666, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1).

§21.4009 Waiver or recovery of overpayments.

For the purposes of this section, “educational institution” includes an organization or entity offering licensing or certification tests.

(a) General.

(1) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the education institution if the Department of Veterans Affairs determines that the overpayment was made as the result of willful or negligent:

(i) Failure of the educational institution to report, as required by §§21.4203 and 21.4204, discontinuance or interruption of a course by a veteran, reservist or eligible person, or

(ii) False certification by the educational institution.

(3) If it appears that the falsity or misrepresentation was deliberate, the Department of Veterans Affairs may not pursue administrative collection pending a determination whether the matter should be referred to the Department of Justice for possible civil or criminal action. However, the Department of Veterans Affairs may recover the amount of the overpayment from the educational institution by administrative collection procedure when the Department of Veterans Affairs determines the false certification or misrepresentation resulted from an administrative error or a misstatement of fact and that no criminal or civil action is warranted.

(4) If the Department of Veterans Affairs recovers any part of the overpayment from the educational institution, it may reimburse the educational institution, if the Department of Veterans Affairs subsequently collects the overpayment from a veteran or eligible person. The reimbursement:

(i) Will be made when the total amount collected from the educational institution and from the veterans and eligible persons (less any amount applied toward marshal fees, court costs, administrative cost of collection and interest) exceeds the total amount for which the educational institution is liable, and

(ii) Will be equal to the excess.

(5) This paragraph does not preclude the imposition of any civil or criminal liability under this or any other law.

(b) Reporting.

(1) If a school is required to make periodic or other certifications, the Department of Veterans Affairs may consider the following in determining whether a school is potentially liable for an overpayment:

(i) The school's failure to report, or to report timely facts which resulted in an overpayment, or

(ii) The school's submission of an incorrect certification as to fact.

(2) In either instance the Department of Veterans Affairs will consider other pertinent factors such as:

(i) Allowing for occasional clerical error or occasional administrative error:

(ii) The school's past reliability in reporting;

(iii) The adequacy of the school's reporting system, and

(iv) The extent of noncompliance with reporting requirements. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685)

(c) *Committee on School Liability.*

(1) Each VA Regional Processing Office shall have a Committee on School Liability. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines.

(2) The Secretary delegates to each Committee on School Liability, and to any panel that the chairperson of the Committee may designate and draw from the Committee, the authority to find whether an educational institution is liable for an overpayment. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(d) *Initial decision.*

(1) The Education Officer of the VA Regional Processing Office of jurisdiction, or the Service Center Manager when the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction, will decide whether there is evidence that would warrant a finding that an educational institution is potentially liable for an overpayment.

(2) Following each finding of potential liability, the Finance Officer of the VA Regional Processing Office of jurisdiction will notify the educational institution in writing of VA's intent to apply the liability provisions of paragraph (a) of this section. The notice will:

(i) Identify the students who were overpaid;

(ii) Identify the veterans and eligible persons who took the licensing or certification test and were overpaid;

(iii) Set out in the case of each student, or in the case of each veteran or eligible person who took the test, the educational institution's actions or omissions which resulted in the finding that the educational institution was potentially liable for the overpayment; and

(iv) State that VA will determine liability on the basis of the evidence of record unless the VA Regional Processing Office of jurisdiction receives additional evidence or a request for a hearing within 30 days of the date the educational institution received the notice. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(e) *Hearings.* A school is entitled to a hearing before a panel drawn from the Committee on School Liability before a decision is made as to whether it is liable for an overpayment. Every hearing will be preceded by a prehearing conference unless the conference is waived by the school. The Committee on School Liability will consider all evidence and testimony presented at the hearing. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(f) *Extent of liability.* Waiver of collection of an overpayment as to a veteran, reservist, or eligible person will not relieve the educational institution of liability for the overpayment. Recovery in whole or in part from the veteran, reservist, or eligible person will limit such liability accordingly. If an overpayment has been recovered from the educational institution and the veteran, reservist, or eligible person subsequently repays the amount in whole or in part, the amount repaid will be reimbursed to the educational institution. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(g) *Notice to educational institution.* The educational institution shall be notified in writing of the decision of the Committee on School Liability. If the educational institution is found liable for an overpayment, the educational institution also will be notified of the right to appeal the decision to the Central Office School Liability Appeals Board within 60 days from the date of the letter to the educational institution containing notice of the decision. The 60-day time limit may be extended to 90 days at the discretion of the chairperson of the Committee on School Liability. The appeal must be in writing setting forth fully the alleged errors of fact and law. If an appeal is not received within the 60-day time limit, the Committee decision is final. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(h) *Appeals.* An appeal will be forwarded to Central Office where it will be considered by the School Liability Appeals Board. The Board's decision will serve as authority for instituting collection proceedings, if appropriate, or for discontinuing collection proceedings instituted on the basis of the original decision of the Committee on School Liability in any case where the Board reverses a decision made by the Committee that the educational institution is liable. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(i) *Review.* Review by the School Liability Appeals Board is limited to the issues raised by the educational institution and shall be on the record and not de novo in character. The Board

may affirm, modify or reverse a decision of the Committee on School Liability or may remand an appeal for further consideration by the appropriate Committee on School Liability. If new and material evidence is discovered while the School Liability Appeals Board is considering a case, the Board may remand the case to the appropriate Committee on School Liability. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(j) *Finality of decisions.* The School Liability Appeals Board has authority to act for the Secretary in deciding appeals concerning an educational institution's liability for an overpayment. There is no right of additional administrative appeal of a decision of the School Liability Appeals Board. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

[32 FR 4533, Mar. 25, 1967, as amended at 44 FR 15492, Mar. 14, 1979; 48 FR 37976, Aug. 22, 1983; 49 FR 35630, Sept. 11, 1984; 51 FR 16316, May 2, 1986; 61 FR 20728, May 8, 1996; 61 FR 26112, May 24, 1996; 62 FR 55760, Oct. 28, 1997; 71 FR 28586, May 17, 2006; 72 FR 16968, Apr. 5, 2007; 74 FR 14666, Mar. 31, 2009]

Supplement *Highlights* references: 27(1), 73(1).

Next Section is §21.4020

Reserved

General

§21.4020 Two or more programs.

(a) *Limit on training under two or more programs.* The aggregate period for which any person may receive assistance under two or more of the following laws may not exceed 48 months (or the part-time equivalent):

(1) Part VII or VIII, Veterans Regulations numbered 1(a), as amended:

(2) Title II of the Veterans' Readjustment Assistance Act of 1952;

(3) The War Orphans' Educational Assistance Act of 1956;

(4) 38 U.S.C. chapters 30, 32, 33, 34, 35, and 36;

(5) 10 U.S.C. chapters 106a, 1606, and 1607;

(6) Section 903 of the Department of Defense Authorization Act, 1981,

(7) The Hostage Relief Act of 1980, and

(8) The Omnibus Diplomatic Security and Antiterrorism Act of 1986. (Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(a))

(b) *Limit on combining assistance received under Chapter 31 with assistance under another program.* No person may receive assistance under Chapter 31, Title 38, United States Code in combination with any provisions of law listed in paragraph (a) of this section in excess of 48 months (or the part-time equivalent) unless the Department of Veterans Affairs determines that additional months of benefits under Chapter 31 are necessary to accomplish the purpose of the veteran's rehabilitation program. (Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(b))

[48 FR 37976, Aug. 22, 1983, as amended at 51 FR 16316, May 2, 1986; 57 FR 29800, July 7, 1992; 61 FR 20728, May 8, 1996; 74 FR 14666, Mar. 31, 2009]

Supplement *Highlights* reference: 82(1)

Next Section is §21.4022

§21.4022 Nonduplication—programs administered by VA.

A veteran, reservist, or eligible individual, who is eligible for educational assistance allowance or subsistence allowance under more than one of the provisions of law listed in this section, whether based on his or her own service or the service of another person, cannot receive such benefits concurrently. The individual must choose under which program he or she will receive benefits for the particular period(s) 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. 30 (Montgomery GI Bill—Active Duty);
- (b) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);
- (c) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (d) 38 U.S.C. 33 (Post-9/11 GI Bill);
- (e) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);
- (f) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);
- (g) 10 U.S.C. 1607 (Reserve Educational Assistance Program);
- (h) 10 U.S.C. 106a (Educational Assistance Test Program);
- (i) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);
- (j) The Hostage Relief Act of 1980 (Pub. L. 96-449), 5 U.S.C. 5661 note);
- (k) 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)

[34 FR 843, Jan. 18, 1969, as amended at 48 FR 37976, Aug. 22, 1983; 50 FR 27826, July 8, 1985; 51 FR 16316, May 2, 1986; 54 FR 33887, Aug. 17, 1989; 57 FR 29800, July 7, 1992; 61 FR 20728, May 8, 1996; 61 FR 26113, May 24, 1996; 74 FR 14666, Mar. 31, 2009]

Supplement *Highlights* references: 27(1), 82(1).

Next Section is §21.4131

§21.4145 Work-study allowance.*(a) Eligibility.*

(1) A veteran or reservist pursuing a program of education under either 38 U.S.C. chapter 30, 32, or 33 or 10 U.S.C. chapter 1606 at a rate of three-quarter time or full time is eligible to receive a work-study allowance.

(2) An eligible person is eligible to receive a work-study allowance when:

(i) The eligible person is pursuing a program of education under 38 U.S.C. chapter 35 on at least a three-quarter-time basis;

(ii) The eligible person is pursuing a program of education in a State; and

(iii) The eligible person is not pursuing a program of special restorative training. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(b) Selection criteria. Whenever feasible, the Department of Veterans Affairs will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The Department of Veterans Affairs shall consider the following additional selection criteria:

(1) Need of the veteran, reservist, or eligible person to augment his or her educational assistance allowance;

(2) Availability to the veteran, reservist, or eligible person of transportation to the place where his or her services are to be performed;

(3) Motivation of the veteran, reservist, or eligible person; and

(4) Compatibility of the work assignment to the veteran's, reservist's, or eligible person's physical condition. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537, 5101(a))

(c) Utilization. Work-study services may be utilized in connection with:

(1) Outreach services program as carried out under the supervision of a Department of Veterans Affairs employee;

(2) Preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs;

(3) Hospital and domiciliary care and medical treatment at VA facilities;

(4) For a reservist training under 10 U.S.C. chapter 1606, activities relating to the administration of 10 U.S.C. chapter 1606 at Department of Defense facilities, Coast Guard facilities, or National Guard facilities; and

(5) Any other appropriate activity of VA. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(d) *Rate of payment.* In return for the veteran's, reservist's, or eligible person's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of:

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) times the number of hours the veteran, reservist, or eligible person has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran, reservist, or eligible person has agreed to work. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(e) *Payment in advance.* VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or

(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date the contract is signed. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(f) *Veteran, reservist, or eligible person reduces rate of training.* In the event the veteran, reservist, or eligible person reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, reservist, or eligible person, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter, or semester in which the veteran, reservist, or eligible person ceases to be a three-quarter-time student. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(g) *Veteran, reservist, or eligible person terminates training.*

(1) If the veteran, reservist, or eligible person terminates all training before completing an agreement, the Director of the Department of Veterans Affairs facility or designee:

(i) May permit him or her to complete the portion of the agreement represented by the money the Department of Veterans Affairs has advanced to the veteran, reservist, or eligible person for which he or she has performed no services, but

(ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(2) The veteran, reservist, or eligible person must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran, reservist, or eligible person terminates training.

(h) *Indebtedness for unperformed service.*

(1) If the veteran, reservist, or eligible person has received an advance for hours of unperformed service, and the Department of Veterans Affairs has evidence that he or she does not intend to perform that service, the advance:

(i) Will be a debt due the United States, and

(ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis of the contract. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(i) *Survey.* The Department of Veterans Affairs will conduct an annual survey of its regional offices to determine the number of veterans, reservists, or eligible persons whose services can be utilized effectively. (Authority: 38 U.S.C. 3485)

[38 FR 12214, May 10, 1973, as amended at 48 FR 37983, Aug. 22, 1983; 61 FR 26113, May 24, 1996; 74 FR 14667, Mar. 31, 2009]

Supplement *Highlights* references: 27(1), 82(1).

§21.4146 Assignments of benefits prohibited.

(a) *General.* Section 5301(a), Title 38, United States Code, provides that payments of benefits due or to become due under the laws administered by the Department of Veterans Affairs shall not be assigned, except to the extent specifically authorized by law. No law specifically authorizes assignments of educational assistance allowances payable under 38 U.S.C. chapters 30, 32, 33, 35, or 36, or 10 U.S.C. chapter 1606, and therefore none shall be made.

(b) *Designating an attorney-in-fact.* In any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(c) *Arrangements amounting to an assignment.* Payments may be made to a post office box address or a bank address only if the educational institution (other than an organization or entity offering a licensing or certification test) attests that it has not entered into an assignment agreement with the student, and is not the attorney-in-fact of the student with power to negotiate an educational assistance check on behalf of the student and is not otherwise able to control the proceeds of the benefits check. Such statements shall be subject to review and when determined to be false, may be cause for creation of an overpayment to the account of the veteran or other eligible person, for which the educational institution (other than an organization or entity offering a licensing or certification test) may be liable under the provisions of §21.4009.

(d) *Correspondence school addresses.* A request by a veteran or other eligible person to send the benefit check payable to him or her at an address which is an educational institution primarily engaged in correspondence course instruction will be presumed not to be the actual address of the veteran or other eligible person and will not be honored. Benefits checks will not be sent to the veteran or other eligible person in that event until a new address is provided designating the individual's mailing address.

(e) *Referral to Committee on Educational Allowances.* When the evidence of record indicates that an educational institution has violated the terms of this section, the matter will be referred to the facility Committee on Educational Allowances as provided in §§21.4210(g) and 21.4212. (Authority: 38 U.S.C. 5301(a))

[43 FR 35296, Aug. 9, 1978, as amended at 44 FR 62498, Oct. 31, 1979; 61 FR 26114, May 24, 1996; 63 FR 35831, July 1, 1998; 72 FR 16969, Apr. 5, 2007; 74 FR 14667, Mar. 31, 2009]

Supplement *Highlights* references: 27(1), 39(4), 73(1), 82(1).

Next Section is §21.4150

§21.4153 Reimbursement of expenses.

For the purposes of this section, other than paragraph (d)(4) of this section, “educational institution” includes an organization or entity offering licensing or certification tests.

(a) *Expenses will be reimbursed under contract:*

(1) *Scope of contracts.*

(i) If a State or local agency requests payment for service contemplated by law, and submits information prescribed in paragraph (e) of this section, VA will negotiate a contract or agreement with the State or local agency to pay (subject to available funds and acceptable annual evaluations) reasonable and necessary expenses incurred by the State or local agency in:

- (A) Determining the qualifications of educational institutions and training establishments to furnish programs of education to veterans and eligible persons,
- (B) Supervising educational institutions and training establishments, and
- (C) Furnishing any other services VA may request in connection with the law governing VA education benefits.

(ii) VA will take into account the results of annual evaluations carried out under §21.4155 of this part when negotiating the terms and conditions of the contract or agreement.

(2) *Reimbursable supervision.* Supervision will consist of the services required:

(i) To determine that the programs are furnished in accordance with the law and with any other reasonable criteria as may be imposed by the State, and

(ii) To disapprove any programs which fail to meet the law and the established criteria. (Authority: 38 U.S.C. 3674, 3689)

(b) *Reimbursement.* The Under Secretary for Benefits and the Director, Education Service, are authorized to enter into agreements necessary to fulfill the purpose of paragraph (a) of this section. See §21.4001(b). (Authority: 38 U.S.C. 512(a))

(c) *Reimbursable expenses.* Reimbursement may be made from the funds provided in the existing contract with the State approving agency under the provisions of this section. No reimbursement may be authorized for expenses incurred by any individual who is not an employee of the State approving agency.

(1) *Salaries.* Salaries for which reimbursement may be authorized under a contract:

(i) Will not be in excess of the established rate of pay for other employees of the State with comparable or equivalent duties and responsibilities,

(ii) Will be limited to the actual salary expense incurred by the State, and

(iii) Will include the basic salary rate plus fringe benefits, such as social security, retirement, and health, accident, or life insurance, that are payable to all similarly circumstanced State employees.

(2) *Travel.*

(i) Reimbursement will be made under the terms of the contract for travel of personnel engaged in activities in connection with the inspection, approval or supervision of educational institutions, including:

(A) Travel of personnel attending training sessions sponsored by VA and the State approving agencies.

(B) Expenses of attending out-of-State meetings and conferences only if the Director, Education Service, authorizes the travel. (Authority: 38 U.S.C. 3674; Pub. L. 100-323)

(ii) Travel expenses for which reimbursement may be authorized under a contract will be limited to:

(A) Expenses allowable under applicable State laws or travel regulations of the State or agency;

(B) Expenses for travel actually performed by employees specified under the terms of the contract and;

(C) Either actual expenses for transportation, meals, lodging and local telephone calls, or the regular State or agency per diem allowance.

(iii) All claims for travel expenses payable under the terms of a contract must be supported by factual vouchers and all transportation allowances must be supported by detailed claims which can be checked against work assignments in the office of the State approving agency. (Authority: 38 U.S.C. 3674)

(3) *Administrative expenses.* In determining the allowance for administrative expenses for which payment may be authorized, VA will apply the provisions of 38 U.S.C. 3674(b). In making that application, VA will determine reimbursable salary cost pursuant to paragraph (c)(1) of this section.

(4) *Subcontracts.* The State approving agency may also be reimbursed for work performed by a subcontractor provided:

(i) The work has a direct relationship to the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; and (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3674)

(ii) The Contracting Officer has approved the subcontract in advance. (Authority: 38 U.S.C. 3674; Pub. L. 94-502, Pub. 95-902)

(d) *Nonreimbursable expenses.* The Department of Veterans Affairs will not provide reimbursement under reimbursement contracts for:

(1) Expenditures other than salaries and travel of personnel required to perform the services specified in the contract and Department of Veterans Affairs regulations.

(2) Supplies, equipment, printing, postage, telephone services, rentals, and other miscellaneous items or a service furnished directly or indirectly.

(3) Except as provided in paragraph (c)(2) of this section, the salaries and travel of personnel while attending training sessions, or when they are engaged in activities other than those in connection with the inspection, approval, or supervision of educational institutions.

(4) The supervision of educational institutions which do not have veterans or eligible persons enrolled.

(5) Expenses incurred in the administration of an educational program which are costs properly chargeable as tuition costs, such as the development of course material or individual educational programs, teacher training or teacher improvement activities, expenses of coordinators, or administrative costs, such as those involving selection and employment of teachers. (This does not preclude reimbursement for expenses of the State agency incurred in the development of standards and criteria for the approval of courses under the law.)

(6) Expenses of a State approving agency for inspecting, approving or supervising courses when the agency is responsible for establishing, conducting or supervising those courses.

(7) Any expense for supervision or other services to be covered by contract which are already being reimbursed or paid from tuition funds under this law.

(e) *Agency operating plan.* A request by a State approving agency for reimbursement under the law will be subject to the requirements of 41 CFR 87.5101-8 as to "Equal Opportunity." The request will be accompanied by the proposed plan of operation and the specific duties and responsibilities of all personnel for which reimbursement of salaries and travel expense is required.

(1) The Department of Veterans Affairs will determine personnel requirements for which the Department of Veterans Affairs provides reimbursement on the basis of estimated workloads agreed upon between the Department of Veterans Affairs and the State agency. Agreements are subject to review and adjustment.

(2) Workloads will be determined upon three factors:

(i) Inspection and approval visits,

(ii) Supervisory visits, and

(iii) Special visits at the request of the Department of Veterans Affairs.

(f) *Contract compliance.* Reimbursement under each contract or agreement is conditioned upon compliance with the standards and provisions of the contract and the law. If the Contracting Officer determines that the State has failed to comply with the standards or provisions of the law or with terms of the reimbursement contract, he or she will withhold reimbursement for claimed expenses under the contract. If the State disagrees, the State may request the Contracting Officer to reconsider his or her decision or may initiate action under the Disputes clause of the contract. See 48 CFR 801.602. (Authority: 38 U.S.C. 3674)

(g) *Contract disputes.* The State approving agency reimbursement contract is subject to the Contract Disputes Act of 1978. Disputes arising under, or relating to, the contract will be resolved in accordance with the disputes article of the contract and with appropriate procurement regulations. (Authority: 41 U.S.C. 602)

[31 FR 6774, May 6, 1966, as amended at 40 FR 42880, Sept. 17, 1975; 43 FR 35296, Aug. 9, 1978; 44 FR 62498, Oct. 31, 1979; 48 FR 37983, Aug. 22, 1983; 51 FR 16316, May 2, 1986; 54 FR 49757, Dec. 1, 1989; 61 FR 20728, May 8, 1996; 61 FR 26114, May 24, 1996; 72 FR 16969, Apr. 5, 2007; 74 FR 14667, Mar. 31, 2009]

Supplement *Highlights* references: 27(1), 73(1), 82(1).

(3) The qualification and performance standards adopted by the State approving agency shall describe a level of qualification and performance which shall equal or exceed the level of qualification and performance described in the prototype qualification and performance standards developed by VA with the State approving agencies. The State approving agency may amend or modify its adopted qualification and performance standards annually as circumstances may require.

(4) VA shall provide assistance in developing these standards to a State approving agency that requests it.

(5) After November 19, 1989, each State approving agency carrying out a contract or agreement with VA under §21.4153(a) shall:

(i) Apply qualification and performance standards based on the standards developed under this paragraph, and

(ii) Make available to any person, upon request, the criteria used to carry out its functions under a contract or agreement entered into under §21.4153(a) of this part.

(6) A State approving agency may not apply these standards to any person employed by the State approving agency on May 20, 1988, as long as that person remains in the position in which the person was employed on that date. (Authority: 38 U.S.C. 3674A(b); Pub. L. 100-323)

[54 FR 49757, Dec. 1, 1989, as amended at 61 FR 29296, June 10, 1996]

Supplement Highlights reference: 27(3)

Next Section is §21.4200

Schools

§21.4200 Definitions.

The definitions in this section apply to this subpart, except as otherwise provided. The definitions of terms defined in this section also apply to subparts C, G, H, K, L, and P if they are not otherwise defined for purposes of those subparts.

(a) *School, educational institution, institution.* The terms school, educational institution and institution mean:

- (1) A vocational school or business school;
- (2) A junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution;
- (3) A public or private elementary school or secondary school;
- (4) A training establishment as defined in paragraph (c) of this section;
- (5) Any entity, other than an institution of higher learning, that provides training for completion of a State-approved alternative teacher certification program; or
- (6) Any private entity that offers, either directly or indirectly under an agreement with another entity, a course or courses to fulfill requirements for the attainment of a license or certificate generally recognized as necessary to obtain, maintain, or advance in employment in a profession or vocation in a high technology occupation. (Authority: 38 U.S.C. 3452, 3501(a)(6), 3689(d))

(b) *Divisions of the school year.*

- (1) *Ordinary School Year* is generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.
- (2) *Term*, any regularly established division of the ordinary school year under which the school operates.
- (3) *Quarter*, a division of the ordinary school year, usually a period from 10 to 13 weeks long.
- (4) *Semester*, a division of the ordinary school year, usually a period from 15 to 19 weeks long.
- (5) *Summer term*, the whole of the period of instruction at a school which takes place between ordinary school years. A summer term may be divided into several summer sessions. (Authority: 38 U.S.C. 3680(a))

(6) *Summer session*, any division of a summer term. (Authority: 38 U.S.C. 3680(a))

(c) *Training establishment*. The term training establishment means any establishment providing apprentice or other training on-the-job, including those under the supervision of a college, university, any State department of education, any State apprenticeship agency, any State board of vocational education, any joint apprenticeship committee, the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. chapter 4C, or any agency of the Federal government authorized to supervise such training. (Authority: 38 U.S.C. 3452(e), 3501(a)(9))

(d) *External degree*. This term means a standard college degree given by an accredited college or university based on satisfactory completion of a prescribed program of independent study. The program may require occasional attendance for a workshop or seminar and may include some regular residence course work.

(e) *Standard college degree*. The term means an associate or higher degree awarded by:

(1) An institution of higher learning that is accredited as a collegiate institution by a recognized regional or national accrediting agency; or

(2) An institution of higher learning that is a *candidate* for accreditation, as that term is used by the regional or the national accrediting agencies; or

(3) An institution of higher learning upon completion of a course which is accredited by an agency recognized to accredit specialized degree-level programs. (Authority: 38 U.S.C. 3452)

(f) *Undergraduate college degree*. The term means a college or university degree obtained through the pursuit of unit subjects which are below the graduate level. Included are associate degrees, bachelors' degrees and first professional degrees.

(g) *Standard class session*. The term *standard class session* means the time an educational institution schedules for class each week in a regular quarter or semester for one quarter or one semester hour of credit. It is not less than 1 hour (or one 50-minute period) of academic instruction, 2 hours (or two 50-minute periods) of laboratory instruction, or 3 hours (or three 50-minute periods) of workshop training. (Authority: 38 U.S.C. 3688(c))

(h) *Institution of higher learning*. This term means:

(1) 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.

(2) When there is no State law to authorize the granting of a degree, a school which:

(i) Is accredited for degree programs by a recognized accrediting agency,
or

(ii) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(3) A hospital offering medical-dental internships or residencies approved in accordance with §21.4265(a) without regard to whether the hospital grants a post-secondary degree.

(4) An educational institution which:

(i) Is not located in a State,

(ii) Offers a course leading to a standard college degree or the equivalent,
and

(iii) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located. (Authority: 38 U.S.C. 3452)

(i) *Audited course.* The term means any credit course which a student attends as a listener only with a prior understanding between school officials and the student that such attendance will not result in credit being granted toward graduation. See §21.4252(i). (Authority: 38 U.S.C. 3680(a)(3))

(j) *Nonpunitive grade.* The term means any grade assigned for pursuit of a course, whether upon completion of the course or at the time of withdrawal from the course, which has the effect of excluding the course from any consideration in determining progress toward fulfillment of requirements for graduation. No credit toward the school's requirements for graduation is granted for such a grade, nor does the grade affect any other criteria for graduation by the policies of the school, such as a grade point average. Therefore, it has the same effect as an audited course. See §21.4135(e).

(k) *Punitive grade.* The term means a grade assigned for pursuit of a course which is used in determining the student's overall progress toward completion of the school's requirements for graduation. Unlike the nonpunitive grade, the punitive grade does affect the criteria to be met by the student for graduation, i.e., it is a factor in computing the student's grade average or grade point average, for example. For this reason it is not the same as an audited course, since it does have an effect upon the student's ability to meet the school's criteria for graduation. See §21.4135(e).

(l) *Drop-add period.* The term means a reasonably brief period at the beginning of a term, not to exceed 30 days, officially designated by a school for unrestricted enrollment changes by students. (Authority: 38 U.S.C. 3680(a)(4))

(m) *Normal commuting distance.* Two locations that are within 55 miles of each other are within normal commuting distance. Furthermore, a branch, extension or additional facility of a school located more than 55 miles from the school's main campus or parent facility will be considered within normal commuting distance only if:

(1) School records show that, prior to the establishment of the additional teaching site, at least 20 students or 5 percent of the enrollment, whichever is the lesser, on the main campus or parent facility were regularly commuting from the area where the additional teaching site is located; or

(2) Other comparable evidence clearly shows that students commute regularly between the two locations. (Authority: 38 U.S.C. 3689(c))

(n) *Enrollment.* This term means the state of being on that roll, or file of a school which contains the names of active students.

(o) *Pursuit of a program of education.*

(1) This term means to work while enrolled, toward the objective of a program of education. This work must be in accordance with approved institution policy and regulations and applicable criteria of Title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through:

- (i) Resident courses,
- (ii) Independent study courses,
- (iii) Correspondence courses,
- (iv) An apprenticeship or other on-the-job training program,
- (v) Flight courses,
- (vi) A farm cooperative course,
- (vii) A cooperative course, or
- (viii) A graduate program of research in absentia.

(2) The Department of Veterans Affairs will consider a veteran or eligible person who qualifies under §21.4138 for payment during an interval or school closing, or who qualifies for payment but whose work is interrupted by a holiday vacation as defined in §21.7020(b)(16), to be in pursuit of a program of education during the interval, school closing or holiday vacation.

(p) *Enrollment period.*

(1) This term means an interval of time during which a veteran or eligible person:

- (i) Is enrolled in an educational institution; and
- (ii) Is pursuing his or her program of education.

(2) This term applies to each unit course or subject in the veteran's or eligible person's program of education.

(q) *Attendance*. This term means the presence of a veteran or eligible person:

(1) In the class where the approved course is being taught in which he or she is enrolled;

(2) At a training establishment; or

(3) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or eligible person is enrolled and is pursuing a program of education. (Authority: 38 U.S.C. 3680(g))

(r) *In residence on a standard quarter- or semester-hour basis*. This term means study at a site or campus of a college or university, or off-campus at an official resident center, requiring pursuit of regularly scheduled weekly class instruction at the rate of one standard class session per week throughout a standard quarter or semester for one quarter- or one semester-hour credit. (Authority: 38 U.S.C. 3688(c))

(s) *Deficiency course*. This term means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(t) *Remedial course*. This term means a special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(u) *Refresher course*. This term means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed. (Authority: 38 U.S.C. 3491(a)(2))

(v) *Reservist*. The term *reservist* means a member of the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606. (Authority: 38 U.S.C. 3002)

(w) *Alternative teacher certification program*. The term alternative teacher certification program, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (a)(5) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning. (Authority: 38 U.S.C. 3452(c))

(x) *State*. The term *State* has the same meaning as provided in §3.1(i) of this chapter. (Authority: 38 U.S.C. 101(20))

(y) *Pilot certificate*. A *pilot certificate* is a pilot certificate issued by the Federal Aviation Administration. The term means a pilot's license as that term is used in 10 U.S.C. chapter 1606 and 38 U.S.C. chapters 30 and 32. (Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(z) *Proprietary educational institution.* The term proprietary educational institution (including a proprietary profit or proprietary nonprofit educational institution) means an educational institution that:

- (1) Is not a public educational institution;
- (2) Is in a State; and
- (3) Is legally authorized to offer a program of education in the State where the educational institution is physically located. (Authority: 38 U.S.C. 3680A(e))

(aa) *High technology industry.* The term *high technology industry* includes the following industries:

- (1) Biotechnology;
- (2) Life science technologies;
- (3) Opto-electronics;
- (4) Computers and telecommunications;
- (5) Electronics;
- (6) Computer-integrated manufacturing;
- (7) Material design;
- (8) Aerospace;
- (9) Weapons;
- (10) Nuclear technology; and
- (11) Any other identified advanced technologies in the biennial Science and Engineering Indicators report published by the National Science Foundation. (Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(bb) *Employment in a high technology industry.* *Employment in a high technology industry* means employment in a high technology occupation specific to a high technology industry. (Authority: 38 U.S.C. 3014A)

(cc) *High technology occupation.* The term *high technology occupation* means an occupation that leads to employment in a high technology industry. These occupations consist of:

- (1) Life and physical scientists;
- (2) Engineers;
- (3) Mathematical specialists;
- (4) Engineering and science technicians;
- (5) Computer specialists; and
- (6) Engineering, scientific, and computer managers. (Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(dd) *Computer specialists.* The term *computer specialists* includes the following occupations:

- (1) Database, system, and network administrators;

- (2) Database, system, and network developers;
- (3) Computer and network engineers;
- (4) Systems analysts;
- (5) Programmers;
- (6) Computer, database, and network support specialists;
- (7) All computer scientists;
- (8) Web site designers;
- (9) Computer and network service technicians;
- (10) Computer and network electronics specialists; and
- (11) All certified professionals, certified associates and certified technicians in the information technology field. (Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(ee) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation. (Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(ff) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test. (Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(gg) *Organization or entity offering a licensing or certification test.*

(1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to the individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test but does not issue the license or certificate; or

(ii) An organization or entity that administers a test but does not issue the license or certificate if that administering organization or entity cannot provide all required

information and certifications under §21.4268 to the State approving agency and to VA. (Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(hh) *Tuition assistance top-up*. The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c). (Authority: 38 U.S.C. 3014(b))

(ii) *VA Regional Processing Office*. The term *VA Regional Processing Office* means a VA office where claims for educational assistance under 38 U.S.C. chapters 30, 32, and 35 and 10 U.S.C. chapter 1606 are allowed or disallowed. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3685, 3689)

(jj) [Reserved]

(kk) *Fugitive felon*. The term *fugitive felon* means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of:

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law. (Authority: 38 U.S.C. 5313B)

(ll) *Felony*. The term *felony* means a major crime or offense defined as such under the law of the place where the offense was committed or under Federal law. It includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law. (Authority: 38 U.S.C. 5313B)

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13403, Sept. 23, 1967; 35 FR 9815, June 16, 1970; 38 FR 14935, June 7, 1973; 38 FR 32579, Nov. 27 1973; 39 FR 43221, Dec. 11, 1974; 40 FR 31762, July 29, 1975; 43 FR 35296, Aug. 5, 1978; 45 FR 48887, July 22, 1980; 48 FR 37584, Aug. 22, 1983; 53 FR 48549, Dec. 1, 1988; 55 FR 28027, July 9, 1990; 57 FR 29800, July 7, 1992; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 62 FR 55760, Oct. 28, 1997; 63 FR 34128, June 23, 1998; 65 FR 81741, Dec. 27, 2000; 68 FR 35178, June 12, 2003; 70 FR 25786, May 16, 2005; 72 FR 16969, Apr. 5, 2007; 73 FR 65264, Nov. 3, 2008; 74 FR 14667, Mar. 31, 2009]

Supplement *Highlights* references: 27(1, 3), 39(2), 53(1), 62(3), 68(1), 73(1), 82(1).

Reserved

§21.4201 Restrictions on enrollment; percentage of students receiving financial support.

(a) *General.* Except as otherwise provided in this section the Department of Veterans Affairs shall not approve an enrollment in any course for an eligible veteran, not already enrolled, for any period during which more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees or other charges paid for them by the educational institution or by the VA under title 38, U.S.C., or under title 10, U.S.C. This restriction may be waived in whole or in part. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(b) *Affected schools.* The requirements of paragraph (a) of this section apply to all courses not otherwise exempt or waived offered by all educational institutions, regardless of whether the institution is degree-granting, proprietary profit, proprietary nonprofit, eleemosynary, public and/or tax-supported.

(c) *Affected courses.*

(1) The following courses or programs are exempt from the requirements of paragraph (a) of this section:

(i) Any farm cooperative course; and

(ii) Any course offered by a flying club established, organized and operated pursuant to regulations of a military department of the Armed Forces as *nonappropriated sundry fund activities* which are governmental instrumentalities.

(2) The provisions of paragraph (a) of this section apply to the enrollment of a serviceperson in a course leading to a high school diploma, equivalency certificate, or a refresher, remedial or deficiency course, but they do not apply to the enrollment of a veteran in such a course.

(3) Except as provided in paragraph (c)(2) of this section, the provisions of paragraph (a) of this section do not apply to an approved course which:

(i) Is offered under contract with the Department of Defense,

(ii) Is on or immediately adjacent to a military base, or a facility of the National Guard (including the Air National Guard) or the Selected Reserve,

(iii) Has been approved by the State approving agency of the State:

(A) Where the base is located or

(B) Where the parent school is located if the course is offered overseas, and

(iv) Is available only to:

(A) Military personnel and their dependents, or

(B) Military personnel, their dependents and civilian employees of a base located in a State, or

(C) Persons authorized by the base commander to attend the course provided the base is located outside the United States.

(D) In the case of a course offered on or immediately adjacent to a facility of the National Guard or the Selected Reserve, members of the National Guard, members of the Selected Reserve and their dependents.

(4) The provisions of paragraph (a) of this section generally do not apply to a course when the total number of veterans, eligible persons, and reservists receiving assistance under 38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606, who are enrolled in the educational institution offering the course, equals 35 percent or less of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). However, the provisions of paragraph (a) of this section will apply to such a course when: (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(i) The course is a course of Special Assistance for the Educationally Disadvantaged and a serviceperson enrolls in it, or

(ii) The Director of the Department of Veterans Affairs facility of jurisdiction has reason to believe that the enrollment of veterans and eligible persons in the course may exceed 85 percent of the total student enrollment in the course. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(d) *Applications for exemptions.* No applications are required for any exemptions except that found in paragraph (c)(4) of this section. To obtain an exemption as stated in paragraph (c)(4) of this section schools must submit reports as required in paragraph (f)(1) of this section. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(e) *Computing the 85-15 percent ratio:*

(1) *Determining when separate computations are required.* Except as provided in paragraph (c) of this section and in paragraph (e)(3) of this section, an 85-15 percent ratio must be computed for each course of study or curriculum leading to a separately approved educational or vocational objective. Computations will not be made for unit subjects, unless only one unit subject is approved by the State approving agency to be offered at a separate branch or extension of a school. Courses or curricula which are offered at separately approved branches or extensions, as well as courses or curricula leading to a secondary school diploma or equivalency certificate offered at any branch or extension, must have an 85-15 percent ratio computed

separately from the same course offered at the parent institution. The count of students attending the branch may not be added to those attending the parent institution even for the same courses or curricula. However, the count of those attending courses or curricula offered at an additional facility, as opposed to a branch or extension, must be added to those attending the same course at the parent institution. Pursuit of a course or curriculum that varies in any way from a similar course, although it may have the same designation as the other similar course or curriculum, will require a separate 85-15 percent computation. A course or curriculum will be considered to vary from another if there are different attendance requirements, required unit subjects are different, required completion length is different, etc.

(i) Separate courses for computation purposes in institutions of higher learning will be determined by general curriculum only until the point at which it is reasonable to assume a major field would be declared and after that point by specific curriculum.

(A) General 2-year curricula at 2-year institutions of higher learning, general curricula such as AA (Associate of Arts) or AS (Associate of Science) degrees with no major specified, will require separate computations for each curriculum. Terminal 2-year courses (i.e., AAS (Associate of Applied Science), dental technology or auto mechanics certificate) and other associate degree courses where a field is specified must be computed separately for each objective.

(B) Students attending 4-year institutions of higher learning and graduate schools may be counted in general curricula such as BA (Bachelor of Art) and BS (Bachelor of Science) only until the normal point at which the school requires the student to declare a major subject. Then the 85-15 percent computation must be made for each specific curriculum, i.e., BS (Bachelor of Science) in electrical engineering, MA (Master of Arts) in English, etc.

(ii) NCD (noncollege degree) courses must be computed separately by approved vocational objective. If several curricula lead to the same coded vocational objective, each must meet the 85-15 percent requirement separately, unless it can be shown that two or more courses are identical in all respects (scheduling, hours devoted to each unit subject, etc.). Branch or extension courses will be computed separately from courses at the parent facility. Courses offered on a full- and part-time basis which are identical in length and content will be combined for computing the ratio.

(2) *Assigning students to each part of the ratio.* Notwithstanding the provisions of paragraph (a) of this section, the following students will be considered to be nonsupported provided VA is not furnishing them with educational assistance under title 38, U.S.C., or under title 10, U.S.C.:

(i) Students who are not veterans or reservists, and are not in receipt of institutional aid. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(ii) All graduate students in receipt of institutional aid.

(iii) Students in receipt of any Federal aid (other than Department of Veterans Affairs benefits).

(iv) Undergraduates and non-college degree students receiving any assistance provided by an institution, if the institutional policy for determining the recipients of such aid is equal with respect to veterans and nonveterans alike. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) *Calculation.*

(i) To determine if the requirement of paragraph (a) of this section has been met for all courses except flight courses the fulltime equivalent, nonsupported students as defined by paragraph (e)(2) of this section will be compared to the full-time equivalent students enrolled in the course. If the full-time equivalent, nonsupported students do not equal at least 15 percent of the total full-time enrollment, the 85-15 percent requirement has not been met for the course. If a non-Department of Veterans Affairs student in a correspondence course has not completed a lesson nor made a payment toward the cost of the course during the 6-month period immediately prior to the computation, the student will not be counted in computing the 85-15 percent ratio.

(ii) The 85-15 percent ratio for flight courses shall be computed by comparing the number of hours of training received by or tuition charged to nonsupported students in the preceding 30 days to the total number of hours of training received by or tuition charged to all students in the same period. All approved courses offered under 14 CFR parts 141 and 142 at a flight school will be considered to be one course for the purpose of making this computation. Similarly, all other approved courses offered at a flight school will be considered to be one course for the purpose of making this computation. In this computation hours of training or tuition charges for students enrolled:

(A) In the recreational pilot certification course and the private pilot certification course will be excluded;

(B) In a ground instructor certification course will be included;

(C) In courses approved under 14 CFR part 141, other than a ground instructor certification course, will be actual hours of logged instructional flight time or the charges for those hours; and

(D) In courses not approved under 14 CFR part 141, such as courses offered by flight simulator or courses for navigator or flight engineer, shall include ground training time or charges; actual logged instructional flight time or charges; and instructional time in a flight simulator or charges for that training. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(f) *Reports.*

(1) Schools must submit to VA all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester

basis, it shall make that submission no later than 30 days after the beginning of the first term for which the school wants the exemption to apply. If the school is not organized on a term, quarter or semester basis, it shall make that submission no later than 30 days after the beginning of the first calendar quarter for which the school wishes the exemption to apply. A school having received an exemption found in paragraph (c)(4) of this section shall not be required to certify that 85 percent or less of the total student enrollment in any course is receiving Department of Veterans Affairs assistance: (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(i) Unless the Director of the VA facility of jurisdiction has reason to believe that the enrollment of eligible veterans and eligible persons in a specific course may exceed 85 percent of the total enrollment in a specific course, or

(ii) Until such time as the total number of veterans, eligible persons and reservists receiving assistance under 38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time procedures contained in paragraph (f)(2) of this section shall apply. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(2) The school must submit all calculations made under paragraph (e)(3) of this section to the Department of Veterans Affairs according to these time limits.

(i) If the school is organized on a term, quarter or semester basis, the calculations must be submitted no later than 30 days after the beginning of each regular school term (excluding summer sessions), or before the beginning date of the next term, whichever occurs first.

(ii) If a school is not organized on a term, quarter or semester basis, reports must be received by the Department of Veterans Affairs no later than 30 days after the end of each calendar quarter. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(g) Effect of the 85-15 percent ratio on processing new enrollments.

(1) The Department of Veterans Affairs will process new enrollments of eligible veterans (and servicepersons where this provision applies to them), in a course on the basis of the school's submission of the most recent computation showing that:

(i) The 85-15 percent ratio is satisfactory, or

(ii) The course is exempt under paragraph (c)(4) of this section.

(2) Except for those enrollments with a beginning date before or the same as the date the school completed the most recent computation, no benefits will be paid under 10 U.S.C. chapter 1606 or under 38 U.S.C. chapter 30, 32, 33, or 36, when that computation establishes that the course: (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(i) Neither has a satisfactory 85-15 percent ratio, nor

(ii) Is exempt under paragraph (c)(4) of this section. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) If a school fails to submit a timely computation, no benefits will be paid for:

(i) The enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate if the enrollment has beginning dates beyond the expiration of the allowable computation period, or

(ii) The enrollment of a veteran in any course to which the provisions of paragraph (a) of this section apply if the enrollment has beginning dates beyond the expiration of the allowable computation period.

(4) Enrollments with later beginning dates may be processed only after the school certifies that:

(i) The proper ratio has been reestablished for the course, or

(ii) The course is exempt from the requirement under paragraph (c)(4) of this section.

(5) When a school shows a reestablished 85-15 percent ratio, each new veteran enrollment or enrollment of a serviceperson in a course leading to a secondary school diploma or an equivalency certificate which is submitted after reestablishment must be individually computed into the ratio to ensure that the 85 percent limitation is not again immediately exceeded. The Department of Veterans Affairs will require individual computations until:

(i) The end of the term for which the ratio was reestablished, or

(ii) The end of the calendar quarter during which the ratio was reestablished if the school is not operated on a term, quarter or semester basis. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(6) Once a student is properly enrolled in a course which either meets the 85-15 percent requirement or which is exempt pursuant to paragraph (c) of this section, such a student may not have benefits for that course terminated because the 85-15 percent requirement subsequently is not met or because the course loses its exemption, as long as the student's enrollment remains continuous. A student enrolled in an institution organized on a term basis need not attend summer sessions in order to maintain continuous enrollment. An enrollment may also be considered continuous if a "break" in enrollment is wholly due to circumstances beyond the student's control such as serious illness.

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving VA education benefits equals or exceeds 85 percent of the total full-time equivalent enrollment in the course may apply for a waiver to the Director, Education Service, through the Director of the VA facility

of jurisdiction. When applying, a school must submit sufficient information to allow the Director, Education Service, to judge the merits of the request against the criteria shown in this paragraph. This information and any other pertinent information available to VA shall be considered in relation to these criteria:

(1) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(2) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of its notice from the Department of Education that the school is eligible to be considered for a grant under the Strengthening Institutions Program or the Special Needs Program, if applicable. Otherwise the school should submit data sufficient to allow the Director, Education Service, to judge whether the school is similar to institutions which the Department of Education considers to be eligible to apply for a grant under these programs. The pertinent criteria and data categories are published in Title 34, Code of Federal Regulations, Chapter VI, Part 624, Subpart A; Part 625, Subpart A; and Part 626, Subpart A. The requirements of those criteria that a school be a “public or nonprofit” institution need not be met.

(3) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to VA.

(4) General effectiveness of the school’s program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, ratio of educational and general expenditures to full-time equivalency enrollment, etc. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

[44 FR 62498, Oct. 31, 1979, as amended at 48 FR 37985, Aug. 22, 1983; 51 FR 16316, May 2, 1986; 52 FR 45634, Dec. 1, 1987; 54 FR 4285, Jan. 30, 1989; 54 FR 34984, Aug. 23, 1989; 55 FR 28027, July 9, 1990; 57 FR 29800, July 7, 1992; 61 FR 20728, May 8, 1996; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 62 FR 55760, Oct. 28, 1997; 63 FR 34129, June 23, 1998; 74 FR 14667, Mar. 31, 2009; 74 FR 17907, Apr. 20, 2009]

Supplement *Highlights* references: 27(1, 3), 39(2), 82(1).

§21.4202 Overcharges; restrictions on enrollments.

(a) [Removed and reserved]

(b) [Removed and reserved]

(c) *Restrictions; proprietary schools.* Enrollment will not be approved for any veteran or eligible person under the provisions of Chapter 34 or 35 respectively, in any proprietary school of which the veteran or eligible person is an official authorized to sign certificates of enrollment or monthly certificates of attendance, an owner or an officer.

[31 FR 6774, May 6, 1966, as amended at 32 FR 13403, Sept. 23, 1967; 37 FR 6679, Apr. 1, 1972; 39 FR 43221, Dec. 11, 1974; 43 FR 35300, Aug. 9, 1978; 48 FR 37987, Aug. 22, 1983; 49 FR 5115, Feb. 10, 1984; 63 FR 35831, July 1, 1998]

Supplement *Highlights* reference: 39(4)

Reserved

§21.4206 Reporting fee.

VA may pay annually to each educational institution furnishing education or each joint apprenticeship training committee acting as a training establishment under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35 or 36 a reporting fee for required reports or certifications. The reporting fee will be paid as soon as feasible after the end of the calendar year.

(a) Except as provided in paragraph (b) of this section the reporting fee will be computed for each calendar year by multiplying \$7.00 by the number of eligible veterans and eligible persons enrolled under 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35 or 36 during that calendar year. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(b) In computing the reporting fee VA will not count a veteran or servicemember whose only receipt of educational assistance under 38 U.S.C. chapter 30 during a calendar year was tuition assistance top-up. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(c) An additional \$4 will be paid to those institutions which have delivered to the veteran or eligible person at registration the educational assistance check representing an advance payment, or which have delivered educational loan checks in accordance with the provisions of Subpart F. If an institution delivers both an advance payment check and educational loan check(s) to the same veteran or eligible person within 1 calendar year, it shall receive only one additional \$4 fee. In order to receive this fee, the institution shall submit to the Department of Veterans Affairs a certification of delivery of each check. If an advance payment check is not delivered within 30 days after commencement of the student's program, the check is to be returned to the Department of Veterans Affairs. If an education loan check is not delivered within 30 days of the date the educational institution received it, the check shall be returned to the Department of Veterans Affairs. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(d) No reporting fee payable to an educational institution under this section shall be subject to offset by the Department of Veterans Affairs against any liability of the educational institution for any overpayment which the Department of Veterans Affairs has administratively determined to exist unless the liability of the educational institution was not contested by the educational institution or was upheld by a final decree of a court of appropriate jurisdiction. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(e) Before payment of a reporting fee the Department of Veterans Affairs will require an educational institution to certify that:

(1) It has exercised reasonable diligence in determining whether it or any course offered by it approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of chapter 1606 of title 10, United States Code or chapters 30, 32, 33, 35 and 36 of title 38, U.S.C.; and

(2) It will, without delay, report any failure to meet any requirement to the Department of Veterans Affairs. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0073)

[32 FR 13404, Sept. 23, 1967, as amended at 40 FR 31762, July 29, 1975; 44 FR 62501, Oct. 31, 1979; 48 FR 37988, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 72 FR 16970, Apr. 5, 2007; 74 FR 14668, Mar. 31, 2009]

Supplement *Highlights* references: 73(1), 82(1).

Next Section is §21.4209

§21.4209 Examination of records.

(a) *Availability of records.* Notwithstanding any other provision of law, an educational institution, including for purposes of this section an organization or entity offering a licensing or certification test, must make the following records and accounts available to authorized Government representatives:

(1) Records and accounts pertaining to veterans or eligible persons who received educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36;

(2) Other students' records necessary for the Department of Veterans Affairs to ascertain institutional compliance with the requirements of these chapters; and

(3) The records of other individuals who took a licensing or certification test that VA believes are necessary to ascertain whether the veterans and eligible persons taking such test were reimbursed the correct amount. (Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(b) *Type of records.* Each educational institution must upon request of duly authorized representatives of the Government make available for examination all appropriate records and accounts, including but not limited to:

(1) Records and accounts which are evidence of tuition and fees charged to and received from or on behalf of all veterans, reservists, and eligible persons and from other students similarly circumstanced;

(2) Records of previous education or training of veterans, reservists, and eligible persons at the time of admission as students and records of advance credit, if any, granted by the educational institution at the time of admission;

(3) Records of the veteran's, reservists, or eligible person's grades and progress;

(4) Records of all advertising, sales or enrollment materials as required by §21.4252(h) and section 3696(b), title 38, United States Code;

(5) Records and computations showing compliance with the requirements of §21.4201 regarding the 85-15 percent ratio of students for each course; and

(6) Records necessary to demonstrate compliance with the requirements of §21.4252(e) pertaining to the time necessary to complete a correspondence course.

(7) Records necessary to demonstrate compliance with the requirements of §21.4268. (Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(c) *Noncollege degree, apprentice, and other on-the-job.* The educational institution having veterans, servicemembers, reservists, and/or eligible persons enrolled in a course that does not lead to a standard college degree must make available, in addition to the records and

accounts required in paragraph (b) of this section, the records of leave, absences, class cuts, makeup work, and tardiness. Each training establishment that has enrolled veterans under 38 U.S.C. chapter 30, 32, or 33, reservists under 10 U.S.C. chapter 1606, or eligible persons under 38 U.S.C. chapter 35 must also make available payroll records. (Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3690)

(d) *Nonaccredited courses.* The educational institution having veterans or eligible persons enrolled in nonaccredited courses must make available, in addition to the records and accounts required in paragraphs (b) and (c) of this section the following:

(1) Records of interruptions for unsatisfactory conduct or attendance.

(2) Records of refunds of tuition, fees and other charges made to a veteran or eligible person who fails to enter the course or withdraws or is discontinued prior to completion of the course.

(e) *Nonavailability.* Failure to make such records available as provided in this section will be grounds for discontinuing the payment of educational assistance allowance or special training allowance.

(f) *Retention of records.*

(1) Except as provided in paragraph (f)(2) of this section, an educational institution must keep records and accounts, including those pertaining to students not receiving benefits from VA, as described in this section, pertaining to each period of enrollment of a veteran, reservist, or eligible person. If those records are not available electronically, the paper records must be kept intact and in good condition at the educational institution for at least 3 years following the end of each enrollment period. If the records are stored electronically, the paper records may be stored at another site. The electronic records must be easily accessible at the educational institution for at least 3 years following the end of each enrollment period.

(2) An organization or entity offering a licensing or certification test must keep records and accounts intact and in good condition that are needed to show that veterans and eligible persons have been paid correctly for taking licensing or certification tests. The organization or entity must keep those records, at a site mutually agreed on, for at least 3 years following the date of the test.

(3) An educational institution will not be required under this section to retain records for longer than 3 years unless the educational institution receives from the Government Accountability Office or VA not later than 30 days before the end of the 3-year period a written request for longer retention. (Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0696.)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14936, June 7, 1973; 43 FR 35300, Aug. 9, 1978; 48 FR 37988, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 61 FR 26114, May 24, 1996; 72 FR 16970, Apr. 5, 2007; 74 FR 14668, Mar. 31, 2009]

Supplement *Highlights* references: 27(1), 73(1), 82(1).

§21.4210 Suspension and discontinuance of educational assistance payments, and of enrollments or reenrollments for pursuit of approved courses.

(a) *Overview; explanation of terms used in §§21.4210 through 21.4216.*

(1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran or eligible person for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual's pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36 or if the individual is entitled to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. VA may pay educational assistance under 38 U.S.C. chapter 33 to an eligible individual or, as appropriate, to the individual's institution of higher learning on his or her behalf, for the individual's pursuit of a course or program of education if the course or program of education is offered by an institution of higher learning and approved under 38 U.S.C. chapter 30 in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36, or if an individual is entitled to be paid educational assistance to meet all or a portion of the institution of higher learning's established charges that the military department concerned has not covered by tuition assistance under 10 U.S.C. 2007(a) or (c). Except for tuition assistance top-up, where courses do not need to be approved, a State approving agency designated by VA, or in some instances VA, approves the course or test for payment purposes. Notwithstanding such approval, VA, as provided in paragraphs (b), (c), and (d) of this section, may suspend, discontinue, or deny payment of benefits to any or all otherwise eligible individuals for pursuit of a course or training approved under 38 U.S.C. chapter 36, and for taking a licensing or certification test approved under 38 U.S.C. chapter 36.

(2) For the purposes of this section and the purposes of §§21.4211 through 21.4216, except as otherwise expressly stated to the contrary:

- (i) The term "course" includes an apprenticeship or other on-job training program;
- (ii) The term "educational institution" includes a training establishment, or organization or entity offering a licensing or certification test; and
- (iii) Reference to action suspending, discontinuing, or otherwise denying enrollment or reenrollment means such action with respect to providing educational assistance under the chapters listed in paragraph (a)(1) of this section. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3452, 3471, 3690)

(b) *Denial of payment in individual cases.*

(1) VA may deny payment of educational assistance to a specific individual for pursuit of a course or courses if, following an examination of the individual's case, VA has credible evidence affecting that individual that:

(i) The course fails to meet any of the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; or

(ii) The educational institution offering the individual's course has violated any of those requirements of law. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(2) VA may deny payment of educational assistance to a specific individual for taking a licensing or certification test if, following an examination of the individual's case, VA has credible evidence affecting that individual that:

(i) The test fails to meet any of the requirements of 38 U.S.C. 3689; or

(ii) The organization or entity offering the individual's test has violated any of the requirements of 38 U.S.C. 3689. (Authority: 38 U.S.C. 3689)

(c) *Notice in individual cases.* Except as provided in paragraph (e) of this section, when VA denies payment of educational assistance to an individual under paragraph (b) of this section, VA will provide concurrent written notice to the individual. The notice shall state:

(1) The adverse action;

(2) The reasons for the action; and

(3) The individual's right to an opportunity to be heard thereon in accordance with part 19 of this title. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(d) *Actions affecting groups.*

(1) The Director of the VA Regional Processing Office of jurisdiction may:

(i) Suspend payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(ii) Disapprove all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid benefits (tuition assistance top-up) to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance); and

(iii) Suspend payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director may determine.

(2) Except as provided in paragraphs (d)(3) and (i) of this section, the decision to act as described in paragraph (d)(1) of this section must be based on evidence of a substantial pattern of veterans, servicemembers, reservists, or eligible persons enrolled in the course or taking the test receiving educational assistance to which they are not entitled because:

(i) One or more of the course approval requirements of 38 U.S.C. chapter 36 are not met, including the course approval requirements specified in §§21.4253, 21.4254, 21.4261, 21.4262, 21.4263, 21.4264, and 21.4268; or

(ii) The educational institution offering the course has violated one or more of the recordkeeping or reporting requirements of 10 U.S.C. chapter 1606, or of 38 U.S.C. chapters 30, 32, 33, 35, and 36. These violations may include, but are not limited to, the following:

(A) Willful and knowing submission of false reports or certifications concerning students or courses of education;

(B) Failure to report to VA a veteran's, servicemember's, reservist's, or eligible person's reduction, discontinuance, or termination of education or training; or

(C) Submission of improper or incorrect reports in such number, manner, or period of time as to indicate negligence on its part, including failure to maintain an adequate reporting or recordkeeping system.

(3) The Director also may make a decision to take the action described in paragraph (d)(1) of this section when the Director has evidence that one or more prohibited assignments of benefits have occurred at an educational institution as a result of that educational institution's policy. This decision may be made regardless of whether there is a substantial pattern of erroneous payments at the educational institution. See §21.4146.

(4) The Director may disapprove the enrollment of all individuals not already enrolled in an educational institution (which for the purposes of this paragraph does not include a training establishment) when the Director finds that the educational institution:

(i) Has charged or received from veterans, servicemembers, reservists, or eligible persons an amount for tuition and fees in excess of the amount similarly circumstanced nonveterans are required to pay for the same course; or

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other established charges that substantially denies to veterans, servicemembers, reservists, or other eligible persons the benefits of advance payment of educational assistance authorized to such individuals under §§21.4138(a), 21.7140(a), 21.7640(d), or 21.9680; or

(iii) Has used erroneous, deceptive, or misleading practices as set forth in §21.4252(h). (Authority: 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) *Actions that must accompany a mass suspension of educational assistance payments or suspension of approval of enrollments and reenrollments in a course or educational institution.*

(1) The Director of the VA Regional Processing Office of jurisdiction may suspend payment of educational assistance and may suspend approval of new enrollments and reenrollments as provided in paragraph (d) of this section, only after:

(i) The Director notifies in writing the State approving agency concerned and the educational institution of any failure to meet the approval requirements and any violation of recordkeeping or reporting requirements; and

(ii) The educational institution:

(A) Refuses to take corrective action; or

(B) Does not take corrective action within 60 days (or 90 days if permitted by the Director).

(2) Not less than 30 days before the Director acts to make a mass suspension of payments of educational assistance and/or suspend approval of new enrollments and reenrollments, the Director will, to the maximum extent feasible, provide written notice to each veteran, servicemember, reservist, and eligible person enrolled in the affected courses. The notice will:

(i) State the Director's intent to suspend payments and/or suspend approval of new enrollments and reenrollments unless the educational institution takes corrective action;

(ii) Give the reasons why the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments; and

(iii) State the date on which the Director intends to suspend payments and/or suspend approval of new enrollments and reenrollments. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(3) If VA receives a claim for educational assistance for the taking by an individual of a licensing or certification test, and the individual took the licensing or certification test during a period when payment for taking such test was suspended, the Director will inform the individual in writing of the fact of the suspension and the reasons why payments were suspended. (Authority: 38 U.S.C. 3689, 3690)

(f) *Actions in cases indicating submission of false, misleading, or fraudulent claims or statements.* The Director of the VA Regional Processing Office of jurisdiction will take the following action, as indicated, that may be in addition to suspending payments or further approval of enrollments or reenrollments in a course or educational institution.

(1) If the Director has evidence indicating that an educational institution has willfully submitted a false or misleading claim, or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim, the Director will make a complete report of the facts of the case to the appropriate State approving agency and to the Office of Inspector General for appropriate action.

(2) If the Director believes that an educational institution has submitted a false, fictitious, or fraudulent claim or written statement within the meaning of the Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812) or that a veteran, servicemember, reservist, eligible person, or other person, with the complicity of an educational institution, has submitted such a claim or made such a written statement, the Director will follow the procedures in part 42 of this title. (Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801-3812; 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(g) *Referral to the Committee on Educational Allowances.* The Director of the VA Regional Processing Office of jurisdiction will refer the following matters to the Committee on Educational Allowances as provided in §21.4212:

(1) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, reservists, or eligible persons already enrolled in a course;

(2) A disapproval under paragraph (d) of this section of all further enrollments or reenrollments of individuals seeking VA educational assistance for pursuit of the course (except for enrollments and reenrollments of servicemembers seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance); and

(3) A suspension under paragraph (d) of this section of payments of educational assistance to all veterans, servicemembers, or eligible persons who may take a licensing or certification test after a date that the Director has determined. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(h) *Withdrawal of referral to Committee on Educational Allowances.*

(1) If, following a suspension of payments and/or of approval of enrollments or reenrollments, the Director of the VA Regional Processing Office of jurisdiction determines that the conditions which justified the suspension have been corrected, and the State approving agency has not withdrawn or suspended approval of the course(s) or tests, the Director may resume payments to and/or approval of enrollments or reenrollments of the affected veterans, servicemembers, reservists, or eligible persons. If the case has already been referred to the

Committee on Educational Allowances under paragraph (g) of this section at the time such action is taken, the Director will advise the Committee that the original referral is withdrawn.

(2) If, following a referral to the Committee on Educational Allowances, the Director finds that the State approving agency will suspend or withdraw approval, the Director may, if otherwise appropriate, advise the Committee that the original referral is withdrawn. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(i) *This section does not apply to disapproval of courses based on conflicts of interests.* VA will disapprove courses when required by §21.4005(d) without applying the provisions of paragraphs (a) through (h) of this section. (Authority: 10 U.S.C. 16136(b); 38 U.S. C. 3034(a), 3241, 3323(a), 3683(b))

[63 FR 35831, July 1, 1998, as amended at 72 FR 16971, Apr. 5, 2007; 74 FR 14668, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1), 82(1).

§21.4211 Composition, jurisdiction, and duties of Committee on Educational Allowances.*(a) Authority.*

(1) 38 U.S.C. 3690 authorizes VA to discontinue educational benefits to veterans, servicemembers, reservists, or eligible persons when VA finds that:

(i) The program of education or course in which such individuals are enrolled fails to meet a requirement of 38 U.S.C. chapter 30, 32, 33, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part; or

(ii) An educational institution has violated any such statute or regulation, or fails to meet such a statutory or regulatory requirement.

(2) This authority does not extend to enrollments and reenrollments of individuals seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance.

(3) 38 U.S.C. 3689 and 3690 further authorize VA to deny payment to servicemembers or veterans for licensing or certification tests when VA finds that either the test or the organization or entity offering the test fails to meet a requirement of 38 U.S.C. 3689 or the applicable regulations of this part.

(4) Sections 21.4210 through 21.4216 implement the authority discussed in paragraphs (a)(1) and (a)(3) of this section.

(5) Each VA Regional Processing Office shall have a Committee on Educational Allowances. For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational institutions located in the Philippines. The Committee's findings of fact and recommendations will be provided to the Director of the VA Regional Processing Office.

(6) The Secretary of Veterans Affairs delegates to each Director of a VA Regional Processing Office the authority to suspend or discontinue payment of educational benefits, to disapprove enrollments or reenrollments, or to deny payment of benefits for tests. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(b) Purpose.

(1) The Committee on Educational Allowances is established to assist the Director of the VA Regional Processing Office of jurisdiction in deciding in a specific case whether:

(i) Educational assistance should be discontinued to all individuals enrolled in any course or courses an educational institution offers; and

(ii) If appropriate, whether approval of all further enrollments or reenrollments in the course or courses an educational institution offers should be denied to veterans, servicemembers, reservists, or other eligible persons pursuing those courses under programs VA administers; or

(iii) Payment should be denied to all servicemembers and veterans for taking a specific licensing or certification test.

(2) A Director's decision described in paragraph (b)(1) of this section must be based on a finding that the educational institution is not meeting, or has violated, a requirement of 38 U.S.C. chapter 30, 32, 33, 35, or 36, or 10 U.S.C. chapter 1606, or the regulations in this part.

(3) The function of the Committee on Educational Allowances is to develop facts and recommend action to be taken on the basis of the facts found. A hearing before the Committee is not in the nature of a trial in a court of law. Instead, it is an administrative inquiry designed to create a full and complete record upon which a recommendation can be made as to whether the Director should discontinue payment of educational benefits and/or deny approval of new enrollments or reenrollments. Both the interested educational institution and VA Regional Counsel, or designee, representing VA, will be afforded the opportunity to present to the Committee any evidence, argument, or other material considered pertinent. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(c) *Jurisdiction.* The Committee on Educational Allowances will consider only those cases which are referred in accordance with §§21.4210(g) and 21.4212. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(d) *Committee members.* The Committee on Educational Allowances will consist of three employees of the VA Regional Processing Office of jurisdiction, at least one of whom is familiar with the adjudication of claims for benefits administered by the Veterans Benefits Administration. The Director of the VA Regional Processing Office of jurisdiction will designate a Chairperson. In the event that any member becomes unable to serve for any reason, the Director may appoint a replacement member. Before the Committee resumes its proceedings, the new member will be given an opportunity to apprise himself or herself of the actions and testimony already taken by the Committee. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(e) *Duties and responsibilities of the Committee.*

(1) The function of the Committee on Educational Allowances is to make recommendations to the Director of the VA Regional Processing Office of jurisdiction in connection with specific cases referred for consideration as provided in §§21.4210(g) and 21.4212.

(2) The performance of this function will include:

(i) Hearing testimony or argument from witnesses or representatives of educational institutions and VA, as appropriate, when such persons appear personally before the Committee;

(ii) Receiving and reviewing all the evidence, testimony, briefs, statements, and records included in each case; and

(iii) Furnishing the Director of the VA Regional Processing Office of jurisdiction a written statement setting forth specifically the question or questions considered, a summation of the essential facts of record, recommendations as to issues referred for consideration by the Committee, and the basis therefor. In any case where there is not unanimity, both the majority and the minority views and recommendations will be furnished. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

[63 FR 35833, July 1, 1998, as amended at 72 FR 16972, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1), 82(1).

§21.4212 Referral to Committee on Educational Allowances.

(a) *Form and content of referral to Committee.* When the Director of the VA Regional Processing Office of jurisdiction refers a case to the Committee on Educational Allowances, as provided in §21.4210(g), the referral will be in writing and will:

(1) State the approval, reporting, recordkeeping, or other criteria of statute or regulation which the Director has cause to believe the educational institution has violated;

(2) Describe the substantial pattern of veterans, servicemembers, reservists, or eligible persons receiving educational assistance to which they are not entitled which the Director has cause to believe exists, if applicable;

(3) Outline the nature of the evidence relied on by the Director in reaching the conclusions of paragraphs (a)(1) and (a)(2) of this section;

(4) Describe the Director's efforts to obtain corrective action and the results of those efforts; and

(5) Ask the Committee on Educational Allowances to perform the functions described in §§21.4211, 21.4213, and 21.4214 and to recommend to the Director whether educational assistance payable to individuals pursuing the courses in question should be discontinued; approval of new enrollments should be denied; and/or payment to individuals for licensing or certification tests should be denied, as appropriate.

(b) *Notice of the referral.*

(1) At the time of referral the Director will:

(i) Send notice of the referral, including a copy of the referral document, by certified mail to the educational institution. The notice will include statements that the Committee on Educational Allowances will conduct a hearing; that the educational institution has the right to appear before the Committee and be represented at the hearing to be scheduled; and that, if the educational institution intends to appear at the hearing, it must notify the Committee within 60 days of the date of mailing of the notice;

(ii) Provide an information copy of the notice and referral document to the State approving agency of jurisdiction; and

(iii) Place a copy of the notice and referral document on display at the VA Regional Processing Office of jurisdiction for review by any interested party or parties.

(2) The Director will provide a copy of the notice and referral document to the VA Regional Counsel, or designee, of jurisdiction, who will represent VA before the Committee on Educational Allowances. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35834, July 1, 1998, as amended at 72 FR 16972, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1).

§21.4213 Notice of hearing by Committee on Educational Allowances.

(a) *Content of hearing notice.* In any case referred to the Committee on Educational Allowances for consideration, a hearing will be held. If, as provided in §21.4212(b), the educational institution has timely notified the Committee of its intent to participate in the hearing, the educational institution will be notified by certified letter from the Chairperson of the date when the hearing will be held. This hearing notification will inform the educational institution of:

- (1) The time and place of the hearing;
- (2) The matters to be considered;
- (3) The right of the educational institution to appear at the hearing with representation by counsel, to present witnesses, to offer testimony, to present arguments, and/or to submit a written statement or brief; and
- (4) The complete hearing rules and procedures.

(b) *Expenses connected with hearing.* The notice also will inform the educational institution that VA will not pay any expenses incurred by the educational institution resulting from its participation in the hearing, including the expenses of counsel or witnesses on behalf of the educational institution.

(c) *Publication of hearing notice.* Notice of the hearing will be published in the *Federal Register*, which will constitute notice to any interested individuals, and will indicate that, while such individuals may attend and observe the hearing, they may not participate unless called as witnesses by VA or the educational institution. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35834, July 1, 1998, as amended at 72 FR 16972, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1).

§21.4214 Hearing rules and procedures for Committee on Educational Allowances.

(a) *Rule 1.* The Chairperson of the Committee on Educational Allowances will be in charge of the proceedings, will administer oaths or affirmations to witnesses, and will be responsible for the official conduct of the hearing. A majority of the members of the Committee will constitute a quorum. No party to the proceedings may conduct a voir dire of the Committee members. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) *Rule 2.* At the opening of the hearing, the Chairperson of the Committee on Educational Allowances will inform the educational institution of the purpose of the hearing, the nature of the evidence of record relating to the asserted failures or violations, and the applicable provisions of law and VA regulations. The Chairperson will advise the VA Regional Counsel, or designee, representing VA, that the Committee on Educational Allowances will entertain any relevant evidence or witnesses which VA Counsel presents to the Committee and which would substantiate a decision by the Committee to recommend that the Director of the VA Regional Processing Office of jurisdiction take an adverse action on the issues submitted for its review. The educational institution will be advised of its right to present any evidence, relevant to the issues submitted for the Committee's review, by oral or documentary evidence; to submit rebuttal evidence; to present and cross-examine witnesses; and to make such statements as may be appropriate on its behalf for a true and full disclosure of the facts. VA Counsel will be allowed to cross-examine any witnesses offered by the educational institution and to reply to any written briefs or arguments submitted to the Committee. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) *Rule 3.* Any testimony or evidence, either oral or written, which the Committee on Educational Allowances deems to be of probative value in deciding the question at issue will be admitted in evidence. While irrelevant, immaterial, or unduly repetitious evidence, testimony, or arguments should be excluded, reasonable latitude will be permitted with respect to the relevancy, materiality, and competency of evidence. In most instances the evidence will consist of official records of the educational institution and VA, and these documents may be attested to and introduced by affidavit; but the introduction of oral testimony by the educational institution or by VA will be allowed, as appropriate, in any instance where the educational institution or VA Counsel desires. VA, however, will neither subpoena any witness on behalf of the educational institution for such purposes nor bear any expenses in connection with the appearance of such witness. In instances where the evidence reasonably available consists of signed written statements, secondary or hearsay evidence, etc., such evidence may be introduced into the record and will be given the weight and consideration which the circumstances warrant. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) *Rule 4.* A verbatim stenographic or recorded transcript of the hearing will be made. This transcript will become a permanent part of the record, and a copy will be furnished to the educational institution and the VA Counsel at the conclusion of the proceeding, unless furnishing of the copy of the transcript is waived by the educational institution. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) *Rule 5.* The Chairperson of the Committee on Educational Allowances will identify all exhibits in the order of introduction or receipt (numerically for VA exhibits and alphabetically

for exhibits introduced by the educational institution). All such original exhibits or documents shall be attached to the original of the transcript. VA shall make photocopies or certified copies and attach them to the copy of the transcript furnished to the educational institution and the VA Counsel. The original transcript will accompany the Committee's recommendation to the Director of the VA Regional Processing Office of jurisdiction along with all exhibits, briefs, or written statements received by the Committee during the course of the proceedings. Such documents should be clearly marked to indicate which were received into evidence and relied upon by the Committee in making its recommendations. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(f) *Rule 6.* The Committee on Educational Allowances, at its discretion, may reasonably limit the number of persons appearing at the hearing, including any affected individuals presented as witnesses by VA or the educational institution. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(g) *Rule 7.* Any person who is presented to testify will be required to be duly placed under oath or affirmation by the Chairperson of the Committee on Educational Allowances. If an official of the educational institution desires to present a statement personally, the individual will be required to be placed under oath or affirmation. The Chairperson will advise each witness that the Committee understands that he or she is voluntarily appearing before the Committee; that any testimony or statement given will be considered as being completely voluntary; and that no one has authority to require the individual to make any statement or answer any question against his or her will before the Committee, except that a person called as a witness on behalf of either VA or the educational institution must be willing to submit to cross-examination with respect to testimony given. Each witness will also be advised that his or her testimony or statement, if false, even though voluntary, may subject him or her to prosecution under Federal statutes. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(h) *Rule 8.* Any member of the Committee on Educational Allowances may question any witness presented to testify at the hearing or either a representative of the educational institution or the VA Counsel concerning matters that are relevant to the question at issue. Generally, questioning by a Committee member will be limited to the extent of clarifying information on the facts and issues involved. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(i) *Rule 9.* If the educational institution fails to timely notify the Committee of its intent to participate in a hearing or if a representative of the educational institution is scheduled to appear for a hearing but, without good cause, fails to appear either in person or by writing, the Committee will proceed with the hearing and will review the case on the basis of the evidence of record which shall be presented by the VA Counsel. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(j) *Rule 10.* Any objection by an authorized representative of the educational institution or the VA Counsel on a ruling by the Chairperson of the Committee on Educational Allowances regarding the admissibility of testimony or other evidence submitted will be made a matter of record, together with the substance in brief of the testimony intended or other evidence concerned. If the other evidence concerned is in the form of an affidavit or other document, it

may be accepted for filing as a future reference if it is later ruled admissible as part of the record of the hearing. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(k) *Rule 11.* Objections relating to the jurisdiction or membership of the Committee on Educational Allowances or the constitutionality of statutes or the constitutionality of, or statutory authority for, VA regulations, are not before the Committee for decision. The time of the Committee will not be used to hear arguments in this regard. However, any such matters outside the province of the Committee may be the subject of a brief or a letter for consideration by the VA Office of General Counsel upon completion of the hearing. The ruling of such authority upon such issues will be obtained and included in the record before the Committee's recommendations are submitted to the Director of the VA Regional Processing Office of jurisdiction. If the VA General Counsel's ruling on such legal issues necessitates reopening the proceeding, that shall be done before the Committee makes its recommendations to the Director of the VA Regional Processing Office of jurisdiction. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(l) *Rule 12.* The hearing will be open to the public. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(m) *Rule 13.* The hearing will be conducted in an orderly manner with dignity and decorum. The conduct of members of the Committee on Educational Allowances, the VA Counsel, and any representatives of the educational institution shall be characterized by appropriate impartiality, fairness, and cooperation. The Chairperson of the Committee shall take such action as may be necessary, including suspension of the hearing or the removal of the offending person from the hearing room for misbehavior, disorderly conduct, or the persistent disregard of the Chairperson's ruling. Where this occurs, the Chairperson will point out that the Committee is entitled to every possible consideration in order that the case may be presented clearly and fully, which may be accomplished only through observance of orderly procedures. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(n) *Rule 14.* The Chairperson of the Committee on Educational Allowances will conduct the hearing proceedings in such a manner that will protect from disclosure information which tends to disclose or compromise investigative sources or methods or which would violate the privacy of any individual. The salient facts, which form the basis of charges, may be disclosed and discussed without revealing the source. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(o) *Rule 15.* At the close of the hearing, the Chairperson of the Committee on Educational Allowances shall inform the appropriate representative of the educational institution that the arguments and the evidence presented will be given careful consideration; and that notice of the decision of the Director of the VA Regional Processing Office of jurisdiction, together with the Committee's recommendations, will be furnished to the educational institution and the VA Counsel at the earliest possible time. The Chairperson will also indicate that notice of the Director's decision will be published in the *Federal Register* for the information of all other interested persons. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(p) *Rule 16.* In making its findings of facts and recommendations, the Committee on Educational Allowances will consider only questions which are referred to it by the Director of the VA Regional Processing Office of jurisdiction as being at issue and which are within the jurisdiction of the Committee. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35834, July 1, 1998, as amended at 72 FR 16972, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1).

§21.4215 Decision of Director of VA Regional Processing Office of jurisdiction.

(a) *Decision.* The Director of the VA Regional Processing Office of jurisdiction will render a written decision on the issue or issues of discontinuance or denial that were the subject of the Committee on Educational Allowances proceedings. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) *Basis of decision.*

(1) The decision of the Director of the VA Regional Processing Office of jurisdiction will be based upon all admissible evidence of record, including:

- (i) The recommendations of the Committee on Educational Allowances;
- (ii) The hearing transcript and the documents admitted in evidence; and
- (iii) The ruling on legal issues referred to appropriate authority.

(2) The decision will clearly describe the evidence and state the facts on which the decision is based and, in the event that the decision differs from the recommendations of the Committee on Educational Allowances, will give the reasons and facts relied upon by the Director in deciding not to follow the Committee majority's recommendations. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) *Correction of deficiencies.* If the Director of the VA Regional Processing Office of jurisdiction believes that the record provided for review is incomplete or for any reason should be reopened, before rendering a decision he or she will order VA staff to gather any additional necessary evidence and will notify the educational institution that it may comment upon the new evidence added. The Director will then notify the educational institution as to whether the matter will be resubmitted to the Committee on Educational Allowances for further proceedings, on the basis of the new circumstances. If the matter is referred back to the Committee, the Director will defer a decision until he or she has received the Committee's new recommendations based upon all of the evidence of record. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) *Effective date.* If the decision of the Director of the VA Regional Processing Office of jurisdiction is adverse to the educational institution, the decision shall indicate specifically the effective date of each adverse action covered by the decision. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) *Notification of decision.*

(1) The Director of the VA Regional Processing Office of jurisdiction shall send a copy of the decision to the educational institution by certified mail, return receipt requested. A copy of the decision also will be provided by regular mail to the institution's legal representative of record, if any. If the decision is adverse to the educational institution, the Director will enclose

a notice of the educational institution's right to have the Director, Education Service review the decision.

(2) The Director of the VA Regional Processing Office of jurisdiction will also send a copy of the decision to:

(i) The State approving agency; and

(ii) VA Counsel.

(3) The Director of the VA Regional Processing Office of jurisdiction shall post a copy of the decision at the VA Regional Processing Office of jurisdiction. A copy of the decision shall be published in the *Federal Register*. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35836, July 1, 1998, as amended at 72 FR 16973, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1).

§21.4216 Review of decision of Director of VA Regional Processing Office of jurisdiction.

(a) *Decision is subject to review by the Director, Education Service.* At the request of the educational institution the Director, Education Service will review a decision of a Director of a VA Regional Processing Office of jurisdiction to discontinue payments; to disapprove new enrollments or reenrollments; or to deny payment of benefits for licensing or certification tests. This review will be based on the evidence of record when the Director of the VA Regional Processing Office of jurisdiction made that decision. It will not be de novo in nature and no hearing on the issue will be held. When reviewing a decision to deny payment for licensing or certification tests, the Director, Education Service may seek the advice of the Professional Certification and Licensure Advisory Committee established under 38 U.S.C. 3689(e). (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), (e), 3690; Pub. L. 122 Stat. 2375)

(b) *Authority of Director, Education Service.* The Director, Education Service has the authority to affirm, reverse, or remand the original decision. In the case of such a review, the reviewing official's decision, other than a remand, shall become the final Department decision on the issue presented.

(c) *Notice of decision of Director, Education Service is required.* Notice of the reviewing official's decision will be provided to the interested parties and published in the *Federal Register*, in the same manner as is provided in §21.4215(e) for decisions of the Director of the VA Regional Processing Office of jurisdiction, for the information of all concerned. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

[63 FR 35836, July 1, 1998, as amended at 72 FR 16973, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 39(4), 73(1).

Next Section is §21.4232

§21.4232 Specialized vocational training—38 U.S.C. Chapter 35.*(a) Eligibility requirements for specialized vocational training.*

(1) The Department of Veterans Affairs may provide a program of a specialized course of vocational training to an eligible person who:

- (i) Is not in need of special restorative training, and
- (ii) Requires specialized vocational training because of a mental or physical handicap.

(2) The counseling psychologist will:

- (i) After consulting with the Vocational Rehabilitation Panel, determine whether such a course is in the best interest of the eligible person; and
- (ii) Deny the application for the program when the course is not in the eligible person's best interest.

(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program, if the counseling psychologist has previously determined that the course is in the eligible person's best interest. (Authority: 38 U.S.C. 3521, 3536; Pub. L. 99-576)

(4) The Department of Veterans Affairs may authorize specialized vocational training for an eligible child only if the child has passed his or her 14th birthday at the time training is to begin. (Authority: 38 U.S.C. 3536)

(b) Program objective. The objective of a program of specialized vocational training will be designated as a vocational objective.

(c) Special assistance. When needed, special assistance will be provided under §21.4276.

(d) Length of specialized vocational training. When the program of specialized vocational training will exceed 45 months, the counseling psychologist will refer the program to the Director, Vocational Rehabilitation and Employment Service for prior approval. (Authority: 38 U.S.C. 3543(b))

[48 FR 37989, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 54 FR 33889, Aug. 17, 1989; 66 FR 44053, Aug. 22, 2001]

§21.4233 Combination.

An approved program may consist of a combination of courses with instruction offered by a school alternating with instruction in a business or industrial establishment (a cooperative course); courses offered by two schools concurrently; or courses offered through class attendance and by television concurrently. A farm cooperative program may be approved which consists of a combination of institutional agricultural courses and concurrent agricultural employment (see §21.4264). A school may contract the actual training to another school or entity, provided the course is approved by the State approving agency having approval jurisdiction of the school or entity which actually provides the training.

(a) *Cooperative courses.* A full-time program of education consisting of phases of school instruction alternated with training in a business or industrial establishment with such training being strictly supplemental to the school instruction may be approved. Alternating periods may be a part-day in school and a part-day on job or may be such periods which alternate on a daily, weekly, monthly or on a term basis. For purposes of approval the school offering the course must submit to the State approving agency, with its application, statements of fact showing at least the following:

(1) That the alternate in-school periods of the course are at least as long as the alternate periods in the business or industrial establishment; in determining this relationship between the two components of the course, training received in a business or industrial establishment during a vacation or officially scheduled school break period shall be excluded from the calculation; where the course is approved as continuous part-time work and part-time study in combination, it shall be measured on the basis of the ratio which each portion of the training bears to full time as defined in §21.4270(c) of this part. The institutional portion must be at least equivalent to one-half time training and must be combined with a job training portion sufficient for the combined training to equal full time. (Authority: 38 U.S.C. 3482(a)(2) and 3532(b))

(2) That the course is set up as a cooperative course in the school catalog or other literature of the school;

(3) That the school itself arranges with the employer's establishment for providing the alternate on-job periods of training on such basis that the on-job portion of the course will be training in a real and substantial sense and will supplement the in-school portion of the course;

(4) That the school arranges directly with the employer's establishment for placing the individual student in that establishment and exercises supervision and control over the student's activities at the establishment to an extent that assures training in a true sense to the student; and

(5) That the school grants credit for the on-job portion of the course for completion of a part of the work required for granting a degree or diploma. (Authority: 38 U.S.C. 3482(a)(2) and 3532(b))

(b) *Concurrent enrollment.* Where a veteran or eligible person cannot successfully schedule his or her complete program at one school, a program of concurrent enrollment may be approved. When requesting such a program the veteran or eligible person must show that his or her complete program of education or training is not available at the school in which he or she will pursue the major portion of his or her program (the primary school), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program.

(1) If VA measures the courses pursued at both institutions on either a clock-hour basis or a credit-hour basis, VA will measure the veteran's or eligible person's enrollment by adding together the units of measurement in the second school to the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution.

(2) Where the standards for measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's or eligible person's enrollment by converting the units of measurement for courses in the second school to the equivalent in value expressed in units of measurement required for the courses in the program of education which the veteran or eligible person is pursuing at the primary institution. (Authority: 38 U.S.C. 3688)

(3) If the provisions of paragraph (b)(2) of this section require VA to convert clock hours to credit hours, it will do so by:

(i) Dividing the number of credit hours which VA considers to be fulltime at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(ii) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(3)(i) of this section. VA will drop all fractional hours.

(4) If the provisions of paragraph (b)(2) of this section require VA to convert credit hours to clock hours, it will do so by:

(i) Dividing the number of clock hours which VA considers to be fulltime at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(ii) Multiplying each credit hour by the number determined in paragraph (b)(4)(i) of this section. VA will drop all fractional hours.

(5) Periodic certifications of training will be required from the veteran and each of the schools where concurrent enrollment is approved in a course which does not lead to a standard college degree and to which the measurement provisions of §21.4270(b) of this part do not apply. (See §§21.4203 and 21.4204.) (Authority: 38 U.S.C. 3688)

(c) *Television:*

(1) A course offered by open-circuit television is an independent study course. In order for an eligible person to receive educational assistance while pursuing such a course, the course must meet all the requirements for independent study found in §21.4267. (Authority: 38 U.S.C. 3523, 3680A)

(2) *Closed circuit telecast.* Instruction offered through closed circuit telecast which requires regular classroom attendance is to be recognized to the same extent as regular classroom and/or laboratory instruction.

(d) *Farm cooperative course.* A program of education consisting of institutional agricultural courses pursued by an eligible person who is concurrently engaged in agricultural employment which is relevant to such institutional course may be approved if the course meets the requirements of §21.4264.

(e) *Contract.* All or part of the program of education of a school may be provided by another school or entity under contract. Such school or entity actually providing the training must obtain approval of the course from the State approving agency in the State having jurisdiction of that school or entity. If the course is a course of flight training, the school or entity actually providing the training must also obtain approval of the course from the Federal Aviation Administration. Measurement of the course and payment of an allowance will be appropriate for the course as offered by the school or entity actually providing the training. (Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3241(b), 3323(a), 3452(c), 3501(a)(6), 3675, 3676)

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13404, Sept. 23, 1967; 39 FR 45237, Dec. 31, 1974, 40 FR 31762, July 29, 1975; 41 FR 26682, June 29, 1976; 41 FR 47930, Nov. 1, 1976; 42 FR 49454, Sept. 27, 1977; 43 FR 35301, Aug. 9, 1976; 45 FR 67093, Oct. 9, 1980; 48 FR 37989, Aug. 22, 1983; 54 FR 33890, Aug. 17, 1989; 61 FR 6782, Feb. 22, 1996; 61 FR 20728, May 8, 1996; 62 FR 40280, July 28, 1997; 62 FR 55760, Oct. 28, 1997; 63 FR 34129, June 23, 1998; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 23(1), 33(1), 39(2).

§21.4234 Change of program.*(a) Definition.*

(1) Except as provided in paragraph (a)(2) of this section, a change of program consists of a change in the educational, professional, or vocational objective for which the veteran, reservist, or eligible person entered training.

(2) VA does not consider any of the following to be changes of program:

(i) A change in the type of courses needed to attain a vocational objective;

(ii) A change in the individual's educational, professional or vocational objective following the successful completion of the immediately preceding program of education;

(iii) A return to the individual's prior program of education following a change of program if the individual resumes training in the program without any loss of credit or standing in that program;

(iv) An enrollment in a new program of education when that program leads to a vocational, educational or professional objective in the same general field as the immediately preceding program of education; or (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(v) An enrollment or reenrollment of a servicemember seeking to be paid tuition assistance top-up benefits to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(b) Application. A veteran, reservist, or eligible person may request a change of program by any form of communication. However, if the veteran, reservist, or eligible person does not furnish sufficient information to allow the Department of Veterans Affairs to process the request, the Department of Veterans Affairs will furnish the prescribed form for a change of program to him or her for completion. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(c) Optional change of program. A spouse or surviving spouse eligible to receive educational assistance under 38 U.S.C. chapter 35 may make one optional change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect, or lack of application. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(d) Other changes of program.

(1) The following changes of program may not be made solely at the option of the veteran, reservist, or eligible person. The Department of Veterans Affairs must approve them before paying educational assistance allowance:

(i) A second or subsequent change of program made by veteran or eligible person other than a child receiving educational assistance under 38 U.S.C. chapter 35,

(ii) An initial change of program made by a veteran or eligible spouse or surviving spouse if the first program was interrupted or discontinued due to his or her own misconduct, neglect or lack of application, or

(iii) Any change of program made by a child receiving educational assistance under 38 U.S.C. chapter 35.

(2) The Department of Veterans Affairs will approve a change of program listed in paragraph (d)(1) of this section if:

(i) The program of education which the veteran, reservist, or eligible person proposes to pursue is suitable to his or her aptitudes, interests and abilities,

(ii) In any instance where the veteran, reservist, or eligible person has interrupted, or failed to progress in his or her program due to his or her own misconduct, neglect or lack of application, there is a reasonable likelihood with respect to the program the veteran, reservist, or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress, and

(iii) In the case of an eligible child receiving educational assistance under 38 U.S.C. chapter 35 the new program meets the criteria applicable to final approval of an original application. See §21.4230.

(3) The Department of Veterans Affairs may approve a third or subsequent change of program if applicable conditions of paragraph (d)(2) of this section are met and the additional change or changes are necessitated by circumstances beyond the control of the veteran, reservist, or eligible person. Circumstances beyond the control of the veteran, reservist, or eligible person include, but are not limited to:

(i) The course being discontinued by the school when no other similar course leading to the same objective is available within normal commuting distance,

(ii) Unexpected financial difficulties preventing completion of the last program because of the overall cost of the program needed to reach the objective, or

(iii) The veteran, reservist, or eligible person being required to relocate because of health reasons in an area where training for the last objective is not available within normal commuting distance. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(4) Notwithstanding any provision of any other paragraph of this section, if a third or subsequent change of program occurs after May 31, 1991, VA will apply only the applicable provisions of paragraph (d)(2) of this section. If the applicable provisions of paragraph (d)(2) of

this section are met, VA will approve the change of program. VA will not apply any of the provisions of paragraph (d)(3) of this section in determining whether the change of program should be approved. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(e) *Adjustments; transfers.* A change in courses or places of training will not be considered a change of objective in the following instances:

(1) The pursuit of the first program is a prerequisite for entrance into and pursuit of a second program.

(2) A transfer from one school to another when the program at the second school leads to the same educational, professional or vocational objective, and does not involve a material loss of credit, or increase training time.

(3) Revision of a program which does not involve a change of objective or material loss of credit nor loss of time originally planned for completion of the veteran's or eligible person's program. For example, an eligible person enrolled for a bachelor of science degree may show a professional objective such as chemist, teacher or engineer. His or her objective for purposes of this paragraph shall be considered to be "bachelor degree" and any change of courses will be considered only an adjustment in the program, not a change, so long as the subjects he or she pursues lead to the bachelor degree and there is no extension of time in the attaining of that degree. (Authority: 10 U.S.C. 510(h), 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0074 and 2900-0099.)

Cross reference: Counseling. See §21.4100.

[31 FR 6774, May 6, 1966, as amended at 34 FR 845, Jan. 18, 1969; 39 FR 34036, Sept. 23, 1974; 39 FR 45237, Dec. 31, 1974; 45 FR 67093, Oct. 9, 1980; 57 FR 29027, June 30, 1992; 57 FR 40614, Sept. 4, 1992; 60 FR 32272, June 21, 1995; 61 FR 6783, Feb. 22, 1996; 72 FR 16973, Apr. 5, 2007; 74 FR 14669, Mar. 31, 2009]

Supplement *Highlights* references: 19(1), 23(1), 73(1), 82(1).

§21.4235 Programs of education that include flight training.

VA will use the provisions of this section to determine whether an individual may be paid educational assistance for pursuit of flight training. See §21.4263 for approval of flight courses for VA training.

(a) *Eligibility.* A veteran or servicemember who is otherwise eligible to receive educational assistance under 38 U.S.C. chapter 30 or 32, or a reservist who is eligible for expanded benefits under 10 U.S.C. chapter 1606 as provided in §21.7540(b), may receive educational assistance for flight training in an approved course provided that the individual meets the requirements of this paragraph. Except when enrolled in a ground instructor certification course or when pursuing flight training under paragraph (f) of this section, the individual must:

(1) Possess a valid private pilot certificate or higher pilot certificate such as a commercial pilot certificate;

(2) If enrolled in a course other than an Airline Transport Pilot (ATP) course, hold a second-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training; and

(3) If enrolled in an ATP certification course, hold a first-class medical certificate on the first day of training and, if that course began before October 1, 1998, hold that certificate continuously during training. (Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(b) *Approval of program.* VA may approve the individual's program of education as described on the individual's application if:

(1) The flight courses that constitute the program of education meet Federal Aviation Administration standards for such courses and the Federal Aviation Administration and the State approving agency approve them; and

(2) The flight training included in the program:

(i) Is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; or

(ii) Is given by an educational institution of higher learning for credit toward a standard college degree that the individual is pursuing. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(c) *Pursuit of flight courses.*

(1) VA will pay educational assistance to an eligible individual for an enrollment in a commercial pilot certification course leading to Federal Aviation Administration certification for a particular category even if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for a different category, since each category represents a different vocational objective.

(2) VA will pay educational assistance to an eligible individual for an enrollment in an instrument rating course only if the individual simultaneously enrolls in a course required for a commercial pilot certificate for the category for which the instrument rating course is pursued or if, at the time of enrollment in the instrument rating course, the individual has a commercial pilot certificate issued by the Federal Aviation Administration for such category. The enrollment in an instrument rating course alone does not establish that the individual is pursuing a vocational objective, as required for VA purposes, since that rating equally may be applied to an individual's private pilot certificate, only evidencing an intent to pursue a non-vocational objective.

(3) VA will pay educational assistance to an eligible individual for an enrollment in a flight course other than an instrument rating course or a ground instructor course, including courses leading to an aircraft type rating, only if the individual has a commercial pilot certificate issued by the Federal Aviation Administration for the category to which the particular course applies.

(4) VA will pay educational assistance to an eligible individual for an enrollment in a ground instructor certificate course, even though the individual does not have any other flight certificate issued by the Federal Aviation Administration, since the Federal Aviation Administration does not require a flight certificate as a prerequisite to ground instructor certification and ground instructor is a recognized vocational objective.

(5) VA will not pay an eligible individual for simultaneous enrollment in more than one flight course, except as provided in paragraph (c)(2) of this section. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a), 3202(2)(A), 3241(a), 3241(b), 3452(b), 3680A(a)(3))

(d) Some individuals are already qualified for a flight course objective.

(1) The provisions of §§21.5230(a)(4), 21.7110(b)(4), and 21.7610(b)(4), prohibiting payment of educational assistance for enrollment in a course for whose objective the individual is already qualified, apply to enrollments in flight courses.

(2) A former military pilot with the equivalent of a commercial pilot certificate and an instrument rating may obtain a commercial pilot certificate and instrument rating from the Federal Aviation Administration without a flight exam within 12 months of release from active duty. Therefore, VA will consider such a veteran to be already qualified for the objectives of a commercial pilot certification course and an instrument rating course if begun within 12 months of the individual's release from active duty. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3241(b), 3471(4))

(e) Some flight courses are refresher training. The provisions of §§21.5230(c), 21.7020(b)(26), 21.7122(b), 21.7520(b)(20), and 21.7610(b)(4) that provide limitations on payment for refresher training that is needed to update an individual's knowledge and skill in order to cope with technological advances while he or she was on active duty service apply to flight training.

(1) An individual who held a Federal Aviation Administration certificate before or during active duty service may have surrendered that certificate or the Federal Aviation Administration may have canceled it. The individual may receive the equivalent of the number of months of educational assistance necessary to complete the course that will qualify him or her for the same grade certificate.

(2) A reservist is not eligible for refresher training unless he or she has had prior active duty. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

(f) *Flight training at an institution of higher learning.*

(1) An individual who is eligible for educational assistance under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 is exempt from the provisions of paragraphs (a)(2) through (d) of this section when his or her courses include flight training that is part of a program of education that leads to a standard college degree.

(2) An individual described in paragraph (f)(1) of this section may pursue courses that may result in the individual eventually receiving recreational pilot certification or private pilot certification, provided that the courses also lead to a standard college degree. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3002(3)(A), 3034(a)(3), 3202(2)(A), 3241(a), 3241(b))

[63 FR 34129, June 23, 1998, as amended at 65 FR 12118, Mar. 8, 2000]

Supplement *Highlights* references: 39(2), 48(1).

§21.4236 Tutorial assistance.

(a) *Enrollment.* A veteran or eligible person may receive supplemental monetary assistance to provide tutorial services if he or she:

(1) Is pursuing a post-secondary educational program on a half-time or more basis at an educational institution, and

(2) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(b) *Approval.* The Department of Veterans Affairs will grant approval when:

(1) The educational institution certifies that:

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected:

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis. (Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3314, 3492, 3533(b))

(c) *Limits on tutorial assistance.*

(1) VA will authorize the cost of tutorial assistance in an amount not to exceed \$100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed \$1200. (Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

(d) *Entitlement charge.* VA will make no charge against the veteran's or eligible person's entitlement to educational assistance for any amount of tutorial assistance authorized. (Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

[48 FR 37989, Aug. 22, 1983, as amended at 50 FR 19935, May 13, 1985; 55 FR 28027, July 9, 1990; 61 FR 26114, May 24, 1996; 74 FR 14670, Mar. 31, 2009]

Supplement *Highlights* reference: 27(1)

Nest Section is §21.4250

Courses

§21.4250 Course and licensing and certification test approval; jurisdiction and notices.

(a) *General.* The statements made in this paragraph are subject to exceptions found in paragraph (c) of this section.

(1) If an educational institution offers a resident course in a State, only the State approving agency for the State where the course is being offered may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(2) If an educational institution with a main campus in a State offers a resident course not located in a State, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(3) If an educational institution offers a course by independent study or by correspondence, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training.

(4) If a training establishment offers a program of apprenticeship or other on-job training, only the State approving agency for the State where the training will take place may approve the course for VA training.

(5) Except as provided in paragraph (a)(6)(ii) of this section, if a State or political subdivision of a State offers a licensing test, only the State approving agency for the State where the license will be valid may approve the test for VA payment.

(6) (i) If an organization or entity offers a licensing or certification test and applies for approval of that test, only the State approving agency for the State where the organization or entity has its headquarters may approve the test and the organization or entity offering the test for VA payment. This approval will be valid wherever the test is given.

(ii) If the organization or entity offering a licensing or certification test does not apply for approval, and a State or political subdivision of a State requires that an individual take the test in order to obtain a license, the State approving agency for the State where the license will be valid may approve the test for VA payment. This approval will be valid for the purpose of VA payment only if the veteran takes the test in the State or political subdivision of the State where the license is valid.

(7) A course approved under 38 U.S.C. chapter 36 will be deemed to be approved for purposes of 38 U.S.C. chapter 35.

(8) Any course that was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 before March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters, will be deemed to be approved for purposes of 38 U.S.C. chapter 36.

(9) VA may make tuition assistance top-up payments of educational assistance to an individual to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance, even though a State approving agency has not approved the course in which the individual was enrolled. (Authority: 38 U.S.C. 3014(b), 3313(e), 3315, 3670, 3672(a))

(b) *State approving agencies.* Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. Chapter 36 and such regulations and policies as the agency may adopt not in conflict therewith.

(1) *Notice of approval.*

(i) Each State approving agency must provide to VA:

(A) A list of schools specifying which courses it has approved;

(B) A list of licensing and certification tests and organizations and entities offering these tests that it has approved; and

(C) Any other information that it and VA may determine to be necessary.

(ii) The lists and information must be provided on paper or electronically as VA may require.

(2) *Notice of suspension of approval or disapproval.* Each State approving agency will notify the Department of Veterans Affairs of the suspension of approval or disapproval of any course or licensing or certification test previously approved and will set forth the reasons for such suspension of approval or disapproval. See §21.4259. (Authority: 38 U.S.C. 3672(a))

(3) *Failure to act.* If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Department of Veterans Affairs.

(c) *Department of Veterans Affairs approval.*

(1) The Director, Vocational Rehabilitation and Employment Service may approve special restorative training in excess of 12 months to overcome or lessen the effects of a physical or mental disability to enable an eligible child to pursue a program of education under 38 U.S.C. chapter 35.

(2) The Director, Education Service may approve:

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36 offered by a school located in the Canal Zone, Guam or Samoa;

(iii) Except as provided in §21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36;

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of Title 29, United States Code as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State; and

(vi) Any licensing or certification test and any organization or entity offering such a test if:

(A) The organization or entity is an agency of the Federal government;

(B) The headquarters of the organization or entity offering the test is not located in a State; or

(C) The State approving agency that would, under paragraph (a)(5) or (a)(6) of this section, have approval jurisdiction for the test has declined to perform the approval function for licensing or certification tests and the organizations or entities offering these tests. (Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3314, 3323(a), 3476, 3523, 3672, 3673, 3689)

Cross Reference: *Designation.* See §21.4150.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0051.)

[31 FR 6774, May 6, 1966, as amended at 35 FR 9816, June 16, 1970; 41 FR 30640, July 26, 1976; 44 FR 54707, Sept. 21, 1979; 48 FR 37990, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 62 FR 55760, Oct. 28, 1997; 66 FR 44053, Aug. 22, 2001; 73 FR 16973, Apr. 5, 2007; 74 FR 14670, Mar. 31, 2009]

Supplement *Highlights* references: 73(1), 82(1).

§21.4251 Minimum period of operation requirement for educational institutions.

The provisions of this section do not apply to licensing or certification tests or to the organizations or entities offering those tests. For information on the minimum period of operation requirement that applies to licensing or certification tests, see §21.4268.

(a) *Definitions.* The following definitions apply to the terms used in this section. The definitions in §21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control.* The term *control* (including the term *controlling*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) *Person.* The term *person* means an individual, corporation, partnership, or other legal entity. (Authority: 38 U.S.C. 3680A(e))

(b) *Some educational institutions must be in operation for 2 years.* Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution:

(1) Has been operating for less than 2 years;

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution, after such change or move, has been in operation for at least 2 years. (Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the 2-year operation requirement.* Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that:

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve. (Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for 2 years.* VA will consider, for the purposes of paragraph (b) of this section, that a proprietary educational institution (or a branch or extension of such an educational

institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution):

(1) 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; and

(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students. (Authority: 38 U.S.C. 3680A(e) and (g))

(e) *Move outside the same general locality.* A proprietary educational institution (or a branch or extension thereof) will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, i.e., 55 miles or more from the original location. (Authority: 38 U.S.C. 3680A(e))

(f) *Change of ownership.*

(1) A change of ownership of a proprietary educational institution occurs when:

- (i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or
- (ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

- (i) The sale of the educational institution;
- (ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;
- (iii) The merger of 2 or more educational institutions; and
- (iv) The division of one educational institution into 2 or more educational institutions.

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

- (i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or

- (ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer. (Authority: 38 U.S.C. 3680A(e))

(g) *Substantially the same faculty, student body, and courses.* VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

- (i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and
- (ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are also enrolled in the educational institution after the move or change in ownership. (Authority: 38 U.S.C. 3680A(e) and (f)(1))

[31 FR 6774, May 6, 1966, as amended at 38 FR 10153, Apr. 25, 1973; 43 FR 35301, Aug. 9, 1978; 44 FR 62501, Oct. 31, 1979; 45 FR 43170, June 26, 1980; 48 FR 37990 and 37991, Aug. 22, 1983; 51 FR 9955, Mar. 24, 1986; 57 FR 29801, July 7, 1992; 57 FR 40614, Sept. 4, 1992; 61 FR 20728, May 8, 1996; 65 FR 81741, Dec. 27, 2000; 72 FR 16974, Apr. 5, 2007]

Supplement *Highlight* references: 53(1), 73(1).

§21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

(a) *Bartending and personality development.* Enrollment will not be approved in any bartending or personality development course.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraphs (b)(1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or

(2) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(3) Any other type of course which the Department of Veterans Affairs determines to be avocational or recreational. (Authority: 38 U.S.C. 3523(a), 3680A(b))

(4) To overcome the presumption that a course is avocational or recreational in character, the veteran or eligible person will be required to establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(c) *Flight training.* The Department of Veterans Affairs may approve an enrollment in any of the following types of courses of flight training if an institution of higher learning offers the course for credit toward the standard college degree the veteran or eligible person is pursuing. The Department of Veterans Affairs otherwise will not approve an enrollment in:

(1) A course of flight training to obtain a private pilot's license or equivalent level training; or

(2) Any course of flight training under Chapter 35. (Authority: 10 U.S.C. 16131(f); 38 U.S.C. 3034, 3241(b), 3323(a), 3523(b), 3680A(b))

(d) *Courses by radio.* Enrollment in such courses will not be approved.

(e) *Correspondence courses.*

(1) VA will not approve the enrollment of an individual under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapter 30, 32, or 35 in a correspondence course or the correspondence portion of a correspondence-residence course unless the course is accredited and meets the requirements of §§21.4253, 21.4256, and 21.4279, as appropriate.

(2) VA will not approve the enrollment of an eligible child under 38 U.S.C. Chapter 35 in a correspondence course or the correspondence portion of a correspondence-residence course. (Authority: 38 U.S.C. 3534(b))

(f) *Alternative teacher certification program.* VA will not approve the enrollment of an eligible person under 38 U.S.C. Chapter 35 in an alternative teacher certification program unless that program is offered by an institution of higher learning as defined in §21.4200(h). (Authority: 38 U.S.C. 3452(c), 3501(a)(6))

(g) *Independent study.*

(1) Effective October 29, 1992, VA may pay educational assistance to a veteran who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if:

(i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran to complete his or her program of education; and the veteran:

(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and

(B) Has remained continuously enrolled in that program of education from October 29, 1992, to the date the veteran enrolls in the nonaccredited independent study course or unit subject; or

(ii) Was enrolled in and receiving educational assistance for the nonaccredited independent study course or unit subject on October 29, 1992, and remains continuously enrolled in that course or unit subject.

(2) Whether or not the veteran is enrolled will be determined by the regularly prescribed standards and practices of the educational institution. (Authority: 38 U.S.C. 3680A; §313(b), Pub. L. 102-568, 106 Stat. 4331–4332)

(h) *Erroneous, deceptive, or misleading practices.* For the purposes of this paragraph, “educational institution” includes an organization or entity offering licensing or certification tests.

(1) If an educational institution uses advertising, sales, enrollment practices, or candidate handbooks that are erroneous, deceptive, or misleading by actual statement, omission, or intimation, VA will not approve:

(i) An enrollment in any course such an educational institution offers; and

(ii) Payment of educational assistance as reimbursement to a veteran or eligible person for taking a licensing or certification test that the educational institution offers.

(2) VA will use the services and facilities of the Federal Trade Commission, where appropriate, under an agreement:

(i) To carry out investigations; and

(ii) To decide whether an educational institution uses advertising, sales, or enrollment practices, or candidate handbooks, described in paragraph (h)(1) of this section.

(3) Any educational institution offering courses approved for the enrollment of veterans, reservists, and/or eligible persons, or offering licensing or certification tests approved for payment of educational assistance as reimbursement to veterans or eligible persons who take the tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks (and copies of each) that the educational institution or its agents have used during the preceding 12-month period. The State approving agency and VA may inspect this record. The materials in this record shall include but are not limited to:

(i) Any direct mail pieces,

(ii) Brochures,

(iii) Printed literature used by sales people,

(iv) Films, video cassettes and audio tapes disseminated through broadcast media,

(v) Material disseminated through print media,

(vi) Tear sheets,

(vii) Leaflets,

(viii) Handbills,

(ix) Fliers, and

(x) Any sales or recruitment manuals used to instruct sales personnel, agents or representatives of the educational institution. (Authority: 38 U.S.C. 3689, 3696)

(i) *Audited courses.* The school's certifications shall exclude courses which are being audited by the veteran or eligible persons since no educational assistance allowances shall be paid for such courses. (Authority: 38 U.S.C. 3680(a))

(j) *Nonpunitive graded courses.* The school shall report any course for which a nonpunitive grade is assigned and no payment shall be authorized for such a course. If payment has already been made, in whole or in part by the Department of Veterans Affairs at the time the grade is assigned, an overpayment shall be created against the account of the student for such a

course, unless the Department of Veterans Affairs determines there are mitigating circumstances. (Authority: 38 U.S.C. 3680(a))

(k) *Courses with suspended approval.* When a State approving agency has suspended the approval of a course for new enrollments, new enrollments in the course shall not be approved until the suspense is lifted. If the State approving agency does not lift the suspense, but disapproves the course instead, new enrollments beginning on or after the date the suspense was effective shall not be approved. See §21.4259. (Authority: 38 U.S.C. 3672(a))

(l) *Courses taken by a nonmatriculated student who is pursuing a degree.* The provisions of this paragraph apply to veterans and eligible persons who are pursuing a degree, but who have not matriculated. The Department of Veterans Affairs considers a student to have matriculated when he or she has been formally admitted to a college or university as a degree-seeking student.

(1) Some colleges or universities admit students provisionally, pending receipt of test results or transcripts. The Department of Veterans Affairs may approve such a veteran's or eligible person's enrollment in a course or subject only if the veteran or eligible person matriculates during the first two terms, quarters or semesters following his or her admission.

(2) The first portion of the courses leading to a single degree may be offered at one college or university. The remaining courses are not offered at the college or university, but are offered at a second college or university which grants the degree based upon the combined credits earned by the student. If the student is not required to matriculate during the portion of the program offered at the first college or university, VA may approve an enrollment in a course or subject that is part of that portion of the program only when the certifications described in either paragraph (1)(2)(i) or (ii) of this section are made.

(i) The college or university granting the degree certifies concurrently with the student's enrollment in the first portion of the program, that:

(A) Full credit will be granted for the subjects taken in the portion of the curriculum offered at the first college or university;

(B) In the last 5 years at least three students who have completed the first part of the program have been accepted into the second part of the program;

(C) At least 90 percent of those who have applied for admission to the second part of the program, after successfully completing the first part, have been admitted;

(D) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the second part of the program.

(ii) The college or university offering the first part of the program:

(A) Certifies to the appropriate State approving agency that as a result of an agreement between that college or university and the college or university offering the second part of the program, all of the courses taken by the veteran or eligible person in the first part of the program, will be accepted by the college or university offering the second part of the program without any loss of credit in partial fulfillment of the requirements for an associate

or higher degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person has stated to an appropriate official of the college or university offering the first part of the program that he or she is pursuing the program.

(3) The first portion of the subjects or courses in a baccalaureate program beyond those necessary for an associate degree may be given at a 2-year college, while the remainder may be offered at a 4-year college or university. When the college or university does not require the student to matriculate while pursuing the additional study at the 2-year college, VA may approve an enrollment in a course offered in the program at the 2-year college only if the certifications described in either paragraph (1)(3)(i) or (ii) of this section are made.

(i) The college or university granting the baccalaureate degree certifies that:

(A) Full credit is granted for the course upon the student's transfer to the college or university granting the baccalaureate degree,

(B) The courses taken at the 2-year college will be acceptable in partial fulfillment for the baccalaureate degree, and

(C) The student will be required to matriculate during the first two terms, quarters or semesters following his or her admission to the college or university granting the baccalaureate degree.

(ii) Either the 2-year college or the college or university granting the baccalaureate degree:

(A) Certifies to the appropriate State approving agency that as a result of agreement between the 2-year college and the college or university offering the baccalaureate degree all of the courses pursued beyond the associate degree will be accepted without any loss of credit in partial fulfillment of the requirements for a baccalaureate degree. This certification may be made once for each program for which an agreement exists.

(B) Certifies to VA that the veteran or eligible person is enrolled in courses covered by the agreement.

(4) Except as provided in paragraphs (1)(1), (2), and (3) of this section, the Department of Veterans Affairs will not approve a veteran's or eligible person's enrollment in a course or subject if the veteran or eligible person:

(i) Is pursuing a degree, and

(ii) Is not matriculated.

(5) Nothing in this paragraph shall prevent a State approving agency from including more restrictive matriculation requirements in its approval criteria. (Authority: 38 U.S.C. 3452)

(m) *Courses offered under contract.* VA may not approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course as a part of a program of education offered by any educational institution if the educational institution or entity providing the course under contract has not obtained a separate approval for the course in the same manner as for any other course as required by §§21.4253, 21.4254, 21.4256, 21.4257, 21.4260, 21.4261, 21.4263, 21.4264, 21.4265, 21.4266, or 21.4267, as appropriate. (Authority: 38 U.S.C. 3680A(f) and (g))

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0073, 2900-0156, and 2900-0682.)

[31 FR 6774, May 6, 1966, as amended at 32 FR 13404, Sept. 23, 1967; 35 FR 9817, June 16, 1970; 40 FR 31763, July 29, 1975; 43 FR 35302, Aug. 9, 1978; 45 FR 31063, June 12, 1980; 48 FR 14379, Apr. 4, 1983; 48 FR 37991, Aug. 22, 1983, 49 FR 5116, Feb. 10 1984; 49 FR 8439, Mar. 7, 1984; 51 FR 19331 May 29, 1986; 55 FR 28028, July 9, 1990; 61 FR 6783, Feb. 22, 1996; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 65 FR 81742, Dec. 27, 2000; 72 FR 16974, Apr. 5, 2007; 74 FR 14670, Mar. 31, 2009]

Supplement *Highlights* references: 23(1), 27(1, 3), 53(1), 73(1).

Reserved

§21.5022 Eligibility under more than one program.*(a) Concurrent benefits under more than one program.*

(1) An individual cannot receive educational assistance under 38 U.S.C. chapter 32 concurrently with benefits under:

- (i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);
- (ii) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);
- (iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);
- (iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);
- (v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);
- (vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);
- (vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);
- (viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);
- (ix) The Hostage Relief Act of 1980 (Pub. L. 96-449, 5 U.S.C. 5561 note);
or
- (x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399). (Authority: 38 U.S.C. 3322(a), 3681(b), 3695)

(2) If an individual is eligible for benefits under 38 U.S.C. chapter 32 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. 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. (Authority: 38 U.S.C. 3033(a), 3322(a))

(b) Total eligibility under more than one program.

(1) No one may receive a combination of educational assistance benefits under 38 U.S.C. Chapter 32 and any of the following provisions of law for more than 48 months (or part-time equivalent);

- (i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);
- (ii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

Assistance);

(iii) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational

(iv) 10 U.S.C. chapter 1606 (Montgomery GI Bill-Selected Reserve);

(v) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vi) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(vii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);

(viii) The Hostage Relief Act of 1980 (Pub. L. 96-449, 5 U.S.C. 5561 note); or

(ix) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399).

(2) No one may receive assistance under 38 U.S.C. Chapter 31 in combination with assistance under 38 U.S.C. Chapter 32 in excess of 48 months (or the part-time equivalent) unless VA determines that additional months of benefits under 38 U.S.C. Chapter 31 are necessary to accomplish the purposes of a rehabilitation program. (Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

[51 FR 12852, Apr. 16, 1986; 51 FR 16517, May 5, 1986, as amended at 53 FR 34495, Sept. 7, 1988; 57 FR 38612, Aug. 26, 1992; 61 FR 29029, June 7, 1996; 74 FR 14670, Mar. 31, 2009]

Supplement *Highlights* references: 27(2), 82(1).

(c) *Amount of reimbursement for taking a licensing or certification test.* The amount of educational assistance VA will pay as reimbursement for taking an approved licensing or certification test is the lowest of the following:

(1) The fee that the licensing or certification organization offering the test charges for taking the test;

(2) \$2,000; or

(3) An amount VA will determine by multiplying the veteran's or servicemember's remaining months and days of entitlement to educational assistance as provided under §21.7072 or §21.7073 by the veteran's or servicemember's monthly rate of basic educational assistance as provided under §21.7136 or §21.7137, as appropriate. (Authority: 38 U.S.C. 3032(f))

[68 FR 35180, June 12, 2003, as amended at 72 FR 16982, Apr. 5, 2007; 72 FR 35662, June 29, 2007]

Supplement *Highlight* references: 62(3), 73(1), 75(1).

§21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.*

(1) Except for receipt of a Montgomery GI Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), a veteran is barred from concurrently receiving educational assistance under 38 U.S.C. chapter 30 and:

- (i) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);
- (ii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);
- (iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);
- (v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);
- (vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);
- (vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);
- (viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);
- (ix) The Hostage Relief Act of 1980 (Pub. L. 96-449, 5 U.S.C. 5561 note);
or
- (x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399).

(b) If an individual is eligible for benefits under 38 U.S.C. chapter 30 and one or more of the programs listed in paragraphs (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. 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. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3681(b))

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible veteran or servicemember:

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act. (Authority: 38 U.S.C. 3034, 3681)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28389, July 11, 1990; 57 FR 15025, April 24, 1992; 58 FR 46867, Sept. 3, 1993; 61 FR 20729, May 8, 1996; redesignated at 68 FR 35180, June 12, 2003; 74 FR 14670, Mar. 31, 2009]

Supplement *Highlights* references: 8(3), 62(3), 82(1).

Next Section is §21.7144

Reserved

(i) The educational institution certifies the reservist's enrollment in the form prescribed by the Secretary of Veterans Affairs; and

(ii) VA has received a report by the reservist of the flight training the reservist has completed, which report is endorsed by the educational institution. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(b) *Payment for intervals and temporary school closings.* In administering 10 U.S.C. chapter 1606, VA will apply the provisions of §21.4138(f) when determining whether a reservist is entitled to payment for an interval or temporary school closing. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(c) *Payee.*

(1) VA will make payment to the reservist or to a duly appointed fiduciary. VA will make direct payment to the reservist even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of §§21.4146(a), (b), (c) and (e) of this part to 10 U.S.C. chapter 1606 in a manner not inconsistent with the way in which they are applied in the administration of 38 U.S.C. chapters 34 and 36. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680, 5301(a))

(d) *Advance payments.* VA will apply the provisions of §21.4138(a) in making advance payments to reservists. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(e) *Frequency of payment.* Except as provided in §21.4138(a), VA shall pay educational assistance in the month following the month for which training occurs. VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree for any month until the reservist's attendance has been reported for that month. VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g))

(f) *Apportionments prohibited.* VA will not apportion educational assistance. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(Approved by Office of Management and budget under control number 2900-0073)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29306, June 10, 1996; 61 FR 29482, June 11, 1996; 64 FR 52652, Sept. 30, 1999; 72 FR 39564, July 19, 2007; 73 FR 65269, Nov. 3, 2008]

Supplement *Highlights* references: 27(4, 5), 46(2), 76(1), 79(1).

Next Section is §21.7642

§21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. chapter 1606 and any of the following provisions of law:

- (1) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);
- (2) 38 U.S.C. 31 (Vocational Rehabilitation and Employment);
- (3) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (4) 38 U.S.C. 33 (Post-9/11 GI Bill);
- (5) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);
- (6) 10 U.S.C. 1607 (Reserve Educational Assistance Program);
- (7) 10 U.S.C. 106a (Educational Assistance Test Program);
- (8) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);
- (9) The Hostage Relief Act of 1980 (Pub. L. 96-449, 5 U.S.C. 5561 note); or
- (10) The Omnibus Diplomatic Security Act of 1986 (Pub. L. 99-399). (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3241(a), 3322(a), 3681)

(b) When paragraph (a) of this section applies, the reservist must choose which benefit he or she wishes to receive. The reservist 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 reservist 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.

(c) *Senior Reserve Officers' Training Corps scholarship program.* Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program. (Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(d) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist:

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty.

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service, or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3681; Pub. L. 98-525)

(e) *Service Members Occupational Conversion and Training Act of 1992*. A reservist may not receive educational assistance under the Montgomery GI Bill-Selected Reserve program during the period for which benefits are payable under the Service Members Occupational Conversion and Training Act of 1992. (Authority: §4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

[53 FR 34740, Sept. 8, 1988, as amended at 56 FR 9628, Mar. 7, 1991; 61 FR 20729, May 8, 1996; 61 FR 29307, June 10, 1996; 74 FR 14671, Mar. 31, 2009]

Supplement *Highlights* references: 27(4), 82(1).

Next Section is §21.7644

§21.7644 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of §§21.4008 and 21.4009 of this part in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36. See §21.7633. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690(b); Pub. L. 98-525)

(b) *Penalties are not overpayments.* The Secretary concerned may require a refund from an individual who fails to participate satisfactorily in required training as a member of the Selected Reserve. This refund is subject to waiver by the Secretary. However, this refund:

(1) Is not an overpayment for VA purposes, and

(2) Is not subject to waiver by VA under §1.957 of this chapter. (Authority: 10 U.S.C. 16135; Pub. L. 98-525)

(c) *Liability for overpayments.*

(1) The amount of the overpayment of educational assistance paid to a reservist constitutes a liability of that reservist unless:

(i) The overpayment is waived as provided in §1.957 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See §21.7635(o) of this part.

(2) The amount of the overpayment of educational assistance paid to a reservist constitutes as liability of the educational institution if VA determines that the overpayment was made as the result of:

(i) Willful or negligent false certification by the educational institution, or

(ii) Willful or negligent failure to certify excessive absences from a course, or discontinuance or interruption of a course by the reservist. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3685; Pub. L. 98-525)

(d) *Waiver of recovery of overpayments.*

(1) Except as stated in paragraph (b) of this section in determining whether an overpayment should be waived or recovered from a reservist, VA will apply the provisions of §1.957 of this chapter.

(2) In determining whether an overpayment should be recovered from an educational institution, VA will apply the provisions of §21.4009(a)(2), (3), (4), and (5), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this part to overpayments of educational assistance under 10 U.S.C. chapter 1606 in the same manner as they are applied to overpayments of educational

§21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment. (Authority: 38 U.S.C. 1804, 1812, 1814)

Next Section is §21.8014

§21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

- (1) Be in writing over the signature of the applicant or the person applying on the child's behalf;
- (2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and
- (3) Clearly identify the benefit sought. (Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001. (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0579) (Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

21.8015-1 §21.8015—Notification by VA of necessary information or evidence when a claim is filed; **21.8015-1**
time for claimant response and VA action; and VA's duty to assist claimants in obtaining evidence

**§21.8015 Notification by VA of necessary information or evidence when a claim is filed;
time for claimant response and VA action; and VA's duty to assist claimants
in obtaining evidence.**

The provisions of §§21.32 and 21.33 of subpart A of this part also apply to claims for benefits and services under this subpart.

[74 FR 31857, July 6, 2009]

Supplement *Highlights* reference: 82(2)

21.8015-2 §21.8015—Notification by VA of necessary information or evidence when a claim is filed; **21.8015-2**
time for claimant response and VA action; and VA's duty to assist claimants in obtaining evidence

Reserved

Additional Applicable Regulations

§21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§21.380, 21.412, 21.414 (except (c), (d), and (e)), 21.420, and 21.430. (Authority: 38 U.S.C. 1804, 1814, 5112)

Next Section is §21.8410

Delegation of Authority

§21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members. (Authority: 38 U.S.C. 512(a), 1804, 1814)

Next Section is Subpart N

Subpart N— [Reserved]

Source: 74 FR 14671, March 31, 2009, unless otherwise noted.

Supplement *Highlights* reference: 82(1)

Next Section is Subpart O

Reserved

Subpart O— [Reserved]

Source: 74 FR 14671, March 31, 2009, unless otherwise noted.

Supplement *Highlights* reference: 82(1)

Next Section is Subpart P

Reserved

Subpart P— Post 9/11 GI Bill

Authority: 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

Source: 74 FR 14671, March 31, 2009, unless otherwise noted.

Supplement *Highlights* reference: 82(1)

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§21.9500 Introduction.

An educational assistance program is established for individuals who served on active duty after September 10, 2001. This educational assistance program is effective August 1, 2009. (Authority: Pub. L. 110-252, 122 Stat. 2357, 2378)

Next Section is §21.9505

Definitions

§21.9505 Definitions.

For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33) the following definitions apply. (See also additional definitions in §§21.1029 and 21.4200).

Academic year means the period of time beginning August 1st of each calendar year and ending July 31st of the subsequent calendar year. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

Active duty means full-time duty in the regular components of the Armed Forces or under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304. Active duty does not include:

- (1) Full-time National Guard Duty performed under 32 U.S.C. orders;
- (2) Any period during which the individual:
 - (i) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians;
 - (ii) Served as a cadet or midshipmen at one of the service academies; or
 - (iii) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;
- (3) A period of service:
 - (i) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b);
 - (ii) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348;
 - (iii) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or
 - (iv) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109; or

(4) A period of Selected Reserve service used to establish eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607. (Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b) and (c))

Advance payment means an amount of educational assistance payable under §21.9640(b)(1)(ii) or (b)(2)(ii) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

Course means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational, professional, or vocational objective. (Authority: 38 U.S.C. 3323(c))

Distance learning means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(7). (Authority: 20 U.S.C. 1003(7); 38 U.S.C. 3323(c))

Educational assistance means the monetary benefit payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33. (Authority: 38 U.S.C. 3313)

Enrollment period means a term, quarter, or semester during which the institution of higher learning offers instruction. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Entry level and skill training means:

- (1) Basic Combat Training and Advanced Individual Training for members of the Army;
- (2) Recruit Training (Boot Camp) and Skill Training ("A" School) for members of the Navy;
- (3) Basic Military Training and Technical Training for members of the Air Force;
- (4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and
- (5) Basic Training for members of the Coast Guard. (Authority: 38 U.S.C. 3301(2))

Established charges means the actual charge for tuition and fees that similarly circumstanced nonveterans enrolled in the program of education are required to pay. (Authority: 38 U.S.C. 3313(h))

Fees means any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a

mandatory requirement for completion of the approved program of education. (Authority: 38 U.S.C. 501(a), 3323(c))

Institution of higher learning (IHL) 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. When there is no State law to authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located. (Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

Interval means a period of time between regularly scheduled individual terms, semesters, or quarters. (Authority: 38 U.S.C. 3034(a)(1), 3323(a), 3680)

Lump sum payment means an amount of educational assistance paid for the entire term, quarter, or semester. (Authority: 38 U.S.C. 3323(c))

Mitigating circumstances means circumstances beyond the individual's control that prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those that VA considers to be mitigating. This list is not all-inclusive.

- (1) An illness or mental illness of the individual;
- (2) An illness or death in the individual's family;
- (3) An unavoidable change in the individual's conditions of employment;
- (4) An unavoidable geographical transfer resulting from the individual's employment;
- (5) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;
- (6) Discontinuance of the course by the educational institution;
- (7) Unanticipated active duty for training; or
- (8) Unanticipated difficulties in caring for the individual's child or children.
(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

Program of education means a curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for a predetermined and identified educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field. The curriculum or combination of courses pursued must be listed in the institution of higher learning's catalog and included in the approval notice provided by the State approving agency to VA in accordance with §21.4258(b)(iv). (Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

Pursuit means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of Title 38, U.S.C., and must be necessary to reach the program's objective. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Rate of pursuit means the measurement obtained by dividing the number of credit hours (or the equivalent credit hours as determined in §21.9750) an individual is enrolled in, including credit hours (or the equivalent) applied to refresher, remedial, and deficiency courses, by the number of credit hours (or the equivalent credit hours) considered to be full-time training at the institution of higher learning. The resulting percentage (rounded to the nearest hundredth) will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training. (Authority: 38 U.S.C. 3323, 3680)

Transferor means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents. (Authority: 38 U.S.C. 3319)

Next Section is §21.9510

Claims and Applications

§21.9510 Claims, VA's duty to assist, and time limits.

The provisions of subpart B of this part apply to claims filed for educational assistance under 38 U.S.C. chapter 33 with respect to VA's responsibilities upon receipt of claim, VA's duty to assist claimants in obtaining evidence, and time limits. (Authority: 38 U.S.C. 3323(c), 5101, 5102, 5103, 5103A)

Next Section is §21.9520

Eligibility

§21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33 based on active duty service after September 10, 2001, if he or she:

(a) Serves a minimum of 90 aggregate days excluding entry level and skill training (to determine when entry level and skill training may be included in the total creditable length of service, see §21.9640(a)) and, after completion of such service,:

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is released from service characterized as honorable and placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5) Is discharged or released from service for:

(i) A medical condition that preexisted such service and is not determined to be service-connected;

(ii) Hardship, as determined by the Secretary of the military department concerned; or

(iii) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves a minimum of 30 continuous days and, after completion of such service, is discharged under other than dishonorable conditions due to a service-connected disability; or

(c) (1) After meeting the minimum service requirements in paragraph (a) or (b) of this section:

(i) An individual makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under either 38 U.S.C. chapter 30, or 10 U.S.C. chapter 106a, 1606, or 1607;

(ii) A member of the Armed Forces who is eligible for educational assistance under 38 U.S.C. chapter 30 and who is making contributions towards such educational assistance under 38 U.S.C. 3011(b) or 3012(c) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33; or

(iii) A member of the Armed Forces who made an election not to receive educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(c)(1) or 3012(d)(1) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33.

(2) An individual may make an irrevocable election to receive benefits under this chapter by properly completing VA Form 22-1990, submitting a transfer-of-entitlement designation under this chapter to the Department of Defense, or submitting a written statement that includes the following:

(i) Identification information (including name, social security number, and address);

(ii) If applicable, an election to receive benefits under chapter 33 in lieu of benefits under one of the applicable chapters listed in paragraph (c)(1)(i) of this section (e.g., “I elect to receive benefits under the Post-9/11-GI Bill in lieu of benefits under the Montgomery GI Bill–Active Duty (chapter 30) program.”);

(iii) The date the individual wants the election to be effective (e.g., “I want this election to take effect on August 1, 2009.”). An election request for an effective date prior to August 1, 2009, will automatically be effective August 1, 2009; and

(iv) An acknowledgement that the election is irrevocable (e.g., “I understand that my election is irrevocable and may not be changed.”). (Authority: 38 U.S.C. 3311; Pub. L. 110-252, Stat. 2375-2376)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0154.)

Next Section is §21.9525

§21.9525 Eligibility for increased and supplemental educational assistance.

(a) *Increased assistance for members with critical skills or specialty.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable under §21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel.

(b) *Supplemental assistance for members serving additional service.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may supplement the amount of educational assistance payable under §21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who meets the following service requirements.

(1) *Individuals with active duty service only.* Supplemental educational assistance may be offered to an individual who serves 5 or more consecutive years on active duty in the Armed Forces in addition to the years counted to qualify for educational assistance, without a break in such service, and:

(i) Continues on active duty without a break;

(ii) Is discharged from service with an honorable discharge;

(iii) Is placed on the retired list;

(iv) Is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(v) Is placed on the temporary disability retired list; or

(vi) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(2) *Individuals with Selected Reserve service.*

(i) Supplemental educational assistance may be offered to an individual who:

(A) Serves 2 or more consecutive years on active duty in the Armed Forces in addition to the years on active duty counted to qualify for educational assistance;

(B) Serves 4 or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for educational assistance; and

(C) After completion of such service:

- (1) Is discharged from service with an honorable discharge;
- (2) Is placed on the retired list;
- (3) Is transferred to the Fleet Reserve or Fleet Marine Corps Reserve;
- (4) Is placed on the temporary disability retired list;
- (5) Continues on active duty; or
- (6) Continues in the Selected Reserve.

(ii) The Secretary concerned may, pursuant to regulations prescribed by the Secretary of Defense, determine the maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though the individual:

(A) Is unable to locate a unit of the Selected Reserve for which he or she is eligible;

(B) Is unable to locate a unit of the Selected Reserve that has a vacancy; or

(C) For any other reason other than those stated in paragraph (b)(2)(ii)(A) and (B) of this section.

(iii) Any decision as to the continuity of an individual's service in the Selected Reserve made by the Secretary of Defense will be binding upon VA. (Authority: 38 U.S.C. 3021, 3022, 3023, 3316)

Next Section is §21.9530

§21.9530 Eligibility time limit.

(a) Except as provided in paragraphs (b) through (e) of this section, an individual's period of eligibility for educational assistance will terminate effective 15 years from the date of the last discharge or release from active duty of at least:

(1) 90 continuous days; or

(2) 30 continuous days if the individual is released for a service-connected disability.

(b) In the case of an individual who establishes eligibility and does not meet one of the service requirements specified in paragraph (a) of this section, the individual's period of eligibility for educational assistance will terminate effective 15 years from the date of discharge for the last period of service used to meet the minimum service requirements for eligibility as stated in §21.9520.

(c) *Amendment of military records.* If an individual's eligibility for educational assistance is established as a result of a correction of military records under 10 U.S.C. 1552, a change, correction, or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the change, correction, modification, or other corrective action. (Authority: 38 U.S.C. 3311(c), 3321)

(d) *Time limit for spouse using transferred entitlement.*

(1) Unless the transferor dies while on active duty, the ending date of the spouse's period of eligibility for entitlement transferred under §21.9570 is the earliest of the following:

(i) The transferor's ending date as determined under this section;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under §21.9570(f).

(2) If the transferor dies while on active duty, the ending date of the spouse's period of eligibility is the earliest of the following:

(i) The date 15 years from the transferor's date of death;

(ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under §21.9570(f). (Authority: 38 U.S.C. 3319)

(e) *Time limit for child using transferred entitlement.*

(1) The ending date of the child's period of eligibility for entitlement transferred under §21.9570 is the earliest of the following:

(i) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective;

(ii) The effective date of the transferor's revocation of transferred entitlement as determined under §21.9570(f); or

(iii) The day the child turns 26.

(2) [Reserved] (Authority: 38 U.S.C. 3319)

Next Section is §21.9535

§21.9535 Extended period of eligibility.

VA will extend an individual's period of eligibility in accordance with the following provisions.

(a) *Disability extension.*

(1) VA will grant an extension of the period of eligibility, as determined in §21.9530 (except for paragraphs (d) and (e)) provided:

(i) The individual applies for the extension within the time specified in §21.1033(c); and

(ii) The medical evidence clearly establishes that the individual was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. VA will not consider an individual's disability for a period of 30 days or less as having prevented the individual from initiating or completing a chosen program, unless the evidence establishes that the individual was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance due to the short-term disability.

(2) *Length of extension.* An individual's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This will be determined as follows:

(i) If the individual is pursuing a program of education organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of:

(A) The beginning date of the ordinary term, quarter, or semester following the day the individual's training became medically feasible;

(B) The last date of the individual's original period of eligibility as determined in §21.9530; or

(C) The date the individual resumed training.

(ii) If the individual is pursuing a program of education that is not organized on a term, quarter, or semester basis, his or her extended period of eligibility will contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of:

- or
- (A) The date the individual's training became medically feasible;
 - (B) The last date of the individual's original period of eligibility as determined in §21.9530.

(b) *Forcibly detained extension.*

(1) VA will grant an extension of the period of eligibility, as determined in §21.9530, equal to the period of time the individual:

- and
- (i) Was captured and forcibly detained by a foreign government or power,
 - (ii) Was hospitalized at a military, civilian, or medical facility immediately following release from the foreign government or power.

(2) [Reserved] (Authority: 38 U.S.C. 3321)

Next Section is §21.9550

Entitlement

§21.9550 Entitlement.

(a) Subject to the provisions of §21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b) (1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual, who as of August 1, 2009, was eligible under 38 U.S.C. chapter 30, had not used any entitlement under that program, was making contributions towards chapter 30, or was a servicemember who would have been eligible for chapter 30 if he or she had not declined participation, will receive 36 months of entitlement under chapter 33.

(c) Except as provided in §§21.9560(d), 21.9570(m), and 21.9635(o), no individual is entitled to more than 36 months of full-time educational assistance under 38 U.S.C. chapter 33. (Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110-252, 122 Stat. 2377)

Next Section is §21.9555

§21.9555 Entitlement to supplemental educational assistance.

In determining the entitlement of an individual who is eligible for supplemental educational assistance, VA will:

(a) Calculate the individual's entitlement to 38 U.S.C. chapter 33 educational assistance on the day he or she establishes eligibility for supplemental educational assistance; and

(b) Credit the individual with the same number of months and days of entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section. (Authority: 38 U.S.C. 3023, 3316)

Next Section is §21.9560

§21.9560 Entitlement charges.

(a) *Overview.* Except as provided in paragraphs (c) through (f) of this section, VA will base entitlement charges on the principle that an eligible individual who is paid educational assistance for one day of full-time pursuit should be charged one day of entitlement.

(b) *Determining entitlement charge.*

(1) VA will make a charge against entitlement as follows:

(i) *Full-time pursuit.* If the individual is pursuing a program of education on a full-time basis, the entitlement charge will be one of the following:

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the entitlement charge will be one day for each day of the certified enrollment period;

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the entitlement charge will be one day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance; or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67.

(ii) *Less than full-time pursuit.* If the individual is pursuing a program of education on a less than a full-time basis, the entitlement charge will be one of the following:

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day for each day of the certified enrollment period determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth);

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the individual will be charged a percentage of a day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth); or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67. (Authority: 38 U.S.C. 3313)

(2) If the individual changes his or her rate of pursuit after the beginning date of the award, VA will:

(i) Divide the certified enrollment period into separate periods of time so that the individual's rate of pursuit is constant within each period; and

(ii) Compute the rate of pursuit separately for each time period.

(c) *Individuals eligible for, or in receipt of, educational assistance other than that authorized under chapter 33.* If an individual elected 38 U.S.C. chapter 33 by relinquishing educational assistance under another program but receives educational assistance for a program of education that is approved under the relinquished chapter but not approved under 38 U.S.C. chapter 33, VA will make a charge against entitlement equivalent to the entitlement charge:

(1) That would be made under the provisions of §21.7076, if the individual relinquished eligibility under 38 U.S.C. chapter 30;

(2) That would be made under the provisions of §21.7576 if the individual relinquished eligibility under 10 U.S.C. chapter 1606; or

(3) That would be made under 10 U.S.C. chapter 1607 if the individual relinquished eligibility under 10 U.S.C. chapter 1607.

(d) *No entitlement charge.* VA will not make a charge against an individual's entitlement:

(1) For an approved licensing or certification test as provided under §21.9665; or (Authority: 38 U.S.C. 3315)

(2) For tutorial assistance as provided under §21.9685; or (Authority: 38 U.S.C. 3314)

(3) For the rural relocation benefit as provided under §21.9660; or (Authority: 38 U.S.C. 3318)

(4) For pursuit of a course or courses when the individual:

(i) Had to discontinue the course or courses as a result of being ordered to:

(A) Active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit. (Authority: 38 U.S.C. 3312(c))

(e) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for any part of the certified period of enrollment;

(3) The individual interrupts his or her enrollment at the end of any term, quarter, or semester within a certified period of enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for the succeeding term, quarter, or semester; or

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual negotiated a check or received a direct deposit for educational assistance provided under this chapter for any part of the certified enrollment period. (Authority: 38 U.S.C. 3323(c))

(f) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the

overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by:

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees;

(ii) Subtracting the remaining amount of the overpayment balances as determined in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, course costs and marshal fees);

(iii) Dividing the result obtained in paragraph (f)(3)(ii) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (f)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment. (Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

Next Section is §21.9570

Transfer of Entitlement to Basic Educational Assistance to Dependents

§21.9570 Transfer of entitlement.

An individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own active duty service, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9505—Definitions. (Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA's duty to assist, and time limits. (Authority: 38 U.S.C. 3319)

(3) *Eligibility.*

- (i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and
- (ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke or modify transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26. (Authority: 38 U.S.C. 3319)

(4) *Entitlement.*

- (i) Section 21.9550—Entitlement;
- (ii) Section 21.9555—Entitlement to supplemental educational assistance;
- (iii) Section 21.9560—Entitlement charges. (Authority: 38 U.S.C. 3319)

(5) *Counseling.*

- (i) Section 21.9580—Counseling;
- (ii) Section 21.9585—Travel expenses. (Authority: 38 U.S.C. 3319)

(6) *Approved programs of education and courses.*

- (i) Section 21.9590—Approved programs of education and courses;
- (ii) Section 21.9600—Overcharges. (Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance.*

- (i) Section 21.9620—Educational assistance;
- (ii) Section 21.9625—Beginning dates, except for paragraphs (e) and (h);
- (iii) Section 21.9630—Suspension or discontinuance of payments;
- (iv) Section 21.9635—Discontinuance dates, except for paragraphs (n) and (o);
- (v) Section 21.9640—Rates of payment of educational assistance;
- (vi) Section 21.9650—Increase in educational assistance;
- (vii) Section 21.9655—Rates of supplemental educational assistance;
- (viii) Section 21.9660—Rural relocation benefit;
- (ix) Section 21.9665—Reimbursement for licensing or certification tests;
- (x) Section 21.9670—Work-study allowance;
- (xi) Section 21.9675—Conditions that result in reduced rates or no payment;
- (xii) Section 21.9680—Certifications and release of payments;
- (xiii) Section 21.9685—Tutorial assistance;
- (xiv) Section 21.9690—Nonduplication of educational assistance;
- (xv) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent; and (Authority: 38 U.S.C. 3319)
- (xvi) Section 21.9700—Yellow Ribbon Program. (Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses.*

- (i) Section 21.9710—Pursuit;
- (ii) Section 21.9715—Advance payment certification;
- (iii) Section 21.9720—Certification of enrollment;
- (iv) Section 21.9725—Progress and conduct;
- (v) Section 21.9735—Other required reports;
- (vi) Section 21.9740—False, late, or missing reports; and
- (vii) Section 21.9745—Reporting fee. (Authority: 38 U.S.C. 3319)

(9) *Course assessment.* Section 21.9750—Course measurement. (Authority: 38 U.S.C. 3319)

(10) *Administrative.* Section 21.9770—Administrative. (Authority: 38 U.S.C. 3319)

(b) *Eligible dependents.*

(1) An individual transferring entitlement under this section may transfer entitlement to:

- (i) The individual's spouse;

(ii) One or more of the individual's children; or

(iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in §3.50(a) of this chapter at the time of transfer.

(3) A child must meet the definition of child in §3.57 of this chapter at the time of transfer. The transferor must make the required designation shown in §21.9570(d)(1) before the child attains the age of 23.

(4) A stepchild, who meets VA's definition of child in §3.57 of this chapter at the time of transfer and who is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence. (Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her military department to transfer entitlement may do so at any time while serving as a member of the Armed Forces, subject to the transferor's 15-year period of eligibility as provided in §21.9530. (Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer.*

(1) An individual transferring entitlement under this section must:

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of entitlement to be transferred to each dependent; and

(iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.

(2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section. (Authority: 38 U.S.C. 3319)

(e) *Maximum months of entitlement transferable.*

(1) The maximum amount of entitlement a transferor may transfer is the lesser of:

(i) Thirty-six months of his or her entitlement; or

(ii) The maximum amount authorized by the Secretary of the military department concerned; or

(iii) The amount of entitlement he or she has available at the time of transfer.

(2) The transferor may transfer up to the maximum amount of transferable entitlement:

(i) To one dependent; or

(ii) Divided among his or her designated dependents in any manner he or she chooses. (Authority: 38 U.S.C. 3319)

(f) Revocation of transferred entitlement.

(1) A transferor may revoke any unused portion of transferred entitlement at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The revocation will be effective the later of:

(i) The date VA receives the notice of revocation; or

(ii) The date the military department concerned receives the notice of revocation. (Authority: 38 U.S.C. 3319)

(g) Modifying a transfer of entitlement.

(1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time. Any modification made will apply only with respect to unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The modification will be effective the later of:

(i) The date VA receives the notice of modification; or

(ii) The date the military department concerned receives the notice of modification. (Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property.* Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding. (Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by a dependent or dependents. (Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate).* Children who have reached age 18 and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate). (Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in §21.9640 (and §§21.9650 and 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning (or school, educational institution, or institution as defined in §21.4200(a) if the dependent is using transferred entitlement to pursue and complete the requirements of a secondary school diploma or equivalency certificate) the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will:

(1) Disregard the fact that either the transferor or the dependent child is (or both are) on active duty, and pay the veteran rate to a dependent child;

(2) Pay the veteran rate to a surviving spouse; and

(3) Proportionally adjust the payment amounts, other than the book stipend, a dependent would otherwise receive under §21.9640 if the dependent's months of entitlement will exhaust during the certified enrollment period, by:

(i) Determining the amount of established charges the dependent would otherwise be eligible to receive for the entire enrollment period, then dividing this amount by the number of days in the dependent's quarter, semester, or term, as applicable, to determine the dependent's daily rate, then determining the actual amount of established charges to be paid by multiplying the dependent's daily rate by his or her remaining months and days of entitlement to educational assistance as provided under §21.9570; and

(ii) Discontinuing the dependent's monthly housing allowance effective as of the date the dependent's months and days of entitlement exhausts. (Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless:

(i) The transferor did not complete the service due to:

(A) His or her death;

(B) A medical condition that preexisted such service on active duty and that the Secretary of the military department concerned determines is not service-connected;

(C) A hardship, as determined by the Secretary of the military department concerned; or

(D) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of duty, as determined by the Secretary of the military department concerned; or

(ii) The transferor is considered to have completed his or her service agreement as a result of being discharged for:

(A) A disability; or

(B) A reduction in force.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (1)(1)(i) of this section or the transferor was not discharged for one of the reasons stated in paragraph (1)(1)(ii) of this section. (Authority: 38 U.S.C. 3034(a), 3311(c)(4), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service:

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course; and

(2) Are not subject to the 48 months limit on training provided for in §21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33 as long as the only educational assistance paid is under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in §21.4020 (other than 38 U.S.C. chapter 33), the 48 months limit on training will apply. (Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

Next Section is §21.9580

Counseling**§21.9580 Counseling.**

An individual may receive counseling from VA before beginning training and during training. VA will apply the provisions of §21.7100 to beneficiaries under 38 U.S.C. chapter 33 in the same manner as they are applied to individuals under 38 U.S.C. chapter 30. (Authority: 38 U.S.C. 3034(a), 3323(a), 3697A)

Next Section is §21.9585

§21.9585 Travel expenses.

VA will not pay for any costs of travel to and from the place of counseling regardless of whether the individual requests educational and vocational counseling or whether the counseling is required. (Authority: 38 U.S.C. 111, 3323(c))

Next Section is §21.9590

Approved Programs of Education and Courses

§21.9590 Approved programs of education and courses.

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must:

- (1) Be pursuing an approved program of education;
- (2) Be pursuing refresher, remedial, or deficiency courses as these courses are defined in §21.7020(b);
- (3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;
- (4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or
- (5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of established charges not covered by military tuition assistance. (Authority: 38 U.S.C. 3313, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

- (1) The program meets the definition of a program of education in §21.9505;
- (2) Except for a program consisting of a licensing or certification test, the program has an educational, vocational, or professional objective as described in §21.7020(b)(13) or (22);
- (3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and
- (4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, the individual is not already qualified for the objective of the program. (Authority: 38 U.S.C. 3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of §21.4234.

(d) *Programs not authorized under 38 U.S.C. chapter 33.* If an individual elected to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under 38 U.S.C. chapter 30, or 10 U.S.C. chapter 1606 or 1607, and the eligible individual requests educational assistance

for a program of education that is not authorized to be available to the individual under the provisions of 38 U.S.C. chapter 33, but is available under the chapter the individual relinquished, VA will provide educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of education that meets the approval criteria under:

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter;

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

(Authority: Pub. L. 110-252, 122 Stat. 2377)

Next Section is §21.9600

§21.9600 Overcharges.

(a) Overcharges by educational institutions may result in the disapproval of enrollments. VA may disapprove an institution of higher learning for further enrollments if the institution of higher learning charges an individual, or receives from an individual, an amount for tuition and fees that exceeds the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course. (Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests. VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the established fees that the organization or entity requires from similarly circumstanced individuals taking the same test. (Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

Next Section is §21.9620

Payments—Educational Assistance**§21.9620 Educational assistance.**

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in §21.9640. The maximum amounts of tuition and fees payable for the upcoming academic year under 38 U.S.C. chapter 33 will be published in the "Notices" section of the *Federal Register* by the first of August of each calendar year. The maximum amounts payable may also be obtained by visiting the GI Bill Web site at <http://www.gibill.va.gov> or by calling VA's customer service department toll-free at 1-888-442-4551. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year. (Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

Next Section is §21.9625

§21.9625 Beginning dates.

VA will determine the beginning date of an award or increased award of educational assistance under this section, but in no case will the beginning date be earlier than August 1, 2009. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates. (Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

(a) *Entrance or reentrance including change of program or institution of higher learning.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or institution of higher learning), the beginning date of his or her award of educational assistance will be determined as follows:

(1) *For other than a licensing or certification test.*

(i) If the award is an award for the first period of enrollment for which the eligible individual began pursuing his or her program of education, the beginning date will be the latest of:

- (A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;
- (B) One year before the date of claim as determined by §21.1029(b);
- (C) The effective date of the approval of the program of education;
or
- (D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is an award for a second or subsequent period of enrollment for which the eligible individual is pursuing a program of education, the effective date of the award will be the latest of:

- (A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;
- (B) The effective date of the approval of the program of education;
or
- (C) One year before the date VA receives the approval notice for the program of education. (Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009:

- (i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test. (Authority: 38 U.S.C. 3034(a), 3315, 3323(a), 3452(b), 3689)

(b) *Certification for program of education that leads to a standard college degree.*

(1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the institution of higher learning.

(2) When the individual enrolls in a resident course, the beginning date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that:

(i) The published standards of the school require the eligible individual to register before reporting; and

(ii) The published standards of the school require the eligible individual to report no more than 14 days before the first scheduled date of classes for the term, quarter, or semester for which the eligible individual has registered.

(5) When the eligible individual enrolls in a resident course and the first day of classes is more than 14 days after the date of registration, the beginning date of the award or increased award of educational assistance will be the first day of classes. (Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education that does not lead to a standard college degree.*

(1) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered in residence but that does not lead to a standard college degree, the beginning date of the award of educational assistance will be as stated in paragraph (b) of this section. (Authority: 38 U.S.C. 3313(b), 3323)

(2) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of:

(i) The date the first lesson was sent, or

(ii) The date of affirmance (as defined in §21.7020(b)(36)). (Authority: 38 U.S.C. 3313, 3316, 3323)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts found, but not earlier than the effective date of the act or administrative issue. (Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in §21.9530, the eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases, the beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed. (Authority: 38 U.S.C.3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving, or is receiving a reduced rate, of educational assistance under §21.9675 (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

(1) The date the tuition and fees are no longer being paid under a Federal (other than one administered by VA), State, or local program; or

(2) The date the individual is released from the penal institution or correctional facility. (Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase ("kicker") based on critical skills or specialty.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance under 38 U.S.C. 3316, the effective date of that increase ("kicker") will be the later of:

(1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first date on which the eligible individual is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned. (Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of:

(1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable. (Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under §21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the military department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in §3.50(a) of this chapter. (Authority: 38 U.S.C. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under §21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates:

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in §3.57 of this chapter; or

(5) Either:

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18. (Authority: 38 U.S.C. 3319)

(k) *Change in active duty status.* If an individual is released or discharged from active duty during a certified period of enrollment, VA will begin paying:

(1) Tuition and fees using the provisions of §21.9640(b) or (c), whichever is applicable, effective the first day of the enrollment period following the enrollment period during which the individual was discharged;

(2) The monthly housing allowance beginning the 1st day of the month following the date the individual was discharged; and

(3) The book stipend beginning the first day of the enrollment period following the enrollment period during which the individual was discharged.

(1) *Election to receive benefits under 38 U.S.C. chapter 33.* If an individual makes an election to receive benefits under 38 U.S.C. chapter 33 in lieu of benefits under 10 U.S.C. chapter 106a, 1606, or 1607, or 38 U.S.C. chapter 30 in accordance with 38 CFR 21.9520(c), VA will begin paying benefits under 38 U.S.C. chapter 33 effective the later of the following:

(1) August 1, 2009;

(2) The date the individual became eligible for educational assistance under 38 U.S.C. chapter 33;

(3) One year before the date the valid election request was received; or

(4) The effective date of the election as requested by the claimant.

Next Section is §21.9630

§21.9630 Suspension or discontinuance of payments.

VA may suspend or discontinue payment of educational assistance in accordance with §§21.4210 through 21.4216. (Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

Next Section is §21.9635

§21.9635 Discontinuance dates.

The effective date of a reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) Death of eligible individual.

(1) If the eligible individual receives a lump sum payment under §21.9640(b)(1)(iii), (b)(2)(iii), (c)(1)(ii), or (c)(2)(ii) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the institution of higher learning receives a lump sum payment for established charges on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The institution of higher learning will be required to return to VA any portion of the established charges paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the institution of higher learning.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to §21.9680(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) First instance of withdrawal of course. In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider mitigating circumstances to exist with respect to the withdrawal of a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider a course or courses dropped during an institution of higher learning's drop-add period in accordance with §21.4200(l). If mitigating circumstances are considered to exist in accordance with this paragraph, VA will terminate or reduce educational assistance effective the end of the month during which the withdrawal occurred. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) Withdrawal or unsatisfactory completion of all courses.

(1) If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades and, in either case, there are no mitigating circumstances, VA will terminate educational assistance effective

the first date of the term in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(2) If the eligible individual withdraws from all courses with mitigating circumstances or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for:

(i) Residence training effective the last date of attendance; and

(ii) Independent study or distance learning effective on the official date of change in status under the practices of the institution of higher learning.

(3) When an eligible individual withdraws from an approved correspondence course offered by an institution of higher learning, VA will terminate educational assistance effective the date the last lesson was serviced. (Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective the end of the month during which the reduction occurred when the circumstances in either paragraphs (d)(1)(i) or (d)(1)(ii) apply:

(i) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances.

(ii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when:

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and:

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(3) An eligible individual enrolled in several courses within a program of education, who reduces his or her rate of pursuit by completing one or more of the courses while continuing training in others, may receive an interval payment based on the total number of enrolled courses he or she completed if the requirements of §21.9680(b)(5) are met. If those requirements are not met, VA will reduce the eligible individual's educational assistance effective the end of the month during which the individual completed each course (or courses). (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the institution of higher learning. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.*

(1) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(3) If an eligible individual receives an incomplete grade for a course or courses, VA will delay creating an overpayment for such course or courses to allow the individual an opportunity to complete the course or courses. However, if the incomplete grade is not replaced with a punitive grade, VA will reduce the individual's educational assistance in accordance with paragraph (f)(1) or (2) of this section effective the earliest of:

(i) The last date permitted by the IHL to complete the course;

(ii) The date the IHL permanently assigns a nonpunitive grade;

(iii) One year from the date the incomplete grade was assigned.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in §21.4210(d) and (g), the discontinuance date of payment of educational assistance will be:

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in §21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month during which VA made the decision to discontinue payments under §21.9630 or §21.4210(d) and (g), if the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the discontinuance. (Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be:

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in §21.4210 if disapproval was preceded by such a suspension; or

(2) The end of the month in which the disapproval is effective or VA receives notice of the disapproval, whichever is later, provided the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval. (Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of educational assistance will be:

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments, as provided in §21.4210, if such suspension preceded the disapproval; or

(2) The end of the month in which the disapproval occurred, provided that the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval. (Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(a), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the institution of higher learning discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the institution of higher learning's regularly established standards of progress, conduct, or attendance. (Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(k) *False or misleading statements.* Payments may not be based on false or misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of §21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30. (Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an institution of higher learning, or an officer or employee of a State

approving agency and an institution of higher learning, as provided in §21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests. (Authority: 38 U.S.C. 3034(a), 3323(a), 3683)

(m) *Incarceration in prison or other penal institution due to conviction of a felony.*

(1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under §21.9675(c) (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The reduced rate or discontinuance will be effective the latest of the following:

(i) The first day of the enrollment period for which all or part of the eligible individual's tuition and fees were paid by a Federal (other than one administered by VA), State, or local program;

(ii) The first day of the enrollment period in which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility; or

(iii) The beginning date of the award as determined by §21.9625. (Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(n) *Reduction or termination due to active duty status.*

(1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C., or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is:

(i) For established charges, the last date of the certified enrollment period,

(ii) For the monthly housing allowance, the end of the month during which the reduction or withdrawal occurred, and

(iii) For the "book stipend", the last date of the period covered by the book stipend payment.

(2) This reduction does not apply to brief periods of active duty for training if the institution of higher learning permits absence for active duty for training without considering the individual's pursuit of a program of education to be interrupted. (Authority: 38 U.S.C. 3313(e))

(o) *Exhaustion of entitlement.*

(1) If an individual enrolled in an institution of higher learning that regularly operates on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33, the effective discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 after the individual has completed more than half of the course, the ending date will be the earlier of the following:

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted. (Authority: 38 U.S.C. 3031(f), 3312, 3321)

(p) *End of period of eligibility.* If an eligible individual is enrolled in an institution of higher learning on the date of expiration of his or her period of eligibility as determined under §21.9530, the effective ending date will be the day preceding the end of the period of eligibility. (Authority: 38 U.S.C. 3321)

(q) *Required verifications not received after certification of enrollment.*

(1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an institution of higher learning in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(r) *Administrative or payee error.*

(1) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance. (Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of:

(1) The effective date of the award; or

(2) The day before the date of the fraudulent act. (Authority: 38 U.S.C. 3323(c), 5112, 6103)

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of:

(1) The effective date of the award; or

(2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted. (Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of §3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance. (Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase ("kicker") for Selected Reserve service.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase ("kicker"). (Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under this chapter who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980, may choose to receive educational assistance under another program. VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first day of the enrollment period during which the individual requested to receive educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980. (Authority: 38 U.S.C. 3322(a))

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency. (Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement. (Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under §21.9570. (Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when:

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in §21.9570. (Authority: 38 U.S.C. 3319)

(bb) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (aa) of this section, VA will determine the ending date of educational assistance based on the facts found. (Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

Next Section is §21.9640

§21.9640 Rates of payment of educational assistance.

VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* Except as provided in paragraph (d) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table:

Aggregate length of creditable active duty service after 09/10/01	Percentage of maximum amounts payable
At least 36 months ¹	100
At least 30 continuous days (Must be discharged due to service-connected disability).....	100
At least 30 months, but less than 36 months ¹	90
At least 24 months, but less than 30 months ¹	80 ³
At least 18 months, but less than 24 months ²	70 ³
At least 12 months, but less than 18 months ²	60
At least 6 months, but less than 12 months ²	50
At least 90 days, but less than 6 months ²	40

¹Includes entry level and skill training.

²Excludes entry level and skill training.

³If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable. (Authority: 38 U.S.C. 3311, 3313)

(b) *Maximum amounts payable for training at more than one-half time.* An individual, other than one on active duty, who is pursuing a program of education at more than one-half time (at a rate of pursuit greater than 50 percent) and who:

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive:

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(1)(i)(A) and the lower amount of fees as determined in paragraph (b)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of:

(1) The actual amount of tuition charged by the institution of higher learning; or

(2) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which

the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of:

(1) The actual amount of fees charged by the institution of higher learning; or

(2) The maximum amount of fees regularly charged full-time undergraduate in-State students in a term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees in a term, quarter, or semester in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (b)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §21.4020 and §21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 using the ZIP code area in which all, or a majority, of the primary institution of higher learning in which the individual is enrolled is located or, if the individual is only pursuing distance learning courses at the primary institution of higher learning, the ZIP code area in which all, or a majority of the institution of higher learning in which the individual is enrolled in one or more resident courses is located; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to:

(A) \$41.67 (\$1,000 divided by 24 credit hours); multiplied by:

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(2) Is enrolled at an institution of higher learning not located in the United States, may receive:

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(2)(i)(A) and the lower amount of fees as determined in paragraph (b)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph ((b)(2)(i)(A) and in paragraph (b)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of:

(1) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(2) The average (i.e., unweighted arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of:

(1) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(2) The average (i.e., unweighted arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (b)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §21.4020 and §21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the average (i.e., unweighted arithmetic mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 residing in the United States; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is

based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to:

(A) \$41.67 (\$1,000 divided by 24 credit hours); multiplied by:

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(c) *Maximum amounts payable for training at one-half time or less.* An individual, other than one on active duty, who is pursuing a program of education at one-half time or less (at a rate of pursuit of 50 percent or less) and who:

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive:

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(1)(i)(A) and the lower amount of fees as determined in paragraph (c)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of:

(1) The actual amount of tuition charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(2) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of:

(1) The actual amount of fees charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(2) The maximum amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees per term, quarter or semester, in the State in which the individual is enrolled or, if the individual is enrolled at a branch located

outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (c)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §21.4020 and §21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to:

(A) \$41.67 (\$1,000 divided by 24 credit hours); multiplied by:

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term; multiplied by:

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(2) Is enrolled in an institution of higher learning not located in the United States, may receive:

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(2)(i)(A) and the lower amount of fees as determined in paragraph (c)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph (c)(2)(i)(A) and in paragraph (c)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of:

(1) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(2) The average (i.e., arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions

of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of:

(1) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(2) The average (i.e., arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (c)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §21.4020 and §21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to:

(A) \$41.67 (\$1,000 divided by 24); multiplied by

(B) The number of credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year; multiplied by:

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(d) *Amounts payable for individuals on active duty.* Individuals on active duty who are pursuing a program of education may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of:

(1) The established charges that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay;

(2) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment.

(3) The lesser amount of paragraph (d)(1) or (2) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with §21.4020 and §21.9635(o);

(e) *Publication of educational assistance rates.* VA will publish the maximum amounts of tuition and fees payable for the upcoming academic year in the "Notices" section of the *Federal Register* and on the GI Bill Web site at <http://www.gibill.va.gov> by the first of August of each calendar year. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year. (Authority: 38 U.S.C. 3313, 3323(c))

Next Section is §21.9645

§21.9645 Refund of basic contribution to chapter 30.

(a) (1) An individual who makes an irrevocable election to receive educational assistance under this chapter by relinquishing eligibility under chapter 30 will be entitled to receive a refund of the amount contributions paid under 38 U.S.C. 3011(b) or 3012(c), up to \$1,200, if the individual, as of the date of the individual's election, meets the requirements for entitlement to educational assistance under this chapter and meets one of the following requirements as of August 1, 2009:

(i) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 and has remaining entitlement under that chapter;

(ii) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 but has not used any entitlement under that chapter; or

(iii) He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because he or she has met the requirements of §21.7042(a) or (b) and is making contributions as provided in §21.7042(g).

(2) Individuals are not entitled to a refund of any portion of additional contributions, of up to \$600, paid towards educational assistance under 38 U.S.C. chapter 30 in accordance with the provisions of §21.7136(h).

(b) *Amount of refund.* The amount of any payment made under this section to the individual who made the contributions will be equal to the total amount of contributions toward basic educational assistance made by the individual as provided in §21.7042(g) multiplied by the fraction with:

(1) A numerator equal to:

(i) The number of months of entitlement under 38 U.S.C. chapter 30 remaining to the individual at the time of the election and the number of months, if any, of transferred entitlement under 38 U.S.C. chapter 30 that the individual revoked; or

(ii) 36 for individuals making contributions in accordance with §21.9645(a)(iii); and

(2) A denominator equal to 36.

(c) *Timing of Payment.* The amount payable under this section will only be paid to the individual who made the contributions as an increase to the monthly housing allowance payable under §21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts. (Authority: Pub. L. 110-252, Stat. 2377-2378)

Next Section is §21.9650

§21.9650 Increase in educational assistance.

The Secretary of the military department concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty retaining personnel, as determined by the Secretary of the military department concerned.

(a) *Chapter 33 increase (“kicker”) amount.*

(1) The amount of the increase is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed:

(i) \$950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (a)(i) of this section based on the individual’s rate of pursuit of training.

(2) The increase (“kicker”) amount payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under §21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester. (Authority: 38 U.S.C. 3015(d)(1), 3313(c), 3316(a))

(b) *Chapter 30 increase (“kicker”) amount.*

(1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 38 U.S.C. chapter 30 in accordance with the provisions of §21.9520(c) and, on the date of such election, the individual is also entitled to an increase (“kicker”) of the amount of educational assistance under 38 U.S.C. 3015(d), the individual remains entitled to that increase under 38 U.S.C. chapter 33.

(2) The increase (“kicker”) amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed:

(i) \$950.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (b)(2)(i) of this section based on the individual’s rate of pursuit of training.

(3) The increase (“kicker”) amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33. (Authority: 38 U.S.C. 3015(d); Pub. L. 110-252, Stat. 2378)

(c) *Chapter 1606 increase (“kicker”) amount.*

(1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 10 U.S.C. chapter 1606 in accordance with the provisions of §21.9520(c) and, on the date of such election, the individual is also entitled to an increase (“kicker”) of the amount of educational assistance under 10 U.S.C. 16131(i), the individual remains entitled to that increase (“kicker”) under 38 U.S.C. chapter 33.

(2) The increase (“kicker”) amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed:

(i) \$350.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (c)(2)(i) of this section based on the individual’s rate of pursuit of training.

(3) The increase (“kicker”) amount payable under paragraph (c) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33. (Authority: 10 U.S.C. 16131(i); Pub. L. 110-252, Stat 2378)

[74 FR 14671, Mar. 31, 2009, as amended at 74 FR 17907, Apr. 20, 2009]

Next Section is §21.9655

§21.9655 Rates of supplemental educational assistance.

In addition to basic educational assistance, an individual who is eligible for supplemental educational assistance and entitled to it will be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by §21.9675.

(a) Individuals eligible for supplemental educational assistance under chapter 33.

(1) The monthly amount of supplemental educational assistance payable to an individual whose initial eligibility for educational assistance is acquired under 38 U.S.C. chapter 33 is set by the Secretary of the military department concerned, but may not exceed \$300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(2) The increase payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under §21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester. (Authority: 38 U.S.C. 3316)

(b) Individuals who were eligible for supplemental educational assistance under 38 U.S.C. chapter 30.

(1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under §21.9520(c) and was entitled to supplemental educational assistance under subchapter III of 38 U.S.C. chapter 30 remains entitled to such additional amount under chapter 33.

(2) The amount of the increase is set by the Secretary of the military department concerned, but may not exceed \$300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual's rate of pursuit of training.

(3) The supplemental increase amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33. (Authority: 38 U.S.C. 3021; Pub. L. 110-252, 122 Stat. 2378)

Next Section is §21.9660

§21.9660 Rural relocation benefit.

An individual eligible for educational assistance under this chapter is entitled to receive a one-time payment of \$500 if the individual:

(a) Resides in a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile (as determined by the most recent decennial Census); and

(b) Either:

(1) Physically relocates at least 500 miles in order to pursue a program of education for which the individual receives educational assistance under this chapter; or

(2) Travels by air to physically attend an institution of higher learning for pursuit of an approved program of education under this chapter if no other land-based method of transportation is available due to an absence of roads or other infrastructure; and

(3) Has provided documentation required in §21.9680(c). (Authority: 38 U.S.C. 3318)

Next Section is §21.9665

§21.9665 Reimbursement for licensing or certification tests.

An eligible individual is entitled to receive reimbursement for taking one licensing or certification test. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test taken on or after August 1, 2009, is the lesser of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test; or

(b) \$2,000. (Authority: 38 U.S.C. 3315)

Next Section is §21.9670

§21.9670 Work-study allowance.

An eligible individual pursuing a program of education under 38 U.S.C. chapter 33 at a rate of pursuit of at least 75 percent may receive a work-study allowance in accordance with the provisions of §21.4145. (Authority: 38 U.S.C. 3034(a), 3323(a), 3485)

Next Section is §21.9675

§21.9675 Conditions that result in reduced rates or no payment.

The payment rates as established in §§21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if:

(1) The individual withdraws because he or she is ordered to active-duty service or, in the case of an individual serving on active duty, he or she is ordered to a new duty location or assignment, or ordered to perform an increased amount of work; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No educational assistance for some incarcerated individuals.* VA will not pay educational assistance to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction and has incurred no expenses for books, supplies, or equipment if:

(1) The individual is enrolled in a course for which there is no tuition and fees;

(2) The individual is enrolled in a course and the tuition and fees for the course are being paid in full by a Federal (other than one administered by VA), State, or local program.

(c) *Reduced educational assistance for some incarcerated individuals.*

(1) VA will reduce the amount of educational assistance paid to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction if:

(i) The individual is enrolled in a course for which the tuition and fees are paid entirely by a Federal (other than one administered by VA), State, or local program, but the individual is required to purchase books, supplies, or equipment for the course; or

(ii) The individual is enrolled in a course for which the tuition and fees are paid partially by a Federal (other than one administered by VA), State, or local program, whether or not the individual is required to purchase books, supplies, or equipment for the course.

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be the lesser of the following:

(i) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment; or

(ii) The amount of tuition and fees otherwise payable to the individual based on the individual's length of creditable service as determined in §21.9640(a) and the individual's rate of pursuit, plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment. (Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for:

(1) An enrollment in an audited course (See §21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in §21.4252(l);

(4) An enrollment in a course certified to VA by the individual taking the course;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under §21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by §21.4252(m). (Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

Next Section is §21.9680

§21.9680 Certifications and release of payments.*(a) Payee.*

(1) VA will make payment of the appropriate amount of established charges (including top-up payments), as determined under §21.9640, directly to the institution of higher learning as a lump sum payment for the entire quarter, semester, or term, as applicable.

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of §21.4146 to 38 U.S.C. chapter 33. (Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) Payments.

(1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance top-up, one seeking reimbursement for taking an approved licensing or certification test, or one who qualifies for an advance payment of the monthly housing allowance) only after the educational institution has certified the individual's enrollment as provided in §21.9720. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0073)

(2) *Advance payments.* VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The institution of higher learning at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's institution of higher learning;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment either:

(1) Is preceded by an interval of nonpayment of 30 days or more; or

(2) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and

(G) The institution of higher learning or the eligible individual has submitted the certification required by §21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the institution of higher learning for delivery to the eligible individual. The institution of higher learning will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an institution of higher learning if:

(A) The institution of higher learning demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The institution of higher learning fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the institution of higher learning has demonstrated its inability to discharge its responsibilities under the advance payment program. (Authority: 38 U.S.C. 3034, 3323, 3680)

(3) *Lump sum payments.* VA will make a lump sum payment for the entire quarter, semester, or term:

(i) To an institution of higher learning, on behalf of an eligible individual, for the appropriate amount of established charges;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the \$500 rural relocation benefit. (Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the eligible individual wants tuition assistance top-up. If the form(s) submitted do not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization, or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program. (Authority: 38 U.S.C. 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0698)

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test. (Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0695)

(6) *Payment for intervals and temporary school closings.* VA may authorize payment of the monthly housing allowance (as increased under §§21.9650(a) and 21.9655(a), if applicable) for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (b)(5)(i) through (b)(5)(v) of this section concerning intervals and in paragraph (5)(vi) of this section concerning temporary school closings. For the purposes of this paragraph, interval means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in §21.4200(b).)

(i) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (b)(5)(ii) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (b)(5)(iii), (iv), and (v) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

(ii) *Restrictions on payment for intervals.* VA will make no payment for an interval if:

(A) The individual's rate of pursuit is one-half time or less on the last day of the certified enrollment period preceding the interval;

(B) The individual is on active duty;

(C) The individual requests, prior to authorization of an award or prior to negotiating a check or receiving a direct deposit for educational assistance, that no benefits be paid for the interval period;

(D) The individual's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the individual not to receive payment;

(E) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis; or

(F) The individual withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in an institution of higher learning not organized on a term, quarter, or semester basis.

(iii) *Payment for intervals between periods of enrollment at different schools.* If the individual transfers from one approved school for the purpose of enrolling in and

pursuing a similar program of education at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar program of education at the second school, VA may not make payments for the interval.

(iv) *Payment for intervals that occur at the same school.*

(A) If the individual remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

- (1) Semesters or quarters,
- (2) A semester or quarter and a term that is at least as long as the interval,
- (3) A semester or quarter and a summer term that is at least as long as the interval,
- (4) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or
- (5) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(B) If the individual remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(v) *Payment for intervals that occur between overlapping enrollments.*

(A) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and which dates the interval and enrollment periods will be considered to begin and end, as follows:

- (1) By treating the ending date of each enrollment period as though it were the individual's last date of training before the interval,
- (2) By treating the beginning date of each enrollment period as though it were the individual's first date of training after the interval,
- (3) By examining the interval payment that would be made to the individual on the basis of the various combinations of beginning and ending dates, and
- (4) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(B) VA will not reduce the interval rate of payment as a result of training the individual may take during the interval, but VA will increase the interval rate of payment if warranted by such training. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(vi) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraph (b)(5)(ii) through (v) of this section to determine if payment may be continued during the interval.

(A) If payment would not be inconsistent with the provisions of paragraph (b)(5)(ii) through (v) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if it appears that either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

(1) The Director of the VA Regional Processing Office of jurisdiction if:

(i) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(ii) If the reason for the closing is a strike, and the strike lasts, or is anticipated to last, 30 days or less.

(2) The Director of Education Service if:

(i) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

(ii) The reason for the closing is a strike, and the strike lasts, or is anticipated to last, more than 30 days.

(B) A school that disagrees with a decision made under paragraph (b)(5)(vi) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the:

(1) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments; or

(2) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments. (Authority: 38 U.S.C. 512, 3034(a), 3323(a), 3680(a))

(c) *Rural relocation benefit.* VA will make the \$500 rural relocation benefit payment after:

(1) The educational institution has certified the individual's enrollment as provided in §21.9680;

(2) The individual has provided:

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.*

(A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name and current address:

- (1) DD Form 214, Certification of Release or Discharge from Active Duty; or
- (2) The most recent Federal income tax return; or
- (3) The most recent State income tax return; or
- (4) Rental/lease agreement; or
- (5) Mortgage document; or
- (6) Current real property assessment; or
- (7) Voter registration card.

(B) An individual using entitlement granted under §21.9570 who, because he or she resides with the transferor or, in the case of a child, a parent, cannot provide any of the documents in paragraph (c)(2)(ii) of this section, may submit any document in paragraphs (c)(2)(ii)(A)(2) through (7) of this section bearing the name and current address of the transferor or, in the case of a child, a parent as proof of residence; and

(iii) *Proof of relocation.* An individual traveling by air must provide an airline receipt for travel with a departure and destination airport within reasonable distance from the home of residence and the institution of higher learning, respectively; and

(3) VA has determined that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation, and either:

(i) If traveling by land, physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2) as the beginning point and the address of the institution of higher learning as the ending point; or

(ii) If traveling by air, was unable to travel to the institution of higher learning by land due to the absence of road or other infrastructure. (Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of §3.1000 of this chapter. (Authority: 38 U.S.C. 5121)

Next Section is §21.9685

§21.9685 Tutorial Assistance.

(a) An individual who is eligible to receive benefits under 38 U.S.C. chapter 33 may receive additional monetary assistance for tutorial services. VA will pay the individual this assistance if the tutorial assistance is necessary for the eligible individual to complete his or her program of education successfully, and the individual:

(1) Is enrolled in and pursuing a postsecondary program of education at a rate of pursuit of at least 50 percent at an institution of higher learning; and

(2) The professor or other person teaching, leading, or giving the course certifies that:

(i) Tutorial assistance is essential to correct a deficiency of the individual in such course; and

(ii) The course is required as part of, or is prerequisite or indispensable to the satisfactory pursuit of, an approved program of education.

(b) *Limits on tutorial assistance.*

(1) VA will authorize the cost of tutorial assistance in an amount not to exceed \$100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed \$1,200. (Authority: 38 U.S.C. 3034(a), 3314, 3323(a), 3492)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0171)

Next Section is §21.9690

§21.9690 Nonduplication of educational assistance.

(a) Except for receipt of a Montgomery GI Bill-Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill-Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under:

- (1) 10 U.S.C. 1606 (Montgomery GI Bill-Selected Reserve);
- (2) 10 U.S.C. 1607 (Reserve Educational Assistance Program);
- (3) 10 U.S.C. 106a (Section 901, Educational Assistance Test Program);
- (4) 38 U.S.C. 30 (Montgomery GI Bill-Active Duty);
- (5) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);
- (6) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (7) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance); or
- (8) Hostage Relief Act of 1980. (Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96-342)

(b) An individual who is eligible for educational assistance under more than one program listed in paragraph (a) of this section must specify in writing which benefit he or she wishes to receive. The eligible individual may choose to receive payment under another educational assistance program at any time, but may not change which benefit he or she will receive more than once during a term, quarter, or semester. (Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist:

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees' Training Act. (Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

Next Section is §21.9695

§21.9695 Overpayments.

(a) *Prevention of overpayments.* In administering educational assistance payable under 38 U.S.C. chapter 33, VA will apply the provisions of §§21.4008 and 21.4009 to eligible individuals and, when appropriate, to institutions of higher learning. (Authority: 38 U.S.C. 3034(a), 3323(a), 3690(b))

(b) *Liability for overpayments.*

(1) An overpayment of educational assistance paid to an eligible individual constitutes a liability of that individual unless:

(i) The overpayment was waived as provided in §§1.957 and 1.962 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See §21.9635(r).

(2) An overpayment of educational assistance paid to the institution of higher learning on behalf of an eligible individual constitutes a liability of the individual unless the individual never attended the term, quarter, or semester certified by the institution of higher learning. If the individual never attended the term, quarter, or semester certified by the institution of higher learning, the institution must return to VA all educational assistance received under the provisions of 38 U.S.C. chapter 33 on behalf of the individual for such term, quarter, or semester.

(3) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of the institution of higher learning if VA determines that the overpayment is the result of willful or negligent:

(i) False certification by the institution of higher learning; or

(ii) Failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual. (Authority: 38 U.S.C. 3034(a), 3323(a), 3685)

(iii) In determining whether an overpayment resulting from the actions listed in paragraphs (b)(3)(i) and (ii) of this section should be recovered from an institution of higher learning, VA will apply the provisions of §21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

(4) VA will determine the amount of an overpayment as follows:

(i) For an individual who does not complete one or more courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such course or courses, VA will

establish an overpayment equal to the amount of educational assistance paid for the course or courses not completed during that certified period of enrollment.

(ii) For an individual who does not complete one or more courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such course or courses, VA will prorate the amount of educational assistance to which he or she is entitled.

(A) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid for the course or courses not completed by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due for the course or courses not completed will be established as an overpayment.

(B) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(C) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs (“book stipend”). (Authority: 38 U.S.C. 3034(a), 3323, 3685, 5302)

Next Section is §21.9700

§21.9700 Yellow Ribbon Program.

(a) *Establishment.* The “Yellow Ribbon G.I. Education Enhancement Program”, known as the “Yellow Ribbon Program,” permits an institution of higher learning (IHL), at the IHL’s option, to enter into an agreement with VA to allow the two parties to provide matching funds to cover a portion of the outstanding amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100 percent educational assistance rate (based on service requirements) as shown in the chart in §21.9640(a) or to their designated dependents using entitlement transferred under §21.9570, who are pursuing training at an eligible IHL.

(c) *Eligible IHLs.* This program is only available at IHLs located in the United States or at a branch of such IHL that is located outside the United States.

(d) *Agreements.* VA will enter into an agreement with an eligible IHL located in the United States seeking to participate in the Yellow Ribbon Program based on a general agreement format developed by VA in which the IHL must agree to:

(1) Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (i.e., full-time versus less than full-time), during the academic year;

(2) Provide contributions during the current academic year and all subsequent academic years in which the IHL participates in the Yellow Ribbon Program and the student maintains satisfactory progress, conduct, and attendance according to the regularly prescribed standards of the institution;

(3) Limit contributions made on behalf of a participant to funds under the unrestricted control of the IHL (e.g., a scholarship sent directly to an IHL on behalf of an individual or specific group of individuals from a third party may not be included in Yellow Ribbon Program contributions). Funds received directly or indirectly from Federal sources may not be counted toward contributions;

(4) State the maximum number of individuals for whom contributions will be made during the academic year;

(5) State the manner (whether by direct grant, scholarship, or otherwise) contributions will be made under the Yellow Ribbon Program;

(6) State the maximum dollar amount of contributions that may be provided on behalf of any particular individual during the academic year regardless of the rate at which the individual is pursuing training. IHLs may specify different contributions amounts:

(i) Based on student status (i.e., undergraduate, graduate, doctoral), or

(ii) For each subelement of the institution (i.e., college or professional school). The maximum amount specified for each subelement of the IHL will apply to all programs and disciplines offered under such subelement.

(7) Provide the maximum amount of contributions payable toward the unmet established charges to all participating individuals during each term, quarter, or semester the individual is enrolled if the IHL's total contribution toward the individual's unmet established charges for the term, quarter, or semester, do not exceed the maximum dollar amount payable during the academic year as specified in paragraph (d)(6) of this section.

(e) *Centralized Agreements.* IHLs with multiple campuses may enter into a single Yellow Ribbon Program Agreement if all participating branches and extensions:

(1) Are listed in the agreement;

(2) Are subject to the authority of the authorizing official signing the Yellow Ribbon Program Agreement; and

(3) Have a certifying official or other employee who meets the requirements of §21.4266(f)(3)(ii) and who has access to the terms of the Yellow Ribbon Program Agreement.

(f) *Matching Contributions.* VA will match each dollar provided by the school on behalf of an individual; however, the combined amount of contributions under the Yellow Ribbon Program may not exceed the remaining amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(g) *Outreach.* The most current list of colleges and universities participating in the Yellow Ribbon Program will be available at VA's GI Bill Web site at <http://www.gibill.va.gov>. The list will include specific information on each school's agreement with VA. (Authority: 38 U.S.C. 3317)

Next Section is §21.9710

Pursuit of Courses**§21.9710 Pursuit.**

Except for an eligible individual seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, an individual's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications. (Authority: 38 U.S.C. 3323(c))

Next Section is §21.9715

§21.9715 Advance payment certification.

All certifications required by this section shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary. An advance payment under this chapter is only permissible to an individual whose rate of pursuit is greater than half-time, and who is entitled to the monthly housing allowance as provided in §21.9640(b)(1)(ii) or (b)(2)(ii).

(a) *Certification needed before an advance payment can be made.* In order for an individual to receive an advance payment of the monthly housing allowance, an application or other document must be signed by the individual or the enrollment certification must be signed by an authorized official of the institution of higher learning. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary.

(1) For each eligible individual receiving an advance payment, an institution of higher learning must:

(i) Verify enrollment for the individual; and

(ii) Verify the delivery of the advance payment check to the individual.

(2) Once the institution of higher learning has initially verified the enrollment of the individual, the individual, not the institution of higher learning, must make subsequent verifications in order to release further payment for that enrollment as provided in §21.9730. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

Next Section is §21.9720

§21.9720 Certification of enrollment.

Except as stated in §21.9680, an institution of higher learning must certify an eligible individual's enrollment before he or she may receive educational assistance.

(a) *Institutions of higher learning must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require institutions of higher learning to certify the enrollments of eligible individuals who either are seeking tuition assistance top-up or, in the cases described in §21.9715, are seeking an advance payment. VA does not require organizations or entities offering a licensing or certification test to certify that the eligible individual took the test. In all other cases, the institution of higher learning must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary. (Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

(b) *Length of the enrollment period covered by the enrollment certification.*

(1) Institutions of higher learning that offer courses on a term, quarter, or semester basis will report enrollment for the term, quarter, semester, ordinary school year, or ordinary school year plus summer term. If the certification covers two or more terms, the institution of higher learning will report each term, quarter, or semester separately.

(2) Institutions of higher learning organized on a year-round basis that do not offer courses on a term, quarter, or semester basis will report enrollment for the length of the course. The certification will include a report of the dates during which the institution of higher learning closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include:

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the institution of higher learning has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion. (Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(Approved by the Office of Management and Budget under control number 2900-0073)

Next Section is §21.9725

§21.9725 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive payments of educational assistance under 38 U.S.C. chapter 33 for pursuit of a program of education, an individual must maintain satisfactory progress. VA will discontinue payments of educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the institution of higher learning he or she is attending. (Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the institution of higher learning in which he or she is enrolled. If the individual will no longer be retained as a student or will not be readmitted as a student by the institution of higher learning in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the institution of higher learning's action is wrongfully retaliatory in nature. (Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the institution of higher learning in which he or she is enrolled. (Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(d) *Reentrance after discontinuance.*

(1) An eligible individual may be reentered following discontinuance because of unsatisfactory attendance, conduct, or progress when either:

(i) The individual resumes enrollment at the same institution of higher learning in the same program of education and the institution of higher learning has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that:

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program that the individual now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.

(2) Reentrance may be for the same program, a revised program, or an entirely different program depending on the cause of the discontinuance and the removal of that cause. (Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

Next Section is §21.9735

§21.9735 Other required reports.

VA will apply the provisions of §21.7156 to individuals and institutions of higher learning under 38 U.S.C. chapter 33 as those provisions are applied to veterans and educational institutions under 38 U.S.C. chapter 30. (Authority: 38 U.S.C. 3034(a), 3323(a))

Next Section is §21.9740

§21.9740 False, late, or missing reports.

(a) *Eligible individual.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§21.4006 and 21.4007 to any individual who submits false or misleading claims, statements, or reports in connection with benefits payable under 38 U.S.C. chapter 33 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. chapter 36. (Authority: 38 U.S.C. 3034(a), 3323(a), 3680, 3690, 6103)

(b) *Institution of higher learning.*

(1) VA may hold an institution of higher learning liable for overpayments that result from the institution of higher learning's willful or negligent failure to report excessive absences from a course, discontinuance of a course, or interruption of a course by an individual or from willful or negligent false certification by the institution of higher learning. See §21.9695(b).

(2) If an institution of higher learning willfully and knowingly submits a false report or certification, VA may disapprove that institution of higher learning's programs of education for further enrollments and may discontinue educational assistance to eligible individuals already enrolled. In doing so, VA will apply §§21.4210 through 21.4216. (Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

Next Section is §21.9745

§21.9745 Reporting fee.

In determining the amount of the reporting fee payable to institutions of higher learning for furnishing required reports, VA will apply the provisions of §21.4206 in the same manner as they are applied in the administration of 38 U.S.C. chapter 36. (Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

Next Section is §21.9750

Course Assessment

§21.9750 Course measurement.

VA will calculate an individual's rate of pursuit of an approved program of education during the individual's period of enrollment in accordance with this section. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(a) *Measurement of courses reported in credit hours.* If the courses are measured in credit hours, then the number of credit hours the individual is taking in a term, quarter, or semester will be divided by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester at the institution of higher learning as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(b) *Measurement of courses reported in clock hours.* If the courses are measured in clock hours, VA will:

(1) Convert the clock hours to equivalent credit hours by:

(i) Adding the total number of clock hours pursued during the term, quarter or semester;

(ii) Dividing the sum of paragraph (b)(1)(i) of this section by the total number of weeks in the term; and

(iii) Multiplying the result of paragraph (b)(1)(ii) of this section rounded to the nearest hundredth by:

(A) If the institution of higher learning measures courses using both credit and clock hours, the decimal determined by dividing the number of credit hours considered full-time at the institution by the number of clock hours considered full-time at the institution.

(B) If the institution of higher learning only measures courses using clock hours, the decimal determined by dividing 14 credit hours by the number of clock hours considered full-time at the institution.

(2) Divide the result of paragraph (b)(1) rounded to the nearest hundredth by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(c) Fourteen credit hours are full-time unless the institution of higher learning certifies that all undergraduate students enrolled for 13 credit hours, or for 12 credit hours, are charged full-time tuition or are considered full-time for other administrative purposes.

(d) *High school courses.* If an individual using transferred entitlement is eligible for pursuit of a secondary school diploma or equivalency certificate, VA will determine the rate of pursuit in accordance with this paragraph. For individuals pursuing high school courses measured in:

(1) Credit hours, VA will use the formula in paragraph (a) of this section.

(2) Clock hours, VA will use the formula in paragraph (b) of this section.

(3) Units, VA will convert the units to credit hours as follows:

(i) Divide the total number of units required for the program of education by 4 (the number of ordinary school years generally required for completion);

(ii) Round the result of paragraph (d)(3)(i) of this section to the nearest whole number.

(iii) Multiply the result of paragraph (d)(3)(ii) of this section by:

(A) 1.0 to determine the number of units required for a rate of pursuit equal to 100 percent. This number is equivalent to 14 credit hours;

(B) .75 to determine the number of units required for a rate of pursuit equal to 75 percent. An individual will be considered to be enrolled in 10.5 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(A) of this section;

(C) .50 to determine the number of units required for a rate of pursuit equal to 50 percent. An individual will be considered to be enrolled in 7 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(B) of this section;

(D) .25 to determine the number of units required for a rate of pursuit equal to 25 percent. An individual will be considered to be enrolled in 3.5 credit hours for any number of units up to the number determined in paragraph (d)(3)(iii)(C) of this section. (Authority: 38 U.S.C. 3319(h))

Next Section is §21.9765

Approval of Programs of Education

§21.9765 Program of education approval.

VA may provide educational assistance for pursuit of a program of education offered by an institution of higher learning if that program of education is approved under 38 U.S.C. chapter 30 in accordance with §§21.7220 and 21.7222. (Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a))

Next Section is §21.9770

Administrative**§21.9770 Administrative.**

In administering chapter 33, VA will apply the sections noted in paragraphs (a) through (f) of this section. For the purpose of application, the term “veteran” as used in these sections is deemed to mean “an eligible individual under 38 U.S.C. chapter 33,” and the term “38 U.S.C. chapter 30” as used in these sections is deemed to mean “38 U.S.C. chapter 33”.

(a) Section 21.7301—Delegations of authority;

(b) Section 21.7302—Finality of decisions;

(c) Section 21.7303—Revision of decisions;

(d) Section 21.7305—Conflicting interests;

(e) Section 21.7307—Examination of records; and

(f) Section 21.7310—Civil rights. (Authority: 38 U.S.C. 511, 512(a), 3034(a), 3323(a), 3690, 3696)

End of Subpart P