

document, for delivery to the appropriate Customs official at the port of destination or exportation.

(2) *Transfer to pipeline from initial carrier other than a pipeline.* When bonded merchandise initially transported by a carrier other than a pipeline is transferred to a pipeline, the procedures in § 18.3 and paragraph (c) of this section shall be followed, except that the bill of lading or other equivalent document of receipt issued by the pipeline operator to the shipper shall be delivered, along with the in-bond document, to the appropriate Customs officer at the port of destination or exportation.

(3) *Initial carrier liable for discrepancies.* In the case of either paragraph (d)(1) or (d)(2) of this section, the initial carrier shall be responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries, at the port of destination or exportation (see § 18.8).

(e) *Recordkeeping.* The shipper, pipeline operator, and consignee are subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 162 of this chapter.

PART 113—CUSTOMS BONDS

1. The general authority for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.62 is amended by revising the paragraph (b) introductory text to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(b) *Agreement to Make or Complete Entry.* If all or part of imported merchandise is released before entry under the provisions of the special delivery permit procedures under 19 U.S.C. 1448(b), released before completion of the entry under 19 U.S.C. 1484(a), or withdrawn from warehouse under 19 U.S.C. 1557(a) (see § 10.62b of this chapter), the principal agrees to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to:

* * * * *

Michael H. Lane,
Acting Commissioner of Customs.

Approved: October 4, 1995.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 96-3905 Filed 2-21-96; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AG22

Veterans Education: Implementation of the Veterans' Benefits Act of 1992, the National Defense Authorization Act for Fiscal Year 1993, and the National Defense Authorization Act for Fiscal Year 1994

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefits regulations of the Department of Veterans Affairs (VA). It makes changes concerning eligibility requirements for educational assistance and benefits, rates of payment for educational assistance, measurement of training time, approval of various types of courses, and educational death benefits. These changes restate statutory requirements and set forth VA's statutory interpretations.

DATES: This final rule is effective February 22, 1996. However, the restatements of statute and VA's statutory interpretations contained in this final rule will be applied retroactively from the effective dates of the statutory provisions. For more information concerning the application of statutes and statutory interpretations, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202-273-7187.

SUPPLEMENTARY INFORMATION: Regulations concerning VA-administered educational assistance and educational benefits are contained in 38 CFR Part 21. The Veterans' Benefits Act of 1992 (Pub. L. 102-568) amends educational assistance provisions under the Montgomery GI Bill—Active Duty and amends other provisions that affect work-study under the Survivors' and Dependents' Educational Assistance program. The National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102-484) and the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) also amend provisions concerning educational assistance under the Montgomery GI Bill—Active Duty. This document contains a number of changes to the regulations which merely reflect certain changes made by these public laws. These changes to the regulations are as follows.

Under Pub. L. 102-568, the limit on the amount of money that VA can pay in advance on a work-study contract has been changed. Formerly, that limit was 40 percent of the total amount payable under the contract. Now the limit is the lesser of 40 percent of the total amount payable under the contract or 50 times the applicable minimum hourly wage in effect on the date the contract is signed. Changes are made to 38 CFR 21.3145 and 21.7145 to reflect these statutory provisions.

Pub. L. 102-484 includes the Service Members Occupational Conversion and Training Act (SMOCTA) (sec. 4481 through 4497, Pub. L. 102-484), which forbids receipt of educational assistance under any of the education programs administered by VA when the veteran, servicemember, or other eligible person is participating in a job training program under SMOCTA. Revisions are made to 38 CFR 21.4131, 21.4135, 21.7131, and 21.7135 to reflect these statutory provisions.

Pub. L. 102-568 provides for later ending dates when the veteran dies during the period covered by an advance payment of educational assistance. Prior to the effective date of Pub. L. 102-568, educational assistance was terminated effective the date the veteran died. However, Pub. L. 102-568 provides that in the event of a death, the effective date of the termination will be the last date covered by the advance payment. Revisions are made to 38 CFR 21.4135 and 21.7135 to reflect these statutory provisions.

Pub. L. 102-568 prohibits State approving agencies from approving for VA educational assistance a course of education that includes nonaccredited independent study. It also prohibits VA from approving an enrollment in an independent study course unless the course is accredited and leads to a standard college degree. Revisions are made to 38 CFR 21.4252, 21.7120, 21.7122, 21.7220 and 21.7222 to reflect these statutory changes. However, under Pub. L. 102-568 these prohibitions do not apply to any person receiving educational assistance for pursuit of an independent study program in which the person was enrolled on the date of enactment of Pub. L. 102-568 (October 29, 1992) who remains "continuously * * * enrolled" and otherwise meets the requirements for eligibility for such assistance in effect on October 29, 1992. Revisions are made to §§ 21.4252 and 21.7120 to restate these statutory provisions. Also, the following definition of "continuously enrolled" is added to 38 CFR 21.7020 to interpret what constitutes "continuously enrolled":

The term *continuously enrolled* means being in an enrolled status at an educational institution for each day during the school year, and for consecutive school years. Continuity of enrollment is not broken by holiday vacations; vacation periods; periods during the school year between terms, quarters, or semesters; or by nonenrollment during periods of enrollment outside the school year (e.g., summer sessions).

The Congress did not indicate that a special meaning other than the common meaning was intended for "continuously enrolled." Therefore, we have concluded that the Congress intended that we interpret "continuously enrolled" consistent with its common meaning and we have formulated the definition of "continuously enrolled" in accordance with our understanding of the Congressional intent.

Pub. L. 102-568 repealed the special provisions for determining students' training time while enrolled in independent study, thereby making the determination of this training time the same as that for resident training. Consequently, the monthly rates for educational assistance for independent study and for resident study are based on the same formula. This eliminates the basis for the provisions in 38 CFR 21.4280 governing independent study course measurement. To reflect these statutory changes, rules dealing with the approval of independent study courses are set forth at 38 CFR 21.4267, and 38 CFR 21.4280 is removed.

Pub. L. 102-568 provides that nonaccredited courses not leading to a standard college degree will be measured for purposes of determining training time the same as for accredited courses that are neither leading to a standard college degree nor offered by an institution of higher learning. Pub. L. 102-568 also provides that when an institution of higher learning offers a course that does not lead to a standard college degree, the students' training time will be determined in the same manner as for students enrolled in undergraduate courses leading to a college degree. 38 CFR 21.4271 is removed and revisions are made to 38 CFR 21.4233, 21.4270, and 21.4272 to reflect these statutory provisions.

Prior to the effective date of Pub. L. 102-568, nurse's aide courses could not be approved for VA training, and consequently VA educational assistance could not be awarded for such training. Pub. L. 102-568 provides criteria for approving some nurse's aide courses. Changes are made to 38 CFR 21.4265 to reflect this statutory change.

Pub. L. 102-568 changes the criteria for establishing eligibility for

educational assistance under the Montgomery GI Bill—Active Duty, including detailed changes concerning continuous active duty, service in the selected reserve, character of service for retirees, and voluntarily discharged veterans. Accordingly, changes are made to 38 CFR 21.7020, 21.7032, 21.7042, 21.7044, 21.7045, and 21.7050 to reflect these statutory changes.

Prior to the effective date of Pub. L. 102-568, a death benefit was payable to survivors of participants in the Montgomery GI Bill—Active Duty only if the participant died while on active duty. Pub. L. 102-568 now also permits payment of the death benefit if the participant dies within a year of discharge from active duty. Accordingly, revisions are made to 38 CFR 21.7280 to reflect this statutory change.

Pub. L. 102-568 also made changes to 38 U.S.C. 3015 concerning the monthly rates of educational assistance which VA is to pay to veterans and servicemembers pursuing a full-time program of education under the Montgomery GI Bill—Active Duty. The final rule changes these rates in 38 CFR 21.7136 and 21.7137 to reflect these statutory changes. These changes to §§ 21.7136 and 21.7137 also have the effect of changing the rates for part-time training, cooperative training, and apprenticeship and other on-job training. 38 U.S.C. 3032 provides formulas to determine the monthly rates for those students pursuing cooperative training and those in apprenticeships and other on-job training. 38 U.S.C. 3015(a) and (b) further state that the monthly rates of educational assistance to be paid to part-time students receiving benefits under the Montgomery GI Bill—Active Duty is to be determined by regulations prescribed by the Secretary of Veterans Affairs. The formula for part-time rates was established based on proposed and final rule making (see 52 FR 25736, July 8, 1987; 53 FR 1756, Jan. 22, 1988). Under this formula, monthly rates for three-quarter-time and one-half-time students have been set at three-quarters and one-half of the statutory full-time rate respectively. The monthly rates payable for less than one-half-time students are the pro-rated amount of their tuition and fees (not to exceed one-half the statutory full-time rate for those training less than one-half time and more than one-quarter time, and not to exceed one-quarter of the full-time rate for those training one-quarter time).

In addition, this final rule contains an interpretative rule with respect to how the statutory requirements for accreditation of an independent study

course applies when there is a loss of accreditation. If an independent study course loses its accreditation (or the educational institution offering the course loses its accreditation), it is our view that VA is required under the statutes controlling the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance programs, as amended by Pub. L. 102-568, to discontinue payments for such a course effective the date of the loss of accreditation. The regulations are amended by adding 38 CFR 21.4135(x) and 21.7135(z) to accomplish this purpose.

This final rule also makes nonsubstantive changes for clarity or to reflect statutory recodification changes.

The restatements of statute and statutory interpretations contained in this final rule will be applied retroactively from the effective dates of the statutory provisions. The dates of application for such changes made by this document (and for certain of the nonsubstantive changes made for clarity or to reflect statutory recodification changes) are as follows:

October 19, 1984: 38 CFR 21.7020(b)(5), 21.7020(b)(6)(i), and 21.7020(b)(6)(ii).

June 30, 1985 (to apply to training received after August 31, 1993): § 21.7136(a)(2)(ii)(C).

June 30, 1985 (to apply to training received after September 30, 1993): §§ 21.7020(b)(6)(iii), 21.7020(b)(6)(iv), and 21.7072(b).

October 28, 1986: §§ 21.7044(a), 21.7044(b)(12), and 21.7050(b).

December 1, 1988: § 21.7042(c).

October 23, 1992: §§ 21.4131(i), 21.4135(aa), 21.7032(a), 21.7032(f), 21.7042(b), 21.7042(f), 21.7045 (except (a)(1)(i)), 21.7131(j), 21.7135(aa), 21.7136 introductory text, 21.7136(a)(1) (as redesignated), 21.7136(a)(2)(ii)(B) (as redesignated), and 21.7136(f) (as redesignated); and the redesignations of paragraphs (a), (b), (b)(1), (b)(2), (b)(3), (c), (d), and (e) of § 21.7136.

October 29, 1992: §§ 21.3145, 21.4135(a), 21.4135(x), 21.4234(a), 21.4252(g), 21.4253(a), 21.4254(d), 21.4265(b), 21.4267, 21.7020(b)(42), 21.7042(a), 21.7120(d), 21.7122(e), 21.7135(a), 21.7135(z) (as added), 21.7145, 21.7152, 21.7220, 21.7222, and 21.7280; the redesignation of § 21.7135(z); and the removal of § 21.4280.

April 1, 1993: §§ 21.7136(b) (as redesignated), 21.7136(c) (as redesignated), and 21.7137.

July 1, 1993 (to apply to enrollments for terms, semesters, or quarters that begin after June 30, 1993): §§ 21.4233(b), 21.4270(a), 21.4270(b), 21.4270(c)

footnote 1, 21.4272 introductory text, 21.4272(g), 21.7170, 21.7172(a) and 21.7172(d); and the removal of §§ 21.4271, 21.4272(e), 21.4272(f), 21.4272(h), and 21.4272(i).

November 30, 1993: §§ 21.7044(b)(8) and 21.7045(a)(1)(i).

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule merely restates statutory changes, sets forth statutory interpretations, and makes nonsubstantive changes. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This final rule has been reviewed by the Office of Management and Budget pursuant to the provisions of Executive Order 12866.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule are 64.117 and 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 17, 1995.
Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts C, D, and K are amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

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

1. The authority citation for part 21, subpart C is revised to read as follows:

Authority: 38 U.S.C. 501(a); 38 U.S.C. 3500-3566, unless otherwise noted.

2. In § 21.3145, paragraph (e) is revised to read as follows:

§ 21.3145 Work-study allowance.

* * * * *

(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: 38 U.S.C. 3485, 3537)

* * * * *

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

3. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 38 U.S.C. 501(a); 38 U.S.C. ch. 34, 35, 36, unless otherwise noted.

4. In § 21.4131, paragraph (i) is added, to read as follows:

§ 21.4131 Commencing dates.

* * * * *

(i) *Service Members Occupational Conversion and Training Act of 1992.* If the veteran's or eligible person's educational assistance has been discontinued because the veteran or eligible person is training under a job training program for which benefits are payable to his or her employer under the Service Members Occupational Conversion and Training Act, VA will determine the date upon which educational assistance may be resumed as follows.

(1) When the veteran or eligible person is pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on the day following that date.

(2) When the veteran or eligible person is not pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on the earliest date otherwise provided by this section, but not before the day following the last date for which benefits are payable under that Act.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

* * * * *

5. In § 21.4135, paragraph (a) is revised; an authority citation to paragraph (a) is added; and paragraphs (x) and (aa) and their authority citations are added, to read as follows:

§ 21.4135 Discontinuance dates. * * *

(a) *Death of veteran or eligible person.*

(1) If the veteran or eligible person receives an advance payment pursuant to 38 U.S.C. 3680(d) 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.

(2) In all other cases if the veteran or eligible person dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 38 U.S.C. 3680)

* * * * *

(x) *Independent study course loses accreditation.* Except as otherwise provided in § 21.4252(g), if the veteran or eligible person is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution 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. 3672, 3676, 3680A(a))

* * * * *

(aa) *Service Members Occupational Conversion and Training Act of 1992.* If an individual enters a training program for the purpose of obtaining assistance under the Service Members Occupational Conversion and Training Act of 1992, the effective date of discontinuance of educational assistance shall be the date on which the individual entered the job training program.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

6. In § 21.4233, paragraphs (b)(4), (b)(1), (b)(2) and (b)(3) are redesignated as paragraphs (b)(1), (b)(2), (b)(3) and (b)(4), respectively; paragraph (b)(5) is amended by removing "§ 21.4270(a), footnote 6" and adding, in its place, "§ 21.4270(b)"; and newly redesignated paragraphs (b)(1) and (b)(2) are revised, to read as follows:

§ 21.4233 Combination. * * *

(b) *Concurrent enrollment.* * * *

(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)

* * * * *

7. In § 21.4234, paragraphs (a)(2)(ii) and (a)(2)(iii) are revised, and paragraph (a)(2)(iv) is added, to read as follows:

§ 21.4234 Change of program.

(a) *Definition.* * * *

(2) * * *

(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, or

(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.

(Authority: 38 U.S.C. 3691)

* * * * *

8. In § 21.4252, paragraph (g) and its authority citation are added, to read as follows:

§ 21.4252 Courses precluded.

* * * * *

(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; sec. 313(b), Pub. L. 102-568, 106 Stat. 4331-4332)

* * * * *

9. In § 21.4253, paragraph (a)(3) is revised and paragraph (a)(5) and an authority citation for paragraph (a) are added, to read as follows:

§ 21.4253 Accredited courses.

(a) *General.* * * *

(3) The course is conducted under the Act of February 23, 1917 (20 U.S.C. 11 *et seq.*).

* * * * *

(5) The course is approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).

(Authority: 38 U.S.C. 3675(a))

* * * * *

10. In § 21.4254, paragraph (d) and its authority citation are added, to read as follows:

§ 21.4254 Nonaccredited courses.

* * * * *

(d) *Limitations on course approval.* Notwithstanding any other provision of this section, a State approving agency shall not approve a nonaccredited course if it is to be pursued in whole or in part by independent study.

(Authority: 38 U.S.C. 3676(e))

11. In § 21.4265, paragraph (b)(3) is revised and an authority citation is added, to read as follows:

§ 21.4265 Practical training approved as institutional training or on-job training.

* * * * *

(b) *Nursing courses.*

* * * * *

(3) Except for enrollment in a nurse's aide course approved pursuant to § 21.4253(a)(5), VA shall not approve an enrollment in a nonaccredited nursing course which does not meet the licensing requirements of the State where the course is offered.

(Authority: 38 U.S.C. 3452, 3688)

* * * * *

12. In subpart D, a new § 21.4267 and its authority citations are added, to read as follows:

§ 21.4267 Approval of independent study.

(a) *Overview.* Except as provided in §§ 21.4252(g), 21.7120(c), and 21.7622(f), VA may not pay educational assistance for a nonaccredited course which is offered in whole or in part by independent study. Hence, it is necessary to differentiate independent study from similar courses.

(Authority: 38 U.S.C. 3014, 3672, 3676(e), 3680A(a))

(b) *Definition of independent study.* (1) VA considers a course to be offered entirely by independent study when—

(i) It consists of a prescribed program of study with provision for interaction either by mail, telephone, or personally between the student and the regularly employed faculty of the university or college;

(ii) It is offered without any regularly scheduled, conventional classroom or laboratory sessions; and

(iii) It is not a course listed in paragraph (c), (d), or (e) of this section.

(2) VA considers a course to be offered in part by independent study when—

(i) It is an undergraduate course;

(ii) It is not classified as one of the three types of courses listed in paragraph (c) of this section;

(iii) It has some weeks when standard class sessions are scheduled; and

(iv) It consists of independent study as defined in paragraph (b)(1) of this section during those weeks when there are no regularly scheduled class sessions.

(Authority: 38 U.S.C. 3676(e), 3680A(a))

(c) *Scope of independent study.* VA does not consider any of the following courses to be courses offered by independent study.

(1) A cooperative course as defined in § 21.4233(a);

(2) A farm cooperative course; or

(3) A course approved as a correspondence course.

(Authority: 38 U.S.C. 3676(e), 3680A(a))

(d) *Undergraduate resident training.* VA considers the following undergraduate courses to be resident training.

(1) A course which meets the requirements for resident institutional training found in § 21.4265(f);

(2) A course which requires regularly scheduled, standard class sessions at least once every two weeks and which has a total number of class sessions equal to the number of credit hours awarded for the course, times the number of weeks in a standard quarter or semester, as applicable;

(3) A course of student teaching; and

(4) Flight training which is an integral part of a standard undergraduate college degree.

(e) *Graduate resident training.* VA considers a graduate course to be resident training if the course—

(1) Is offered through regularly scheduled, conventional classroom or laboratory sessions; or

(2) Consists of research (either on campus or in absentia) necessary for the preparation of the student's—

- (i) Master's thesis,
- (ii) Doctoral dissertation, or
- (iii) Similar treatise which is prerequisite to the degree being pursued; or
- (3) Consists of a combination of training as described in paragraphs (e)(1) and (e)(2) of this section.

(Authority: 38 U.S.C. 3676(e), 3680A(a))

13. In § 21.4270, paragraphs (a) and (b) and footnote 1 to the table in paragraph (c) are revised, to read as follows:

§ 21.4270 Measurement of courses.

(a) *Measurement of trade, technical, and high school courses.* Trade, technical, high school, and high school preparatory courses shall be measured as stated in this paragraph.

(1) *Trade and technical courses.* (i) Except as provided in paragraph (b) of this section, if shop practice is an integral part of a trade or technical course not leading to a standard college degree—

(A) A full-time enrollment is 22 clock hours per week (exclusive of supervised study) with not more than 2½ hours rest period allowance;

(B) A three-quarter-time enrollment is 16 through 21 clock hours per week (exclusive of supervised study) with not more than 2 hours rest period allowance;

(C) A one-half-time enrollment is 11 through 15 clock hours per week (exclusive of supervised study) with not more than 1¼ hours rest period allowance;

(D) A less than one-half-time but more than one-quarter-time enrollment is 6 through 10 clock hours per week (exclusive of supervised study) with not more than ¾ hour rest period allowance; and

(E) A quarter-time enrollment is 1 through 5 clock hours per week (exclusive of supervised study).

(ii) Except as provided in paragraph (b) of this section, if theory and class instruction constitute more than 50 percent of the required hours in a trade or technical course not leading to a standard college degree, enrollments will be measured as follows. In measuring net instruction there will be included customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in a school's shops and the time involved in field trips and group instruction may be included in computing the clock hour requirements.

(A) A full-time enrollment is 18 clock hours net instruction per week (exclusive of supervised study);

(B) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week (exclusive of supervised study);

(C) A one-half-time enrollment is 9 through 12 clock hours net instruction per week (exclusive of supervised study);

(D) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week (exclusive of supervised study); and

(E) A quarter-time enrollment is 1 through 4 clock hours net instruction per week (exclusive of supervised study).

(2) *High school courses.* If a student is pursuing high school courses at a rate which would result in an accredited high school diploma in four ordinary school years, VA considers him or her to be enrolled full time. Otherwise, for high school enrollments, training time will be determined as follows. (For the purpose of this paragraph, a unit is not less than one hundred and twenty 60-minute hours or the equivalent of study in any subject in one academic year.)

(i) A full-time enrollment is 18 clock hours net instruction per week or four units per year or the equivalent;

(ii) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week or three units per year or the equivalent;

(iii) A one-half-time enrollment is 9 through 12 clock hours net instruction per week or two units per year or the equivalent;

(iv) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week or one unit per year or the equivalent; and

(v) A one-quarter-time enrollment is 1 through 4 clock hours net instruction per week.

(3) *Elementary school.* For a high school preparatory course pursued at the elementary school level—

(i) A full-time enrollment is 18 clock hours net instruction per week;

(ii) A three-quarter-time enrollment is 13 through 17 clock hours net instruction per week;

(iii) A one-half-time enrollment is 9 through 12 clock hours net instruction per week;

(iv) A less than one-half-time but more than one-quarter-time enrollment is 5 through 8 clock hours net instruction per week; and

(v) A one-quarter-time enrollment is 1 through 4 clock hours per week.

(Authority: 38 U.S.C. 3688(a))

(b) *Measurement of non-college degree courses offered by institutions of*

higher learning. (1) Notwithstanding the provisions of paragraph (a)(1) of this section, if a student is enrolled in a course which is not leading to a standard college degree and which is offered by an institution of higher learning, VA will measure his or her enrollment in the same manner as collegiate undergraduate courses are measured according to the provisions of paragraph (c) of this section.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if a student is enrolled in a course not leading to a standard college degree which is offered on a standard quarter- or semester-hour basis by an educational institution which is not an institution of higher learning, VA shall measure his or her enrollment in the same manner as collegiate undergraduate courses are measured according to the provisions of paragraph (c) of this section, provided that the educational institution requires at least the same minimum number of hours of weekly attendance as are required by paragraph (a)(1) of this section for courses offered on a clock-hour basis. If the educational institution does not require at least the same minimum number of hours of weekly attendance as are required in paragraph (a)(1) of this section, VA will not apply the provisions of paragraph (c) of this section, but will measure the course according to the criteria in paragraph (a)(1) of this section.

(Authority: 38 U.S.C. 3688(a)(7))

(c) *Collegiate graduate, professional and on-the-job training courses.* * * *

¹ Cooperative courses may be measured on a full-time basis only.

* * * * *

14. Section 21.4271 is removed and reserved.

15. In § 21.4272, paragraphs (e), (f), (h), and (i) are removed and reserved; and the introductory text and paragraph (g)(3) are revised, to read as follows:

§ 21.4272 Collegiate course measurement.

VA will measure a college level course in an institution of higher learning on a credit-hour basis provided all the conditions under paragraph (a) or (b) of this section are met. See also § 21.4273.

(Authority: 38 U.S.C. 3688)

* * * * *

(g) *Course measurement; nonstandard terms.* * * *

(3) The quotient resulting from the use of the formula is called equivalent credit hours. VA treats equivalent credit hours as credit hours for measurement purposes.

(Authority: 38 U.S.C. 3688(b))

* * * * *

16. Section 21.4280 is removed and reserved.

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

17. The authority citation for part 21, subpart K is revised to read as follows:

Authority: 38 U.S.C. 501(a); 38 U.S.C. ch. 30, unless otherwise noted.

18. In § 21.7020, paragraphs (b)(5) and (b)(6) are revised, and paragraph (b)(42) is added, to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) *Other definitions.* * * *

(5) *Break in service.* (i) Except as provided in paragraph (b)(5)(ii) of this section, the term *break in service* means a period of more than 90 days between the date when an individual is released from active duty or otherwise receives a complete separation from active duty service and the date he or she reenters on active duty.

(ii) A period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians is not a break in service.

(Authority: 38 U.S.C. 3011, 3021)

(6) *Continuous active duty.* (i) The term *continuous active duty* means active duty served without interruption. An interruption in service will only be found when the individual receives a complete separation from active duty.

(ii) A period during which an individual on active duty is assigned full time by the Armed Forces to a civilian institution for a course of education substantially the same as established courses offered to civilians will not interrupt the continuity of the individual's active duty.

(iii) If an individual, during his or her initial obligated period of active-duty service, is separated from active duty to pursue a course of education at a service academy or a post-secondary school preparatory to enrollment at a service academy, no interruption in service will be found and the individual's service will be considered continuous active-duty service, provided he or she—

(A) Commences pursuit of a course of education at a service academy or post-secondary school,

(B) Fails to complete the course of education, and

(C) Immediately reenters on a period of active duty.

(iv) An individual who is discharged or released from active duty for a reason

stated in paragraph (b)(6)(iv) of this section after serving not more than 12 months of his or her initial obligated period of active duty, and who subsequently reenlists or reenters on a period of active duty, will not be considered to have an interruption in service. Except as provided in paragraph (b)(6)(v) of this section, the individual's service during the two periods will be considered continuous active-duty service for the aggregate length of the two service periods. However, the individual's discharge or release from the initial obligated period of service must have been:

(A) For a service-connected disability,
(B) For a medical condition which preexisted such active-duty service and is not service connected,

(C) For a physical or mental condition not characterized as a disability and not resulting from the individual's own willful misconduct which interfered with the individual's performance of duty as determined by the Secretary concerned, or

(D) Involuntary, for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned.

(v) If the second period of active-duty service referred to in paragraph (b)(6)(iv) of this section is of such nature or character that, when aggregated with the initial period of service referred to in that paragraph, it would cause the individual to be divested of entitlement to educational assistance otherwise established by the initial period of active duty, the two periods of service will not be aggregated and will not be considered a single period of continuous active duty.

(vi) Time lost will not be considered to interrupt the continuity of service. For the purpose of this section, "time lost" includes excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 3011, 3012)

* * * * *

(42) *Continuously enrolled.* The term *continuously enrolled* means being in an enrolled status at an educational institution for each day during the school year, and for consecutive school years. Continuity of enrollment is not broken by holiday vacations; vacation periods; periods during the school year between terms, quarters, or semesters; or by nonenrollment during periods of enrollment outside the school year (e.g., summer sessions).

(Authority: Sec. 313(b), Pub. L. 102-568, 106 Stat. 4333)

19. In § 21.7032, paragraph (a) and its authority citation are revised and

paragraph (f) and its authority citation are added, to read as follows:

§ 21.7032 Time limits.

(a) *Scope of this section.* The provisions of this section are applicable to original applications, formal or informal; to reopened claims; and, to the extent indicated in paragraph (f) of this section, to elections to receive educational assistance under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471)

* * * * *

(f) *Time limit for completing certain elections.* An individual who seeks to establish eligibility to receive educational assistance under § 21.7045 must—

(1) Within one year of the date of the VA letter or other written notice to the individual indicating that additional evidence is needed in order to complete the claim, submit that evidence to VA. This time limit may be extended if the individual is able to show good cause for an extension of the period to the date on which he or she actually submits the additional evidence; and

(2) Submit the \$1,200 VA is required pursuant to § 21.7045(c)(2) to collect before educational assistance can be awarded. A delay in submitting the \$1,200 may result in a later effective date for the award to the individual, and in no event will VA accept payment of the \$1,200 from the individual after the last date of eligibility as determined by § 21.7050 or § 21.7051. See § 21.7131(k).

(Authority: 38 U.S.C. 3018B)

20. In § 21.7042, the introductory text of paragraph (b)(7)(i) is amended by removing "as" and adding, in its place, "a" and by removing "released" and adding, in its place, "released"; the introductory text of paragraph (c)(3)(ii) is amended by removing "the individual is" and adding, in its place, "have been"; paragraph (f)(1) is amended by removing "in § 21.7045(b)" and adding, in its place, "in § 21.7045(b) or (c)"; and the introductory text of paragraph (a)(3) is revised, paragraph (a)(6) and its authority citation and paragraph (b)(7)(iii) are added, the introductory text of paragraph (c)(3) is revised, paragraphs (c)(3)(i), (c)(3)(iii)(A), and (c)(3)(iii)(B) are revised, and paragraph (c)(3)(iii)(C) is added, to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(3) Except as provided in paragraph (a)(6) of this section, the individual before completing the service

requirements of this paragraph must either—

* * * * *

(6) An individual who does not meet the requirements of paragraph (a)(3) of this section nevertheless is eligible for basic educational assistance if he or she—

(i) Was on active duty on August 2, 1990, and

(ii) Completes the requirements of a secondary school diploma (or an equivalency certificate) before October 29, 1994.

(Authority: 38 U.S.C. 3011)

(b) *Eligibility based on active duty service and service in the Selected Reserve.* * * *

(7) * * *

(iii) Before completing four years service in the Selected Reserve, the individual ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the individual's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 268(b). However, this exemption from the four-year service requirement does not apply to a reservist who ceases to be a member of the Selected Reserve under adverse conditions as characterized by the Secretary of the military department concerned, or to a reservist who after having involuntarily ceased to be a member of the Selected Reserve is involuntarily separated from the Armed Forces under adverse conditions as characterized by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16133(b)(1); 38 U.S.C. 3012(b)(1)(B); sec. 4421(b) and (c), Pub. L. 102-484, 106 Stat. 2718)

* * * * *

(c) *Eligibility based on withdrawal of election not to enroll.* * * *

(3) The individual must:

(i) Complete the period of service that he or she was obligated to serve on December 1, 1988, which will include completion of a period of extension or reenlistment if an individual's initial obligated period of service was scheduled to end after November 30, 1988, but he or she extended an enlistment or reenlisted before December 1, 1988; or

* * * * *

(iii) * * *

(A) Discharged or released from active duty for the convenience of the Government after completing not less than 20 months of that period of service if such period was less than three years,

or 30 months, if that period was at least three years;

(B) Involuntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense; or

(C) Discharged or released from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense (or by the Secretary of Transportation for the Coast Guard when the Coast Guard is not operating as a service of the Navy).

* * * * *

21. In § 21.7044, paragraph (a)(3)(ii) is amended by removing "degree. This may be done at any time." and adding, in its place, "degree, which may be done at any time;" paragraph (a)(4)(i)(E) is amended by removing "or;" and adding, in its place, "or"; paragraph (a)(4)(i)(F) is amended by removing "Navy;" and adding, in its place, "Navy;" and paragraph (a)(4)(i)(F) is further amended by removing its authority citation; paragraph (a)(5)(iv) is amended by removing "service;" and adding, in its place, "service; and"; and the heading, paragraph (a)(6), the authority citation for paragraph (a), and paragraph (b)(8)(ii)(B) are revised, and paragraphs (b)(8)(iii) and (b)(12) and their authority citations are added, to read as follows:

§ 21.7044 Persons with 38 U.S.C. ch. 34 eligibility.

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(6) The individual must have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service.

(Authority: 38 U.S.C. 3011)

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.* * * *

(8) * * *

(ii) * * *

(B) For a medical condition which preexisted that period of active duty and which VA determines is not service connected, or

(iii) Before completing four years service in the Selected Reserve the

individual ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on September 30, 1999, by reason of the inactivation of the individual's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to 10 U.S.C. 268(b). However, this exemption from the four years service requirement does not apply to a reservist who ceases to be a member of the Selected Reserve under adverse conditions as characterized by the Secretary of the military department concerned, or to a reservist who after having involuntarily ceased to be a member of the Selected Reserve is involuntarily separated from the Armed Forces under adverse conditions as characterized by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16133(b)(1); sec. 4421(b) and (c), Pub. L. 102-484, 106 Stat. 2718)

* * * * *

(12) The individual must have been on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break in service.

(Authority: 38 U.S.C. 3012(a)(1)(B))

* * * * *

22. Section 21.7045 is revised to read as follows:

§ 21.7045 Eligibility based on involuntary separation or voluntary separation.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance as provided in subpart K of this part if he or she meets the requirements of paragraph (a) and either paragraph (b) or (c) of this section.

(a) *Service requirements.* The individual must meet one of the following sets of service requirements.

(1) The individual must—

(i) Be on active duty or full-time National Guard duty either on September 30, 1990, or on or after November 30, 1993, and

(ii) After February 2, 1991, be involuntarily separated, as that term is defined in 10 U.S.C. 1141, with an honorable discharge; or

(2) The individual must—

(i) Be separated from active military, naval, or air service with an honorable discharge, and

(ii) Receive voluntary separation incentives under 10 U.S.C. 1174a or 1175.

(Authority: 38 U.S.C. 3018A)

(b) *Additional requirements for those individuals voluntarily separated after October 22, 1992, or involuntarily separated.* An individual who meets the requirements of paragraph (a)(1) of this section, or an individual who meets the requirements of paragraph (a)(2) of this section and was separated after October 22, 1992, must meet the following additional requirements in order to establish eligibility for educational assistance.

(1) *Required election.* (i) If, under § 21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the election must be made:

(A) Before the involuntary or voluntary separation as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; and

(ii) If the individual is a participant (as defined in § 21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:

(A) Before the individual is involuntarily or voluntarily separated as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy; or

(iii) If the individual is not described in either paragraph (b)(1)(i) or (b)(1)(ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:

(A) Before the individual is involuntarily or voluntarily separated as the case may be, and

(B) Pursuant to procedures which the Secretary of the military department concerned provides in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation provides with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) *Reduction in basic pay.* The basic pay of anyone who makes one of the irrevocable elections described in paragraph (b)(1) of this section is required by 38 U.S.C. 3018B to be reduced by \$1,200.

(i) If for any reason the basic pay of an individual who received an involuntary separation is not so reduced by \$1,200, the failure to make the reduction will not affect the individual's eligibility for educational assistance under 38 U.S.C. ch. 30.

(ii) If the individual is voluntarily separated, such reduction of the individual's basic pay by \$1,200 is a precondition to establishing eligibility. Hence, educational assistance under 38 U.S.C. ch. 30 may not be paid to such an individual when the reduction does not occur.

(3) *Educational requirement.* (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have successfully completed either:

(A) The requirements of a secondary school diploma (or equivalency certificate), or

(B) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(ii) If a veteran's application for educational assistance is denied due to failure to meet the requirements of paragraph (b)(3)(i) of this section at the time of his or her application for educational assistance, the veteran may reapply if the requirements are subsequently met.

(Authority: 38 U.S.C. 3018B)

(c) *Additional requirements for individuals who are voluntarily discharged before October 23, 1992.* If an individual meets the requirements of paragraph (a)(2) of this section and is voluntarily discharged before October 23, 1992, he or she must also meet the following requirements in order to establish eligibility for educational assistance.

(1) *Required election.* (i) If, under § 21.7042(f), the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, he or she must irrevocably withdraw that election and make an election to receive educational assistance under 38 U.S.C. ch. 30. The withdrawal and the new election must be made:

(A) Before October 23, 1993, and
(B) In the form and manner prescribed by the Secretary of Veterans Affairs; and

(ii) If the individual is a participant (as defined in § 21.5021(e)) in the educational program provided in 38 U.S.C. ch. 32, the individual must make

an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must be made:

(A) Before October 23, 1993, and
(B) In the form and manner prescribed by the Secretary of Veterans Affairs.

(iii) If the individual is not described in either paragraph (c)(1)(i) or (ii) of this section, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must be made:

(A) Before October 23, 1993, and
(B) In the form and manner prescribed by the Secretary of Veterans Affairs.

(2) *\$1,200 collection.* VA must collect \$1,200 from the individual before awarding educational assistance under 38 U.S.C. ch. 30. Collection of \$1,200 is a precondition to establishing eligibility.

(3) *Educational requirement.* (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have successfully completed either:

(A) The requirements of a secondary school diploma (or equivalency certificate), or

(B) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(ii) If a veteran's application for educational assistance under subpart K of this part is denied due to failure to meet the requirements of paragraph (c)(3)(i) of this section at the time of his or her application for educational assistance, the veteran will be permitted to apply at a later date.

(Authority: 38 U.S.C. 3018B)

§ 21.705 [Amended]

23. Section 21.7050(b)(1) is amended by removing "October 18, 1984" and adding, in its place, "June 30, 1985".

24. In § 21.7072, paragraph (b) heading, paragraph (b)(1) introductory text, and the authority citation for paragraph (b)(1) are revised, to read as follows:

§ 21.7072 Entitlement to basic educational assistance.

* * * * *

(b) *Entitlement: individual discharged for service-connected disability, a medical condition which preexisted service, hardship, or involuntarily for the convenience of the Government as a result of a reduction in force.* (1) Except as provided in § 21.7073, when the provisions of paragraph (b) of this section are met, an eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the

individual's continuous active duty service that is after June 30, 1985, and that, in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is part of the individual's initial obligated period of active duty. In the case of a veteran to whom the definition of continuous active duty found in either § 21.7020(b)(6)(iii) or § 21.7020(b)(6)(iv) applies, the length of the continuous active duty will be the aggregate length of the periods of active duty referred to in those paragraphs. Except as provided in § 21.7073, VA will apply paragraph (b) of this section when the individual:

* * * * *

(Authority: 38 U.S.C. 3011(f), 3013(a))

* * * * *

25. In § 21.7120, paragraph (d) and its authority citation are added, to read as follows:

§ 21.7120 Courses included in programs of education.

* * * * *

(d) *Independent study.* (1) Except as provided in paragraph (d)(2) of this section, effective October 29, 1992, VA may pay educational assistance to a veteran or servicemember 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 or servicemember to complete his or her program of education,

(ii) On October 29, 1992, the veteran or servicemember was receiving educational assistance for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and

(iii) The veteran or servicemember has remained continuously enrolled in the program of education of which the nonaccredited independent study course or unit subject forms a part from October 29, 1992, to the date of enrollment by the veteran or servicemember in the nonaccredited independent study course or unit subject.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, VA may pay educational assistance to a veteran or servicemember for enrollment in a course or unit subject offered by independent study which, though part of an approved program of education, is not required in order for the veteran or servicemember to complete the program of education (i.e., an elective) when—

(i) The veteran or servicemember was enrolled in and receiving educational assistance for the course or unit subject on October 29, 1992, and

(ii) The veteran or servicemember remains continuously enrolled in the course or unit subject.

(3) Whether or not the veteran or servicemember is enrolled will be determined by the regularly prescribed standards and practices of the educational institution offering the course or unit subject.

(Authority: 38 U.S.C. 3014, 3034, 3076, 3680A(a); sec. 313(b), Pub. L. 102-568, 106 Stat. 4333)

26. In § 21.7122, paragraphs (e)(5) and (e)(6) and the authority citation for paragraph (e) are revised, and paragraph (e)(7) is added, to read as follows:

§ 21.7122 Courses precluded.

* * * * *

(e) *Other courses.* * * *

(5) Except as provided in § 21.4252(j), a course from which the veteran or servicemember withdrew without mitigating circumstances,

(6) An enrollment in a course offered by a proprietary school when the veteran or servicemember is an official of the school authorized to sign certificates of enrollment or monthly certifications of attendance or monthly certifications of pursuit, an owner of the school, or an operator of the school, or

(7) Except as provided in § 21.7120(d), an enrollment in a nonaccredited independent study course.

(Authority: 38 U.S.C. 3002(3), 3034, 3672(a), 3676, 3680(a), 3680A(a))

27. In § 21.7131, paragraph (j) is added, to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(j) *Service Members Occupational Conversion and Training Act of 1992.* If the veteran's educational assistance has been discontinued because the veteran is training under a job training program for which benefits are payable to his or her employer under the Service Members Occupational Conversion and Training Act of 1992, VA will determine the date upon which educational assistance may be resumed as follows.

(1) When the veteran is pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on the day following that date.

(2) When the veteran is not pursuing a program of education on the last date for which benefits are payable under that Act, payments will be resumed on the commencing date as determined by paragraphs (a) through (i) of this section, but not before the day following the last date for which benefits are payable under that Act.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

28. In § 21.7135, paragraph (z) is redesignated as paragraph (bb); and paragraph (a) and its authority citation are revised, and paragraphs (z) and (aa) and their authority citations are added, to read as follows:

§ 21.7135 Discontinuance dates.

* * * * *

(a) *Death of veteran or servicemember.*

(1) If the veteran or servicemember receives an advance payment pursuant to 38 U.S.C. 3680(d) 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.

(2) In all other cases if the veteran or servicemember dies while pursuing a program of education, the discontinuance date of educational assistance shall be the last date of attendance.

(Authority: 38 U.S.C. 3014, 3023, 3680)

* * * * *

(z) *Independent study course loses accreditation.* Except as otherwise provided in § 21.7120(d), if the veteran or servicemember is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution 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. 3014, 3034, 3676, 3680A(a))

(aa) *Service Members Occupational Conversion and Training Act of 1992.* If a veteran enters a training program for the purpose of obtaining assistance under the Service Members Occupational Conversion and Training Act of 1992, the effective date of discontinuance of educational assistance shall be the date on which the veteran entered the job training program.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

* * * * *

29. In § 21.7136, paragraphs (a), (b), (c), (d) and (e) are redesignated as paragraphs (b), (c), (d), (e) and (f), respectively; the introductory text of newly redesignated paragraph (f) is amended by removing “§ 21.7045(b)(2)” and adding, in its place, “§ 21.7045(b)(1)(ii) or (c)(1)(ii)”; and introductory text is added to the section, paragraph (a) is added, newly

redesignated paragraphs (b) and (c) are revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

The monthly rate of educational assistance payable to a veteran or servicemember depends in part upon the service requirements he or she met to establish eligibility for that educational assistance.

(a) *Service requirements for higher rates.* The monthly rate of basic educational assistance payable to a veteran or servicemember shall be the rate stated in paragraph (b) of this section when—

(1) The veteran has established eligibility for educational assistance under § 21.7045; or

(2) The veteran has established eligibility under § 21.7042, and one of the following sets of circumstances exist.

(i) The veteran's initial obligated period of active duty is at least three years; or

(ii) The veteran's initial obligated period of active duty is at least two years and less than three years and either the veteran has served or is committed to serve in the Selected Reserve for a period of at least four years, or the veteran was committed to serve in the Selected Reserve for a period of at least four years but failed to complete four years service for one of the reasons stated in § 21.7042(b)(7)(i) or (iii); or

(iii) The veteran's initial obligated period of active duty is at least two years and less than three years and—

(A) The basic educational assistance is payable for training received after August 31, 1993;

(B) The veteran's continuous active duty service beginning on the date of the commencement of his or her initial obligated period of active duty is at least three years and upon completion of that continuous period of active duty the veteran either—

(1) Continues on active duty; or
 (2) Is discharged from active duty with an honorable discharge; or

(3) Is released after service on active duty characterized by the Secretary concerned as honorable service and is

placed on the retired list, transferred to the Fleet Reserve or the Fleet Marine Corps Reserve, placed on the temporary disability retired list; or

(4) 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.

(Authority: 38 U.S.C. 3015(a))

(b) *Rates.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the monthly rate of basic educational assistance payable to a veteran whose service meets the requirements of paragraph (a) of this section is the rate stated in the following table.

Training	Monthly rate
Full time	\$400.00.
¾ time	300.00.
½ time	200.00.
Less than ½ but more than ¼ time.	200.00
¼ time or less	See § 21.7136(d). 100.00 See § 21.7136(d).

(Authority: 38 U.S.C. 3015(c), 3015(f))

(2) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable when he or she is pursuing an apprenticeship or other on-job training is the rate stated in the following table.

Training period	Monthly rate
First six months of pursuit of program	\$300.00
Second six months of pursuit of program	220.00
Remaining pursuit of program	140.00

(Authority: 38 U.S.C. 3015, 3032(c))

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable when he or she is pursuing a cooperative course is \$320.

(Authority: 38 U.S.C. 3015(f), 3032(d))

(c) *Rates for some veterans whose initial obligated period of active duty is less than three years.* If a veteran has

established eligibility under § 21.7042, but the veteran's service is not described in paragraph (a)(2) of this section, the monthly rate of educational assistance payable to the veteran shall be determined by this paragraph.

(1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, the monthly rate of basic educational assistance payable to a veteran is the amount stated in the following table.

Training	Monthly rate
Full time	\$325.00.
¾ time	243.75.
½ time	162.50.
Less than ½ but more than ¼ time.	162.50
¼ time or less	See § 21.7136(d). 81.25 See § 21.7136(d).

(Authority: 38 U.S.C. 3015(c))

(2) The monthly rate of educational assistance payable to a veteran who is pursuing an apprenticeship or other on-job training is the rate stated in the following table.

Training period	Monthly rate
First six months of pursuit of program	\$243.75
Second six months of pursuit of program	178.75
Remaining pursuit of program	113.75

(Authority: 38 U.S.C. 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran is \$260 when the veteran is pursuing a cooperative course.

(Authority: 38 U.S.C. 3015)

* * * * *

30. In § 21.7137, the heading and paragraphs (a)(1), (a)(2), and (c) are revised, to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* (1) Except as provided in paragraph (a)(2) of this section, the monthly rate of basic educational assistance will be the rate stated in the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	\$588.00	\$624.00	\$655.00	\$16.00
¾ time	441.00	468.00	491.50	12.00
½ time	294.00	312.00	327.00	8.50
Less than ½ but more than ¼ time	294.00 See § 21.7137(b)

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1/4 time or less	147.00 See § 21.7137(b)	
Cooperative	441.60	462.00	481.60	9.20

(Authority: 38 U.S.C. 3015(c), 3015(f))

(2) For veterans pursuing an apprenticeship or other on-job training, the monthly rate of basic educational assistance will be the rate stated in the following table.

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st 6 mos. of pursuit of program	\$402.75	\$415.13	\$426.00	\$5.25
2nd 6 mos. of pursuit of program	276.38	285.73	293.43	3.85
3rd 6 mos. of pursuit of program	163.80	169.93	174.65	2.45
Remaining pursuit of program	151.90	157.68	162.93	2.45

(Authority: 38 U.S.C. 3015(d), 3015(f))

* * * * *

(c) *Rates for servicemembers.* The monthly rate of educational assistance for a servicemember may not exceed the lesser of the following rates (except as provided in paragraph (d) of this section):

- (1) The monthly pro-rated cost of the course.
- (2) The following monthly rates—
 - (i) \$588.00 for full-time training,
 - (ii) \$441.00 for three-quarter-time training,
 - (iii) \$294.00 for one-half time training and training that is less than one-half, but more than one-quarter-time training, and
 - (iv) \$147.00 for one-quarter-time training.

(Authority: 38 U.S.C. 3015(d), 3015(f))

31. In § 21.7145, paragraph (e) is revised, to read as follows:

§ 21.7145 Work-study allowance.

* * * * *

(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: 38 U.S.C. 3485)

32. In § 21.7152, paragraph (b)(3)(ii) is removed; paragraph (b)(3)(iii) is redesignated as paragraph (b)(3)(ii); and paragraph (b)(3)(i) is revised, to read as follows:

§ 21.7152 Certification of enrollment.

* * * * *

(b) *Length of the enrollment period covered by the enrollment certification.*

* * * * *

- (3) * * *
- (i) The enrollment date, and

* * * * *

33. In § 21.7170, paragraphs (b) and (g) are removed; paragraphs (c), (d), (e) and (f) are redesignated as paragraphs (b), (c), (d) and (e), respectively; and the introductory text and paragraph (a) are revised, to read as follows:

§ 21.7170 Course measurement.

In administering benefits payable under 38 U.S.C. chapter 30, VA shall apply the following sections.

- (a) § 21.4270 (except paragraphs (a)(2) and (a)(3) and those portions of paragraph (c) and footnotes dealing with farm cooperative training)—

Measurement of courses,

(Authority: 38 U.S.C. 3034, 3688)

* * * * *

- 34. In § 21.7172, paragraphs (a)(1), (a)(2), and (d) are revised, to read as follows:

§ 21.7172 Measurement of concurrent enrollments.

(a) *Conversion of units of measurement required.* * * *

- (1) If VA measures the courses at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis), and VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

- (2) If VA measures the courses pursued at the primary institution on a clock-hour basis, and VA measures the

courses pursued at the second school on a credit-hour basis, VA will convert the credit hours to clock hours to determine the veteran's training time.

(Authority: 38 U.S.C. 3034, 3688)

* * * * *

(d) *Both courses measured on a credit hour basis or both courses measured on a clock hour basis.* If VA measures the courses pursued at both institutions on a credit hour basis or on a clock hour basis, VA will measure the veteran's enrollment by adding together the units of measurement for the courses at the second school and the units of measurement for the courses at the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution.

(Authority: 38 U.S.C. 3034, 3688)

35. In § 21.7220, paragraph (b) introductory text is revised, paragraphs (b)(9) and (b)(10) are revised, paragraph (b)(11) is added, and the authority citation for paragraph (b) is revised, to read as follows:

§ 21.7220 Course approval.

* * * * *

(b) *Course approval criteria.* In administering benefits payable under 38 U.S.C. chapter 30, VA and, where appropriate, the State approving agencies, shall apply the following sections.

* * * * *

- (9) Section 21.4265—Practical training approved as institutional training or on-job training,

- (10) Section 21.4266—Courses offered at subsidiary branches or extensions,

(11) Section 21.4267—Approval of independent study.

(Authority: 38 U.S.C. 3034, 3476, 3672, 3675, 3676, 3678, 3679, 3680A, 3689)

* * * * *

36. In § 21.7222, paragraph (e) and its authority citation are revised, to read as follows:

§ 21.7222 Courses and enrollments which may not be approved.

* * * * *

(e) Except as provided in § 21.7120(d), an independent study course which—

- (1) Does not lead to a standard college degree, or
- (2) Is a nonaccredited course.

(Authority: 38 U.S.C. 3676, 3680A)

37. In § 21.7280, paragraph (b)(1) is revised, to read as follows:

§ 21.7280 Death benefit.

* * * * *

(b) *Necessary criteria for death benefit.* * * *

- (1) The individual either—
 - (i) Dies while on active duty, or
 - (ii) Dies after October 28, 1992, and his or her date of death is within one year after the date of his or her last discharge or release from active duty; and

* * * * *

[FR Doc. 96-3780 Filed 2-21-96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1370

RIN 0970-AB21

Family Violence Prevention and Services Programs

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes requirements for sections 303, 308, 311, and 314 of the Family Violence Prevention and Services Act, as amended, and provides States, Indian tribes and other grantees with information on grants available under these sections of the statute.

EFFECTIVE DATE: March 25, 1996.

ADDRESSES: Administration for Children and Families, Office of Community Services, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley, (202) 401-5529.

SUPPLEMENTARY INFORMATION: Sections 311(h) and 312(a) of the Family Violence Prevention and Services Act, as amended, require the Secretary to publish regulations implementing sections 303, 308, 311, and 314, of the Act. These final regulations address this requirement.

Program Description

The Family Violence Prevention and Services Act (the Act) authorizes formula and discretionary grant programs which fund a range of activities designed to both prevent family violence and provide services to victims of family violence. Enacted as title III of the Child Abuse Amendments of 1984, the Act was amended and reauthorized by Public Law 102-295, the Child Abuse, Domestic Violence, Adoption, and Family Services Act of 1992. The Act was further amended by Public Law 103-322, the Violent Crime Control and Law Enforcement Act of 1994, also known as the "Crime Bill".

Under section 303 of the Act, funds are awarded as formula grants to States and Indian tribes and tribal organizations to assist in supporting activities to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents. These grants have supplemented many already established community-based family violence prevention and service activities. They also have allowed States and tribes to expand current service programs and establish additional new shelters in rural and underserved areas, on reservations, and in Alaskan Native Villages and Regional Corporation Areas. In most areas, there is private sector as well as State and local funding for these emergency shelters.

Under section 311 of the Act, added by the 1992 amendments, formula grants are available to private non-profit State domestic violence coalitions to conduct domestic violence intervention and prevention activities and to increase public awareness of domestic violence issues. Grant funds support training and technical assistance activities as well as public education services.

The 1992 amendments also added a new section 308 to the Act which requires the Secretary to establish and maintain a national resource center for family violence prevention and services and up to six special issue resource centers. The Crime Bill increased the allowed number of special issue resource centers to seven. The purpose of the national resource center and the special issue resource centers is to offer

resource, policy, and technical assistance and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professionals and interested parties on issues pertaining to domestic violence.

Currently, the national resource center maintains a central resource library to collect and disseminate information relating to the incidence and prevention of family violence and the provision of immediate shelter and related assistance. The special interest resource centers provide a specialization, on a nationwide basis, in at least one area of domestic violence service, prevention, or law.

Discretionary grants also are awarded under section 314 of the Act to public and private non-profit agencies, including Indian tribes and tribal organizations to assist in the development of public information and community awareness campaign activities that will serve as information models for the prevention of family violence.

Approach to Writing the Final Rule

A notice of proposed rulemaking (NPRM) was published in the Federal Register on December 10, 1993 (58 FR 64920). Two letters containing comments were received in response to the NPRM. Later in the preamble, we summarize the comments and respond to them. No changes have been made to the regulation in response to comments received.

In February of 1995, the President announced a Regulatory Reinvention Initiative as part of the National Performance Review, calling for more immediate, comprehensive regulatory reform. As part of this initiative, he directed all agencies to undertake an exhaustive review of all regulations—with an eye toward eliminating or modifying those that are obsolete or which are otherwise in need of reform. With this in mind, we reexamined the language in the NPRM to see whether the final regulation could achieve the same objectives in a simpler, more consistent, and more flexible manner.

The NPRM generally did not reiterate the statute or list all applicable regulations. Rather, it stated broadly that grantees must meet the statutory requirements of the Act as well as all applicable regulations, and it referenced the pertinent program funding announcements in each of the four sections of the proposed rule. The program funding announcements, which are published in the Federal Register, describe the relevant statutory and regulatory requirements, as well as