

**DEPARTMENT OF DEFENSE****DEPARTMENT OF HOMELAND SECURITY****Coast Guard****DEPARTMENT OF VETERANS AFFAIRS****38 CFR Part 21**

RIN 2900-AL80

**Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve**

**AGENCIES:** Department of Defense, Department of Homeland Security (Coast Guard), and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Selected Reserve for Fiscal Year 2004 (October 1, 2003, through September 30, 2004) are changed to show a 2.2% increase in these rates.

**DATES:** *Effective Date:* This final rule is effective October 25, 2004.

*Applicability Date:* The changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Lynn M. Nelson, Education Adviser, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273-7294.

**SUPPLEMENTARY INFORMATION:** Under the formula mandated by 10 U.S.C. 16131(b) for Fiscal Year 2004, the rates of basic educational assistance under the Montgomery GI Bill—Selected Reserve payable to students pursuing a program of education full time, three-quarter time, and half time must be increased by 2.2%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 2002, through June 30, 2003, exceeds the total of the monthly Consumer Price Index-W for July 1, 2001, through June 30, 2002.

Title 10 U.S.C. 16131(b) requires that full-time, three-quarter time, and half-time rates be increased as noted above. In addition, 10 U.S.C. 16131(d) requires

that monthly rates payable to reservists in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there is a 2.2% raise for such training as well.

Title 10 U.S.C. 16131(b) also requires that the Department of Veterans Affairs (VA) pay reservists training less than half time at an appropriately reduced rate. Since payment for less than half-time training became available under the Montgomery GI Bill—Selected Reserve in Fiscal Year 1990, VA has paid less than half-time students at 25% of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied from October 1, 2003, in accordance with the applicable statutory provisions discussed above.

**Administrative Procedure Act**

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

**Regulatory Flexibility Act**

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify 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. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any

rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

**Catalog of Federal Domestic Assistance Program Numbers**

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 20, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

Dated: August 10, 2004.

**John D. Winkler,**

*Deputy Assistant Secretary of Defense for Reserve Affairs (Manpower & Personnel).*

September 3, 2004.

**Kenneth T. Venuto,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.*

■ For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

**PART 21—VOCATIONAL REHABILITATION AND EDUCATION****Subpart L—Educational Assistance for Members of the Selected Reserve**

■ 1. The authority citation for part 21, subpart L, continues to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

■ 2. Section 21.7636 is amended by:

■ a. Revising paragraphs (a)(1) and (a)(2)(i) and tables at the end of each paragraph.

■ b. In paragraph (a)(3), removing “September 30, 2002, and before October 1, 2003,” and adding, in its place, “September 30, 2003, and before October 1, 2004.”

The revisions read as follows:

**§ 21.7636 Rates of payment.**

(a) *Monthly rate of educational assistance.* (1) Except as otherwise

provided in this section or in § 21.7639, the monthly rate of educational assistance payable for training that occurs after September 30, 2003, and before October 1, 2004, to a reservist pursuing a program of education is the rate stated in this table:

Training	Monthly rate
Full .....	\$282.00
¾ time .....	212.00
½ time .....	140.00
¼ time .....	70.50

(2)(i) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time that occurs after September 30, 2003, and before October 1, 2004, is the rate stated in this table:

Training period	Monthly rate
First six months of pursuit of training .....	\$211.50
Second six months of pursuit of training .....	155.10
Remaining pursuit of training .....	98.70

\* \* \* \* \*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

#### RIN 2900-AL64

### Increase in Rates Payable Under the Survivors' and Dependents' Educational Assistance Program

**AGENCY:** Department of Veterans Affairs.  
**ACTION:** Final rule.

**SUMMARY:** This document amends the regulations governing rates of educational assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program to reflect increases required by statutory provisions. The rates of educational assistance payable under the DEA program are changed to show a 1.5% increase for fiscal year 2003 (October 1, 2002, through September 30, 2003) and a 2.2% increase for fiscal year 2004 (beginning October 1, 2003). In addition, the Veterans Benefits Act of 2003 provided an increase in the rates payable effective July 1, 2004. The amendments show the pay tables for the three rate increases identified above.

**DATES:** *Effective Date:* This final rule is effective October 25, 2004.

*Applicability Dates:* The changes in rates are applied to conform to the respective statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

#### FOR FURTHER INFORMATION CONTACT:

Lynn M. Nelson, Education Advisor (225C), Education Service, Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Ave. NW., Washington, DC 20420 (202) 273-7294.

**SUPPLEMENTARY INFORMATION:** Under the formula mandated by 38 U.S.C. 3564, the monthly rates of basic educational assistance payable under the Survivors' and Dependents' Educational Assistance (DEA) program must be adjusted each fiscal year. The regulations governing the rates of educational assistance payable under the DEA program for fiscal year (FY) 2003 (October 1, 2002, through September 30, 2003) are changed to reflect a 1.5% increase. The 1.5% increase is the percentage by which the total of the monthly Consumer Price Index-W (CPI-W) for July 1, 2001, through June 30, 2002, exceeds the total of the monthly CPI-W for July 1, 2000, through June 30, 2001.

The regulations are further amended to include the DEA rates payable during FY 2004. The FY 2004 rates reflect a 2.2% increase. The 2.2% increase is the percentage by which the total of the monthly CPI-W for July 1, 2002, through June 30, 2003, exceeds the total of the monthly CPI-W for July 1, 2001, through June 30, 2002.

In addition to the cost of living rate adjustments discussed above, Section 302 of the Veterans Benefits Act of 2003 (Pub. L. 108-183) provides an increase in the DEA rates effective July 1, 2004. A new paragraph (c) is added to Section 21.3131 to show the increased DEA rates effective July 1, 2004.

The changes set forth in this final rule are effective from the date of publication, but the changes in the rates for FY 2003 are effective October 1, 2002, the changes in the rates for FY 2004 are effective October 1, 2003, and the changes in rates provided for in Public Law 108-183 are effective July 1, 2004. This is in accordance with the applicable statutory provisions discussed above.

#### Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521).

#### Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule, because the agency is not required to publish a notice of proposed rulemaking for this rule. Even so, 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. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1232, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This rule will have no such effect on State, local or tribal governments, or the private sector.

#### Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.117.

#### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed Forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 23, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, 38 CFR part 21 (subpart C) is amended as follows: