

effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; and 64.011, Veterans Dental Care.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: September 30, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

- For the reasons set out in the preamble, the interim final rule amending 38 CFR part 1, which was published at 72 FR 48239 on August 23, 2007, is adopted as a final rule with the following changes:

PART 1—GENERAL PROVISIONS

- 1. The authority citation for part 1 continues to read as follows:

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

- 2. In § 1.460, revise the definitions for “Near death” and “Procurement organization” in alphabetical order to read as follows:

§ 1.460 Definitions.

* * * * *

Near death. The term “near death” means that in the clinical judgment of the patient’s health care provider based on defined clinical triggers, the patient’s death is imminent.

* * * * *

Procurement organization. The term “procurement organization” means an organ procurement organization, eye bank, and/or tissue bank as defined in this section.

* * * * *

- 3. Revise § 1.485a(d), to read as follows:

§ 1.485a Eye, organ and tissue donation.

* * * * *

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the

applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with the Food and Drug Administration (FDA) that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

- 4. Revise § 1.514b(d), to read as follows:

§ 1.514b Disclosures to procurement organizations.

* * * * *

(d) The VHA health care facility has confirmed with HHS that it has certified or recertified the organ procurement organization as provided in the applicable HHS regulations. VA medical centers must verify annually in January of each calendar year with FDA that an eye bank or tissue bank has complied with the FDA registration requirements of 21 CFR Part 1271 and that the registration status is active before permitting an eye bank or tissue bank to receive protected health information.

(Authority: 38 U.S.C. 5701(k), 7332(b)(2)(E))

[FR Doc. E8-26172 Filed 10-31-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AM59

Elimination of Co-Payment for Weight Management Counseling

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Department of Veterans Affairs (VA) published a direct final rule amending our medical regulations to designate weight management counseling (individual and group sessions) as a service that is not subject to VA’s co-payment requirements. VA received no significant adverse comments concerning this rule or its companion substantially identical proposed rule published on the same date. This document confirms that the direct final rule became effective on June 16, 2008. In a companion document in this issue of the *Federal Register*, we are withdrawing as unnecessary that proposed rule.

DATES: Effective date: June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business

Policy, Chief Business Office (16), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1591 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a direct final rule published in the *Federal Register* on April 16, 2008 (73 FR 20530), VA amended the medical regulations set forth at 38 CFR part 17 to eliminate co-payments for weight management counseling (individual and group sessions). VA published a companion substantially identical proposed rule (RIN 2900-AM81; 73 FR 20579) on the same date to serve as a proposal for the provisions in the direct final rule in case significant adverse comments were received. The direct final rule and proposed rule each provided a 30-day comment period that ended May 16, 2008. No adverse comments were received. Two public comments were received, both of which supported the proposed rule.

Under the direct final rule procedures that we described in those documents, because no significant adverse comment was received within the comment period, the regulation became effective on the date specified in the direct final rule, June 16, 2008. In a companion document in this issue of the *Federal Register*, VA is withdrawing the proposed rule (RIN 2900-AM81) published at 73 FR 20579 as unnecessary.

Approved: October 27, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8-26177 Filed 10-31-08; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AM45

Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Other Miscellaneous Issues

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations governing education programs the Department of Veterans Affairs (VA) administers. In accordance with statutory requirements and previously established formulas, it amends the regulations to show increases in the monthly rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty program, an increase in the percentage

payable to veterans pursuing apprenticeship or other on-job training, and a change in the formula used to calculate the entitlement charge for individuals pursuing apprenticeship or other on-job training. It also amends procedural provisions and delegations of authority regarding continuation of payments during emergency school closings. Furthermore, this document makes nonsubstantive technical changes for purposes of clarity and to remove obsolete provisions.

DATES: Effective Date: This final rule is effective November 3, 2008.

Applicability Dates: Certain amendments in this final rule are applied retroactively to conform to statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Brandy R. Terrell, Regulation Development Team Leader, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 461-9822.

SUPPLEMENTARY INFORMATION:

I. Increase in Montgomery GI Bill—Active Duty Program Monthly Rates

This document reflects changes made under a formula mandated by 38 U.S.C. 3015(h). Under this formula, the full-time rates of basic educational assistance payable to students under the Montgomery GI Bill—Active Duty (MGIB) program were required to be increased by the percentage by which the total monthly Consumer Price Index—W, for the 12-month period ending on June 30th preceding the fiscal year during which the increase is applicable, exceeds the Consumer Price Index—W for the 12-month period ending on June 30th preceding the previous fiscal year. Using this formula, VA calculated a 3 percent increase for fiscal year (FY) 2006 (October 1, 2005, through September 30, 2006), a 4 percent increase for FY 2007 (October 1, 2006, through September 30, 2007), and a 2.5 percent increase for the period in FY 2008 prior to August 1, 2008 (October 1, 2007, through July 31, 2008), the effective date of section 5004 of Public Law 110-252 (122 Stat. 2379). The full-time basic educational assistance rates in this document reflect increases in accordance with the aforementioned statutory formula.

It should be noted that the aforementioned increases do not affect all educational assistance payable under the MGIB. The increases apply only to

the basic educational assistance rate. The increases do not apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (also known as “kickers”). Also, veterans who previously had eligibility under the Veterans’ Educational Assistance Program (Vietnam Era GI Bill) receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased. In addition, the increases do not apply to additional amounts payable for dependents.

The provisions of 38 U.S.C. 3015(a) and (b) require that VA pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the MGIB in 1985, VA has paid three-quarter-time students and one-half-time students at 75 percent and 50 percent of the full-time institutional rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter time have had their payments limited to the prorated amount of tuition and fees not to exceed 50 percent of the full-time institutional rate. Similarly, students pursuing a program of education at one-quarter time or less have had their payments limited to the prorated amount of tuition and fees not to exceed 25 percent of the full-time institutional rate. Changes are made consistent with the authority and formula described in this paragraph.

The changes in §§ 21.7136 and 21.7137 in the MGIB monthly rates are applied retroactively to conform to statutory requirements, in accordance with the applicable statutory provisions discussed above. VA began paying the increased rates for FY 2006, FY 2007, and FY 2008 through July 31, 2008, effective for training pursued on or after October 1, 2005, October 1, 2006, and October 1, 2007, through July 31, 2008, respectively.

II. Increase in the Percentage Payable and Modification of the Formula Used To Calculate Entitlement Charge for Veterans Pursuing Apprenticeship or Other On-Job Training

The provisions of 38 U.S.C. 3032(c) require that veterans pursuing a full-time program of apprenticeship or other on-job training be paid a percentage of the basic educational assistance full-time monthly rate. Benefits for the first six months of training, the second six months of training, and the remainder of the program, are ordinarily payable under section 3032 at 75 percent, 55

percent, and 35 percent, respectively. However, the Veterans Benefits Improvement Act of 2004 (Pub. L. 108-454) temporarily increased the percentages payable for apprenticeship and other on-job training from 75 percent, 55 percent, and 35 percent to 85 percent, 65 percent, and 45 percent, respectively, after September 30, 2005, and before January 1, 2008. This final rule makes changes in §§ 21.7136(b)(2)(i) through (b)(2)(iii), (c)(2)(i) through (c)(2)(iii), (d)(4) through (d)(6), (f)(4), and (h)(2), and 21.7137(a)(2), consistent with the authority and formula described in this paragraph.

The Veterans Benefits Improvement Act of 2004 also modified the formula used to calculate entitlement charges for certain apprenticeship and other on-job trainees. Prior to October 1, 2005, veterans with 38 U.S.C. chapter 34 entitlement were charged a month of entitlement for each month they received educational assistance. The entitlement charge was based on the length of training rather than the amount received for training. The Veterans Benefits Improvement Act of 2004 mandated that chapter 34 entitlement charged for training pursued on or after October 1, 2005, be reduced proportionately by the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution. This final rule makes changes in § 21.7076(b)(4) consistent with the authority and formula described in this paragraph, applicable to training pursued on or after October 1, 2005.

VA began paying the increased percentages for veterans pursuing apprenticeship and other on-job training and using the aforementioned formula to calculate entitlement charge for training pursued on or after October 1, 2005, in accordance with the statutory provisions listed above.

This final rule also makes nonsubstantive changes in the 38 U.S.C. chapter 34 entitlement provisions intended to clarify that entitlement charges are charges for record purposes and not monetary charges.

III. Changes in § 21.4138 To Amend Delegations of Authority, Reflect Current Agency Organization, and Make Clarifying Changes; Authority for Continuation of Payment of Educational Assistance During Temporary School Closings

Our regulations prior to the changes made by this document granted the Director of the VA facility of jurisdiction for a school or schools affected by an emergency situation the authority to determine, applying the standards under § 21.4138(f), whether educational assistance is payable for breaks, including intervals between terms. In this document, we are amending those and other provisions in § 21.4138, Certifications and release of payments, to make changes in delegations of authority, reflect current agency organization, and make clarifying changes. Among the changes to reflect current agency organization, we use in § 21.4138(f) and in this preamble the term "VA Regional Processing Office of jurisdiction" rather than "VA facility of jurisdiction". Among the clarifying changes in § 21.4138(f), we change its heading to "Payments for intervals and temporary school closings" to better reflect its scope and similarly make changes in the text of § 21.4138(f) to better reflect the scope of its provisions, define *interval*, reorganize its provisions, and add headings within § 21.4138(f).

When hurricanes cause emergency school closings in the jurisdiction of more than one VA Regional Processing Office, it is possible for the director of each VA Regional Processing Office to make a different decision as to continuation of payments. In order to provide prompt and consistent emergency instructions to all offices, we are amending § 21.4138(f) to elevate to the Director, Education Service, VA Central Office, the authority to determine whether to continue payments during school closings when the reasons for the closings cause schools under the jurisdiction of more than one VA Regional Processing Office to close. The Director of the VA Regional Processing Office of jurisdiction will retain the authority to determine if payments may be continued for school closings that only affect schools within that Director's jurisdiction. The regulations do not authorize payment if in the judgment of the Director with jurisdiction the school closing will not be temporary.

Under current § 21.4138(f), the Director of the VA Regional Processing Office of jurisdiction has authority to continue payments during a temporary

closing caused by a strike by the faculty or staff of a school that does not exceed 30 days. After that authorization for payment, the Director, Education Service, has authority to determine whether to continue payments if the closing lasts more than 30 days. We are amending § 21.4138(f) to clarify that their respective authority to continue payments during a strike that results in a school closure applies regardless of whether or not the school's faculty or staff are on strike.

If a school disagrees with a determination of whether to authorize payments for the period of a school closure, an opportunity for a review by the Director, Education Service, is provided by current § 21.4138(f)(2)(i)(B). Our amendments to § 21.4138 add, in § 21.4138(f)(6)(ii), a delegation of authority to the Under Secretary for Benefits to review initial decisions as to continuation of payments made by the Director, Education Service.

IV. Miscellaneous Nonsubstantive Technical Changes for Purposes of Clarity and To Remove Obsolete Provisions

In 1996, VA amended 38 CFR 21.7136 by renumbering paragraphs (a) through (e) as paragraphs (b) through (f), respectively. The amendments to § 21.7136 were published February 22, 1996, in the **Federal Register** (61 FR 6780, 6788–6789). In that final rule, we neglected to update the references within newly-redesignated paragraph (f) from paragraph (e) to (f). We are amending § 21.7136(f) in this document to update the incorrect reference citations.

In 1996, VA removed 38 CFR 21.4205 governing absences, in a final rule published May 24, 1996, in the **Federal Register** (61 FR 26107–26117). In that final rule, we neglected to remove the references to § 21.4205 in §§ 21.4200(o) and 21.7140(d). This rule updates those two paragraphs as needed to reflect changes in our regulations.

In 2000, VA amended 38 CFR 21.7045, adding paragraph (d). The final rule was published February 7, 2000, in the **Federal Register** (65 FR 5785–5788). In that final rule, we neglected to update the introductory paragraph of § 21.7136(f) to include a reference to § 21.7045(d), which concerns alternative eligibility requirements for persons with eligibility under 38 U.S.C. chapter 32 to qualify for eligibility under 38 U.S.C. chapter 30. In 2003, we amended § 21.7045 to add paragraph (e), which includes additional alternative eligibility requirements for persons eligible under 38 U.S.C chapter 32 to qualify for eligibility under 38 U.S.C.

chapter 30. That final rule was published June 9, 2003, in the **Federal Register** (68 FR 34326–34332). In that final rule, we updated the introductory paragraph of § 21.7136(f) to add a reference to § 21.7045(e)(2), but we should have referred also to § 21.7045(d) and all of paragraph (e). This document makes that necessary amendment to the introductory paragraph of § 21.7136(f).

In the same 2003 final rule, we amended 38 CFR 21.4138(f), "Payment for intervals between terms." The

SUPPLEMENTARY INFORMATION section of that final rule stated that changes made in that rule to § 21.4138(f) are applicable to MGIB, Survivors' and Dependents' Educational Assistance Program, Veterans Educational Assistance Program, and Montgomery GI Bill—Selected Reserve benefits and said that it would be applicable to the MGIB under § 21.7140 (66 FR at 34327). In that final rule, we neglected to amend § 21.7140. Changes were needed to assure that the amended provisions in § 21.4138(f) would be clearly applicable to MGIB benefits. This document amends § 21.7140(d) for purposes of clarity, to remove redundant provisions, to conform with § 21.4138(f) and, as we discuss above with respect to its obsolete citation of § 21.4205, to reflect changes in our regulations.

In 2006, VA amended § 21.7139, in a final rule published December 18, 2006, in the **Federal Register** (71 FR 75672, 74678–75679). We erroneously referred in § 21.7139(f)(1)(i) to § 21.7136(b)(5) through (b)(8) and (c)(5) through (c)(8) and to § 21.7137(a)(5) through (a)(8), which our regulations did not then contain. We had intended instead to refer to § 21.7136(b)(2) and (c)(2) and to § 21.7137(a)(2). This document revises § 21.7139(f)(1)(i) to reflect the appropriate cross-references in conformance with this document's changes to §§ 21.7136 and 21.7137. Those are the same references that have been appropriate since December 18, 2006.

Administrative Procedure Act

The changes made by this final rule merely are procedural rules, interpretive rules, nonsubstantive changes, or matters of agency organization and management, or they reflect statutory requirements and adjustments made based on previously established formulas. These changes are exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553(b) and (d).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits

of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In 38 CFR 21.4138(f)(6), there are provisions for a school disagreeing with VA’s decision as to continuation of payments of educational assistance for periods of emergency closings to request an administrative review in writing. However, those provisions do not constitute a collection of information under the Act because they concern information collected from fewer than 10 persons annually. VA has received no such requests since at least 1993.

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 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. While some of its provisions in § 21.4138(f)(6) as to emergency school closings may affect small entities, any effect on small entities would be minuscule. 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 of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this final rule are 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans’ Educational Assistance; and 64.124, All-Volunteer Force Educational Assistance. This final rule also affects the Montgomery GI Bill—Selective Reserve program, for which there is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, 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: October 27, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

- For the reasons stated above, the Department of Veterans Affairs amends 38 CFR part 21 (subparts D, K, and L) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

- 1. Revise the authority citation for part 21, subpart D to read as follows:

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

- 2. Amend § 21.4138 by:
 - a. Adding introductory text.
 - b. In paragraph (a)(1)(iv), removing “field facility” and adding, in its place, “Regional Processing Office”.
 - c. In paragraph (a)(4) introductory text, removing “field station” and adding, in its place, “Regional Processing Office”.
 - d. Revising paragraph (f).

The addition and revision read as follows:

§ 21.4138 Certifications and release of payments.

For the purposes of this section, the Manila Regional Office is considered the VA Regional Processing Office of jurisdiction for educational assistance allowance claims processed under 38 U.S.C. chapter 35 for educational institutions located in the Philippines.

* * * * *

(f) *Payment for intervals and temporary school closings.* VA may authorize payment 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 (f)(1) through (f)(5) of this section concerning intervals and in paragraph (f)(6) 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).)

(1) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (f)(2) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (f)(3), (f)(4), and (f)(5) 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.

(2) *Restrictions on payment for intervals.* VA will make no payment for an interval if:

- (i) The student is training at less than the half-time rate on the last day of training during the term, quarter, semester, or summer term preceding the interval;
- (ii) The student is on active duty;

(iii) The student requests, prior to authorization of an award or prior to negotiating the check, that no benefits be paid for the interval period;

(iv) The student's entitlement applicable to such payment will be exhausted by receipt of such payment, and it is to the advantage of the student not to receive payment;

(v) The interval occurs between school years at a school that is not organized on a term, quarter, or semester basis;

(vi) The student 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 a school not organized on a term, quarter, or semester basis; or

(vii) The student receives an accelerated payment for the term, quarter, semester, or summer session preceding the interval.

(3) *Payment for interval between periods of enrollment at different schools.* If the student transfers from one approved school for the purpose of enrolling in and pursuing a similar course 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 course at the second school, VA may not make payments for the interval.

(4) *Payment for intervals that occur at the same school.* (i) If the student remains enrolled at the same school, VA may make payment for an interval which does not exceed 8 weeks and which occurs between:

(A) Semesters or quarters,

(B) A semester or quarter and a term that is at least as long as the interval,

(C) A semester or quarter and a summer term that is at least as long as the interval,

(D) Consecutive terms (other than semesters or quarters) provided that both terms are at least as long as the interval, or

(E) A term and summer term provided that both the term and the summer term are at least as long as the interval.

(ii) If the student 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. 3680)

(5) *Payment for intervals that occur between overlapping enrollments.* (i) 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 what dates the interval and enrollment periods will be considered to begin and end, as follows:

(A) By treating the ending date of each enrollment period as though it were the student's last date of training before the interval,

(B) By treating the beginning date of each enrollment period as though it were the student's first date of training after the interval,

(C) By examining the interval payment that would be made to the student on the basis of the various combinations of beginning and ending dates, and

(D) 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.

(ii) VA will not reduce the interval rate of payment as a result of training the student may take during the interval, but VA will increase the interval rate of payment if warranted by such training.

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

(6) *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 paragraphs (f)(2) through (f)(5) of this section to determine if payment may be continued during the interval.

(i) If payment would not be inconsistent with the provisions of paragraphs (f)(2) through (f)(5) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if, in the judgment of the VA official specified in this paragraph, 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:

(A) The Director of the VA Regional Processing Office of jurisdiction if:

(1) 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

(2) If the reason for the closing is a strike, the strike has lasted 30 days or less and is not anticipated to last more than 30 days.

(B) The Director, Education Service if:

(1) 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

(2) The reason for the closing is a strike and the strike lasts, or is anticipated to last, more than 30 days.

(ii) A school that disagrees with a decision made under paragraph (f)(6) 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—

(A) Director, Education Service, if the Director of the VA Regional Processing Office of jurisdiction made the initial decision to continue or discontinue payments.

(B) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments.

(Authority: 38 U.S.C. 512, 3680(a))

* * * * *

§ 21.4200 [Amended]

■ 3. Amend § 21.4200(o)(2) by removing “under § 21.4205 for payment during a holiday vacation” and adding, in its place, “for payment but whose work is interrupted by a holiday vacation as defined in § 21.7020(b)(16).”

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

■ 4. Revise the authority citation for part 21, subpart K, to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, and as noted in specific sections.

■ 5. Amend § 21.7076 by:

■ a. In paragraph (b)(3) introductory text, adding “38 U.S.C.” immediately preceding “chapter 30”.

■ b. Revising paragraph (b)(4).

The revision reads as follows:

§ 21.7076 Entitlement charges.

* * * * *

(b) * * *

(4) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, including any month in which the veteran fails to complete 120 hours of training, VA will make a record-purpose charge against 38 U.S.C. chapter 34 entitlement, if any, as follows:

(i) For training that occurs before October 1, 2005, VA will reduce 38 U.S.C. chapter 34 entitlement by one month for each month of benefits paid.

(ii) For training that occurs on or after October 1, 2005, VA will reduce 38 U.S.C. chapter 34 entitlement proportionately based on the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution.

(Authority: 38 U.S.C. 3015(e), 3032(c), 3687; sec. 102, Pub. L. 108-454, 118 Stat. 3600)

* * * * *

■ 6. Amend § 21.7136 by:

- a. Revising paragraphs (b), (c)(1), (c)(2), (c)(3), (d)(4), (d)(5), (d)(6), (f)(4), and (h)(2); and revising the authority citation immediately following paragraph (h)(3).
- b. In paragraph (f) introductory text, removing “or (e)(2)” and adding, in its place, “(d), or (e)”.
- c. In paragraph (f)(2), removing “(e)(2)(i)” each place that it appears, and adding, in its place, “(f)(2)(i)” and in paragraph (f)(2)(i) removing “(e)(1)” and adding, in its place “(f)(1)”.
- d. In paragraph (f)(3), removing “(e)(2)(i)” and adding, in its place, “(f)(2)(i)”.

The revisions read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) **Rates.** (1) Except as elsewhere provided in this section or in § 21.7139, basic educational assistance is payable to a veteran whose service is described in paragraph (a) of this section at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training	Monthly rate
Full time	\$1034.00
¾ time	775.50
½ time	517.00
Less than ½ but more than ¼ time	517.00
¼ time	258.50

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

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training	Monthly rate
Full time	\$1075.00
¾ time	806.25
½ time	537.50

Training	Monthly rate
Less than ½ but more than ¼ time	537.50
¼ time	268.75

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

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Training	Monthly rate
Full time	\$1101.00
¾ time	825.75
½ time	550.50
Less than ½ but more than ¼ time	550.50
¼ time	275.25

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

(2) If a veteran’s service is described in paragraph (a) of this section, basic educational assistance is payable to the veteran for pursuit of apprenticeship or other on-job training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training period	Monthly rate
First six months of training	\$878.90
Second six months of training	672.10
Remaining pursuit of training	465.30

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

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training period	Monthly rate
First six months of training	\$913.75
Second six months of training	698.75
Remaining pursuit of training	483.75

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

(iii) For training that occurs after September 30, 2007, and before January 1, 2008:

Training period	Monthly rate
First six months of training	\$935.85
Second six months of training	715.65
Remaining pursuit of training	495.45

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

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

Training period	Monthly rate
First six months of training	\$825.75
Second six months of training	605.55
Remaining pursuit of training	385.35

(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 to the veteran for pursuit of a cooperative course is—

(i) \$1034.00 for training that occurs after September 30, 2005, and before October 1, 2006;

(ii) \$1075.00 for training that occurs after September 30, 2006, and before October 1, 2007; and

(iii) \$1101.00 for training that occurs after September 30, 2007, and before August 1, 2008.

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

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, basic educational assistance is payable to a veteran at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training period	Monthly rate
Full time	\$840.00
¾ time	630.00
½ time	420.00
Less than ½ but more than ¼ time	420.00
¼ time or less	210.00

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

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training period	Monthly rate
Full time	\$873.00
¾ time	654.75
½ time	436.50
Less than ½ but more than ¼ time	436.50
¼ time or less	218.25

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

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Training period	Monthly rate
Full time	\$894.00
¾ time	670.50
½ time	447.00
Less than ½ but more than ¼ time	447.00

Training period	Monthly rate
1/4 time or less	223.50

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

(2) Basic educational assistance is payable to a veteran for pursuit of apprenticeship or other on-job training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training period	Monthly rate
First six months of training	\$714.00
Second six months of training	546.00
Remaining pursuit of training	378.00

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

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training period	Monthly rate
First six months of training	\$742.05
Second six months of training	567.45
Remaining pursuit of training	392.85

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

(iii) For training that occurs after September 30, 2007, and before January 1, 2008:

Training period	Monthly rate
First six months of training	\$759.90
Second six months of training	581.10
Remaining pursuit of training	402.30

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

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

Training period	Monthly rate
First six months of training	\$670.50
Second six months of training	491.70
Remaining pursuit of training	312.90

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

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is

(i) \$840.00 for training that occurs after September 30, 2005, and before October 1, 2006;

(ii) \$873.00 for training that occurs after September 30, 2006, and before October 1, 2007; and

(iii) \$894.00 for training that occurs after September 30, 2007, and before August 1, 2008.

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

* * * * *

(d) * * *

(4) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing an apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed \$300 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$340 per month.

(ii) During the second 6 months of training the increase may not exceed \$220 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$260 per month.

(iii) During the remaining months of training the increase may not exceed \$140 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$180 per month.

(5) For individuals who first become members of the Armed Forces during the period beginning November 29, 1989, and ending September 30, 1998, and who are pursuing an apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed \$525 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$595 per month.

(ii) During the second 6 months of training the increase may not exceed \$385 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$455 per month.

(iii) During the remaining months of training the increase may not exceed \$245 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$315 per month.

(6) For individuals who first become members of the Armed Forces after September 30, 1998, and who are pursuing apprenticeship or other on-job training, the increase may not exceed the rates shown below:

(i) During the first 6 months of training the increase may not exceed

\$712.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$807.50 per month.

(ii) During the second 6 months of training the increase may not exceed \$522.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$617.50 per month.

(iii) During the remaining months of training the increase may not exceed \$332.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$427.50 per month.

(Authority: 38 U.S.C. 3015, 3032; sec. 103, Pub. L. 108-454, 118 Stat. 3600)

* * * * *

(f) * * *

(4) For a veteran pursuing a program of apprenticeship or other on-job training—

(i) During periods before October 1, 2005, and after December 31, 2007, VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section—

(A) By .75 for a veteran in the first six months of pursuit of training, (B) By .55 for a veteran in the second six months of pursuit of training, or

(C) By .35 for a veteran in the remaining months of pursuit of training.

(ii) During the period beginning October 1, 2005, and ending December 31, 2007, VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section—

(A) By .85 for a veteran in the first six months of pursuit of training,

(B) By .65 for a veteran in the second six months of pursuit of training, or

(C) By .45 for a veteran in the remaining months of pursuit of training.

(Authority: 38 U.S.C. 3015(e); sec. 103, Pub. L. 108-454, 118 Stat. 3600)

* * * * *

(h) * * *

(2) If a veteran is pursuing apprenticeship or other on-job training—

(i) During periods before October 1, 2005, and after December 31, 2007, VA will increase the veteran's monthly educational assistance that is otherwise payable—

(A) During the first 6 months of pursuit of training, by \$3.75 for every \$20 the veteran contributed, (B) During the second 6 months of pursuit of training, by \$2.75 for every \$20 the veteran contributed, or

(C) During the remaining months of the veteran's pursuit of training, by

\$1.75 for every \$20 the veteran contributed.

(ii) During the period beginning October 1, 2005, and ending December 31, 2007, VA will increase the veteran's monthly educational assistance that is otherwise payable—

(A) During the first 6 months of pursuit of training, by \$4.25 for every \$20 the veteran contributed,

(B) During the second 6 months of pursuit of training, by \$3.25 for every \$20 the veteran contributed, or

(C) During the remaining months of the veteran's pursuit of training, by \$2.25 for every \$20 the veteran contributed.

* * * *

(3) * * *

(Authority: 38 U.S.C. 3015(g); sec. 103, Pub. L. 108-454, 118 Stat. 3600)

* * * *

■ 7. Amend § 21.7137 by revising paragraphs (a) and (c) to read as follows:

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

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, basic educational assistance is payable to individuals with remaining entitlement under 38 U.S.C. chapter 34 at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	\$1222.00	\$1258.00	\$1289.00	\$16.00
¾ time	917.00	943.50	967.00	12.00
½ time	611.00	629.00	644.50	8.50
Less than ½ but more than ¼ time	611.00	611.00	611.00	0
¼ time or less	305.50	305.50	305.50	0

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

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	\$1263.00	\$1299.00	\$1330.00	\$16.00
¾ time	947.75	974.25	997.75	12.00
½ time	631.50	649.50	665.00	8.50
Less than ½ but more than ¼ time	631.50	631.50	631.50	0
¼ time or less	315.75	315.75	315.75	0

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

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	\$1289.00	\$1325.00	\$1356.00	\$16.00
¾ time	967.25	993.75	1017.25	12.00
½ time	644.50	662.50	678.00	8.50
Less than ½ but more than ¼ time	644.50	644.50	644.50	0
¼ time or less	322.25	322.25	322.25	0

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

(2) For veterans pursuing apprenticeship or other on-job training,

basic educational assistance is payable for training at the following monthly rates:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	\$995.35	\$1009.38	\$1021.70	\$5.95
2nd six months of pursuit of program	738.73	749.78	758.88	4.55
3rd six months of pursuit of program	495.90	503.78	509.85	3.15
Remaining pursuit of program	480.60	488.03	494.78	3.15

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

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	\$1030.20	\$1044.23	\$1056.55	\$5.95
2nd six months of pursuit of program	765.38	776.43	785.53	4.55
3rd six months of pursuit of program	514.35	522.23	528.30	3.15
Remaining pursuit of program	499.05	506.48	513.23	3.15

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

(iii) For training that occurs after September 30, 2007 and before January 1, 2008:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	\$1052.30	\$1066.33	\$1078.65	\$5.95
2nd six months of pursuit of program	782.28	793.33	802.43	4.55
3rd six months of pursuit of program	526.05	533.93	540.00	3.15
Remaining pursuit of program	510.75	518.18	524.93	3.15

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

(iv) For training that occurs after December 31, 2007, and before August 1, 2008:

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	\$928.50	\$940.88	\$951.75	\$5.25
2nd six months of pursuit of program	661.93	671.28	678.98	3.85
3rd six months of pursuit of program	409.15	415.28	420.00	2.45
Remaining pursuit of program	397.25	403.03	408.28	2.45

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

(3) The monthly rate of basic educational assistance payable to a veteran who is pursuing a cooperative course is the rate stated in the following tables:

(i) For training that occurs after September 30, 2005, and before October 1, 2006:

Monthly rate			
No dependents	One dependent	Two dependents	Additional for each additional dependent
\$1222.00	\$1258.00	\$1289.00	\$16.00

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

(ii) For training that occurs after September 30, 2006, and before October 1, 2007:

Monthly rate			
No dependents	One dependent	Two dependents	Additional for each additional dependent
\$1263.00	\$1299.00	\$1330.00	\$16.00

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

(iii) For training that occurs after September 30, 2007, and before August 1, 2008:

Monthly rate			
No dependents	One dependent	Two dependents	Additional for each additional dependent
\$1289.00	\$1325.00	\$1356.00	\$16.00

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

* * * * *

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

(1) The monthly rate stated in paragraph (a) of this section; or

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable.

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

* * * * *

■ 8. Amend § 21.7139 by revising paragraph (f)(1)(i) to read as follows:

§ 21.7139 Conditions which result in reduced rates or no payment.

* * * * *

(f) * * *

(1) * * *

(i) The rates specified in §§ 21.7136(b)(2), (c)(2), (d)(4) through (d)(6), (f)(4), and (h)(2) and 21.7137(a)(2); and

* * * * *

■ 9. Amend § 21.7140 by revising paragraph (d) to read as follows:

§ 21.7140 Certifications and release of payments.

* * * * *

(d) *Payment for intervals and temporary school closings.* In administering 38 U.S.C. chapter 30, VA will apply the provisions of § 21.4138(f) when determining whether an individual is entitled to payment for an interval or temporary school closing.

(Authority: 38 U.S.C. 3034, 3680)

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 10. Revise the authority citation for part 21, subpart L to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36 and as noted in specific sections.

■ 11. Amend § 21.7640 by:

■ a. Revising the heading for paragraph (b).

■ b. In paragraph (b), removing “a break, including an interval between terms” and adding, in its place, “an interval or temporary school closing”. The revision reads as follows:

§ 21.7640 Release of payments.

* * * * *

(b) *Payment for intervals and temporary school closings.* * * *

* * * * *

[FR Doc. E8-26176 Filed 10-31-08; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R02-OAR-2008-0308; FRL-8731-2]

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on July 7, 2008. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be promulgated into part 55 and updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the State of New Jersey. The intended effect of approving the OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Effective Date: This rule is effective on December 3, 2008.

This incorporation by reference of certain publications listed in this rule is

approved by the Director of the Federal Register as of December 3, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2008-0308. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT:

Steven Riva, Air Programs Branch, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007; telephone number: (212) 637-4074; e-mail address: riva.steven@epa.gov.

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I. Background Information

Throughout this document, the terms “we,” “us,” and “our” refer to the U.S. EPA.

On September 4, 1992, EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and State ambient air quality standards (AAQS) and to comply with the provisions of part C of title I of the CAA. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude.

On July 7, 2008 (73 FR 38356), EPA proposed to approve requirements into

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.