

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AN10

Post-9/11 GI Bill

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this final rule to establish regulations regarding a new educational assistance program for individuals who serve on active duty after September 10, 2001. The new program, known as the Post-9/11 GI Bill, was authorized by title V of the Supplemental Appropriations Act, 2008 (Post-9/11 Veterans Educational Assistance Act of 2008). This final regulation includes the rules necessary to implement the provisions of the Post-9/11 Veterans Educational Assistance Act of 2008 that govern the Post-9/11 GI Bill.

DATES: *Effective Date:* This final rule will become effective on August 1, 2009.

FOR FURTHER INFORMATION CONTACT: Brandye R. Terrell, Regulation Development Team Leader, Education Service, Department of Veterans Affairs (225C), 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 461-9822. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on December 23, 2008 (73 FR 78876), VA published a proposal to establish VA regulations to implement the provisions of the Post-9/11 Veterans Educational Assistance Act of 2008 that govern the Post-9/11 GI Bill. Interested persons were invited to submit written comments on or before January 22, 2009. We received comments from 38 organizations and 8 individuals. We have made several changes based on these comments.

Eligibility

One commenter stated that the period of eligibility for retirees is not specifically addressed and noted that there is no definition of "retiree" in title 38, CFR. We did not define the term "retiree" or address retirees as a separate category in the regulation because an individual's period of eligibility is based on factors unrelated to the individual's status as a retiree. The period of eligibility for all individuals entitled to Post-9/11 GI Bill benefits is provided in § 21.9530. If the individual meets the eligibility requirements, the 15-year period of

eligibility begins on the last date of discharge, without regard to the reason for separation, even if the individual was discharged prior to August 1, 2009, the effective date of the program.

We received three comments on the eligibility of members of the National Guard or Active Guard Reserve (AGR) serving on active duty under title 32, U.S.C. One commenter requested that these members be allowed to transfer Post-9/11 GI Bill benefits to their dependents. One commenter also suggested that any service under orders lasting 30 days or more that cite use of Operation Iraqi Freedom, Operation Enduring Freedom, or Operation Noble Eagle funds should be considered active duty for the purpose of the Post-9/11 GI Bill. Section 3301 of title 38, U.S.C., defines "active duty" as having the same meaning given such term in 38 U.S.C. 101(21)(A) for members of the regular components of the Armed Forces. This paragraph states that active duty means full-time duty in the Armed Forces, other than active duty for training. Active Duty is further defined in 38 U.S.C. 3301(1) to include a call or order to active duty under specific title 10 sections of the U.S. Code for members of the reserve components of the Armed Forces. Neither of the statutory definitions for active duty under section 3301(1) includes members of the National Guard or Active Guard Reserve serving under title 32, U.S.C.; therefore, we are unable to authorize eligibility for these individuals.

One commenter requested clarification on why commissioned officers of the Public Health Service (PHS) are excluded from eligibility for Post-9/11 GI Bill benefits. Another commenter requested a review of 42 U.S.C. 213(d) to determine if PHS officers qualify for the new benefit and suggested National Oceanic and Atmospheric Administration (NOAA) officers also be included as eligible. We agree that commissioned officers of PHS and NOAA are eligible for benefits under the Post-9/11 GI Bill. In a digested opinion from 1985, our General Counsel read the provisions of 42 U.S.C. 213 regarding PHS and 33 U.S.C. 857-1 and 857-3 (now in 33 U.S.C. 3002 and 3072, respectively) regarding NOAA as expanding the definition of "Armed Forces" in 38 U.S.C. 101(10) to also include PHS and NOAA for purposes of benefits administered by VA. *See* VADIGOP, 6-26-85 (8-28 Reentry in Active Service). Therefore, service as a commissioned officer of PHS or NOAA meets the "active duty in the Armed Forces" service requirement in section 3311 of title 38, U.S.C.

Transfer of Entitlement

Two commenters requested that retirees be allowed to transfer benefits to dependents. Two additional commenters wanted individuals to be allowed to transfer benefits to dependents even if they were unable to reenlist, or without their having to reenlist, if they met the minimum service requirements. While VA is responsible for administering payment of transferred benefits, the Department of Defense (DoD) is responsible for determining eligibility for transfer of entitlement to dependents. Specifically, the statute provides that the Secretary of Defense may authorize the Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, and the Secretary of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy) to determine if individuals serving in the Armed Forces in their respective departments are eligible to transfer entitlement to dependents. As VA has no authority to determine eligibility for transfer of entitlement of educational assistance under the Post-9/11 GI Bill, individuals inquiring about eligibility for transfer of entitlement should contact DoD for information.

One commenter requested that VA clarify what happens to entitlement that was transferred under the Montgomery GI Bill (MGIB) if the transferor does not revoke the transferred entitlement before electing to receive benefits under the Post-9/11 GI Bill. Entitlement that was transferred under MGIB and not revoked prior to the transferor's election of Post-9/11 GI Bill benefits will remain available to the dependent to whom it was transferred. Dependents will remain eligible for transferred benefits under the provisions of the chapter from which benefits were transferred.

One commenter disagreed with the exclusion of transferred benefits as marital property. We made no change to this rule in the final regulation because 38 U.S.C. 3319(f)(3) prohibits the treatment of transferred entitlement as marital property.

We received one comment suggesting we specify the time limit for which dependents eligible for transferred entitlement may use their benefit. We make no change based on this comment as the period of eligibility for use of transferred benefits is listed in 38 CFR 21.9530, in paragraph (d) for spouses and in paragraph (e) for children.

One commenter recommended removing the kicker exclusion from the rate of payment for transferred benefits because there is no statutory provision limiting its payment to the dependent.

We agree that there is no statutory reason why kickers should not be paid to transferees. The Selected Reserve kicker is excluded under MGIB. In trying to be consistent, we excluded kickers from the Post-9/11 GI Bill also. While we intended to only exclude the Selected Reserve kicker, we inadvertently excluded all kickers. However, after reviewing the transfer-of-entitlement language used under MGIB and the Post-9/11 GI Bill, we find that, while the MGIB language is more restrictive and specifically pinpoints the section under which payments should be determined, the language in the Post-9/11 GI Bill is broader and simply says that individuals should receive the amount that the transferor would receive. Based on this language, we have changed the rate of payment for transferred benefits under the Post-9/11 GI Bill to include any kicker to which the transferor is entitled.

Another commenter suggested we clarify that “veteran rate” as used in 38 CFR 21.9570(k) means the dependent is eligible for the housing allowance. We do not agree that this term needs clarification. The term dependent is used to refer to both an eligible child and an eligible spouse or surviving spouse. A dependent child and surviving spouse will always receive transferred benefits in the same manner as an individual off active duty. This means that they will be eligible to receive the housing allowance if all other criteria are met. However, a dependent spouse will always receive benefits in the same manner as the transferor, thus he or she will not be eligible for the monthly housing allowance if the transferor is on active duty.

We received one comment suggesting we add reduction in force (RIF) to the list in 38 CFR 21.9570(l) of exceptions to the requirement that the transferor complete the service agreement that allowed the transferor to participate in the transferability program. We contacted DoD for clarification of what constitutes completion of a service agreement. DoD considers any individual released due to a disability or as a result of RIF to have completed his or her service agreement. Therefore, we amended the final rule to clarify that release due to a disability or as a result of RIF constitutes completion of the service agreement, and therefore does not result in loss of transferred entitlement for the transferor’s dependents.

One commenter recommended allowing spouses to use their own Post-9/11 GI Bill benefits in addition to transferred benefits under the Post-9/11

GI Bill. We make no changes based on this comment since paragraph (m) of § 21.9570 states that all dependents may do this. The definition of dependent includes a spouse. Thus, spouses and children are both covered under this section. Spouses may use their own Post-9/11 GI Bill benefits and/or their transferred benefits.

Another commenter requested that the extension of entitlement provided in § 21.9635(o) be applied to a transferee if the transferor only transfers entitlement to one person. We do not agree to make this change because 38 U.S.C. 3319(d) specifically indicates that transferred entitlement may not exceed 36 months. Allowing an extension of entitlement for transferees would be a direct violation of the statute.

One commenter disagreed with the definition of “child” used in the proposed regulation. The commenter indicated that by adopting the definition of child as it is defined in § 3.57 (under the age of 18 or, if they are enrolled in school, under the age of 23), VA is defining the term narrower than required by legislation. The commenter recommended VA define child without the age requirements and, in addition, not make a distinction between a child and a foster child or stepchild.

Based on the definitions of child and spouse in the proposed regulation, DoD also expressed concern with regard to the loss of transferred entitlement for dependents who were deemed eligible for the program at the time of transfer, but who lost this eligibility based on their status at a later date. They contend that Post-9/11 GI Bill benefits belong to the veteran/servicemember and not the dependent. They base this on the provisions in 38 U.S.C. 3319(f) that allow the transferor to modify or revoke the transferred entitlement at any time within the transferor’s 15-year eligibility period. DoD suggested VA apply the definitions of “spouse” and “child” effective the date of the transfer and disregard the dependent’s status at the point the dependent utilizes the benefits.

We agree, in part, with these concerns and made clarifying changes in the final rule. A transferor may elect to transfer his or her entitlement to his or her child, but at the time of the designation the child must still meet the 38 U.S.C. 101(4) definition of “child,” *i.e.*, a legitimate child, a legally adopted child, a stepchild, or an illegitimate child, as those terms are explained in 38 CFR 3.57, and who is unmarried and under age 18, was permanently incapable of self-support before reaching age 18, or after attaining the age of 18 years and until completion of education or

training (but not after attaining the age of 23 years) is pursuing a course of instruction at an approved educational institution. Thereafter, the child’s subsequent marriage will not affect his or her entitlement. Finally, a child may continue to use entitlement so transferred until reaching age 26. If a transferor elects to transfer his or her entitlement to a spouse, a subsequent divorce will not affect the transferee’s entitlement; however, the transferor retains the right to revoke or modify the transfer at any time.

Enrollment Certification

We received three comments requesting clarification on whether schools will be required to report the cost of dropped courses in order for VA to properly judge whether or not there has been an overpayment. One of the commenters asked if there will be a time limit for any refunds due to VA. We make no changes based on these comments. Schools are required to report the established charges associated with an individual’s enrollment and, in the event an individual reduces the number of courses he or she is enrolled in, the established charges for the courses in which he or she remains enrolled. This process is the same process that is used in other educational assistance programs to certify enrollments and reductions of individuals training at less than one-half time or who are on active duty.

Furthermore, similar to existing procedures for other educational assistance programs, individuals will still be responsible for negotiating repayment of debts with our Debt Management Center or have money recouped from future payments. Schools that are required to return funds to VA, regardless of the reason, will send the money back electronically or send a payment to the Regional Processing Office’s agent cashier.

We received two related comments regarding which charges should be reported to VA and whether VA will require certification of actual tuition and fees or estimated tuition and fees. One commenter stated that actual tuition and fees cannot be provided until an individual is invoiced and would require that schools certify each term separately. One commenter also requested clarification on whether fees should be reported regardless of pending aid, scholarships, state grants, etc. We make no changes based on these comments. The institution of higher learning must certify the eligible individual’s enrollment before he or she may receive educational assistance and 38 U.S.C. 3313(h)(2) requires that VA

pay based on the actual tuition and fees charged to the student. Schools will be required to report actual tuition and fees in accordance with the statute.

One commenter requested that VA clarify the regulation to state that term-based institutions operating on a year-round basis should report on the same basis as other term-based institutions. We revised the language in paragraph (b) of § 21.9720 to clarify that institutions of higher learning organized on a year-round basis will report on the same basis as term-based institutions unless they do not offer courses on a term, quarter, or semester basis, in which case they will report enrollment for the length of the course.

Payments

One commenter indicated there currently is an approved apprenticeship program at an institution of higher learning and requested clarification on whether this program is payable under the Post-9/11 GI Bill. We cannot pay benefits for an apprenticeship or on-the-job training program at an institution of higher learning acting in the capacity of an employer. In order to be approved for Post-9/11 GI Bill benefits, individuals must be pursuing an approved program of education offered at an institution of higher learning. Section 21.4258(b)(iv), 38 CFR requires that institutions of higher learning list all approved programs of education in their catalog. If the program of education is offered by the institution of higher learning and is approved for the purposes of 38 U.S.C. chapter 30, VA will make the appropriate payment. Apprenticeship and on-the-job training programs are offered by employers and are generally not available to the entire student population. We have clarified the definition of "program of education" to state that "the curriculum or combination of courses pursued must be listed in the institution of higher learning's catalog and included in the approval notice provided by the State approving agency to VA in accordance with § 21.4258(b)(iv)."

Three commenters recommended expanding the advance payment option to include all educational assistance offered under the Post-9/11 GI Bill rather than limiting it to just the monthly housing allowance. Section 3680(d) of title 38, U.S.C., limits the amount of an advance payment to an amount equal to the first month, or fraction thereof, in which the individual is pursuing training plus the amount for the subsequent month of training. Under the Post-9/11 GI Bill, VA is required to pay the tuition and fees, books and supplies stipend, and other payments

(e.g., rural relocation, licensing or certification test reimbursement) in a lump sum. As a result, we are unable to apply the advance payment provisions to such lump-sum payments.

Overpayments

We received three comments asking whether individuals who withdraw as a result of being called to active duty will be required to repay benefits. One of the commenters also asked whether the school will be required to return the funds if an individual is called to active duty. We make no changes based on these comments. Individuals who withdraw as a result of being called to active duty will not have to repay tuition and fees, Yellow Ribbon Program contributions, or the book stipend. If they are in receipt of the housing allowance, it will be discontinued at the end of the month in which the withdrawal occurred. If the school processes a refund for tuition and/or fees, it should be issued to the student following the regularly prescribed standards and practices of the institution.

One commenter proposed that the institution of higher learning be responsible for making a refund to VA when the student does not register for a class certified in advance of the registration period, and for which the institution received tuition and fees on behalf of the student. We agree with this comment and have clarified in § 21.9695(b) that an overpayment of educational assistance paid to the institution of higher learning on behalf of an eligible individual constitutes a liability of the individual unless the individual never attended the term, quarter, or semester certified by the institution of higher learning. When an individual never attends a term, quarter, or semester certified by the institution of higher learning, the institution must return to VA all educational assistance received under the provisions of 38 U.S.C. chapter 33 on behalf of the individual.

Two commenters wanted to know why individuals will be held accountable for repayment of tuition and fees if the money is sent directly to the school, especially since individuals in VA's Vocational Rehabilitation and Employment Program are not required to make repayment of tuition and fees. We make no changes in the final rule based on this comment, but we are providing the following clarification concerning this issue. Section 3313(a) of title 38, U.S.C., states that the Secretary shall pay to each individual entitled to educational assistance the amounts specified in subsection (c) to meet the

expenses of such individual's subsistence, tuition, fees, and other costs for pursuit of such program of education. Paragraph (g) of that section subsequently directs that payment of the tuition and fees be made directly to the institution of higher learning; however, it is clear that the benefit and the associated responsibilities belong to the individual.

Additionally, the authority to establish an overpayment against a school is limited by statute, per 38 U.S.C. 3685(b), to instances where the Secretary finds that an overpayment has been made to a veteran or eligible person as the result of willful or negligent failure to report or false certification. Therefore, unless an overpayment results from the actions or inactions described in section 3685(b), VA cannot collect from the school amounts of tuition and fees that were properly paid on behalf of the individual.

Conversely, if VA makes an erroneous or improper payment not resulting from the negligent or willful actions or inactions on the part of a school, the erroneous or improper payment may be recovered from the receiver. This situation may arise if a school certifies an individual for multiple terms but the individual does not attend all of the terms certified. Section 21.4203 of title 38, CFR provides that schools shall report without delay a change in enrollment. If VA issues a tuition and fees payment to the school on behalf of an individual for a term that the individual never attends VA will collect the full amount of the payment from the school.

One commenter suggested § 21.9695(b)(3) be revised to clarify that if an individual does not complete one or more courses, but does complete at least one course, that the individual will not have an overpayment equaling the total amount of all educational assistance paid, but rather only for the course or courses the individual did not complete. Based on this comment, we clarified this section to indicate that if a student withdraws from a course or courses, the overpayment will only be established for the course or courses from which the student withdraws, not the amount of all educational assistance for that enrollment period.

One commenter requested clarification of how an "incomplete" grade designation, for which the individual is given additional time to finish a course, will be treated and whether it will be considered an overpayment. We agree this issue should be addressed in the final rule, and have added a paragraph to

§ 21.9635(f) clarifying that if the institution of higher learning records an incomplete grade for an individual's course (or courses) and allows the individual additional time to complete the coursework, VA will not create an overpayment for those course(s) unless one of the following occurs: The individual fails to complete the course within the regularly prescribed standards of the institution or one year from the date the incomplete was assigned, whichever is earlier, or the individual is permanently assigned a nonpunitive grade.

One commenter requested that schools be required to refund money to VA that would otherwise normally be refunded to the student based on the school's refund policy. We make no changes based on this comment. Institutions of higher learning have refund policies individualized to their institutions and students would not know when or if a refund was sent to VA. Additionally, VA will determine the amount of the student's overpayment, if any, after processing the change in enrollment. The amount the school refunds to the student and the amount the student owes to VA will generally not be equal as VA will pay to the end of the month for any reduction during the drop add period or for which the student provides evidence of mitigating circumstances. To reduce confusion on how much is owed and to whom, schools should continue to refund money to students based on their regularly established policies.

Tuition and Fees

Two commenters requested clarification on why, in § 21.9640(a), the 70 percent level would apply instead of the 80 percent level if the individual met the service requirements at both levels. One of the commenters suggested removing the requirement to use the 70 percent level instead of the 80 percent level because it is not justified legislatively. We do not agree to make this change because 38 U.S.C. 3311(e) specifically provides that individuals entitled to educational assistance under paragraphs (4) and (5) of 38 U.S.C. 3311(b) will be entitled to educational assistance using the provisions of paragraph (5). Paragraph (4) establishes eligibility for individuals with at least 24 months but less than 30 months of service, including entry level and skill training. Paragraph (5) establishes eligibility for individuals with at least 18 months but less than 24 months of service, excluding entry level and skill training. If both levels of service requirements are met, the lower percentage level must be used;

therefore, applying the higher percentage level would be contrary to the clear requirement of the statute.

We received several comments regarding the effectual relationship between tuition and fees payments under the Post-9/11 GI Bill and other forms of aid, such as State veterans' tuition programs. One of the commenters suggested that 1st payer/2nd payer rules be clarified so that all parties clearly understand who pays what and when. VA will pay based on the amount the student is charged, not the amount the student has remaining after State programs have contributed funds. Schools should certify the total amount of tuition and the total amount of fees that a student is charged. The amount reported to VA should not be reduced for pending or subsequent payments to be credited to the student's account from State programs, scholarships, grants, or any title IV funds (including Pell Grants). If an institution is not able to charge a veteran for tuition due to a State waiver or other State funded program, the school should not report tuition to VA. However, if the State reimburses the institution and/or veteran for tuition and fees after the individual has been billed, then the institution should report the original amount charged to the student. The amount of tuition and fees submitted to VA in these instances should not be reduced based on any additional funds received that will reduce the student's out-of-pocket expenses. One commenter also asked that we clarify whether a student can opt out of State assistance to receive educational assistance under the Post-9/11 GI Bill. There is no requirement in 38 U.S.C. chapter 33 that requires an individual to opt in or out of existing State programs in order to receive benefits under the Post-9/11 GI Bill. The statute simply states that VA may pay all or a portion of the cost of the actual tuition and fees charged the individual. Each State will need to review the laws that govern their State programs to determine if individuals may opt in or out of receiving assistance under the State funded programs.

One commenter suggested VA provide a non-exhaustive list of approved fees to clarify which fees would be payable under the Post-9/11 GI Bill and further suggested that health insurance premiums be included on the list. Another recommended that VA redefine fees to include those charged to all students (unless waived) enrolled in the same program of education as the VA benefit recipient. This commenter also recommended removing the requirement that the amount of fees that

can be paid is limited to those charged to undergraduates. Finally, one commenter indicated support for the definition as stated in the proposed regulation. Based on these comments, we are amending the definition of fees in the final rule. Accordingly, "fees" will include any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education including, but not limited to, health insurance premiums, freshman fees, graduation fees, and lab fees. The term does not include study abroad fees unless the fees are assessed for courses that are required for completion of the program of education. The statute requires VA to calculate the highest in-State amount payable for tuition and fees using undergraduate tuition and fees. However, individuals may receive payment for tuition and fees for graduate programs or other approved programs up to the amount of the highest in-State amount payable for undergraduate fees.

One commenter suggested that VA clarify that the amounts payable for established charges and the book stipend are adjusted by the individual's eligibility percentage. We make no changes based on this comment. Section 21.9640(a) indicates that the amounts payable for pursuit of an approved program of education under that section are subject to the individual's eligibility percentage as determined by his or her aggregate length of creditable active duty service after September 10, 2001.

One commenter expressed concern that the tuition and fees payments made on behalf of students attending part-time are not lowered based on the student's rate of pursuit. The commenter indicated that not reducing the maximum amount payable based on rate of pursuit will reward students for pursuing education part-time instead of full-time. We do not agree that this is an area of concern. Many schools charge students proportionately less for part-time enrollment because they base charges on a per-credit-hour rate. Furthermore, the statute does not require VA to reduce the maximum amounts payable proportionally based on rate of pursuit. It only dictates that the maximum payable be reduced based on the eligibility percentage. Nonetheless, based on several other comments regarding tuition and fees payments, we are amending the final rule to clarify that individuals will receive a tuition payment not to exceed the amount determined by multiplying the number of certified credit hours for the term, quarter, or semester by the

highest in-State amount charged per credit hour. Individuals will receive the amount for fees certified for the term, quarter, or semester, not to exceed the highest amount of fees that could be charged in any term.

One commenter suggested allowing schools to certify the actual amount of tuition and fees charged minus any applicable military tuition assistance (TA) without requiring additional paperwork from the individual student. We make no changes based on this comment. Currently, VA requires that the student submit the TA form to VA prior to the issuance of a (top-up) payment. This form is necessary to determine the appropriate amount of tuition and fees VA will pay. Schools may submit the top-up form for the individual; however, VA should have the form on file and use it to make the determination of how much payment is due. Requiring certifying officials to make determinations on the amount of top-up payment an individual is due would add an additional step in the process that already exists and create an unnecessary burden on the schools. The TA form already provides VA with all of the information needed to determine the appropriate payment.

We received one comment requesting that the maximum rate for tuition and fees fluctuate during the academic year whenever the State makes changes in the tuition and/or fees rates after the academic year begins. We make no changes based on this comment other than clarifying that the maximum amounts payable for tuition and fees, as published, will be effective for each term, quarter, or semester that begins during the academic year. The State approving agency of jurisdiction will determine each State's highest in-State amounts payable for tuition per credit hour and for fees each term during an academic year. VA will publish the maximum amounts payable for tuition and fees on the GI Bill Web site at <http://www.gibill.va.gov> and in the **Federal Register** by August 1st of each year to allow institutions of higher learning and students to take this information into consideration when making relevant decisions. If VA were to change these figures each time an institution of higher learning or a State changed the amount of tuition or fees it charged, it could adversely affect the students if the amount was decreased and could adversely affect institutions of higher learning participating in the Yellow Ribbon Program if the amount increased.

Book Stipend

One commenter recommended VA issue promissory notes for the book stipends. We make no changes based on this comment. Book stipends are paid directly to the individual. VA sees no benefit in issuing a promissory note for books instead of issuing the book stipend payment directly to the individual.

Several commenters expressed concern about the method of payment for the book stipend. Four of these commenters asked how the summer term or mini-terms would impact the payment, especially since many students do not attend the summer sessions. Two commenters suggested that VA redefine academic year so that individuals could receive the full book stipend and two commenters requested the method of calculating the book stipend be clarified. Based on these comments, we clarified the method VA will use to determine how the book stipend payment is calculated. A book stipend of up to \$1,000 is available to veterans (and transferees). Section 3313(c)(1)(B)(ii) of title 38, U.S.C., provides a formula for determining the amount of the book stipend payable each academic year. The formula instructs VA to pay a portion of the book stipend equal to the amount determined by multiplying \$1,000 by the fraction of the academic year that the term, quarter, or semester represents. We choose to divide the academic year by 24 credit hours (the minimum number of credit hours generally considered to be full-time for an undergraduate in an academic year). Using this calculation, an individual eligible for 100 percent of the amounts payable under the Post-9/11 GI Bill who is pursuing training at more than one-half-time will receive \$41.67 for each credit hour certified up to 24 credit hours in an academic year.

Monthly Housing Allowance

Several comments were received agreeing with VA's interpretation of the statute with regard to how distance learning courses affect eligibility for the monthly housing allowance (MHA); however, many other commenters expressed concern that the MHA is not available for additional categories of individuals. While one commenter supported prohibiting individuals from receiving the MHA if they are pursuing programs of education entirely by distance learning because of the potential for abuse, six commenters requested that the MHA be available to individuals pursuing a program of education entirely by distance learning.

One of the commenters in favor of the MHA for distance learners also recommended that it be paid to these students based on the ZIP code of the student's address instead of the school's ZIP code as is done for students taking in-residence courses. Other commenters requested clarification on how partial pursuit of distance learning impacts the receipt of the MHA. Section 3313(c) of title 38, U.S.C., prohibits an individual from receiving the MHA if the individual is pursuing a program of education offered by distance learning. While we have interpreted this as broadly as possible to include individuals taking even one course in-residence as eligible to receive the MHA (if all other requirements are met), VA would be in violation of the statute if we allowed individuals pursuing a program of education entirely by distance learning to receive the MHA. Additionally, another commenter requested that VA define a qualifier for "a single resident course." The commenter indicated that distance learning institutions may begin creating one-credit courses or one-half credit courses just to meet the residency requirement. It was suggested that VA set a minimum unit or percentage of courses that must be pursued in residence in order for individuals to qualify for the MHA. While VA notes the concern of the commenter, we disagree that institutions will create frivolous courses solely for the purpose of qualifying their students for the MHA. Further, many of the individuals enrolled in distance learning courses are unable to attend school in the traditional classroom setting due to other life circumstances. However, VA may only pay educational assistance under the Post-9/11 GI Bill for an approved program of education. Any courses pursued must be necessary for the attainment of the individual's identified objective. If the course has not been approved for pursuit of an approved program of education by the State approving agency or the course is not required for an individual's objective, VA will not be able to provide educational assistance for such course or include any credit for such course when determining eligibility for the MHA.

One commenter recommended allowing veterans to receive the MHA when training at more than one-half time but less than three-quarter time. We are retaining the wording contained in the proposed regulation that will permit individuals who are training at greater than one-half time to receive the MHA if all other criteria are met. Any

individual who is not on active duty, who is enrolled in at least one in-residence course, and who is pursuing a program of education with a rate of pursuit greater than 50 percent, will receive the housing allowance.

Two commenters recommended providing a monthly housing allowance to individuals attending foreign schools using the DoD's overseas housing allowance (OHA) rates for the locale where the individual is residing, rather than the average of the monthly housing allowances payable in the United States. One commenter also requested that we clarify how the "average" will be determined. We considered these comments, but make no substantive changes in the final rule other than to clarify that we will use the unweighted arithmetic mean to determine the average monthly housing allowance payable. DoD adjusts the basic allowance for housing (BAH) rates effective the first of January each year. The OHA rates are reviewed, and are subject to change, every 6 months. To maintain consistency in applying the MHA rate changes, VA will continue to use the national average to determine the maximum MHA payable for students attending foreign institutions.

We received one comment suggesting VA use the rate of pursuit to adjust the amount of MHA an individual will receive. The statute does not require that we limit the housing allowance based on rate of pursuit. We are only directed to limit it based on the individual's eligibility percentage level. We have decided not to unnecessarily limit the housing allowance and will pay individuals according to the direction provided in 38 U.S.C. 3313(c).

One commenter recommended the determination of eligibility for the MHA be established annually based on the individual's program rather than basing it on courses taken in a single term. We make no changes based on this comment. It would be extremely difficult for VA to determine the amount of MHA to pay on an annual basis. To do so would require that every school certify every student for all terms during the academic year. All institutions do not require students to register for every term (Fall, Winter, Spring, Summer) at the start of the school year. Having such a requirement would require students to register and schools to report actual tuition and fees for an entire year. Many schools cannot report actual tuition and fees until registration has ended. Determining receipt of MHA annually would burden the schools to make major changes in their registration and certification processes.

Kickers

We received four comments regarding payment of Post-9/11 GI Bill kickers. One commenter felt strongly that the Post-9/11 GI Bill kicker payments should not be denied to active-duty members, students whose rate of pursuit is one-half time or less, and students pursuing a program of education entirely by distance learning. One commenter requested an explanation as to how the MHA and the kicker are related. Two commenters requested that the final rule permit the kicker to be paid even if the individual is not entitled to receive the MHA. One of these commenters suggested increasing a "zero" dollar MHA payment by the amount of the Post-9/11 GI Bill kicker and the other commenter suggested paying the Post-9/11 GI Bill kicker in a lump sum payment in the same manner as the MGIB and Selected Reserve kickers are paid. We make no changes based on these comments. Section 3316(a)(1) of title 38, U.S.C., provides that DoD kickers will increase the monthly amount otherwise payable under 38 U.S.C. 3313(c)(1)(B). Section 3313(c)(1)(B) of title 38, U.S.C., is the section that authorizes the monthly housing allowance. Section 3313(a) of that title specifically indicates that the amounts specified in subsection (c) will be paid to individuals entitled to educational assistance under the Post-9/11 GI Bill who are pursuing an approved program of education, other than a program discussed in subsections (e) and (f). Subsection (e) details assistance payable for individuals on active duty, and subsection (f) details assistance payable for individuals pursuing training at one-half time or less. Neither subsection (e) nor (f) references nor authorizes a monthly housing allowance. VA is unable to increase the amount of an assistance payment that the individual is not eligible to receive. Additionally, section 3313(c)(1)(B)(i) specifically excludes the housing allowance for individuals pursuing a program of education offered entirely by distance learning. As a result of these statutory provisions, VA is unable to make Post-9/11 GI Bill kicker payments for a term, quarter, or semester in which an individual is on active duty, for an individual whose rate of pursuit is one-half time or less, or for an individual who is pursuing a program of education entirely by distance learning.

Another commenter inquired whether students will be required to fill out additional paperwork to receive MGIB kicker payments while receiving benefits under the Post-9/11 GI Bill. We

make no change based on this comment because no additional paperwork is required. DoD will continue to notify VA of MGIB kicker eligibility. If an individual is eligible, VA will process the MGIB kicker payment without any additional paperwork from the individual.

Chapter 30 Refunds

One commenter requested clarification on how refunds of MGIB contributions will be handled, and asked if the refund will be automatic or if the individual will have to complete a form to request the refund. Another commenter asked when an individual will actually receive the refund. A third commenter recommended that a refund of the MGIB contributions be made even if the individual is not in receipt of the monthly housing allowance. We make no changes based on these comments. If the individual is in receipt of the housing allowance, VA will automatically refund the appropriate amount of the MGIB contributions when the individual exhausts his or her entitlement under the Post-9/11 GI Bill. Section 5003(c)(6) of Public Law 110-252 (122 Stat. 2377-2378) states that an individual may receive a refund of the basic contributions paid toward MGIB as an increase to the last monthly stipend payable to the individual under 38 U.S.C. 3313(c)(1)(B), *i.e.*, the monthly housing allowance. VA has no authority to ignore the statute and pay the refund when an individual is not eligible to receive the monthly housing allowance.

Two commenters addressed the additional \$600 contribution (buy-up) that can be made towards increased educational assistance under MGIB. One commenter wanted to know if these contributions will also be refunded. The other commenter requested the final rule clearly state that the \$600 is not refundable, if that is the case. Since the statute does not authorize a refund of the \$600 contribution, we changed the wording in the final rule to clearly reflect that these contributions cannot be refunded.

Tutorial Assistance

One commenter requested clarification regarding whether an individual who received tutorial assistance under MGIB could also receive up to \$1,200 for tutorial assistance under the Post-9/11 GI Bill. We make no changes based on this comment. Individuals who received tutorial assistance under MGIB may receive up to \$1,200 for tutorial assistance under the Post-9/11 GI Bill. The \$1,200 payable for tutorial assistance is the maximum amount that

can be paid for such assistance under each program.

Another commenter recommended removing the requirement that the individual be pursuing a program of education on a one-half time or more basis in order to be eligible for receipt of tutorial assistance. We make no changes based on this comment because the requirement is statutory. Section 3314(b)(1) of title 38, U.S.C., incorporates the provisions of 38 U.S.C. 3492, which requires that individuals be pursuing training at one-half time or more to receive tutorial assistance.

We received one comment indicating that there should not be a requirement that a student be failing a course before tutorial assistance can be authorized. We make no changes based on this comment. Section 3314(b)(2) of title 38, U.S.C., requires that the professor or teacher certify that tutorial assistance is essential to correct a deficiency of the student in a course that is required for satisfactory pursuit of the student's program of education. While this requirement is statutory, it should not be construed to mean tutorial assistance is only available if the individual is already failing the course. If the professor or teacher identifies that the individual has a justifiable need for tutorial assistance or the individual will not be able to continue pursuing his or her approved program of education, either in that course or as a prerequisite for other required courses, then VA would consider tutorial assistance to be warranted.

Yellow Ribbon Program

The proposed regulation provided that institutions of higher learning agree to the following to participate in the Yellow Ribbon Program—

- Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), in any given academic year;
- Make contributions toward the program on behalf of the individual in the form of a waiver;
- State the maximum number of individuals for whom contributions will be made in any given academic year;
- Waive the same percentage of unmet established charges for all eligible individuals in any given academic year; and
- Commit to provide contributions for eligible individuals for the entire academic year specified in the agreement.

Several commenters requested the ability to set different contribution levels for one or more subelements (*e.g.*, School of Business, School of Liberal Arts) of the institution of higher learning. Another commenter requested the ability to set the contribution level by student status (*e.g.*, undergraduate, graduate, doctoral). The commenters noted that the subelements within the institution of higher learning have their own course schedule, tuition and fee structure, funding, and administrative requirements. Additionally, it was noted that tuition and fees for graduate students are generally higher than that of undergraduate students.

Five commenters requested that institutions of higher learning have the ability to set the maximum amount contributed in dollar amounts. The commenters noted that it would be easier for institutions of higher learning to budget for the program if the institutions had the ability to set a maximum dollar amount per student. They stated that using a percentage would require institutions to be more conservative in contributions.

We received several comments regarding the requirement that schools provide contributions in the form of a waiver. Some commenters requested that the term "waiver" be defined while other commenters requested that the "waiver" requirement be removed altogether. The commenters noted that some schools do not "waive" tuition and fees as a matter of policy. Other commenters asked if fee remission or a tuition discount qualified as a waiver.

We also received comments regarding continuous eligibility under the Yellow Ribbon Program. VA's Web site stated that institutions of higher learning must agree to continue Yellow Ribbon Program contributions for participating students as long as the institution continues to participate in the program and the student remains in good academic standing in accordance with the regularly prescribed standards of the institution. One commenter noted that it would be difficult for institutions to commit to provide contributions in subsequent years due to the novelty of the program, while two commenters suggested that VA state that contributions will continue throughout all subsequent years of continuous enrollment.

We agree, in general, with the above comments and, based on those comments, have substantially changed the requirements for participation in the Yellow Ribbon Program. VA has amended the Yellow Ribbon Program provisions to allow institutions of higher learning to set contribution levels

by student status or subelement, state the maximum dollar amount that may be provided to each participant during the academic year, and provide contributions by direct grant, scholarship, or otherwise. We also clarified that institutions of higher learning must agree to provide Yellow Ribbon Program contributions to participating students as long as the institution participates in the program and the student remains in good academic standing in accordance with the regularly prescribed standards of the institution, and to provide the maximum amount of contributions payable for a participating individual each term he or she is enrolled as long as the amount paid will not exceed the maximum dollar amount payable for the academic year as specified in the agreement.

We received three comments requesting the ability to amend agreements during the academic year to increase the maximum number of students eligible to participate in the program, and we received one comment requesting a formal procedure to amend the agreement and the ability to negotiate the terms of the agreement prior to the beginning of the academic year. VA will continue to require that the initial agreement be binding for the entire academic year. While it is commendable that institutions of higher learning want to provide Yellow Ribbon Program contributions for additional individuals if money is available, the institutions are only required to report a maximum. The maximum number of participants listed in the agreement could be set high enough to cover all individuals that may apply. Additionally, VA will draft an agreement in accordance with statute that will be used in the administration of the Yellow Ribbon Program. For equality and consistency, VA chooses to reject the idea of allowing schools to individually negotiate the terms of the agreement. Having a standard agreement for all participating institutions will allow potential Yellow Ribbon Program participants to easily compare the program at different institutions.

We also received three comments expressing opposition to the first-come-first-served rule. Specifically, two commenters noted that requiring schools to provide contributions based on a first-come-first-served basis does not allow the institution to determine who is selected to participate and one commenter noted that several institutions offer financial aid on a need-basis only. VA included the first-come-first-served rule to ensure that there was a fair method of determining

who received Yellow Ribbon Program contributions at each participating institution. While VA notes that many schools provide financial aid on a need-basis only, the Yellow Ribbon Program is not a need-based program and should be available to any individual (and/or dependent of the individual) who has met the requirements to qualify for the program.

Elections

The proposed regulations stated that individuals eligible for educational assistance under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 106a, 1606, or 1607 and who have met the service requirements to qualify for the Post-9/11 GI Bill must make an irrevocable election to receive educational assistance under the Post-9/11 GI Bill in lieu of one of the above-mentioned programs. One commenter noted that it is not fair for students to make an irrevocable election for a new benefit without access to complete and accurate information because it will permanently affect the course of their education. Another commenter suggested that VA allow individuals at least one opportunity to change their mind after making the irrevocable election or provide benefits counseling. Section 5003(c)(8) of Public Law 110-252 (122 Stat. 2375-2378) states that elections to receive educational assistance under the Post-9/11 GI Bill in lieu of other specific educational assistance programs are irrevocable. Accordingly, VA is unable to regulate exceptions to the provision. However, individuals may call VA's customer service number for assistance in making an informed decision before making an election. Additionally, VA offers vocational and educational counseling to eligible individuals upon request.

We also received comments requesting clarification on how the irrevocable eligibility elections would be made. VA is amending proposed § 21.9520(c) to specify that elections may be made by properly completing VA Form 22-1990, submitting a Post-9/11 GI Bill transfer-of-entitlement designation to DoD, or by submitting a written statement that includes identification information, the benefit being relinquished (if applicable), the effective date of the election, and a statement acknowledging that the individual understands that the election is irrevocable.

Three commenters requested that VA amend proposed § 21.9635(w) to clarify that an election to receive benefits under an existing educational assistance program on or after August 1, 2009, does not negate the opportunity to elect or

use the Post-9/11 GI Bill at a later date. As proposed this provision stated that if an individual was eligible under more than one program and the individual elected to receive benefits under a previously existing program that VA would terminate assistance under the Post-9/11 GI Bill effective the date of the election. The elections referred to in § 21.9635(w) are not irrevocable eligibility elections. Individuals who are eligible for the Post-9/11 GI Bill and another educational assistance program at the same time may specify under which program they wish to receive payment. VA is amending the language of the section to clarify that individuals who are in receipt of benefits under the Post-9/11 GI Bill who choose to receive benefits under another program will receive benefits under such program effective the first day of the enrollment period during which the individual requested to receive benefits under the other program.

Academic Year

Five commenters suggested that VA amend the dates of the academic year to coincide with the Department of Education's award year that runs from July 1st of each calendar year through June 30th of the subsequent calendar year. VA set the beginning date of each academic year of August 1st to coincide with the effective date of the Post-9/11 GI Bill benefit for clarity and ease of administration. In determining the maximum amounts payable during each academic year, VA will obtain the highest tuition per credit hour and the highest fees that can be charged an undergraduate student at a public institution in each State from the State approving agency (SAA) of jurisdiction. Based on feedback from several SAAs, many institutions of higher learning do not set the rates for tuition and fees until June or July of each year. Moving the beginning date of the academic year to July would not provide VA adequate time to update systems, post the new maximums on the Web site, or timely process claims with the newly established maximums in July.

Rate of Pursuit

The proposed regulation states that the rate of pursuit will be the percentage determined by dividing the number of course hours an individual is enrolled in by the number of course hours considered to be full-time at the institution of higher learning. Additionally, in proposed § 21.9750, VA defined full-time pursuit to equal 14 credit hours unless the institution of higher learning certifies that all undergraduate students enrolled for 13

credit hours, or for 12 credit hours, are charged full-time tuition and are considered full-time for other administrative purposes. We received comments requesting that VA define full-time enrollment as a minimum of 12 credit hours. VA is unable to consider a minimum of 12 credit hours as full-time training for all institutions. Section 3688(a)(4) of title 38, U.S.C., defines "full-time" as a minimum of 14 hours unless the institution certifies that all undergraduate students enrolled for at least 12, but less than 14, hours are considered full-time for other administrative purposes.

One commenter suggested that VA always consider traumatic brain injury (TBI) veterans to be training at full-time (a rate of pursuit of 100%) even when the training time (or rate of pursuit) does not equal full-time. The commenter noted that TBI veterans are sometimes unable to pursue a full course load and should not be penalized due to their disability. Unfortunately, there are no provisions in the statute that will allow VA to pay a different rate to a specific class of veterans.

Another commenter requested that VA pay educational assistance for courses that are not part of an individual's program of education. Section 3452 of title 38, U.S.C., defines program of education to include any curriculum or combination of unit courses or subjects pursued at an educational institution that is generally accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. VA will pay for refresher, remedial, and deficiency courses that are required for the attainment of an objective even though those courses will not be credited towards the objective. However, VA is unable to pay for courses that are not required for pursuit of the individual's identified objective.

Mitigating Circumstances

We received comments requesting clarification of when mitigating circumstances will be considered to exist and which mitigating circumstances will be accepted by VA. One commenter asked VA to include mental illness in the listing of acceptable mitigating circumstances. In this final rule, VA added a definition for mitigating circumstances that provides examples of situations that VA will consider acceptable. Additionally, we modified § 21.9635 to clarify that mitigating circumstances will always be considered to exist for the first reduction or withdrawal of less than seven hours. We also received a

comment requesting that we expand the consideration of existing mitigating circumstances to more than the first instance of reduction or withdrawal and increase the number of hours in the first instance of withdrawal from six credit hours to eight credit hours for which mitigating circumstances will automatically be considered to exist. Section 3680(a)(1) of title 38, U.S.C., limits the automatic consideration of existing mitigating circumstances to the first reduction or withdrawal of less than seven hours. The statute does not provide VA the authority to increase the number of times mitigating circumstances will be considered to exist or the number of hours for which mitigating circumstances will automatically be considered to exist. Nevertheless, there is no statutory limit on the number of times that VA may consider evidence of mitigating circumstances submitted by the eligible individual. Any time an individual reduces or withdraws from training after the drop-add period, or receives a non-punitive grade (regardless of the number of credit hours reduced or withdrawn), he or she may submit evidence of mitigating circumstances to VA for review. If the mitigating circumstances are acceptable, VA will pay educational assistance through the end of the month of the reduction or through the last date of attendance for withdrawals.

Appeals

Two commenters requested that we clarify the appeals process for eligible individuals in receipt of educational assistance under the Post-9/11 GI Bill. Specifically, one commenter requested that VA provide a formal process for appealing the denial of the rural relocation benefit. Decisions regarding eligibility and entitlement to educational assistance under the Post-9/11 GI Bill are subject to the provisions of 38 U.S.C. chapters 71 and 72. Specifically, individuals may appeal a decision regarding eligibility or entitlement to educational assistance under the Post-9/11 GI Bill to the Board of Veterans' Appeals in accordance with the provisions of 38 CFR Part 20. To clarify this, VA is adding new § 21.1034 to notify claimants of their appeal rights regarding decisions of eligibility and entitlement to educational assistance administered by VA. Another commenter requested that VA provide a formal process for appealing a decision of eligibility to increased educational assistance ("kicker"). VA notes in newly added § 21.1034 that eligibility for educational assistance under 10 U.S.C. 510 or 10 U.S.C. chapter 106a, 1606, or 1607, and supplemental or increased

assistance under 10 U.S.C. 16131(i), 38 U.S.C. 3015(d), 3021, and 3316, may not be appealed to VA, because the decision of eligibility for educational assistance and supplemental or increased educational assistance ("kicker") under those sections rests solely with the DoD. Accordingly, VA will direct claimants appealing eligibility to supplemental or increased educational assistance ("kicker") under the Post-9/11 GI Bill to the DoD.

General Comments

One commenter requested that VA explain why a certifying official who is eligible for the Post-9/11 GI Bill will be barred from receiving benefits at the school for which he or she is authorized to submit enrollments. VA included this language in the proposed regulation to help reduce the possibility of receiving fraudulent enrollment certifications. However, after further review, VA has determined that certifying officials eligible for receipt of benefits under the Post-9/11 GI Bill will be eligible to receive benefits for training pursued at the institution of higher learning for which he or she is authorized to sign enrollment certifications. However, certifying officials will be prohibited from submitting their own enrollment certification to VA.

Another commenter asked VA to consider exempting programs specifically provided for veterans from the 85–15 rule. Section 3680A of title 38, U.S.C., instructs VA to disapprove enrollment in certain courses, including those courses where more than 85 percent of the students are receiving educational assistance under programs administered by VA. However, that section provides an exception for courses offered at institutions of higher learning where less than 35 percent of the students on campus are receiving educational assistance under a program administered by VA.

We received a comment regarding the method in which students will certify their enrollment as stated in proposed § 21.9730. Due to system limitations, individuals will not be able to certify attendance to VA on a monthly basis, similar to individuals in receipt of benefits under 38 U.S.C. chapter 30. As a result, we removed proposed § 21.9730 and all references to that section from the final rule. However, the inability to certify attendance monthly does not relieve the individual of the responsibility of notifying VA of a change in enrollment in accordance with § 21.9735.

We received a comment requesting that beneficiaries under the Post-9/11 GI Bill also be provided with five months

of free entitlement for remedial classes, noting that beneficiaries under 38 U.S.C. chapter 35 are not charged entitlement for the first 5 months of pursuit of remedial training. Chapter 33 of title 38, U.S.C., does not include a provision that would allow VA to provide five months of remedial training with no entitlement charge as is available for chapter 35 beneficiaries under 38 U.S.C. 3533 who meet the requirements of 38 U.S.C. 3491(a). However, the statute does provide that individuals may receive reimbursement for one licensing or certification test, tutorial assistance, and the rural relocation benefit with no charge to entitlement.

One commenter requested that VA allow individuals to pursue multiple objectives. The term "program of education" is defined in 38 U.S.C. 3452(b) for the purposes of chapter 36. Section 3323(a) of title 38, U.S.C., directs VA to the administrative provisions listed in 38 U.S.C. 3034(a) that further direct us to specific provisions of 38 U.S.C. chapter 36. Based on the statutory definition of "program of education" VA may approve the pursuit of multiple objectives as long as they lead to a single career field. Institutions of higher learning may request approval of dual degrees with the State approving agency of jurisdiction if they can show that the objectives are complementary and will lead to a single career field.

Two commenters requested that VA publish the State maximums prior to August 1st of each calendar year. Due to the novelty of the program, we are unable to predict how far ahead of the academic year we will have access to the State maximums. Based on recently received information from several State approving agencies, many public institutions do not set their tuition and fees until June or July of each year. We published the State maximums for the 2008–2009 academic year on our Web site in February. We will publish the State maximums for upcoming academic years as early as possible, but not later than August 1st of each calendar year.

In proposed § 21.9625(h), VA indicated that individuals who qualify for an increase in the percentage of the maximum amount payable based on length of active duty service during a certified enrollment period would receive payment based on such increase the first day of the term, quarter, or semester during which he or she was enrolled following the date the individual became entitled to such increase. A commenter requested that VA consider allowing individuals who are not enrolled in quarter or semester

schools to receive an increased payment within 4 months of the date the individual became entitled to the increase. VA will continue to increase percentages effective the date of the award or the first day of the certified enrollment period during which the individual is enrolled following the date the individual became entitled to such increase. Payments for tuition, fees, and, if applicable, the Yellow Ribbon Program are issued as lump sums at the beginning of the certified enrollment period. Those payments are issued for the entire enrollment period certified to VA. Increasing payments mid-term could adversely affect schools participating in the Yellow Ribbon Program. If VA readjusts the individual's claim to pay additional assistance, the amount of Yellow Ribbon Program contributions that the school could legally provide may be reduced. In these situations, the school would be required to refund money back to VA. For consistency among all schools, VA chooses to continue authorizing payment of educational assistance at an increased percentage effective the first date of the award or the first day of the certified enrollment period following the effective date of the increased percentage.

One commenter asked VA to clarify how entitlement would be charged for an individual who was called to active duty for a short period of time. Section 21.9560(d)(4) of title 38, CFR, states that entitlement will not be charged to individuals who are called or ordered to active duty or a new assignment and who do not receive credit or lose training time for any portion of the enrollment period. If the institution of higher learning grants the individual a leave of absence and the student returns and completes the courses following the leave of absence with no loss of credit or training time, VA would not reduce or alter the training time.

Another commenter requested that VA reconsider applying the administrative provisions (of chapter 36) for existing educational assistance programs to the Post-9/11 GI Bill. Section 3323(a) of title 38, U.S.C., directs VA to apply the provisions listed in 38 U.S.C. 3034(a) in the administration of the Post-9/11 GI Bill. Section 3034(a) requires that VA use existing provisions of 38 U.S.C. chapters 34 and 36. The use of the existing structure is mandated by statute and can not be changed by regulation.

We received a comment requesting that we create a regulatory pilot program for educational assistance that will provide less oversight for institutions with graduation-rate track records in the

top half of the institutions in the country. The commenter noted that the current provisions in place are necessary to protect veterans, but added that the provisions are cumbersome and unnecessary for successful institutions. The commenter specifically suggested that VA create a second set of less obtusive rules for specific institutions. Chapter 36 of title 38, U.S.C., directs VA to work cooperatively with State approving agencies to approve programs of education for educational assistance. As a result, VA can not remove statutory oversight requirements by regulation.

A commenter suggested that VA clarify whether the conversion rate for foreign currency will be based on a rate determined at an exchange where currencies are traded or at a commercial bank. VA amended the final rule to clarify that the foreign exchange rates effective July 1st of each calendar year as published by the Federal Reserve will be used to convert foreign currency for enrollments certified for the following academic year (August 1st through July 31st).

Additional Changes

We received several comments requesting technical changes to increase the clarity and readability of the regulatory text. VA appreciates the comments and incorporated several of the suggested changes in the final rule. In addition to the numerous non-substantive technical changes that were made, VA is also amending the final rule to clarify that individuals making an irrevocable eligibility election to receive benefits under the Post-9/11 GI Bill may receive a retroactive payment of educational assistance under the program for training pursued not earlier than one year prior to the date the election request was received. However, the retroactive payment can never begin prior to August 1, 2009, or the date the individual qualified for educational assistance under the program. We are also revising the formula for determining the maximum amount of tuition and fees that can be paid for individuals pursuing training at a foreign institution each year based on the current in-State maximums rather than the in-State maximums for the previous academic year. Additionally, we are revising § 21.9750 to include the formulas that will be used to assess courses at institutions of higher learning that do not use credit hours.

Other Comments

VA received several comments suggesting support for, or proposal of, legislative changes to certain provisions of the Post-9/11 GI Bill. Our primary

focus is on ensuring that all requirements are met and all systems are in place for issuing payments on August 1, 2009; therefore, at this time, VA cannot support any legislative changes that would interfere with our ability to achieve this objective. We will take each of these suggestions submitted during the comment period into consideration when developing future legislative proposals. We also received numerous comments regarding the implementation of the program itself. Some commenters asked when institutions would be able to certify enrollments, when institutions would receive funds, how payments would be delivered, when and how students will be notified of application procedures, and if schools will have access to an individual's certificate of eligibility. We also received comments expressing concern regarding how often enrollment information will be reported and what additional information will be required. VA is in the process of developing the procedures necessary to implement the Post-9/11 GI Bill in accordance with statutory and regulatory provisions. We will continue to update our Web site at <http://www.gibill.va.gov> as information becomes available regarding the procedures that will be used to administer the program. VA appreciates the eagerness of the institutions to assist VA in providing our nation's veterans with this well-deserved benefit. We also appreciate the support and patience of each of our stakeholders during this process.

Benefits Costs

The benefit costs for implementing this final rule are slightly higher than the cost of implementing the proposed rule based on the opinion of our General Counsel that members of the PHS and NOAA are eligible for educational assistance under the Post-9/11 GI Bill. We estimate that the addition of PHS and NOAA members will result in an additional 332 trainees per year at the cost of \$2.1 million for FY 2009 and nearly \$56.5 million over 10 years.

Paperwork Reduction Act

This final rule contains provisions that constitute collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (“Act”). In the preamble of the proposed rule, we identified 5 existing information collections that would be used in the administration of the Post-9/11 GI Bill. VA subsequently determined that the “Student Verification of Enrollment” (OMB control number 2900–0465) will not be necessary for the administration of the

program. VA also identified additional existing information collections that are necessary for the administration of the program. VA will use these existing information collections with the following Office of Management and Budget (OMB) control numbers in the administration of the Post-9/11 GI Bill:

- 2900-0154—Application for VA Education Benefits
- 2900-0171—Tutorial Assistance
- 2900-0576—Correspondence Affirmation
- 2900-0657—Conflicting Interests Certification for Proprietary Schools
- 2900-0073—VA Enrollment Certification
- 2900-0074—Request for Change of Program or Place of Training
- 2900-0156—Notice of Change in Student Status
- 2900-0209—Work-Study
- 2900-0353—Certificate of Lessons Completed
- 2900-0695—Application for Reimbursement of Licensing or Certification Test Fees

Additionally, VA determined that this rule will require a new information collection to implement the provisions of 38 U.S.C. 3319 regarding the Yellow Ribbon Program. Section 3319 of title 38, U.S.C., and 38 CFR 21.9700 require VA to enter into an agreement with an institution of higher learning that wishes to participate in the Yellow Ribbon Program. The institution of higher learning must report the means by which contributions are made, the maximum amount of contributions that will be provided to any individual during the academic year, and the maximum number of individuals for which the institution of higher learning will provide contributions during the academic year. On November 3, 2008, VA notified the public that an emergency request for approval was submitted to OMB for collection of information under the Yellow Ribbon Program. VA did not receive any comments regarding the information collection during the comment period. OMB approved the use of the Yellow Ribbon Program Agreement on January 8, 2009, under control number 2900-0718.

In the preamble of the proposed rule, we also stated that the provisions in 38 CFR 21.9680(c) requiring individuals to submit a request for the rural relocation benefit in writing does not constitute a collection of information under the Act because VA anticipates that information will be collected from fewer than 10 persons annually.

OMB assigns a control number for each collection of information it approves. VA may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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 given year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866 and Congressional Review Act

This is an economically significant regulatory action under Executive Order 12866 and constitutes a major rule under the Congressional Review Act.

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). Executive Order 12866 classifies a “significant regulatory action” requiring review by OMB as any 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 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 entitlement recipients; 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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866 because it is likely to result in a rule that may have an annual effect on the economy of \$100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. This final rule is also a major rule under the

Congressional Review Act because it is likely to result in an annual effect on the economy of \$100 million or more.

VA has attempted to follow OMB circular A-4 to the extent feasible in this analysis. The circular first calls for a discussion of the need for the regulation. The Post-9/11 GI Bill was established to provide educational assistance to members of the Armed Forces who serve on active duty after September 10, 2001. The preamble above discusses the need for the regulation in more detail.

The impact of this regulation is primarily to the federal budget. Eligible individuals may receive an educational assistance allowance for established charges not to exceed the highest amount charged full-time in-State undergraduate students by the most expensive public institution in the State where the student is enrolled (or the national average of the most expensive in-State public institutions for individuals training at a foreign institution not associated with an institution located inside the United States), a monthly housing allowance up to the monthly amount payable under section 403 of title 37, U.S.C., for a member with dependents in pay grade E-5 residing in the military housing area that encompasses all or the majority portion of the ZIP code area in which the institution is located, and a book stipend of up to \$1,000 each academic year. Individuals may also qualify for a work-study allowance, tutorial assistance, reimbursement of a licensing or certification test, and a rural relocation benefit. Individuals eligible for 100 percent of the benefit may also receive additional funds under the Yellow Ribbon Program to cover established charges not otherwise covered under chapter 33.

The effective date of the chapter 33 program is August 1, 2009; therefore, full year benefit costs begin in FY 2010. VA estimates the benefit cost of the program will be \$1.2 billion in FY 2009, approximately \$28.1 billion through FY 2013, and \$78.1 billion through FY 2018.

Due to the short length of time provided to implement this new benefit program and the lack of an existing payment system that will support the types of payments authorized under the new program, VA will utilize manual processing of claims in a preexisting system with limited functionality until an in-house Information Technology Systems (IT) solution can be developed. As a result, VA estimates discretionary costs of \$78.8 million in FY 2009 and \$452.6 million over 10 years for IT and minor construction needs, supplies,

equipment (including computers); increased rent; and salaries to support additional personnel. FY 2009 costs are offset by additional funding in the amount of \$100 million dollars made available to VA in chapter 3 of title I of the Supplemental Appropriations Act, 2008.

Regulatory Flexibility Act

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. Although this final rule will affect some small entities that are testing organizations or educational institutions, any economic impact on them will be minor because these functions are currently being carried out for other educational assistance programs. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

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; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.130, Post-9/11 Veterans Educational Assistance. The final rule also affects the Montgomery GI Bill—Selected Reserve (MGIB—SR) program and the Reserve Educational Assistance Program (REAP), for which there are no Catalog of Federal Domestic Assistance numbers.

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: February 25, 2009.

John R. Gingrich,
Chief of Staff, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA amends 38 CFR part 21 as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

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

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

■ 2. Amend § 21.1029 by:

■ a. In the introductory text, removing “and L,” and adding, in its place, “L, and P,”;

■ b. Revising the authority citation at the end of paragraph (e).

The revision reads as follows:

§ 21.1029 Definitions.

* * * * *

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

* * * * *

■ 3. Amend § 21.1030 by revising the authority citation at the end of paragraphs (a), (b) and (c) to read as follows:

§ 21.1030 Claims.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 501(a), 3034(a), 3241(a), 3323(a), 3471, 3513, 5101(a))

* * * * *

§ 21.1031 [Amended]

■ 4. Amend § 21.1031(b)(1) introductory text by removing “or L” and adding, in its place, “L, or P”.

§ 21.1032 [Amended]

■ 5. Amend § 21.1032(a)(1) introductory text by removing “or L” and adding, in its place, “L, or P”.

■ 6. Revise § 21.1033(c) to read as follows:

§ 21.1033 Time limits.

* * * * *

(c) *Time limit for filing a claim for an extended period of eligibility under 10*

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

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

(2) One year from the date on which the spouse's, surviving spouse's, veteran's, reservist's, or other eligible individual's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3321, 3512)

* * * * *

■ 7. Add § 21.1034 to subpart B to read as follows:

§ 21.1034 Appeals.

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

(Authority: 38 U.S.C. 501(a), 7105, 7105A)

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

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

Authority: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

■ 9. Amend § 21.3022 to read as follows:

§ 21.3022 Nonduplication—programs administered by VA.

A person who is eligible for educational assistance under 38 U.S.C. chapter 35 and is also eligible for assistance under any of the provisions of law listed in this paragraph cannot receive such assistance concurrently. The eligible person must choose which

benefit he or she will receive for the particular period(s) of training during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(a) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(b) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);

(c) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);

(d) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(e) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(f) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(g) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(h) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note.);

(i) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note.); and

(j) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

Subpart D—Administration of Educational Assistance Programs

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

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

■ 11. Amend § 21.4005 by:

■ a. Removing “chapter 30, 32, 34, 35, or 36” each place it appears and adding, in each place, “chapter 30, 32, 33, 35, or 36”; removing “chapters 30, 32, 34, 35, or 36” each place it appears and adding, in each place, “chapters 30, 32, 33, 35, or 36”; removing “chapter 30, 32, or 35” and adding, in each place, “chapter 30, 32, 33, or 35”.

■ b. Revising paragraph (a)(1)(ii) and (a)(2)(ii).

■ c. Revising the authority citation at the end of paragraphs (a) and (b).

■ d. Revising paragraph (e) heading. The revisions read as follows:

§ 21.4005 Conflicting interests.

* * * * *

(a) * * *

(1) * * *

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

(2) * * *

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

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3683, 3689)

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

■ 12. Amend § 21.4006 by revising the authority citation at the end of paragraphs (a) introductory text, (a)(2), and (b) to read as follows:

§ 21.4006 False or misleading statements.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690)

■ 13. Amend § 21.4008 by revising the authority citation at the end of paragraphs (a) and (b) to read as follows:

§ 21.4008 Prevention of overpayments.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3690(b))

■ 14. Amend § 21.4009 by revising the authority citation at the end of paragraphs (b) through (j) to read as follows:

§ 21.4009 Waiver or recovery of overpayments.

* * * * *

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

(j) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3685, 3689(d))

■ 15. Amend § 21.4020 by:
■ a. Revising paragraph (a)(4) and (5); and
■ b. Revising the authority citation at the end of paragraphs (a) and (b).
The revisions read as follows:

§ 21.4020 Two or more programs.

(a) * * *

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

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

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(a))

(b) * * *

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3695(b))

■ 16. Revise § 21.4022 to read as follows:

§ 21.4022 Nonduplication—programs administered by VA.

A veteran, reservist, or eligible individual, who is eligible for educational assistance allowance or subsistence allowance under more than one of the provisions of law listed in this section, whether based on his or her own service or the service of another

person, cannot receive such benefits concurrently. The individual must choose under which program he or she will receive benefits for the particular period(s) during which education or training is to be pursued. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

- (a) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);
- (b) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);
- (c) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (d) 38 U.S.C. 33 (Post-9/11 GI Bill)
- (e) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);
- (f) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);
- (g) 10 U.S.C. 1607 (Reserve Educational Assistance Program);
- (h) 10 U.S.C. 106a (Educational Assistance Test Program);
- (i) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96-342, 10 U.S.C. 2141 note);
- (j) The Hostage Relief Act of 1980 (Pub. L. 96-449), 5 U.S.C. 5661 note);
- (k) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399).

(Authority: 10 U.S.C. 16136(b), 16166(b); 38 U.S.C. 3322, 3681)

- 17. Amend § 21.4145 by:
 - a. In paragraph (a)(1), removing “chapter 30 or 32” and adding, in its place, “chapter 30, 32 or 33”.
 - b. Revising the authority citation at the end of paragraphs (a), (c), (d), (e), (f), and (h).
 - c. Adding an authority citation at the end of paragraph (b).
 - d. Adding an authority citation at the end of paragraph (g).

The revisions and additions read as follows:

§ 21.4145 Work study allowance.

- (a) * * *
- (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)
- (b) * * *
- (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537, 5101(a))
- (c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3104(a)(4), 3241(a), 3323(a), 3485, 3537)

* * * * *

§ 21.4146 [Amended]

■ 18. Amend § 21.4146, paragraph (a), by removing “chapters 30, 32, 35, or 36” and adding, in its place, “chapters 30, 32, 33, 35, or 36”.

■ 19. Amend § 21.4153 by revising paragraph (c)(4)(i) and the authority citation following paragraph (c)(4)(i) to read as follows:

§ 21.4153 Reimbursement of expenses.

- (c) * * *
- (4) * * *
- (i) The work has a direct relationship to the requirements of 10 U.S.C. chapter 1606, or 38 U.S.C. chapter 30, 32, 33, 35, or 36; and

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3674)

* * * * *

§ 21.4200 [Amended]

■ 20. Amend § 21.4200 introductory text, by removing “subparts C, F, G, H, K, and L” and adding, in its place, “subparts C, G, H, K, L, and P”.

■ 21. Amend § 21.4201 by:

- a. In paragraph (a), removing “the Department of Veterans Affairs pursuant to Title 38 U.S.C.” and adding, in its place, “VA under title 38, U.S.C., or under title 10, U.S.C.”.

■ b. In paragraph (c)(4), removing “chapters 30, 31, 32, 34, 35 and 36, title 38, United States Code, and chapter 1606, title 10, United States Code” and adding, in its place, “38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606”.

■ c. In paragraph (e)(2) introductory text, removing “United States Code or under chapter 1606, title 10, United

States Code” and adding, in its place, “U.S.C., or under title 10, U.S.C.”.

■ d. In paragraph (f)(1)(ii), removing “chapters 30, 31, 32, 34, 35, or 36, title 38, U.S.C., or chapter 1606, title 10 U.S.C.” and by adding, in its place, “38 U.S.C. chapters 30, 31, 32, 33, 35 and 36, and 10 U.S.C. chapter 1606”.

■ e. In paragraph (g)(2) introductory text, removing “either under Chapter 1606, Title 10, U.S.C., or under Chapters 30, 32, 34, or 36, Title 38 U.S.C.” and adding, in its place, “under 10 U.S.C. chapter 1606 or under 38 U.S.C. chapter 30, 32, 33, or 36”.

■ f. Revising the authority citation at the end of paragraphs (a), (c)(4) introductory text, (c)(4)(ii), (d), (e)(2)(i), (e)(2)(iv), (e)(3), (f)(1) introductory text, (f)(1)(ii), (f)(2), (g)(2) introductory text, (g)(2)(ii), (g)(5), and (h).

The revisions read as follows:

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

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(c) * * *

(4) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(e) * * *

(2) * * *

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(iv) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(3) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(f) * * *

(1) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

(g) * * *
(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(5) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

* * * * *

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3680A(d))

- 22. Amend § 21.4206 by:
 - a. In the introductory text and in paragraph (a), removing “chapter 30, 32, 34, 35 or 36” and adding, in its place, “chapter 30, 32, 33, 35 or 36”.
 - b. In paragraph (e)(1), removing “chapters 30, 32, 34, 35 and 36 of title 38 U.S.C.” and adding, in its place, “chapters 30, 32, 33, 35 and 36 of title 38, U.S.C.”.
 - c. Revising the authority citation at the end of paragraphs (a) through (d).
 - d. Removing the authority citation at the end of paragraph (e)(1) and by revising the authority citation at the end of the paragraph (e).
 - e. Adding an information collection approval parenthetical at the end of the section.

The revisions and addition read as follows:

§ 21.4206 Reporting fee.

* * * * *

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3684(c))

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

- 23. Amend § 21.4209 by:
 - a. In paragraph (a)(1), removing “chapter 30, 32, 34, 35, or 36” and adding, in its place, “chapter 30, 32, 33, 35, or 36”.

■ b. In paragraph (c), removing “veterans under 38 U.S.C. chapter 30 or 32,” and adding, in its place, “veterans under 38 U.S.C. chapter 30, 32, or 33,”.

■ c. Revising the authority citation at the end of paragraphs (a) through (c), and (f).

The revisions read as follows:

§ 21.4209 Examination of records.

(a) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(b) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

(c) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3690)

* * * * *

(f) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3323(a), 3689, 3690)

* * * * *

- 24. Amend § 21.4210 by:
 - a. Revising the section heading and paragraph (a)(1).
 - b. In paragraph (b)(1)(i), removing “chapter 30, 32, 34, 35, or 36” and adding, in its place, “chapter 30, 32, 33, 35, or 36”.
 - c. In paragraph (d)(2)(ii), removing “chapters 30, 32, 34, 35, and 36” and adding, in its place, “chapters 30, 32, 33, 35, and 36”.
 - d. Revising paragraph (d)(4)(ii).
 - e. Revising the authority citation at the end of paragraphs (a), (b)(1)(ii), (c), (d), (e)(2), and (f) through (i).

The revisions read as follows:

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

(a) *Overview; explanation of terms used in §§ 21.4210 through 21.4216.* (1) VA may pay educational assistance to a reservist under 10 U.S.C. chapter 1606 for the reservist’s pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 32 or 35 to a veteran or eligible person for the individual’s pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; or if the individual has taken a licensing or certification test approved in accordance with the provisions of 38 U.S.C. chapter 36. VA may pay educational assistance under 38 U.S.C. chapter 30 to a veteran or servicemember for the individual’s pursuit of a course approved in accordance with the provisions of 38 U.S.C. chapter 36; if the individual has

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

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3452, 3471, 3690)

(b) * * *
(1) * * *
(ii) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(d) * * *
(4) * * *

(ii) Has instituted a policy or practice with respect to the payment of tuition, fees, or other established charges that substantially denies to veterans, servicemembers, reservists, or other eligible persons the benefits of advance payment of educational assistance

authorized to such individuals under § 21.4138(a), 21.7140(a), 21.7640(d), or 21.9680; or

* * * * *

(Authority: 16136(b); 38 U.S.C. 512(a), 3034(a), 3241(a), 3323(a), 3680A(d), 3684, 3685, 3689, 3690, 3696, 5301)

(e) * * *

(2) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

* * * * *

(f) * * *

(Authority: 10 U.S.C. 16136(b); 31 U.S.C. 3801–3812; 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689, 3690)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3690)

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3683(b))

■ 25. Amend § 21.4211 by:

■ a. Removing “chapter 30, 32, 34, 35, or 36” each place it appears and adding, in each place, “chapter 30, 32, 33, 35, or 36”.

■ b. Revising the authority citation at the end of paragraphs (a) through (e).

The revisions read as follows:

§ 21.4211 Composition, jurisdiction, and duties of the Committee on Educational Allowances.

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 512(a), 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3323(a), 3241(a), 3689(d), 3690)

■ 26. Amend § 21.4212 by revising the authority citation at the end of the section to read as follows:

§ 21.4212 Referral to Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 27. Amend § 21.4213 by revising the authority citation at the end of the section to read as follows:

§ 21.4213 Notices of hearing by Committee on Educational Allowances.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 28. Amend § 21.4214 by revising the authority citation for paragraphs (a) through (p) to read as follows:

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

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(f) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(g) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(h) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(i) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(j) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(k) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(l) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(m) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(n) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(o) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(p) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 29. Amend § 21.4215 by revising the authority citation for paragraphs (a) through (e) to read as follows:

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

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(d) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

(e) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 30. Amend § 21.4216 by revising the authority citation for paragraphs (a) and (c) to read as follows:

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

(a) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), (e), 3690; Pub. L. 122 Stat. 2375)

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3323(a), 3689(d), 3690)

■ 31. Amend § 21.4233 by revising the authority citation at the end of paragraph (e) to read as follows:

§ 21.4233 Combination.

* * * * *

(e) * * *

(Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3002(8), 3034(d), 3241(b), 3323(a), 3452(c), 3501(a)(6), 3675, 3676)

■ 32. Amend § 21.4234 by:

■ a. Removing “veteran or eligible person” each time it appears, and adding, in its place, “veteran, reservist, or eligible person”.

■ b. Revising paragraph (c).

■ c. In paragraph (d)(1)(i), removing “veteran or eligible spouse or surviving spouse” and adding, in its place, “veteran or eligible person other than a child receiving educational assistance under 38 U.S.C. chapter 35”.

■ d. In paragraph (d)(1)(iii) and (d)(2)(iii), removing “child”, and adding, in each place, “child receiving

educational assistance under 38 U.S.C. chapter 35”.

■ e. Revising the authority citation at the end of paragraphs (a)(2)(iv), (a)(2)(v), (b), (c), (d)(3), (d)(4), and (e).

The revisions read as follows:

§ 21.4234 Change of program.

- (a) * * *
(2) * * *
(iv) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

- (v) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

- (b) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

(c) Optional change of program. A spouse or surviving spouse eligible to receive educational assistance under 38 U.S.C. chapter 35 may make one optional change of program if his or her previous course was not interrupted due to his or her own misconduct, neglect, or lack of application.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

- (d) * * *
(3) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

- (4) * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

- (e) * * *

(Authority: 10 U.S.C. 510(h), 16136(b), 16166(b); 38 U.S.C. 3034(a), 3241, 3323(a), 3691)

* * * * *

■ 33. Amend § 21.4236 by revising the authority citation at the end of paragraphs (b), (c), and (d) to read as follows:

§ 21.4236 Tutorial assistance.

* * * * *

- (b) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3314, 3492, 3533(b))

- (c) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

- (d) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

■ 34. Amend § 21.4250 by:

■ a. In paragraph (c)(2)(ii), removing “Chapter 1606 or 38 U.S.C. Chapters 30, 32, 35, or 36” and adding, in its place, “chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36”.

■ b. In paragraph (c)(2)(iii), removing “chapter 30, 32, or 35” and adding, in its place, “chapter 30, 32, 33, or 35”.

■ c. Revising the authority citation at the end of paragraphs (a) and (c).

The revisions read as follows:

§ 21.4250 Course and licensing and certification test approval; jurisdiction and notices.

- (a) * * *

(Authority: 38 U.S.C. 3014(b), 3313(e), 3315, 3670, 3672(a))

* * * * *

- (c) * * *

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3314, 3323(a), 3476, 3523, 3672, 3673, 3689)

* * * * *

■ 35. Amend § 21.4252 by revising the authority citation at the end of paragraph (c) to read as follows:

§ 21.4252 Courses precluded; erroneous, deceptive, or misleading practices.

* * * * *

- (c) * * *

(Authority: 10 U.S.C. 16131(f); 38 U.S.C. 3034, 3241(b), 3323(a), 3523(b), 3680A(b))

* * * * *

Subpart G—Post-Vietnam Era Veterans’ Educational Assistance Under 38 U.S.C. Chapter 32

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

Authority: 38 U.S.C. 501(a), chs. 32, 36, and as noted in specific sections.

■ 37. Amend § 21.5022 by revising paragraphs (a) and (b)(1)(i) through (b)(1)(vii), adding paragraphs (b)(1)(viii) and (b)(1)(ix), and revising the authority citation at the end of the section to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* (1) An individual cannot receive educational assistance under 38 U.S.C. chapter 32 concurrently with benefits under—

- (i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);
(ii) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);
(iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iv) 38 U.S.C. chapter 35 (Survivors’ and Dependents’ Educational Assistance);

(v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);

(vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(Authority: 38 U.S.C. 3322(a), 3681(b), 3695)

(2) If an individual is eligible for benefits under 38 U.S.C. chapter 32 and one or more of the programs listed in (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(Authority: 38 U.S.C. 3033(a), 3322(a))

- (b) * * *

- (1) * * *

(i) 38 U.S.C. chapter 30 (Montgomery GI Bill—Active Duty);

(ii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);

(iii) 38 U.S.C. chapter 35 (Survivors’ and Dependents’ Educational Assistance);

(iv) 10 U.S.C. chapter 1606

(Montgomery GI Bill—Selected Reserve);

(v) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);

(vi) 10 U.S.C. chapter 106a (Educational Assistance Test Program);

(vii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);

(viii) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or

(ix) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

* * * * *

(Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

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

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

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

■ 39. Amend § 21.7143 by revising paragraphs (a) and (b) to read as follows:

§ 21.7143 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* (1) Except for receipt of a Montgomery GI

Bill—Selected Reserve kicker provided under 10 U.S.C. 16131(i), a veteran is barred from concurrently receiving educational assistance under 38 U.S.C. chapter 30 and—

- (i) 38 U.S.C. chapter 31 (Vocational Rehabilitation and Employment);
- (ii) 38 U.S.C. chapter 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (iii) 38 U.S.C. chapter 33 (Post-9/11 GI Bill);
- (iv) 38 U.S.C. chapter 35 (Survivors' and Dependents' Educational Assistance);
- (v) 10 U.S.C. chapter 1606 (Montgomery GI Bill—Selected Reserve);
- (vi) 10 U.S.C. chapter 1607 (Reserve Educational Assistance Program);
- (vii) 10 U.S.C. chapter 106a (Educational Assistance Test Program);
- (viii) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);
- (ix) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or
- (x) The Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399).

(b) If an individual is eligible for benefits under 38 U.S.C. chapter 30 and one or more of the programs listed in paragraphs (a)(1)(i) through (a)(1)(x) of this section, he or she must specify under which program he or she is claiming benefits. The individual may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The individual may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3681(b))

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 40. The authority citation for part 21, subpart L is amended 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.

■ 41. Amend § 21.7642 by revising paragraphs (a) and (b) to read as follows:

§ 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. chapter 1606 and any of the following provisions of law—

- (1) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);
- (2) 38 U.S.C. 31 (Vocational Rehabilitation and Employment);
- (3) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);
- (4) 38 U.S.C. 33 (Post-9/11 GI Bill);
- (5) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance);
- (6) 10 U.S.C. 1607 (Reserve Educational Assistance Program);
- (7) 10 U.S.C. 106a (Educational Assistance Test Program);
- (8) Section 903 of the Department of Defense Authorization Act, 1981 (Pub. L. 96–342, 10 U.S.C. 2141 note);
- (9) The Hostage Relief Act of 1980 (Pub. L. 96–449, 5 U.S.C. 5561 note); or
- (10) The Omnibus Diplomatic Security Act of 1986 (Pub. L. 99–399).

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3033(a), 3241(a), 3322(a), 3681)

(b) When paragraph (a) of this section applies, the reservist must choose which benefit he or she wishes to receive. The reservist may choose to receive benefits under another program (other than 38 U.S.C. chapter 33) at any time, but not more than once in a calendar month. The reservist may choose to receive benefits under 38 U.S.C. chapter 33 at any time, but not more than once during a certified term, quarter, or semester.

* * * * *

■ 42. Add and reserve subparts N and O.

■ 43. Add new subpart P to read as follows:

Subpart P—Post-9/11 GI Bill

Sec.

21.9500 Introduction.

Definitions

21.9505 Definitions.

Claims and Applications

21.9510 Claims, VA's duty to assist, and time limits.

Eligibility

- 21.9520 Basic eligibility.
- 21.9525 Eligibility for increased and supplemental educational assistance.
- 21.9530 Eligibility time limit.
- 21.9535 Extended period of eligibility.

Entitlement

- 21.9550 Entitlement.
- 21.9555 Entitlement to supplemental educational assistance.
- 21.9560 Entitlement charges.

Transfer of Entitlement to Basic Educational Assistance to Dependents

21.9570 Transfer of entitlement.

Counseling

- 21.9580 Counseling
- 21.9585 Travel Expenses.

Approved Programs of Education and Courses

- 21.9590 Approved programs of education and courses.
- 21.9600 Overcharges.

Payments—Educational Assistance

- 21.9620 Educational assistance.
- 21.9625 Beginning dates.
- 21.9630 Suspension or discontinuance of payments.
- 21.9635 Discontinuance dates.
- 21.9640 Rates of payment of educational assistance.
- 21.9645 Refund of basic contribution to chapter 30.
- 21.9650 Increase in educational assistance.
- 21.9655 Rates of supplemental educational assistance.
- 21.9660 Rural relocation benefit.
- 21.9665 Reimbursement for licensing or certification tests.
- 21.9670 Work-study allowance.
- 21.9675 Conditions that result in reduced rates or no payment.
- 21.9680 Certifications and release of payments.
- 21.9685 Tutorial Assistance.
- 21.9690 Nonduplication of educational assistance.
- 21.9695 Overpayments.
- 21.9700 Yellow Ribbon Program.

Pursuit of Courses

- 21.9710 Pursuit.
- 21.9715 Advance payment certification.
- 21.9720 Certification of enrollment.
- 21.9725 Progress and conduct.
- 21.9735 Other required reports.
- 21.9740 False, late, or missing reports.
- 21.9745 Reporting fee.

Course Assessment

21.9750 Course measurement.

Approval of Programs of Education

21.9765 Program of education approval.

Administrative

21.9770 Administrative.

Authority: 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

Subpart P—Post-9/11 GI Bill

§ 21.9500 Introduction.

An educational assistance program is established for individuals who served on active duty after September 10, 2001. This educational assistance program is effective August 1, 2009.

(Authority: Pub. L. 110–252, 122 Stat. 2357, 2378)

Definitions

§ 21.9505 Definitions.

For the purposes of this subpart (governing the administration and payment of educational assistance under 38 U.S.C. chapter 33) the following definitions apply. (See also additional definitions in §§ 21.1029 and 21.4200).

Academic year means the period of time beginning August 1st of each calendar year and ending July 31st of the subsequent calendar year.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

Active duty means full-time duty in the regular components of the Armed Forces or under a call or order to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304. Active duty does not include—

(1) Full-time National Guard Duty performed under 32 U.S.C. orders;

(2) Any period during which the individual—

(i) Was assigned full-time by the Armed Forces to a civilian institution to pursue a program of education that was substantially the same as programs of education offered to civilians;

(ii) Served as a cadet or midshipman at one of the service academies; or

(iii) Served under the provisions of 10 U.S.C. 12103(d) pursuant to an enlistment in the Army National Guard, Air National Guard, Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(3) A period of service—

(i) Required by an officer pursuant to an agreement under 10 U.S.C. 2107(b);

(ii) Required by an officer pursuant to an agreement under 10 U.S.C. 4348, 6959, or 9348;

(iii) That was terminated because the individual is considered a minor by the Armed Forces, was erroneously enlisted, or received a defective enlistment agreement; or

(iv) Counted for purposes of repayment of an education loan under 10 U.S.C. chapter 109; or

(4) A period of Selected Reserve service used to establish eligibility under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606 or 1607.

(Authority: 38 U.S.C. 101(21)(A), 3301(1), 3311(d), 3322(b) and (c))

Advance payment means an amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) for the month or fraction of the month in which the individual's quarter, semester, or term will begin plus the amount for the following month.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

Course means a unit of instruction required for an approved program of education that provides an individual with the knowledge and skills necessary to meet the requirements of the selected educational, professional, or vocational objective.

(Authority: 38 U.S.C. 3323(c))

Distance learning means the pursuit of a program of education via distance education as defined in 20 U.S.C. 1003(7).

(Authority: 20 U.S.C. 1003(7); 38 U.S.C. 3323(c))

Educational assistance means the monetary benefit payable under 38 U.S.C. chapter 33 to, or on behalf of, individuals who meet the eligibility requirements for pursuit of an approved program of education under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3313)

Enrollment period means a term, quarter, or semester during which the institution of higher learning offers instruction.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Entry level and skill training means—

(1) Basic Combat Training and Advanced Individual Training for members of the Army;

(2) Recruit Training (Boot Camp) and Skill Training ("A" School) for members of the Navy;

(3) Basic Military Training and Technical Training for members of the Air Force;

(4) Recruit Training and Marine Corps Training (School of Infantry Training) for members of the Marine Corps; and

(5) Basic Training for members of the Coast Guard.

(Authority: 38 U.S.C. 3301(2))

Established charges means the actual charge for tuition and fees that similarly circumstanced nonveterans enrolled in the program of education are required to pay.

(Authority: 38 U.S.C. 3313(h))

Fees means any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education. Fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education.

(Authority: 38 U.S.C. 501(a), 3323(c))

Institution of higher learning (IHL) means a college, university, or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to

authorize the granting of such a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. Such term shall also include a hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree. Such term shall also include an educational institution that offers courses leading to a standard college degree or its equivalent, and is not located in a State but is recognized as an educational institution by the secretary of education (or comparable official) of the country or other jurisdiction in which the institution is located.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a), 3452(f))

Interval means a period of time between regularly scheduled individual terms, semesters, or quarters.

(Authority: 38 U.S.C. 3034(a)(1), 3323(a), 3680)

Lump sum payment means an amount of educational assistance paid for the entire term, quarter, or semester.

(Authority: 38 U.S.C. 3323(c))

Mitigating circumstances means circumstances beyond the individual's control that prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those that VA considers to be mitigating. This list is not all-inclusive.

(1) An illness or mental illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable change in the individual's conditions of employment;

(4) An unavoidable geographical transfer resulting from the individual's employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;

(6) Discontinuance of the course by the educational institution;

(7) Unanticipated active duty for training; or

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

Program of education means a curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for a predetermined and identified

educational, professional, or vocational objective. Such term also means any curriculum or combination of courses pursued at an institution of higher learning that are accepted as necessary to meet the requirements for more than one predetermined and identified educational, professional, or vocational objective if all the objectives pursued are generally recognized as being reasonably related to a single career field. The curriculum or combination of courses pursued must be listed in the institution of higher learning's catalog and included in the approval notice provided by the State approving agency to VA in accordance with § 21.4258(b)(iv).

(Authority: 38 U.S.C. 3034(a), 3301, 3323(a), 3452(b))

Pursuit means to work, during a certified enrollment period, towards the objective of a program of education. This work must be in accordance with approved institutional policy and applicable criteria of Title 38, U.S.C., and must be necessary to reach the program's objective.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g))

Rate of pursuit means the measurement obtained by dividing the number of credit hours (or the equivalent credit hours as determined in § 21.9750) an individual is enrolled in, including credit hours (or the equivalent) applied to refresher, remedial, and deficiency courses, by the number of credit hours (or the equivalent credit hours) considered to be full-time training at the institution of higher learning. The resulting percentage (rounded to the nearest hundredth) will be the individual's rate of pursuit not to exceed 100 percent. For the purpose of this subpart, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(Authority: 38 U.S.C. 3323, 3680)

Transferor means an individual who is entitled to educational assistance under the Post-9/11 GI Bill based on his or her own active duty service and who is approved by the military department to transfer all or a portion of his or her entitlement to one or more dependents.

(Authority: 38 U.S.C. 3319)

Claims and Applications

§ 21.9510 Claims, VA's duty to assist, and time limits.

The provisions of subpart B of this part apply to claims filed for educational assistance under 38 U.S.C. chapter 33 with respect to VA's

responsibilities upon receipt of claim, VA's duty to assist claimants in obtaining evidence, and time limits.

(Authority: 38 U.S.C. 3323(c), 5101, 5102, 5103, 5103A)

Eligibility

§ 21.9520 Basic eligibility.

An individual may establish eligibility for educational assistance under 38 U.S.C. chapter 33 based on active duty service after September 10, 2001, if he or she—

(a) Serves a minimum of 90 aggregate days excluding entry level and skill training (to determine when entry level and skill training may be included in the total creditable length of service, see § 21.9640(a)) and, after completion of such service,—

(1) Continues on active duty;

(2) Is discharged from service with an honorable discharge;

(3) Is released from service characterized as honorable and placed on the retired list, temporary disability retired list, or transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;

(4) Is released from service characterized as honorable for further service in a reserve component; or

(5) Is discharged or released from service for—

(i) A medical condition that preexisted such service and is not determined to be service-connected;

(ii) Hardship, as determined by the Secretary of the military department concerned; or

(iii) A physical or mental condition that interfered with the individual's performance of duty but was not characterized as a disability and did not result from the individual's own misconduct;

(b) Serves a minimum of 30 continuous days and, after completion of such service, is discharged under other than dishonorable conditions due to a service-connected disability; or

(c)(1) After meeting the minimum service requirements in paragraph (a) or (b) of this section—

(i) An individual makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under either 38 U.S.C. chapter 30, or 10 U.S.C. chapter 106a, 1606, or 1607;

(ii) A member of the Armed Forces who is eligible for educational assistance under 38 U.S.C. chapter 30 and who is making contributions towards such educational assistance under 38 U.S.C. 3011(b) or 3012(c) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33; or

(iii) A member of the Armed Forces who made an election not to receive educational assistance under 38 U.S.C. chapter 30 in accordance with 38 U.S.C. 3011(c)(1) or 3012(d)(1) makes an irrevocable election to receive benefits under 38 U.S.C. chapter 33.

(2) An individual may make an irrevocable election to receive benefits under this chapter by properly completing VA Form 22-1990, submitting a transfer-of-entitlement designation under this chapter to the Department of Defense, or submitting a written statement that includes the following—

(i) Identification information (including name, social security number, and address);

(ii) If applicable, an election to receive benefits under chapter 33 in lieu of benefits under one of the applicable chapters listed in paragraph (c)(1)(i) of this section (e.g., "I elect to receive benefits under the Post-9/11-GI Bill in lieu of benefits under the Montgomery GI Bill—Active Duty (chapter 30) program.");

(iii) The date the individual wants the election to be effective (e.g., "I want this election to take effect on August 1, 2009."). An election request for an effective date prior to August 1, 2009, will automatically be effective August 1, 2009; and

(iv) An acknowledgement that the election is irrevocable (e.g., "I understand that my election is irrevocable and may not be changed.").

(Authority: 38 U.S.C. 3311; Pub. L. 110-252, Stat. 2375-2376)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0154.)

§ 21.9525 Eligibility for increased and supplemental educational assistance.

(a) *Increased assistance for members with critical skills or specialty.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may increase the amount of educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty in retaining personnel.

(b) *Supplemental assistance for members serving additional service.* The Secretary of the military department concerned, pursuant to regulations prescribed by the Secretary of Defense, may supplement the amount of

educational assistance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) to an individual who meets the following service requirements.

(1) *Individuals with active duty service only.* Supplemental educational assistance may be offered to an individual who serves 5 or more consecutive years on active duty in the Armed Forces in addition to the years counted to qualify for educational assistance, without a break in such service, and—

- (i) Continues on active duty without a break;
- (ii) Is discharged from service with an honorable discharge;
- (iii) Is placed on the retired list;
- (iv) Is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve;
- (v) Is placed on the temporary disability retired list; or
- (vi) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service.

(2) *Individuals with Selected Reserve service.* (i) Supplemental educational assistance may be offered to an individual who—

(A) Serves 2 or more consecutive years on active duty in the Armed Forces in addition to the years on active duty counted to qualify for educational assistance;

(B) Serves 4 or more consecutive years of duty in the Selected Reserve in addition to the years of duty in the Selected Reserve counted to qualify the individual for educational assistance; and

(C) After completion of such service—

- (1) Is discharged from service with an honorable discharge;
- (2) Is placed on the retired list;
- (3) Is transferred to the Fleet Reserve or Fleet Marine Corps Reserve;
- (4) Is placed on the temporary disability retired list;

(5) Continues on active duty; or

(6) Continues in the Selected Reserve.

(ii) The Secretary concerned may, pursuant to regulations prescribed by the Secretary of Defense, determine the maximum period of time during which the individual is considered to have continuous service in the Selected Reserve even though the individual—

(A) Is unable to locate a unit of the Selected Reserve for which he or she is eligible;

(B) Is unable to locate a unit of the Selected Reserve that has a vacancy; or

(C) For any other reason other than those stated in paragraph (b)(2)(ii)(A) and (B) of this section.

(iii) Any decision as to the continuity of an individual's service in the

Selected Reserve made by the Secretary of Defense will be binding upon VA.

(Authority: 38 U.S.C. 3021, 3022, 3023, 3316)

§ 21.9530 Eligibility time limit.

(a) Except as provided in paragraphs (b) through (e) of this section, an individual's period of eligibility for educational assistance will terminate effective 15 years from the date of the last discharge or release from active duty of at least—

- (1) 90 continuous days; or
- (2) 30 continuous days if the individual is released for a service-connected disability.

(b) In the case of an individual who establishes eligibility and does not meet one of the service requirements specified in paragraph (a) of this section, the individual's period of eligibility for educational assistance will terminate effective 15 years from the date of discharge for the last period of service used to meet the minimum service requirements for eligibility as stated in § 21.9520.

(c) *Amendment of military records.* If an individual's eligibility for educational assistance is established as a result of a correction of military records under 10 U.S.C. 1552, a change, correction, or modification of a discharge or dismissal under 10 U.S.C. 1553, or other corrective action by a competent military authority, the individual's period of eligibility will terminate effective 15 years from the date of the change, correction, modification, or other corrective action.

(Authority: 38 U.S.C. 3311(c), 3321)

(d) *Time limit for spouse using transferred entitlement.* (1) Unless the transferor dies while on active duty, the ending date of the spouse's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

- (i) The transferor's ending date as determined under this section;
- (ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(2) If the transferor dies while on active duty, the ending date of the spouse's period of eligibility is the earliest of the following—

- (i) The date 15 years from the transferor's date of death;
- (ii) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective; or

(iii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f).

(Authority: 38 U.S.C. 3319)

(e) *Time limit for child using transferred entitlement.* (1) The ending date of the child's period of eligibility for entitlement transferred under § 21.9570 is the earliest of the following—

(i) The ending date specified by the transferor, if the transferor specified the period for which the transfer was effective;

(ii) The effective date of the transferor's revocation of transferred entitlement as determined under § 21.9570(f); or

(iii) The day the child turns 26.

(2) [Reserved]

(Authority: 38 U.S.C. 3319)

§ 21.9535 Extended period of eligibility.

VA will extend an individual's period of eligibility in accordance with the following provisions.

(a) *Disability extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530 (except for paragraphs (d) and (e)) provided—

(i) The individual applies for the extension within the time specified in § 21.1033(c); and

(ii) The medical evidence clearly establishes that the individual was prevented from initiating or completing the chosen program of education within the original period of eligibility because of a physical or mental disability that did not result from the individual's willful misconduct. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. VA will not consider an individual's disability for a period of 30 days or less as having prevented the individual from initiating or completing a chosen program, unless the evidence establishes that the individual was prevented from enrolling or reenrolling in the chosen program or was forced to discontinue attendance due to the short-term disability.

(2) *Length of extension.* An individual's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This will be determined as follows—

(i) If the individual is pursuing a program of education organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date the

individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The beginning date of the ordinary term, quarter, or semester following the day the individual's training became medically feasible;

(B) The last date of the individual's original period of eligibility as determined in § 21.9530; or

(C) The date the individual resumed training.

(ii) If the individual is pursuing a program of education that is not organized on a term, quarter, or semester basis, his or her extended period of eligibility will contain the same number of days as the number of days from the date the individual was prevented from initiating or completing training during his or her original period of eligibility to the earliest of—

(A) The date the individual's training became medically feasible; or

(B) The last date of the individual's original period of eligibility as determined in § 21.9530.

(b) *Forcibly detained extension.* (1) VA will grant an extension of the period of eligibility, as determined in § 21.9530, equal to the period of time the individual—

(i) Was captured and forcibly detained by a foreign government or power, and

(ii) Was hospitalized at a military, civilian, or medical facility immediately following release from the foreign government or power.

(2) [Reserved]

(Authority: 38 U.S.C. 3321)

Entitlement

§ 21.9550 Entitlement.

(a) Subject to the provisions of § 21.4020 and this section, an eligible individual is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under 38 U.S.C. chapter 33.

(b)(1) An individual who, as of August 1, 2009, has used entitlement under 38 U.S.C. chapter 30, but retains unused entitlement under that chapter, makes an irrevocable election to receive educational assistance under the provisions of 38 U.S.C. chapter 33 instead of educational assistance under the provisions of chapter 30, will be limited to one month (or partial month) of entitlement under chapter 33 for each month (or partial month) of unused entitlement under chapter 30 (including any months of chapter 30 entitlement previously transferred to a dependent that the individual has revoked).

(2) An individual, who as of August 1, 2009, was eligible under 38 U.S.C.

chapter 30, had not used any entitlement under that program, was making contributions towards chapter 30, or was a servicemember who would have been eligible for chapter 30 if he or she had not declined participation, will receive 36 months of entitlement under chapter 33.

(c) Except as provided in §§ 21.9560(d), 21.9570(m), and 21.9635(o), no individual is entitled to more than 36 months of full-time educational assistance under 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3312(a), 3323(a), 3695; Pub. L. 110–252, 122 Stat. 2377)

§ 21.9555 Entitlement to supplemental educational assistance.

In determining the entitlement of an individual who is eligible for supplemental educational assistance, VA will—

(a) Calculate the individual's entitlement to 38 U.S.C. chapter 33 educational assistance on the day he or she establishes eligibility for supplemental educational assistance; and

(b) Credit the individual with the same number of months and days of entitlement to supplemental educational assistance as the number calculated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3023, 3316)

§ 21.9560 Entitlement charges.

(a) *Overview.* Except as provided in paragraphs (c) through (f) of this section, VA will base entitlement charges on the principle that an eligible individual who is paid educational assistance for one day of full-time pursuit should be charged one day of entitlement.

(b) *Determining entitlement charge.* (1) VA will make a charge against entitlement as follows:

(i) *Full-time pursuit.* If the individual is pursuing a program of education on a full-time basis, the entitlement charge will be one of the following—

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the entitlement charge will be one day for each day of the certified enrollment period;

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the entitlement charge will be one day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance; or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67.

(ii) *Less than full-time pursuit.* If the individual is pursuing a program of education on a less than a full-time basis, the entitlement charge will be one of the following—

(A) During any period for which VA pays established charges to the institution of higher learning on the individual's behalf, the individual will be charged a percentage of a day for each day of the certified enrollment period determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth);

(B) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf but pays a monthly housing allowance to the individual, the individual will be charged a percentage of a day for each day of the certified enrollment period and/or interval period for which the individual receives the monthly housing allowance determined by dividing the number of course hours the individual is pursuing by the number of course hours required for full-time pursuit (rounded to the nearest hundredth); or

(C) During any period for which VA does not pay established charges to the institution of higher learning on the individual's behalf or a monthly housing allowance to the individual but makes a lump sum payment to the individual for books, supplies, equipment, and other educational costs, VA will make an entitlement charge of 1 day for every \$41.67 paid, with any remaining amount rounded to the nearest amount evenly divisible by \$41.67.

(Authority: 38 U.S.C. 3313)

(2) If the individual changes his or her rate of pursuit after the beginning date of the award, VA will—

(i) Divide the certified enrollment period into separate periods of time so that the individual's rate of pursuit is constant within each period; and

(ii) Compute the rate of pursuit separately for each time period.

(c) *Individuals eligible for, or in receipt of, educational assistance other than that authorized under chapter 33.* If an individual elected 38 U.S.C. chapter 33 by relinquishing educational assistance under another program but receives educational assistance for a program of education that is approved under the relinquished chapter but not approved under 38 U.S.C. chapter 33, VA will make a charge against entitlement equivalent to the entitlement charge—

(1) That would be made under the provisions of § 21.7076, if the individual relinquished eligibility under 38 U.S.C. chapter 30;

(2) That would be made under the provisions of § 21.7576 if the individual relinquished eligibility under 10 U.S.C. chapter 1606; or

(3) That would be made under 10 U.S.C. chapter 1607 if the individual relinquished eligibility under 10 U.S.C. chapter 1607.

(d) *No entitlement charge.* VA will not make a charge against an individual's entitlement—

(1) For an approved licensing or certification test as provided under § 21.9665; or

(Authority: 38 U.S.C. 3315)

(2) For tutorial assistance as provided under § 21.9685; or

(Authority: 38 U.S.C. 3314)

(3) For the rural relocation benefit as provided under § 21.9660; or

(Authority: 38 U.S.C. 3318)

(4) For pursuit of a course or courses when the individual—

(i) Had to discontinue the course or courses as a result of being ordered to—

(A) Active duty service under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304; or

(B) A new duty location or assignment or to perform an increased amount of work; and

(ii) Did not receive credit or lost training time for any portion of the period of enrollment in the course or courses for which the eligible individual was pursuing to complete his or her approved educational, professional, or vocational objective as a result of having to discontinue pursuit.

(Authority: 38 U.S.C. 3312(c))

(e) *Interruption to conserve entitlement.* An individual may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter, or semester if the individual is enrolled for the

entire term, quarter, or semester. VA will make a charge against entitlement for the entire period of certified enrollment, if the individual is otherwise eligible for educational assistance, except when educational assistance is interrupted for any of the following conditions:

(1) Enrollment is terminated;

(2) The individual cancels his or her enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for any part of the certified period of enrollment;

(3) The individual interrupts his or her enrollment at the end of any term, quarter, or semester within a certified period of enrollment and does not negotiate a check or receive a direct deposit for educational assistance provided under this chapter for the succeeding term, quarter, or semester; or

(4) The individual requests interruption or cancellation for any break when a school was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation regardless of whether or not the individual negotiated a check or received a direct deposit for educational assistance provided under this chapter for any part of the certified enrollment period.

(Authority: 38 U.S.C. 3323(c))

(f) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy, is waived and not recovered, or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and not recovered, the charge against entitlement will be the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees;

(ii) Subtracting the remaining amount of the overpayment balances as determined in paragraph (f)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, course costs and marshal fees);

(iii) Dividing the result obtained in paragraph (f)(3)(ii) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees); and

(iv) Multiplying the percentage obtained in paragraph (f)(3)(iii) of this section by the amount of entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 38 U.S.C. 3034(a), 38 U.S.C. 3323(a), 3685)

Transfer of Entitlement to Basic Educational Assistance to Dependents

§ 21.9570 Transfer of entitlement.

An individual entitled to educational assistance under 38 U.S.C. chapter 33 based on his or her own active duty service, and who is approved by a service department to transfer entitlement, may transfer up to a total of 36 months of his or her entitlement to a dependent (or among dependents). A transferor may not transfer an amount of entitlement that is greater than the entitlement he or she has available at the time of transfer.

(a) *Application of sections in subpart P to individuals in receipt of transferred entitlement.* In addition to the rules in this section, the following sections apply to a dependent in the same manner as they apply to the individual from whom entitlement was transferred.

(1) *Definitions.* Section 21.9505—Definitions.

(Authority: 38 U.S.C. 3319)

(2) *Claims and applications.* Section 21.9510—Claims, VA's duty to assist, and time limits.

(Authority: 38 U.S.C. 3319)

(3) *Eligibility.*

(i) Section 21.9530—Eligibility time limit, paragraphs (d) and (e) only; and

(ii) Section 21.9535—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke or modify transfer at any time and that VA may only extend a child's ending date to the date the child attains age 26.

(Authority: 38 U.S.C. 3319)

(4) *Entitlement.*

- (i) Section 21.9550—Entitlement;
- (ii) Section 21.9555—Entitlement to supplemental educational assistance;
- (iii) Section 21.9560—Entitlement charges.

(Authority: 38 U.S.C. 3319)

(5) *Counseling.*

- (i) Section 21.9580—Counseling;
- (ii) Section 21.9585—Travel expenses.

(Authority: 38 U.S.C. 3319)

(6) *Approved programs of education and courses.*

- (i) Section 21.9590—Approved programs of education and courses;
- (ii) Section 21.9600—Overcharges.

(Authority: 38 U.S.C. 3319)

(7) *Payments—Educational assistance.*

- (i) Section 21.9620—Educational assistance;
- (ii) Section 21.9625—Beginning dates, except for paragraphs (e) and (h);
- (iii) Section 21.9630—Suspension or discontinuance of payments;
- (iv) Section 21.9635—Discontinuance dates, except for paragraphs (n) and (o);
- (v) Section 21.9640—Rates of payment of educational assistance;
- (vi) Section 21.9650—Increase in educational assistance;
- (vii) Section 21.9655—Rates of supplemental educational assistance;
- (viii) Section 21.9660—Rural relocation benefit;
- (ix) Section 21.9665—Reimbursement for licensing or certification tests;
- (x) Section 21.9670—Work-study allowance;
- (xi) Section 21.9675—Conditions that result in reduced rates or no payment;
- (xii) Section 21.9680—Certifications and release of payments;
- (xiii) Section 21.9685—Tutorial assistance;
- (xiv) Section 21.9690—Nonduplication of educational assistance;

- (xv) Section 21.9695—Overpayments, except that the dependent and transferor are jointly and severally liable for any amount of overpayment of educational assistance to the dependent; and

(Authority: 38 U.S.C. 3319)

(xvi) Section 21.9700—Yellow Ribbon Program.

(Authority: 38 U.S.C. 3317)

(8) *Pursuit of courses.*

- (i) Section 21.9710—Pursuit;
- (ii) Section 21.9715—Advance payment certification;
- (iii) Section 21.9720—Certification of enrollment;
- (iv) Section 21.9725—Progress and conduct;

- (v) Section 21.9735—Other required reports;

- (vi) Section 21.9740—False, late, or missing reports; and
- (vii) Section 21.9745—Reporting fee.

(Authority: 38 U.S.C. 3319)

(9) *Course assessment.* Section 21.9750—Course measurement.

(Authority: 38 U.S.C. 3319)

(10) *Administrative.* Section 21.9770—Administrative.

(Authority: 38 U.S.C. 3319)

(b) *Eligible dependents.*

- (1) An individual transferring entitlement under this section may transfer entitlement to:
 - (i) The individual's spouse;
 - (ii) One or more of the individual's children; or
 - (iii) A combination of the individuals referred to in paragraphs (b)(1)(i) and (ii) of this section.

(2) A spouse must meet the definition of spouse in § 3.50(a) of this chapter at the time of transfer.

(3) A child must meet the definition of child in § 3.57 of this chapter at the time of transfer. The transferor must make the required designation shown in § 21.9570(d)(1) before the child attains the age of 23.

(4) A stepchild, who meets VA's definition of child in § 3.57 of this chapter at the time of transfer and who is temporarily not living with the transferor, remains a member of the transferor's household if the actions and intentions of the stepchild and transferor establish that normal family ties have been maintained during the temporary absence.

(Authority: 38 U.S.C. 3319)

(c) *Timeframe during which an individual may transfer entitlement.* An individual approved by his or her military department to transfer entitlement may do so at any time while serving as a member of the Armed Forces, subject to the transferor's 15-year period of eligibility as provided in § 21.9530.

(Authority: 38 U.S.C. 3319)

(d) *Designating dependents; designating the amount to transfer; and period of transfer.*

- (1) An individual transferring entitlement under this section must:
 - (i) Designate the dependent or dependents to whom such entitlement is being transferred;
 - (ii) Designate the number of months of entitlement to be transferred to each dependent; and
 - (iii) Specify the beginning date and ending date of the period for which the transfer is effective for each dependent.

(2) VA will accept the transferor's designations as shown on any document signed by the transferor that shows the information required in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(Authority: 38 U.S.C. 3319)

(e) *Maximum months of entitlement transferable.*

(1) The maximum amount of entitlement a transferor may transfer is the lesser of:

- (i) Thirty-six months of his or her entitlement; or
- (ii) The maximum amount authorized by the Secretary of the military department concerned; or
- (iii) The amount of entitlement he or she has available at the time of transfer.

(2) The transferor may transfer up to the maximum amount of transferable entitlement:

- (i) To one dependent; or
- (ii) Divided among his or her designated dependents in any manner he or she chooses.

(Authority: 38 U.S.C. 3319)

(f) *Revocation of transferred entitlement.*

(1) A transferor may revoke any unused portion of transferred entitlement at any time by submitting a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The revocation will be effective the later of—

- (i) The date VA receives the notice of revocation; or
- (ii) The date the military department concerned receives the notice of revocation.

(Authority: 38 U.S.C. 3319)

(g) *Modifying a transfer of entitlement.*

(1) A transferor may modify the designations he or she made under paragraph (d) of this section at any time. Any modification made will apply only with respect to unused transferred entitlement. The transferor must submit a written notice to both the Secretary of Veterans Affairs and the Secretary of the military department concerned that initially approved the transfer of entitlement. VA will accept a copy of the written notice addressed to the military department as sufficient written notification to VA.

(2) The modification will be effective the later of—

(i) The date VA receives the notice of modification; or

(ii) The date the military department concerned receives the notice of modification.

(Authority: 38 U.S.C. 3319)

(h) *Prohibition on treatment of transferred entitlement as marital property.* Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(Authority: 38 U.S.C. 3319)

(i) *Entitlement charge to transferor.* VA will reduce the transferor's entitlement at the rate of 1 month of entitlement for each month of transferred entitlement used by a dependent or dependents.

(Authority: 38 U.S.C. 3319)

(j) *Secondary school diploma (or equivalency certificate).* Children who have reached age 18 and spouses may use transferred entitlement to pursue and complete the requirements of a secondary school diploma (or equivalency certificate).

(Authority: 38 U.S.C. 3319)

(k) *Rate of payment of educational assistance.* VA will apply the rules in § 21.9640 (and §§ 21.9650 and 21.9655 when applicable) to determine the educational assistance rate that would apply to the transferor. VA will pay the dependent and/or the dependent's institution of higher learning (or school, educational institution, or institution as defined in § 21.4200(a) if the dependent is using transferred entitlement to pursue and complete the requirements of a secondary school diploma or equivalency certificate) the amounts of educational assistance payable under 38 U.S.C. chapter 33 in the same manner and at the same rate as if the transferor were enrolled in the dependent's program of education, except that VA will—

(1) Disregard the fact that either the transferor or the dependent child is (or both are) on active duty, and pay the veteran rate to a dependent child;

(2) Pay the veteran rate to a surviving spouse; and

(3) Proportionally adjust the payment amounts, other than the book stipend, a dependent would otherwise receive under § 21.9640 if the dependent's months of entitlement will exhaust during the certified enrollment period, by—

(i) Determining the amount of established charges the dependent would otherwise be eligible to receive for the entire enrollment period, then

dividing this amount by the number of days in the dependent's quarter, semester, or term, as applicable, to determine the dependent's daily rate, then determining the actual amount of established charges to be paid by multiplying the dependent's daily rate by his or her remaining months and days of entitlement to educational assistance as provided under § 21.9570; and

(ii) Discontinuing the dependent's monthly housing allowance effective as of the date the dependent's months and days of entitlement exhausts.

(Authority: 38 U.S.C. 3319)

(l) *Transferor fails to complete required service contract that afforded participation in the transferability program.*

(1) Dependents are not eligible for transferred entitlement if the transferor fails to complete the amount of service he or she agreed to serve in the Armed Forces in order to participate in the transferability program, unless—

(i) The transferor did not complete the service due to:

(A) His or her death;

(B) A medical condition that preexisted such service on active duty and that the Secretary of the military department concerned determines is not service-connected;

(C) A hardship, as determined by the Secretary of the military concerned; or

(D) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but interfered with the individual's performance of duty, as determined by the Secretary of the military department concerned; or

(ii) The transferor is considered to have completed his or her service agreement as a result of being discharged for—

(A) A disability; or

(B) A reduction in force.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraph (l)(1)(i) of this section or the transferor was not discharged for one of the reasons stated in paragraph (l)(1)(ii) of this section.

(Authority: 38 U.S.C. 3034(a), 3311(c)(4), 3319)

(m) *Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 33 based on his or her own service.* Dependents who are eligible for

payment of educational assistance through transferred entitlement and are eligible for payment under 38 U.S.C. chapter 33 based on their own active service:

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course; and

(2) Are not subject to the 48 months limit on training provided for in § 21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 33 as long as the only educational assistance paid is under 38 U.S.C. chapter 33. If the dependent is awarded educational assistance under another program listed in § 21.4020 (other than 38 U.S.C. chapter 33), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3034(a), 3319, 3322, 3323(a), 3695)

Counseling

§ 21.9580 Counseling.

An individual may receive counseling from VA before beginning training and during training. VA will apply the provisions of § 21.7100 to beneficiaries under 38 U.S.C. chapter 33 in the same manner as they are applied to individuals under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3697A)

§ 21.9585 Travel expenses.

VA will not pay for any costs of travel to and from the place of counseling regardless of whether the individual requests educational and vocational counseling or whether the counseling is required.

(Authority: 38 U.S.C. 111, 3323(c))

Approved Programs of Education and Courses

§ 21.9590 Approved programs of education and courses.

(a) Payments of educational assistance are based on pursuit of a program of education. In order to receive educational assistance under 38 U.S.C. chapter 33, an eligible individual must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher, remedial, or deficiency courses as these courses are defined in § 21.7020(b);

(3) Be pursuing other preparatory or special education or training courses necessary to enable the individual to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided under a program administered by the Secretary of a military department under 10 U.S.C. 2007(a) or (c), for which the individual is requesting educational assistance for the amount of established charges not covered by military tuition assistance.

(Authority: 38 U.S.C. 3313, 3323(a), 3689)

(b) *Approval of the selected program of education.* Subject to paragraph (a), VA will approve a program of education under 38 U.S.C. chapter 33 selected by the individual if:

(1) The program meets the definition of a program of education in § 21.9505;

(2) Except for a program consisting of a licensing or certification test, the program has an educational, vocational, or professional objective as described in § 21.7020(b)(13) or (22);

(3) The courses, subjects, or licensing or certification tests in the program are approved for VA training; and

(4) Except for a program consisting of a licensing or certification test designed to help the individual maintain employment in a vocation or profession, the individual is not already qualified for the objective of the program.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3471, 3689)

(c) *Change of program.* In determining whether an individual may change his or her selected program of education, VA will apply the provisions of § 21.4234.

(d) *Programs not authorized under 38 U.S.C. chapter 33.* If an individual elected to receive benefits under 38 U.S.C. chapter 33 by relinquishing eligibility under 38 U.S.C. chapter 30, or 10 U.S.C. chapter 1606 or 1607, and the eligible individual requests educational assistance for a program of education that is not authorized to be available to the individual under the provisions of 38 U.S.C. chapter 33, but is available under the chapter the individual relinquished, VA will provide educational assistance at the rate payable under the provisions of the relinquished chapter to the eligible individual for pursuit of any program of education that meets the approval criteria under—

(1) 38 U.S.C. chapter 30, if the individual was eligible under that chapter;

(2) 10 U.S.C. chapter 1606, if the individual was eligible under that chapter; or

(3) 10 U.S.C. chapter 1607, if the individual was eligible under that chapter.

(Authority: Pub. L. 110–252, 122 Stat. 2377)

§ 21.9600 Overcharges.

(a) *Overcharges by educational institutions may result in the disapproval of enrollments.* VA may disapprove an institution of higher learning for further enrollments if the institution of higher learning charges an individual, or receives from an individual, an amount for tuition and fees that exceeds the established charges that the institution of higher learning requires from similarly circumstanced individuals enrolled in the same course.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(a))

(b) *Overcharges by organizations or entities offering licensing or certification tests may result in disapproval of tests.*

VA may disapprove an organization or entity offering a licensing or certification test when the organization or entity offering the test charges an individual, or receives from an individual, an amount for fees that exceeds the established fees that the organization or entity requires from similarly circumstanced individuals taking the same test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689(d), 3690(a))

Payments—Educational Assistance

§ 21.9620 Educational assistance.

VA will pay educational assistance for an eligible individual's pursuit of an approved program of education. The eligible individual and/or the individual's educational institution will receive payment amounts in accordance with the formulas listed in § 21.9640. The maximum amounts of tuition and fees payable for the upcoming academic year under 38 U.S.C. chapter 33 will be published in the "Notices" section of the **Federal Register** by the first of August of each calendar year. The maximum amounts payable may also be obtained by visiting the GI Bill Web site at <http://www.gibill.va.gov> or by calling VA's customer service department toll-free at 1–888–442–4551. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year.

(Authority: 38 U.S.C. 3313, 3314, 3315, 3316, 3317)

§ 21.9625 Beginning dates.

VA will determine the beginning date of an award or increased award of educational assistance under this

section, but in no case will the beginning date be earlier than August 1, 2009. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable beginning dates.

(Authority: 38 U.S.C. 3313, 3316, 3323(a), 5110, 5111, 5113)

(a) *Entrance or reentrance including change of program or institution of higher learning.* When an eligible individual enters or reenters into training (including a reentrance following a change of program or institution of higher learning), the beginning date of his or her award of educational assistance will be determined as follows:

(1) *For other than a licensing or certification test.* (i) If the award is an award for the first period of enrollment for which the eligible individual began pursuing his or her program of education, the beginning date will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) One year before the date of claim as determined by § 21.1029(b);

(C) The effective date of the approval of the program of education; or

(D) One year before the date VA receives approval notice for the program of education.

(ii) If the award is an award for a second or subsequent period of enrollment for which the eligible individual is pursuing a program of education, the effective date of the award will be the latest of—

(A) The date the institution of higher learning certifies under paragraph (b) or (c) of this section;

(B) The effective date of the approval of the program of education; or

(C) One year before the date VA receives the approval notice for the program of education.

(Authority: 38 U.S.C. 3034(a), 3313, 3316, 3323(a), 3672, 5103)

(2) *For a licensing or certification test.* VA will award educational assistance for the cost of a licensing or certification test only when the eligible individual takes such test on or after August 1, 2009—

(i) While the test is approved under 38 U.S.C. chapter 36;

(ii) While the individual is eligible for educational assistance under this subpart; and

(iii) No more than one year before the date VA receives a claim for reimbursement of the cost of the test.

(Authority: 38 U.S.C. 3034(a), 3315, 3323(a), 3452(b), 3689)

(b) *Certification for program of education that leads to a standard college degree.* (1) When the individual enrolls in a course offered by independent study or distance learning, the beginning date of the award or increased award of educational assistance will be the date the eligible individual begins pursuit of the course according to the regularly established practices of the institution of higher learning.

(2) When the individual enrolls in a resident course, the beginning date of the award or increased award of educational assistance will be the first scheduled date of classes for the term, quarter, or semester in which the eligible individual is enrolled, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(3) When the individual enrolls in a resident course whose first scheduled class begins after the calendar week when, according to the school's academic calendar, classes are scheduled to begin for the term, quarter, or semester, the beginning date of the award or increased award of educational assistance allowance will be the actual date of the first class scheduled for that particular course.

(4) When the individual enrolls in a resident course, the beginning date of the award will be the date of reporting provided that—

(i) The published standards of the school require the eligible individual to register before reporting; and

(ii) The published standards of the school require the eligible individual to report no more than 14 days before the first scheduled date of classes for the term, quarter, or semester for which the eligible individual has registered.

(5) When the eligible individual enrolls in a resident course and the first day of classes is more than 14 days after the date of registration, the beginning date of the award or increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 3313, 3316, 3323)

(c) *Certification for program of education that does not lead to a standard college degree.* (1) When an eligible individual enrolls at an institution of higher learning for a program of education that is offered in residence but that does not lead to a standard college degree, the beginning date of the award of educational assistance will be as stated in paragraph (b) of this section.

(Authority: 38 U.S.C. 3313(b), 3323)

(2) When an eligible individual enrolls at an institution of higher

learning for a program of education that is offered by correspondence, the beginning date of the award of educational assistance will be the later of—

(i) The date the first lesson was sent, or

(ii) The date of affirmance (as defined in § 21.7020(b)(36)).

(Authority: 38 U.S.C. 3313, 3316, 3323)

(d) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the beginning date of an eligible individual's award of educational assistance, the beginning date will be adjusted in accordance with the facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3323(c), 5113)

(e) *Correction of military records.* As determined in § 21.9530, the eligibility of a veteran may arise because the nature of the veteran's discharge or release is changed by appropriate military authority. In these cases, the beginning date of the veteran's educational assistance will be in accordance with facts found, but not earlier than the date the nature of the discharge or release was changed.

(Authority: 38 U.S.C. 3323(c))

(f) *Individuals in a penal institution.* If an eligible individual is not receiving, or is receiving a reduced rate, of educational assistance under § 21.9675 (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction), the rate will be increased or assistance will begin effective the earlier of the following:

(1) The date the tuition and fees are no longer being paid under a Federal (other than one administered by VA), State, or local program; or

(2) The date the individual is released from the penal institution or correctional facility.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(g) *Increase ("kicker") based on critical skills or specialty.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance under 38 U.S.C. 3316, the effective date of that increase ("kicker") will be the later of—

(1) The beginning date of an eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first date on which the eligible individual is entitled to the increase ("kicker") as determined by the Secretary of the military department concerned.

(Authority: 10 U.S.C. 16131(i); 38 U.S.C. 3015(d), 3316(a))

(h) *Increase in percentage of maximum amount payable based on length of active duty service requirements.* If an eligible individual is entitled to an increase in the percentage of the maximum amount of educational assistance payable as a result of meeting additional length of active duty service requirements, the effective date of that increase will be the later of—

(1) The beginning date of the eligible individual's award as determined by paragraphs (a) through (e) of this section; or

(2) The first day of the term, quarter, or semester following the term, quarter, or semester in which the eligible individual becomes entitled to an increase in the percentage of the maximum amount payable.

(Authority: 38 U.S.C. 3311, 3313)

(i) *Spouse eligible for transferred entitlement.* If a spouse is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the military department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 6 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer; or

(4) The date the spouse first meets the definition of spouse in § 3.50(a) of this chapter.

(Authority: 38 U.S.C. 3319)

(j) *Child eligible for transferred entitlement.* If a child is eligible for transferred entitlement under § 21.9570, the beginning date of the award of educational assistance will be no earlier than the latest of the following dates—

(1) The date the Secretary of the service department concerned approves the transferor to transfer entitlement;

(2) The date the transferor completes 10 years of service in the Armed Forces;

(3) The date the transferor specified in his or her designation of transfer;

(4) The date the child first meets the definition of child in § 3.57 of this chapter; or

(5) Either—

(i) The date the child completes the requirements of a secondary school diploma (or equivalency certificate); or

(ii) The date the child attains age 18.

(Authority: 38 U.S.C. 3319)

(k) *Change in active duty status.* If an individual is released or discharged from active duty during a certified

period of enrollment, VA will begin paying—

(1) Tuition and fees using the provisions of § 21.9640(b) or (c), whichever is applicable, effective the first day of the enrollment period following the enrollment period during which the individual was discharged;

(2) The monthly housing allowance beginning the 1st day of the month following the date the individual was discharged; and

(3) The book stipend beginning the first day of the enrollment period following the enrollment period during which the individual was discharged.

(1) *Election to receive benefits under 38 U.S.C. chapter 33.* If an individual makes an election to receive benefits under 38 U.S.C. chapter 33 in lieu of benefits under 10 U.S.C. chapter 106a, 1606, or 1607, or 38 U.S.C. chapter 30 in accordance with 38 CFR 21.9520(c), VA will begin paying benefits under 38 U.S.C. chapter 33 effective the later of the following—

(1) August 1, 2009;

(2) The date the individual became eligible for educational assistance under 38 U.S.C. chapter 33;

(3) One year before the date the valid election request was received; or

(4) The effective date of the election as requested by the claimant.

§ 21.9630 Suspension or discontinuance of payments.

VA may suspend or discontinue payment of educational assistance in accordance with §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

§ 21.9635 Discontinuance dates.

The effective date of a reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, VA will reduce or discontinue educational assistance using the earliest of the applicable dates.

(a) *Death of eligible individual.* (1) If the eligible individual receives a lump sum payment under § 21.9640(b)(1)(iii), (b)(2)(iii), (c)(1)(ii), or (c)(2)(ii) and dies before the end of the period covered by the lump sum payment, the discontinuance date of educational assistance for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment.

(2) If the institution of higher learning receives a lump sum payment for established charges on behalf of an eligible individual and the individual dies before the end of the period covered by the lump sum payment, the

discontinuance date for the purpose of that lump sum payment will be the last date of the period covered by the lump sum payment. The institution of higher learning will be required to return to VA any portion of the established charges paid by VA that would normally be refunded to a similarly circumstanced individual according to the regularly established practices of the institution of higher learning.

(3) If the eligible individual receives an advance payment of the monthly housing allowance pursuant to § 21.9680(b)(2) and dies before the period covered by the advance payment ends, the discontinuance date of educational assistance shall be the last date of the period covered by the advance payment.

(4) For all other payments, if the eligible individual dies while pursuing a program of education, the discontinuance date of educational assistance will be the end of the month during which the individual last attended.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d), 3680(e))

(b) *First instance of withdrawal of course.* In the first instance of a withdrawal from a course or courses for which the eligible individual received educational assistance, VA will consider mitigating circumstances to exist with respect to the withdrawal of a course or courses totaling no more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider a course or courses dropped during an institution of higher learning's drop-add period in accordance with § 21.4200(l). If mitigating circumstances are considered to exist in accordance with this paragraph, VA will terminate or reduce educational assistance effective the end of the month during which the withdrawal occurred.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a)(1))

(c) *Withdrawal or unsatisfactory completion of all courses.* (1) If the eligible individual, for reasons other than being called or ordered to active duty service, withdraws from all courses or receives all nonpunitive grades and, in either case, there are no mitigating circumstances, VA will terminate educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which nonpunitive grades are assigned.

(2) If the eligible individual withdraws from all courses with

mitigating circumstances or withdraws from all courses for which a punitive grade is or will be assigned, VA will terminate educational assistance for—

(i) Residence training effective the last date of attendance; and

(ii) Independent study or distance learning effective on the official date of change in status under the practices of the institution of higher learning.

(3) When an eligible individual withdraws from an approved correspondence course offered by an institution of higher learning, VA will terminate educational assistance effective the date the last lesson was serviced.

(Authority: 38 U.S.C. 3323, 3680(a))

(d) *Reduction in the rate of pursuit of a program of education.* If the eligible individual reduces the rate of pursuit by withdrawing from one or more courses in a program of education but continues training in one or more courses, VA will apply the provisions of this paragraph.

(1) If the reduction in the rate of pursuit occurs other than on the first date of the term, VA will reduce the eligible individual's educational assistance effective the end of the month during which the reduction occurred when the circumstances in either paragraphs (d)(1)(i) or (d)(1)(ii) apply—

(i) A nonpunitive grade is assigned for the course from which the eligible individual withdraws and the withdrawal occurs with mitigating circumstances.

(ii) A punitive grade is assigned for the course from which the eligible individual withdraws.

(2) VA will reduce educational assistance effective the first date of the enrollment in which the reduction occurs when—

(i) The reduction occurs on the first date of the term; or

(ii) A nonpunitive grade is assigned for the course from which the eligible individual withdraws, and—

(A) The eligible individual does not withdraw because he or she is called to active duty service, or in the case of an individual serving on active duty, he or she is not ordered to a new duty location or assignment, or is not ordered to perform an increased amount of work, and

(B) The withdrawal occurs without mitigating circumstances.

(3) An eligible individual enrolled in several courses within a program of education, who reduces his or her rate of pursuit by completing one or more of the courses while continuing training in others, may receive an interval payment based on the total number of enrolled courses he or she completed if the

requirements of § 21.9680(b)(5) are met. If those requirements are not met, VA will reduce the eligible individual's educational assistance effective the end of the month during which the individual completed each course (or courses).

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(e) *End of course or period of enrollment.* If an eligible individual's course or period of enrollment ends, the effective date of reduction or discontinuance of the individual's award of educational assistance will be the ending date of the course or period of enrollment as certified by the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(f) *Nonpunitive grade.* (1) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the first date of enrollment for the term in which the grade applies unless mitigating circumstances are found.

(2) If an eligible individual does not officially withdraw from a particular course and the individual receives a nonpunitive grade for that course, VA will reduce the individual's educational assistance effective the end of the month during which the student last attended when mitigating circumstances are found.

(3) If an eligible individual receives an incomplete grade for a course or courses, VA will delay creating an overpayment for such course or courses to allow the individual an opportunity to complete the course or courses. However, if the incomplete grade is not replaced with a punitive grade, VA will reduce the individual's educational assistance in accordance with paragraph (f)(1) or (2) of this section effective the earliest of—

(i) The last date permitted by the IHL to complete the course;

(ii) The date the IHL permanently assigns a nonpunitive grade;

(iii) One year from the date the incomplete grade was assigned.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(g) *Discontinued by VA.* If VA discontinues payment to an eligible individual following procedures stated in § 21.4210(d) and (g), the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments

provided in § 21.4210, if the discontinuance was preceded by suspension; or

(2) The end of the month during which VA made the decision to discontinue payments under § 21.9630 or § 21.4210(d) and (g), if the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the discontinuance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(h) *Disapproved by State approving agency.* If a State approving agency disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of payment of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments provided in § 21.4210 if disapproval was preceded by such a suspension; or

(2) The end of the month in which the disapproval is effective or VA receives notice of the disapproval, whichever is later, provided the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3672(a), 3690)

(i) *Disapproval by VA.* If VA disapproves a program of education in which an eligible individual is enrolled, the discontinuance date of educational assistance will be—

(1) The date the Director of the VA Regional Processing Office of jurisdiction first suspended payments, as provided in § 21.4210, if such suspension preceded the disapproval; or

(2) The end of the month in which the disapproval occurred, provided that the Director of the VA Regional Processing Office of jurisdiction did not suspend payments before the disapproval.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3671(b), 3672(a), 3690)

(j) *Unsatisfactory progress.* If an eligible individual's progress is unsatisfactory, his or her educational assistance will be discontinued effective the earlier of the following:

(1) The end of the month during which the institution of higher learning discontinues the eligible individual's enrollment; or

(2) The end of the month during which the eligible individual's progress becomes unsatisfactory according to the institution of higher learning's regularly established standards of progress, conduct, or attendance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(k) *False or misleading statements.* Payments may not be based on false or

misleading statements, claims, or reports. If educational assistance is paid as the result of an individual submitting false or misleading statements, claims, or reports, VA will apply the provisions of § 21.4006 and 21.4007 in the same manner as they apply to veterans under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

(l) *Conflicting interests (not waived).* If a conflict of interest exists between an officer or employee of VA and an institution of higher learning, or an officer or employee of a State approving agency and an institution of higher learning, as provided in § 21.4005, and VA does not grant a waiver, the discontinuance date of educational assistance will be 30 days after the date of the letter notifying the eligible individual of the conflicting interests.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3683)

(m) *Incarceration in prison or other penal institution due to conviction of a felony.*

(1) The provisions of this paragraph apply to an eligible individual whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.9675(c) (based on incarceration in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction).

(2) The reduced rate or discontinuance will be effective the latest of the following—

(i) The first day of the enrollment period for which all or part of the eligible individual's tuition and fees were paid by a Federal (other than one administered by VA), State, or local program;

(ii) The first day of the enrollment period in which the eligible individual is incarcerated in a Federal, State, local, or other penal institution or correctional facility; or

(iii) The beginning date of the award as determined by § 21.9625.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(n) *Reduction or termination due to active duty status.* (1) The discontinuance date for an eligible individual who reduces or terminates training as a result of being called or ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C., or in the case of an individual serving on active duty, being ordered to a new duty location or assignment or to perform an increased amount of work is—

(i) For established charges, the last date of the certified enrollment period,

(ii) For the monthly housing allowance, the end of the month during which the reduction or withdrawal occurred, and

(iii) For the "book stipend", the last date of the period covered by the book stipend payment.

(2) This reduction does not apply to brief periods of active duty for training if the institution of higher learning permits absence for active duty for training without considering the individual's pursuit of a program of education to be interrupted.

(Authority: 38 U.S.C. 3313(e))

(o) *Exhaustion of entitlement.* (1) If an individual enrolled in an institution of higher learning that regularly operates on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33, the effective discontinuance date will be the last day of the quarter or semester in which the entitlement is exhausted.

(2) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 after the individual has completed more than half of the course, the ending date will be the earlier of the following—

(i) The last day of the course, or

(ii) 12 weeks from the day the entitlement is exhausted.

(3) If an individual enrolled in an institution of higher learning that does not regularly operate on the quarter or semester system exhausts his or her entitlement under 38 U.S.C. chapter 33 before the individual has completed more than half of the course, the effective ending date will be the date the entitlement was exhausted.

(Authority: 38 U.S.C. 3031(f), 3312, 3321)

(p) *End of period of eligibility.* If an eligible individual is enrolled in an institution of higher learning on the date of expiration of his or her period of eligibility as determined under § 21.9530, the effective ending date will be the day preceding the end of the period of eligibility.

(Authority: 38 U.S.C. 3321)

(q) *Required verifications not received after certification of enrollment.* (1) If VA does not receive the required verification of attendance in a timely manner for an eligible individual enrolled in a course or courses at an institution of higher learning in a program of education not leading to a standard college degree, VA will terminate payments effective the last date of the last period for which

verification of the eligible individual's attendance was received. If VA later receives the verification, VA will make any adjustment on the basis of the facts found.

(2) If VA does not receive verification of enrollment within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, VA will determine the actual facts and make an adjustment, if required. If the eligible individual failed to enroll, VA will terminate the award of educational assistance effective the beginning date of the enrollment period.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(r) *Administrative or payee error.* (1) When an administrative error or error in judgment by VA, the Department of Defense, or the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(2) When a payee receives an erroneous award of educational assistance as the result of providing false information or withholding information necessary to determine eligibility to the award, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later. The date of the reduction or discontinuance will not be before the last date on which the individual was entitled to payment of educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112(b), 5113)

(s) *Forfeiture for fraud.* If an eligible individual must forfeit his or her educational assistance due to fraud, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3323(c), 5112, 6103)

(t) *Forfeiture for treasonable acts or subversive activities.* If an eligible individual must forfeit his or her educational assistance due to treasonable acts or subversive activities, the ending date of payment of educational assistance will be the later of—

(1) The effective date of the award; or

(2) The day before the date the individual committed the treasonable act or subversive activities for which the individual was convicted.

(Authority: 38 U.S.C. 3323(c), 6104, 6105)

(u) *Change in law or VA issue or interpretation.* If there is a change in the

applicable law or VA issue, or in VA's application of the law or issue, VA will use the provisions of § 3.114(b) of this chapter to determine the ending date of the eligible individual's educational assistance.

(Authority: 38 U.S.C. 3323(c), 5112, 5113)

(v) *Reduction following the loss of increase ("kicker") for Selected Reserve service.* If an eligible individual is entitled to an increase ("kicker") in the monthly rate of educational assistance due to service in the Selected Reserve and loses that entitlement, the effective date for the reduction in the monthly rate payable is the date that the Secretary of the military department concerned determines that the eligible individual is no longer eligible to the increase ("kicker").

(Authority: 10 U.S.C. 16131; 38 U.S.C. 3316(a))

(w) *Receipt of educational assistance allowance under another educational assistance program.* An individual in receipt of educational assistance under this chapter who is also eligible for educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980, may choose to receive educational assistance under another program. VA will terminate educational assistance under 38 U.S.C. chapter 33 effective the first day of the enrollment period during which the individual requested to receive educational assistance under 10 U.S.C. chapter 106a, 1606, or 1607, or under 38 U.S.C. chapter 30, 31, 32, or 35, or the Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3322(a))

(x) *Independent study course loses accreditation.* If the eligible individual is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the institution of higher learning offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3676, 3680A(a))

(y) *Dependent exhausts transferred entitlement.* The ending date of an award of educational assistance to a dependent who exhausts the entitlement transferred to him or her is the date he or she exhausts the entitlement.

(Authority: 38 U.S.C. 3319)

(z) *Transferor revokes transfer of entitlement.* If the transferor revokes a

transfer of unused entitlement, the date of discontinuance for the dependent's entitlement is the effective date of the revocation of transfer as determined under § 21.9570.

(Authority: 38 U.S.C. 3319)

(aa) *Transferor fails to complete additional active duty service requirement.* VA will discontinue each award of educational assistance given to a dependent, effective the first date of each such award when—

(1) The transferor fails to complete the additional active duty service requirement that afforded him or her the

opportunity to transfer entitlement of educational assistance; and

(2) The military department discharges the transferor for a reason other than one of the reasons stated in § 21.9570.

(Authority: 38 U.S.C. 3319)

(bb) *Other reasons for discontinuance.* If an eligible individual's educational assistance must be discontinued for any reason other than those stated in paragraphs (a) through (aa) of this section, VA will determine the ending date of educational assistance based on the facts found.

(Authority: 38 U.S.C. 3323(c), 5112(a), 5113)

§ 21.9640 Rates of payment of educational assistance.

VA will determine the amount of educational assistance payable under 38 U.S.C. chapter 33 as provided in this section.

(a) *Percentage of maximum amounts payable.* Except as provided in paragraph (d) of this section, VA will apply the applicable percentage of the maximum amounts payable under this section for pursuit of an approved program of education, in accordance with the following table—

Aggregate length of creditable active duty service after 09/10/01	Percentage of maximum amounts payable
At least 36 months ¹	100
At least 30 continuous days (Must be discharged due to service-connected disability)	100
At least 30 months, but less than 36 months ¹	90
At least 24 months, but less than 30 months ¹	80 ³
At least 18 months, but less than 24 months ²	70 ³
At least 12 months, but less than 18 months ²	60
At least 6 months, but less than 12 months ²	50
At least 90 days, but less than 6 months ²	40

¹ Includes entry level and skill training.

² Excludes entry level and skill training.

³ If the service requirements are met at both the 80 and 70 percentage level, the maximum percentage of 70 must be applied to amounts payable.

(Authority: 38 U.S.C. 3311, 3313)

(b) *Maximum amounts payable for training at more than one-half time.* An individual, other than one on active duty, who is pursuing a program of education at more than one-half time (at a rate of pursuit greater than 50 percent) and who—

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(1)(i)(A) and the lower amount of fees as determined in paragraph (b)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of—

(1) The actual amount of tuition charged by the institution of higher learning; or

(2) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which the individual is enrolled

or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of—

(1) The actual amount of fees charged by the institution of higher learning; or

(2) The maximum amount of fees regularly charged full-time undergraduate in-State students in a term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees in a term, quarter, or semester in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (b)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 using the ZIP code area in which all, or a majority, of the primary institution of higher learning in which the individual is enrolled is located or, if the individual is only pursuing distance learning courses at the primary institution of higher learning, the ZIP code area in which all, or a majority of the institution of higher learning in which the individual is enrolled in one or more resident courses is located; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours

(or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) \$41.67 (\$1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(2) Is enrolled at an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (b)(2)(i)(A) and the lower amount of fees as determined in paragraph (b)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph (b)(2)(i)(A) and in paragraph (b)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of—

(1) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(2) The average (*i.e.*, unweighted arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of—

(1) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(2) The average (*i.e.*, unweighted arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (b)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term,

as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) Except for individuals pursuing a program of education offered entirely through distance learning, a monthly housing allowance. The monthly housing allowance will be equal to the average (*i.e.*, unweighted arithmetic mean) monthly amount of the basic allowance for housing payable under 37 U.S.C. 403 for a member of the military with dependents in pay grade E-5 residing in the United States; and

(iii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for each quarter, semester, or term. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) \$41.67 (\$1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year.

(c) *Maximum amounts payable for training at one-half time or less.* An individual, other than one on active duty, who is pursuing a program of education at one-half time or less (at a rate of pursuit of 50 percent or less) and who—

(1) Is enrolled at an institution of higher learning located in the United States, or at a branch of such institution that is located outside the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(1)(i)(A) and the lower amount of fees as determined in paragraph (c)(1)(i)(B) of this section.

(A) The amount of tuition payable is the lesser of—

(1) The actual amount of tuition charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(2) The maximum amount of tuition regularly charged per credit hour to full-time undergraduate in-State students by the public institution of higher learning having the highest rate of regularly-charged tuition per credit hour in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located, multiplied by the number of credit hours in which the individual is enrolled.

(B) The amount of fees payable is the lesser of—

(1) The actual amount of fees charged by the institution of higher learning that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay; or

(2) The maximum amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institution of higher learning having the highest rate of regularly-charged fees per term, quarter or semester, in the State in which the individual is enrolled or, if the individual is enrolled at a branch located outside the United States, in the State where the main campus of the institution of higher learning is located.

(C) The lesser amount of paragraph (c)(1)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) in a single academic year. The

lump sum payment for each quarter, semester, or term is equal to—

(A) \$41.67 (\$1,000 divided by 24 credit hours); multiplied by—

(B) The number of credit hours (or the equivalent number of credit hours if enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term; multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(2) Is enrolled in an institution of higher learning not located in the United States, may receive—

(i) A lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the sum of the lower amount of tuition as determined in paragraph (c)(2)(i)(A) and the lower amount of fees as determined in paragraph (c)(2)(i)(B) of this section. Prior to comparing the amounts in paragraph (c)(2)(i)(A) and in paragraph (c)(2)(i)(B) of this section, foreign currency must be converted into United States dollars using the foreign exchange conversion rate as published by the Federal Reserve effective on the first day of the month of July that precedes the beginning date of the individual's enrollment period.

(A) The amount of tuition payable is the lesser of—

(1) The actual amount of tuition charged by the institution of higher learning (converted into United States dollars); or

(2) The average (*i.e.*, arithmetic mean) amount of tuition per credit hour regularly charged full-time undergraduate in-State students by public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(B) The amount of fees payable is the lesser of—

(1) The actual amount of fees charged by the institution of higher learning (converted into United States dollars); or

(2) The average (*i.e.*, arithmetic mean) amount of fees regularly charged full-time undergraduate in-State students per term, quarter, or semester by the public institutions of higher learning throughout the United States as published by VA for the relevant academic year.

(C) The lesser amount of paragraph (c)(2)(i)(A) or (B) of this section, divided by the number of days in the individual's quarter, semester, or term,

as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(ii) An amount for books, supplies, equipment, and other educational costs (referred to as the "book stipend") payable as a lump sum for the certified enrollment period. The maximum amount payable to an eligible individual with remaining entitlement is based on pursuit of twenty-four credit hours (the minimum number of credit hours generally considered to be full-time training at the undergraduate level for an academic year). An individual may receive an amount for each credit hour pursued up to twenty-four credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) in a single academic year. The lump sum payment for each quarter, semester, or term is equal to—

(A) \$41.67 (\$1,000 divided by 24); multiplied by

(B) The number of credit hours (or the equivalent number of credit hours if the individual's enrollment is reported in clock hours) taken by the individual in the quarter, semester, or term, up to a cumulative total of twenty-four credit hours for the academic year; multiplied by—

(C) The percentage equal to the individual's rate of pursuit as determined by dividing the number of credit hours the individual is pursuing by the number of credit hours required for full-time pursuit.

(d) *Amounts payable for individuals on active duty.* Individuals on active duty who are pursuing a program of education may receive a lump sum amount for established charges paid directly to the institution of higher learning for the entire quarter, semester, or term, as applicable. The amount payable will be the lowest of—

(1) The established charges that similarly circumstanced nonveterans enrolled in the individual's program of education would be required to pay;

(2) That portion of the established charges not covered by military tuition assistance under 10 U.S.C. 2007(a) or (b) for which the individual has stated to VA that he or she wishes to receive payment.

(3) The lesser amount of paragraph (d)(1) or (2) of this section, divided by the number of days in the individual's quarter, semester, or term, as applicable, to determine the individual's daily rate which will then be multiplied by the individual's remaining months and days

of entitlement to educational assistance in accordance with § 21.4020 and § 21.9635(o);

(e) *Publication of educational assistance rates.* VA will publish the maximum amounts of tuition and fees payable for the upcoming academic year in the "Notices" section of the **Federal Register** and on the GI Bill Web site at <http://www.gibill.va.gov> by the first of August of each calendar year. The maximum amounts payable, as published, will be effective for each term, quarter, or semester that begins during the academic year.

(Authority: 38 U.S.C. 3313, 3323(c))

§ 21.9645 Refund of basic contribution to chapter 30.

(a)(1) An individual who makes an irrevocable election to receive educational assistance under this chapter by relinquishing eligibility under chapter 30 will be entitled to receive a refund of the amount contributions paid under 38 U.S.C. 3011(b) or 3012(c), up to \$1,200, if the individual, as of the date of the individual's election, meets the requirements for entitlement to educational assistance under this chapter and meets one of the following requirements as of August 1, 2009—

(i) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 and has remaining entitlement under that chapter;

(ii) He or she is eligible for basic educational assistance under 38 U.S.C. chapter 30 but has not used any entitlement under that chapter; or

(iii) He or she is a member of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 because he or she has met the requirements of § 21.7042(a) or (b) and is making contributions as provided in § 21.7042(g).

(2) Individuals are not entitled to a refund of any portion of additional contributions, of up to \$600, paid towards educational assistance under 38 U.S.C. chapter 30 in accordance with the provisions of § 21.7136(h).

(b) *Amount of refund.* The amount of any payment made under this section to the individual who made the contributions will be equal to the total amount of contributions toward basic educational assistance made by the individual as provided in § 21.7042(g) multiplied by the fraction with—

(1) A numerator equal to—

(i) The number of months of entitlement under 38 U.S.C. chapter 30 remaining to the individual at the time of the election and the number of months, if any, of transferred

entitlement under 38 U.S.C. chapter 30 that the individual revoked; or

(ii) 36 for individuals making contributions in accordance with § 21.9645(a)(iii); and

(2) A denominator equal to 36.

(c) *Timing of Payment.* The amount payable under this section will only be paid to the individual who made the contributions as an increase to the monthly housing allowance payable under § 21.9640(b)(1)(ii) or (b)(2)(ii) at the time his or her entitlement exhausts.

(Authority: Pub. L. 110–252, Stat. 2377–2378)

§ 21.9650 Increase in educational assistance.

The Secretary of the military department concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty in which there is a critical shortage of personnel, for which there is difficulty recruiting, or, in the case of critical units, for which there is difficulty retaining personnel, as determined by the Secretary of the military department concerned.

(a) *Chapter 33 increase (“kicker”) amount.* (1) The amount of the increase is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) \$50.00 per month for full-time training; or
(ii) A percentage of the full-time training amount under paragraph (a)(i) of this section based on the individual’s rate of pursuit of training.

(2) The increase (“kicker”) amount payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3015(d)(1), 3313(c), 3316(a))

(b) *Chapter 30 increase (“kicker”) amount.* (1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 38 U.S.C. chapter 30 in accordance with the provisions of § 21.9520(c) and, on the date of such election, the individual is also entitled to an increase (“kicker”) of the amount of educational assistance under 38 U.S.C. 3015(d), the individual remains entitled to that increase under 38 U.S.C. chapter 33.

(2) The increase (“kicker”) amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) \$50.00 per month for full-time training; or

(ii) A percentage of the full-time training amount under paragraph (b)(2)(i) of this section based on the individual’s rate of pursuit of training.

(3) The increase (“kicker”) amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3015(d); Pub. L. 110–252, Stat. 2378)

(c) *Chapter 1606 increase (“kicker”) amount.* (1) If an individual is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election to relinquish eligibility under 10 U.S.C. chapter 1606 in accordance with the provisions of § 21.9520(c) and, on the date of such election, the individual is also entitled to an increase (“kicker”) of the amount of educational assistance under 10 U.S.C. 16131(i), the individual remains entitled to that increase (“kicker”) under 38 U.S.C. chapter 33.

(2) The increase (“kicker”) amount is set by the Secretary of the military department concerned, but the amount of any such increase may not exceed—

(i) \$350.00 per month for full-time training; or
(ii) A percentage of the full-time training amount under paragraph (c)(2)(i) of this section based on the individual’s rate of pursuit of training.

(3) The increase (“kicker”) amount payable under paragraph (c) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 10 U.S.C. 16131(i); Pub. L. 110–252, Stat 2378)

§ 21.9655 Rates of supplemental educational assistance.

In addition to basic educational assistance, an individual who is eligible for supplemental educational assistance and entitled to it will be paid supplemental educational assistance at the rate described in this section unless a lesser rate is required by § 21.9675.

(a) *Individuals eligible for supplemental educational assistance under chapter 33.* (1) The monthly amount of supplemental educational assistance payable to an individual whose initial eligibility for educational assistance is acquired under 38 U.S.C. chapter 33 is set by the Secretary of the

military department concerned, but may not exceed \$300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual’s rate of pursuit of training.

(2) The increase payable under paragraph (a) of this section will only be paid to the individual as part of the monthly housing allowance if the individual is entitled to receive a monthly housing allowance under § 21.9640(b)(1)(ii) or (b)(2)(ii) for that term, quarter, or semester.

(Authority: 38 U.S.C. 3316)

(b) *Individuals who were eligible for supplemental educational assistance under 38 U.S.C. chapter 30.* (1) An individual who is eligible for educational assistance under 38 U.S.C. chapter 33 by reason of an irrevocable election under § 21.9520(c) and was entitled to supplemental educational assistance under subchapter III of 38 U.S.C. chapter 30 remains entitled to such additional amount under chapter 33.

(2) The amount of the increase is set by the Secretary of the military department concerned, but may not exceed \$300 per month for full-time training. Individuals pursuing training at less than full-time will receive a percentage of the amount set by the Secretary of the military department concerned based on the individual’s rate of pursuit of training.

(3) The supplemental increase amount payable under paragraph (b) of this section will be paid to the individual as a lump sum in an amount for the entire quarter, semester, or term, as applicable, based on the monthly amount to which the individual was entitled at the time of the election of chapter 33.

(Authority: 38 U.S.C. 3021; Pub. L. 110–252, 122 Stat. 2378)

§ 21.9660 Rural relocation benefit.

An individual eligible for educational assistance under this chapter is entitled to receive a one-time payment of \$500 if the individual—

(a) Resides in a county (or similar entity utilized by the Bureau of the Census) with less than 7 persons per square mile (as determined by the most recent decennial Census); and

(b) Either—

(1) Physically relocates at least 500 miles in order to pursue a program of education for which the individual receives educational assistance under this chapter; or

(2) Travels by air to physically attend an institution of higher learning for

pursuit of an approved program of education under this chapter if no other land-based method of transportation is available due to an absence of roads or other infrastructure; and

(3) Has provided documentation required in § 21.9680(c).

(Authority: 38 U.S.C. 3318)

§ 21.9665 Reimbursement for licensing or certification tests.

An eligible individual is entitled to receive reimbursement for taking one licensing or certification test. The amount of educational assistance VA will pay as reimbursement for an approved licensing or certification test taken on or after August 1, 2009, is the lesser of the following:

(a) The fee that the licensing or certification organization offering the test charges for taking the test; or

(b) \$2,000.

(Authority: 38 U.S.C. 3315)

§ 21.9670 Work-study allowance.

An eligible individual pursuing a program of education under 38 U.S.C. chapter 33 at a rate of pursuit of at least 75 percent may receive a work-study allowance in accordance with the provisions of § 21.4145.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3485)

§ 21.9675 Conditions that result in reduced rates or no payment.

The payment rates as established in §§ 21.9640 and 21.9655 will be reduced in accordance with this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Except as provided in this paragraph, VA will not pay educational assistance for an eligible individual's pursuit of a course from which the eligible individual withdraws or receives a nonpunitive grade that is not used in computing the requirements for graduation. VA may pay educational assistance for a course from which the eligible individual withdraws or receives a nonpunitive grade if—

(1) The individual withdraws because he or she is ordered to active-duty service or, in the case of an individual serving on active duty, he or she is ordered to a new duty location or assignment, or ordered to perform an increased amount of work; or

(2) There are mitigating circumstances, and

(i) The eligible individual submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the eligible individual that a description is needed, or at a later date if the eligible individual is able to show good cause

why the one-year time limit should be extended to the date on which he or she submitted the description of the mitigating circumstances; and

(ii) The eligible individual submits evidence supporting the existence of mitigating circumstances within one year of the date VA requested the evidence, or at a later date if the eligible individual is able to show good cause why the one-year time limit should be extended to the date on which he or she submitted the evidence supporting the existence of mitigating circumstances.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(b) *No educational assistance for some incarcerated individuals.* VA will not pay educational assistance to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction and has incurred no expenses for books, supplies, or equipment if—

(1) The individual is enrolled in a course for which there is no tuition and fees;

(2) The individual is enrolled in a course and the tuition and fees for the course are being paid in full by a Federal (other than one administered by VA), State, or local program.

(c) *Reduced educational assistance for some incarcerated individuals.* (1) VA will reduce the amount of educational assistance paid to an eligible individual who is incarcerated in a Federal, State, local, or other penal institution or correctional facility due to a felony conviction if—

(i) The individual is enrolled in a course for which the tuition and fees are paid entirely by a Federal (other than one administered by VA), State, or local program, but the individual is required to purchase books, supplies, or equipment for the course; or

(ii) The individual is enrolled in a course for which the tuition and fees are paid partially by a Federal (other than one administered by VA), State, or local program, whether or not the individual is required to purchase books, supplies, or equipment for the course.

(2) The amount of educational assistance payable for pursuit of an approved program of education by an eligible individual, as described in this paragraph, will be the lesser of the following—

(i) The amount equal to any portion of tuition and fees charged for the course that are not paid by a Federal (other than one administered by VA), State, or local program plus an amount equal to any charges to the eligible

individual for the cost of necessary books, supplies, and equipment; or

(ii) The amount of tuition and fees otherwise payable to the individual based on the individual's length of creditable service as determined in § 21.9640(a) and the individual's rate of pursuit, plus an amount equal to any charges to the eligible individual for the cost of necessary books, supplies, and equipment.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3482(g))

(d) *No educational assistance for certain enrollments.* VA will not pay educational assistance for—

(1) An enrollment in an audited course (See § 21.4252(i));

(2) A new enrollment in a course during a period when the approval has been suspended by a State approving agency or VA;

(3) An enrollment in a course by a nonmatriculated student except as provided in § 21.4252(l);

(4) An enrollment in a course certified to VA by the individual taking the course;

(5) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement as computed under § 21.4201; and

(6) An enrollment in a course offered under contract for which VA approval is prohibited by § 21.4252(m).

(Authority: 38 U.S.C. 501(a), 3034(a), 3323(a))

§ 21.9680 Certifications and release of payments.

(a) *Payee.* (1) VA will make payment of the appropriate amount of established charges (including top-up payments), as determined under § 21.9640, directly to the institution of higher learning as a lump sum payment for the entire quarter, semester, or term, as applicable.

(2) VA will make all other payments to the eligible individual or a duly appointed fiduciary. VA will make direct payment to the eligible individual even if he or she is a minor.

(3) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of § 21.4146 to 38 U.S.C. chapter 33.

(Authority: 38 U.S.C. 3034(a), 3313(g), 3323(a), 3680, 5301)

(b) *Payments.*

(1) VA will pay educational assistance for an eligible individual's enrollment in an approved program (other than one seeking tuition assistance top-up, one seeking reimbursement for taking an approved licensing or certification test, or one who qualifies for an advance payment of the monthly housing

allowance) only after the educational institution has certified the individual's enrollment as provided in § 21.9720.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(g), 3689)

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

(2) *Advance payments.* VA will apply the provisions of this section in making advance payments of the monthly housing allowance to eligible individuals.

(i) VA will make payments of the monthly housing allowance in advance when:

(A) The eligible individual has specifically requested such a payment;

(B) The individual is enrolled at a rate of pursuit greater than half-time;

(C) The institution of higher learning at which the eligible individual is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B), (d)(4)(C), and (d)(5) pertaining to receipt, delivery, and return of checks, and certifications of delivery and enrollment;

(D) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (b)(2)(iv) of this section to prevent advance payments being made to the eligible individual's institution of higher learning;

(E) There is no evidence in the eligible individual's claim file showing that he or she is not eligible for an advance payment;

(F) The period for which the eligible individual has requested a payment either—

(1) Is preceded by an interval of nonpayment of 30 days or more; or

(2) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and

(G) The institution of higher learning or the eligible individual has submitted the certification required by § 21.9715.

(ii) The amount of the advance payment to an eligible individual is the amount payable for the monthly housing allowance for the month or fraction thereof in which the term or course will begin plus the amount of the monthly housing allowance for the following month.

(iii) VA will mail advance payments to the institution of higher learning for delivery to the eligible individual. The institution of higher learning will not deliver the advance payment check more than 30 days in advance of the first date of the enrollment period for which VA makes the advance payment.

(iv) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an institution of higher learning if:

(A) The institution of higher learning demonstrates an inability to comply with the requirements of paragraph (b)(2)(iii) of this section;

(B) The institution of higher learning fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible individual or return to VA; or

(C) The Director determines, based on compelling evidence, that the institution of higher learning has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 3034, 3323, 3680)

(3) *Lump sum payments.* VA will make a lump sum payment for the entire quarter, semester, or term:

(i) To an institution of higher learning, on behalf of an eligible individual, for the appropriate amount of established charges;

(ii) To an eligible individual for the appropriate amount for books, supplies, equipment, and other educational costs; and

(iii) To an eligible individual entitled to the \$500 rural relocation benefit.

(Authority: 38 U.S.C. 3034(a), 3313, 3318, 3323(a), 3680(f))

(4) VA will pay educational assistance for tuition assistance top-up only after the individual has submitted to VA a copy of the form(s) that the military service with jurisdiction requires for tuition assistance and that had been presented to the educational institution, covering the course or courses for which the eligible individual wants tuition assistance top-up. If the form(s) submitted do not contain the amount of tuition assistance charged to the individual, VA may delay payment until VA obtains that information from the educational institution. Examples of these forms include:

(i) DA Form 2171, Request for Tuition Assistance—Army Continuing Education System;

(ii) AF Form 1227, Authority for Tuition Assistance—Education Services Program;

(iii) NAVMC 10883, Application for Tuition Assistance, and either NAVEDTRA 1560/5, Tuition Assistance Authorization, or NAVMC (page 2), Tuition Assistance Authorization;

(iv) Department of Homeland Security, USCG CG-4147, Application for Off-Duty Assistance; and

(v) Request for Top-Up: eArmyU Program.

(Authority: 38 U.S.C. 5101(a))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0698)

(5) VA will pay educational assistance to an eligible individual as reimbursement for taking an approved licensing or certification test only after the eligible individual has submitted to VA a copy of his or her official test results and, if not included in the results, a copy of another official form (such as a receipt or registration form) that together must include:

(i) The name of the test;

(ii) The name and address of the organization or entity issuing the license or certificate;

(iii) The date the eligible individual took the test; and

(iv) The cost of the test.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3689)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0695)

(6) *Payment for intervals and temporary school closings.* VA may authorize payment of the monthly housing allowance (as increased under §§ 21.9650(a) and 21.9655(a), if applicable) for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (b)(5)(i) through (b)(5)(v) of this section concerning intervals and in paragraph (5)(vi) of this section concerning temporary school closings. For the purposes of this paragraph, interval means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in § 21.4200(b).)

(i) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (b)(5)(ii) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (b)(5)(iii), (iv), and (v) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

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

(A) The individual's rate of pursuit is one-half time or less on the last day of the certified enrollment period preceding the interval;

(B) The individual is on active duty;

(C) The individual requests, prior to authorization of an award or prior to negotiating a check or receiving a direct deposit for educational assistance, that no benefits be paid for the interval period;

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

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

(F) The individual withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in an institution of higher learning not organized on a term, quarter, or semester basis.

(iii) *Payment for intervals between periods of enrollment at different schools.* If the individual transfers from one approved school for the purpose of enrolling in and pursuing a similar program of education at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar program of education at the second school, VA may not make payments for the interval.

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

(1) Semesters or quarters,

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

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

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

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

(B) If the individual remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(v) *Payment for intervals that occur between overlapping enrollments.* (A) If a student is enrolled in overlapping

enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and which dates the interval and enrollment periods will be considered to begin and end, as follows:

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

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

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

(4) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

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

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(a))

(vi) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraph (b)(5)(ii) through (v) of this section to determine if payment may be continued during the interval.

(A) If payment would not be inconsistent with the provisions of paragraph (b)(5)(ii) through (v) of this section, a determination to authorize payment for a period of a temporary school closing, or to not authorize payment if it appears that either the school closing will not be temporary or payment would not otherwise be in accord with this section, or both, will be made by:

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

(i) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

(ii) If the reason for the closing is a strike, and the strike lasts, or is anticipated to last, 30 days or less.

(2) The Director of Education Service if:

(i) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

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

(B) A school that disagrees with a decision made under paragraph (b)(5)(vi) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the—

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

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

(Authority: 38 U.S.C. 512, 3034(a), 3323(a), 3680(a))

(c) *Rural relocation benefit.* VA will make the \$500 rural relocation benefit payment after—

(1) The educational institution has certified the individual's enrollment as provided in § 21.9680;

(2) The individual has provided—

(i) *Request for benefit.* An individual must submit a request for the rural relocation benefit in writing;

(ii) *Proof of residence.* (A) An individual must provide proof of his or her place of residence by submitting any of the following documents bearing his or her name and current address:

(1) DD Form 214, Certification of Release or Discharge from Active Duty; or

(2) The most recent Federal income tax return; or

(3) The most recent State income tax return; or

(4) Rental/lease agreement; or

(5) Mortgage document; or

(6) Current real property assessment; or

(7) Voter registration card.

(B) An individual using entitlement granted under § 21.9570 who, because he or she resides with the transferor or, in the case of a child, a parent, cannot provide any of the documents in

paragraph (c)(2)(ii) of this section, may submit any document in paragraphs (c)(2)(ii)(A)(2) through (7) of this section bearing the name and current address of the transferor or, in the case of a child, a parent as proof of residence; and

(iii) *Proof of relocation.* An individual traveling by air must provide an airline receipt for travel with a departure and destination airport within reasonable distance from the home of residence and the institution of higher learning, respectively; and

(3) VA has determined that the individual resided in a county (or similar entity utilized by the Bureau of the Census) with less than seven persons per square mile based on the most recent decennial census prior to relocation, and either:

(i) If traveling by land, physically relocated at least 500 miles, confirmed by means of a commonly available internet search engine for mapping upon entering the individual's resident address provided in paragraph (c)(2) as the beginning point and the address of the institution of higher learning as the ending point; or

(ii) If traveling by air, was unable to travel to the institution of higher learning by land due to the absence of road or other infrastructure.

(Authority: 38 U.S.C. 3318)

(d) *Apportionments prohibited.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680)

(e) *Accrued benefits.* Educational assistance remaining due and unpaid on the date of the individual's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

§ 21.9685 Tutorial Assistance.

(a) An individual who is eligible to receive benefits under 38 U.S.C. chapter 33 may receive additional monetary assistance for tutorial services. VA will pay the individual this assistance if the tutorial assistance is necessary for the eligible individual to complete his or her program of education successfully, and the individual—

(1) Is enrolled in and pursuing a postsecondary program of education at a rate of pursuit of at least 50 percent at an institution of higher learning; and

(2) The professor or other person teaching, leading, or giving the course certifies that—

(i) Tutorial assistance is essential to correct a deficiency of the individual in such course; and

(ii) The course is required as part of, or is prerequisite or indispensable to the

satisfactory pursuit of, an approved program of education.

(b) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed \$100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed \$1,200.

(Authority: 38 U.S.C. 3034(a), 3314, 3323(a), 3492)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0171)

§ 21.9690 Nonduplication of educational assistance.

(a) Except for receipt of a Montgomery GI Bill-Active Duty kicker provided under 38 U.S.C. 3015(d) or a Montgomery GI Bill-Selected Reserve kicker provided under 10 U.S.C. 16131(i), an eligible individual is barred from receiving educational assistance under 38 U.S.C. chapter 33 concurrently with educational assistance provided under—

(1) 10 U.S.C. 1606 (Montgomery GI Bill—Selected Reserve);

(2) 10 U.S.C. 1607 (Reserve Educational Assistance Program);

(3) 10 U.S.C. 106a (Section 901, Educational Assistance Test Program);

(4) 38 U.S.C. 30 (Montgomery GI Bill—Active Duty);

(5) 38 U.S.C. 31 (Vocational Rehabilitation and Employment Program);

(6) 38 U.S.C. 32 (Post-Vietnam Era Veterans' Educational Assistance);

(7) 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance); or

(8) Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681; section 901, Pub. L. 96-342)

(b) An individual who is eligible for educational assistance under more than one program listed in paragraph (a) of this section must specify in writing which benefit he or she wishes to receive. The eligible individual may choose to receive payment under another educational assistance program at any time, but may not change which benefit he or she will receive more than once during a term, quarter, or semester.

(Authority: 38 U.S.C. 3034(a), 3322, 3323(a), 3681)

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses that are being paid for entirely or partly by the Armed Forces during any period in which he or she is on active duty service; or

(2) For a unit course or courses that are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3681)

§ 21.9695 Overpayments.

(a) *Prevention of overpayments.* In administering educational assistance payable under 38 U.S.C. chapter 33, VA will apply the provisions of §§ 21.4008 and 21.4009 to eligible individuals and, when appropriate, to institutions of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690(b))

(b) *Liability for overpayments.* (1) An overpayment of educational assistance paid to an eligible individual constitutes a liability of that individual unless—

(i) The overpayment was waived as provided in §§ 1.957 and 1.962 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.9635(r).

(2) An overpayment of educational assistance paid to the institution of higher learning on behalf of an eligible individual constitutes a liability of the individual unless the individual never attended the term, quarter, or semester certified by the institution of higher learning. If the individual never attended the term, quarter, or semester certified by the institution of higher learning, the institution must return to VA all educational assistance received under the provisions of 38 U.S.C. chapter 33 on behalf of the individual for such term, quarter, or semester.

(3) The amount of the overpayment of educational assistance paid to the eligible individual, or paid to the institution of higher learning on behalf of the eligible individual, constitutes a liability of the institution of higher learning if VA determines that the overpayment is the result of willful or negligent—

(i) False certification by the institution of higher learning; or

(ii) Failure to certify excessive absences from a course, discontinuance of a course, or interruption of a course by the eligible individual.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3685)

(iii) In determining whether an overpayment resulting from the actions listed in paragraphs (b)(3)(i) and (ii) of this section should be recovered from an institution of higher learning, VA will apply the provisions of § 21.4009 (except paragraph (a)(1)) to overpayments of educational assistance under 38 U.S.C. chapter 33.

(4) VA will determine the amount of an overpayment as follows—

(i) For an individual who does not complete one or more courses in the certified period of enrollment for which he or she received payment, and who does not substantiate mitigating circumstances for not completing such course or courses, VA will establish an overpayment equal to the amount of educational assistance paid for the course or courses not completed during that certified period of enrollment.

(ii) For an individual who does not complete one or more courses in the certified period of enrollment, but who substantiates mitigating circumstances for not completing such course or courses, VA will prorate the amount of educational assistance to which he or she is entitled.

(A) VA will determine the prorated amount of the established charges by dividing the amount the individual was paid for the course or courses not completed by the number of days in the certified enrollment period, and multiplying the result by the number of days from the beginning date of the enrollment period through the last date of attendance. The result of this calculation will equal the amount the individual is due. The difference between the amount of educational assistance paid and the amount of educational assistance the individual is due for the course or courses not completed will be established as an overpayment.

(B) VA will determine the prorated amount of the monthly housing allowance by determining the amount the individual was entitled to while enrolled and subtracting that amount from the total amount paid. The difference between the amount of the monthly housing allowance paid and the amount of the monthly housing allowance the individual is due will be established as an overpayment.

(C) Individuals who have substantiated mitigating circumstances will not be charged an overpayment for the lump sum payment for books, supplies, equipment, and other educational costs ("book stipend").

(Authority: 38 U.S.C. 3034(a), 3323, 3685, 5302)

§ 21.9700 Yellow Ribbon Program.

(a) *Establishment.* The "Yellow Ribbon G.I. Education Enhancement Program", known as the "Yellow Ribbon Program," permits an institution of higher learning (IHL), at the IHL's option, to enter into an agreement with VA to allow the two parties to provide matching funds to cover a portion of the outstanding amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(b) *Eligible individuals.* This program is only available to individuals entitled to the 100 percent educational assistance rate (based on service requirements) as shown in the chart in § 21.9640(a) or to their designated dependents using entitlement transferred under § 21.9570, who are pursuing training at an eligible IHL.

(c) *Eligible IHLs.* This program is only available at IHLs located in the United States or at a branch of such IHL that is located outside the United States.

(d) *Agreements.* VA will enter into an agreement with an eligible IHL located in the United States seeking to participate in the Yellow Ribbon Program based on a general agreement format developed by VA in which the IHL must agree to—

(1) Provide contributions to eligible individuals who apply for such program at that institution (in a manner prescribed by the institution) on a first-come-first-served basis, regardless of the rate at which the individual is pursuing training (*i.e.*, full-time versus less than full-time), during the academic year;

(2) Provide contributions during the current academic year and all subsequent academic years in which the IHL participates in the Yellow Ribbon Program and the student maintains satisfactory progress, conduct, and attendance according to the regularly prescribed standards of the institution;

(3) Limit contributions made on behalf of a participant to funds under the unrestricted control of the IHL (*e.g.*, a scholarship sent directly to an IHL on behalf of an individual or specific group of individuals from a third party may not be included in Yellow Ribbon Program contributions). Funds received directly or indirectly from Federal sources may not be counted toward contributions;

(4) State the maximum number of individuals for whom contributions will be made during the academic year;

(5) State the manner (whether by direct grant, scholarship, or otherwise) contributions will be made under the Yellow Ribbon Program;

(6) State the maximum dollar amount of contributions that may be provided on behalf of any particular individual during the academic year regardless of the rate at which the individual is pursuing training. IHLs may specify different contributions amounts—

(i) Based on student status (*i.e.*, undergraduate, graduate, doctoral), or

(ii) For each subelement of the institution (*i.e.*, college or professional school). The maximum amount specified for each subelement of the IHL will apply to all programs and

disciplines offered under such subelement.

(7) Provide the maximum amount of contributions payable toward the unmet established charges to all participating individuals during each term, quarter, or semester the individual is enrolled if the IHL's total contribution toward the individual's unmet established charges for the term, quarter, or semester, do not exceed the maximum dollar amount payable during the academic year as specified in paragraph (d)(6) of this section.

(e) *Centralized Agreements.* IHLs with multiple campuses may enter into a single Yellow Ribbon Program Agreement if all participating branches and extensions—

(1) Are listed in the agreement;

(2) Are subject to the authority of the authorizing official signing the Yellow Ribbon Program Agreement; and

(3) Have a certifying official or other employee who meets the requirements of § 21.4266(f)(3)(ii) and who has access to the terms of the Yellow Ribbon Program Agreement.

(f) *Matching Contributions.* VA will match each dollar provided by the school on behalf of an individual; however, the combined amount of contributions under the Yellow Ribbon Program may not exceed the remaining amount of established charges not covered under 38 U.S.C. chapter 3313(c)(1)(A).

(g) *Outreach.* The most current list of colleges and universities participating in the Yellow Ribbon Program will be available at VA's GI Bill Web site at <http://www.gibill.va.gov>. The list will include specific information on each school's agreement with VA.

(Authority: 38 U.S.C. 3317)

Pursuit of Courses

§ 21.9710 Pursuit.

Except for an eligible individual seeking tuition assistance top-up or reimbursement for taking an approved licensing or certification test, an individual's educational assistance depends upon his or her pursuit of a program of education. Verification of this pursuit is accomplished by various certifications.

(Authority: 38 U.S.C. 3323(c))

§ 21.9715 Advance payment certification.

All certifications required by this section shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary. An advance payment under this chapter is only permissible to an individual whose rate of pursuit is greater than half-time, and who is

entitled to the monthly housing allowance as provided in § 21.9640(b)(1)(ii) or (b)(2)(ii).

(a) *Certification needed before an advance payment can be made.* In order for an individual to receive an advance payment of the monthly housing allowance, an application or other document must be signed by the individual or the enrollment certification must be signed by an authorized official of the institution of higher learning.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form specified by the Secretary and shall contain such information as specified by the Secretary.

(1) For each eligible individual receiving an advance payment, an institution of higher learning must—

(i) Verify enrollment for the individual; and

(ii) Verify the delivery of the advance payment check to the individual.

(2) Once the institution of higher learning has initially verified the enrollment of the individual, the individual, not the institution of higher learning, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.9730.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680(d))

§ 21.9720 Certification of enrollment.

Except as stated in § 21.9680, an institution of higher learning must certify an eligible individual's enrollment before he or she may receive educational assistance.

(a) *Institutions of higher learning must certify most enrollments.* VA does not, as a condition of payment of tuition assistance top-up or advance payment, require institutions of higher learning to certify the enrollments of eligible individuals who either are seeking tuition assistance top-up or, in the cases described in § 21.9715, are seeking an advance payment. VA does not require organizations or entities offering a licensing or certification test to certify that the eligible individual took the test. In all other cases, the institution of higher learning must certify the eligible individual's enrollment before he or she may receive educational assistance. This certification must be in a form specified by the Secretary and contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 3014(b), 3031, 3034(a), 3323(a), 3482(g), 3680, 3687, 3689, 5101(a))

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

(1) Institutions of higher learning that offer courses on a term, quarter, or semester basis will report enrollment for the term, quarter, semester, ordinary school year, or ordinary school year plus summer term. If the certification covers two or more terms, the institution of higher learning will report each term, quarter, or semester separately.

(2) Institutions of higher learning organized on a year-round basis that do not offer courses on a term, quarter, or semester basis will report enrollment for the length of the course. The certification will include a report of the dates during which the institution of higher learning closes for any intervals designated in its approval data as breaks between school years.

(3) When an eligible individual enrolls in a distance learning program leading to a standard college degree, the institution of higher learning's certification will include—

(i) The enrollment date; and

(ii) The ending date for the period being certified. If the institution of higher learning has no prescribed maximum time for completion, the certification must include an ending date based on the educational institution's estimate for completion.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

(Approved by the Office of Management and Budget under control number 2900-0073)

§ 21.9725 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive payments of educational assistance under 38 U.S.C. chapter 33 for pursuit of a program of education, an individual must maintain satisfactory progress. VA will discontinue payments of educational assistance if the individual does not maintain satisfactory progress. Progress is unsatisfactory if the individual does not satisfactorily progress according to the regularly prescribed standards of the institution of higher learning he or she is attending.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory conduct according to the regularly prescribed standards and practices of the institution of higher learning in which he or she is enrolled. If the individual will no longer be retained as a student or will not be readmitted as a student by the institution of higher

learning in which he or she is enrolled, VA will discontinue educational assistance, unless further development establishes that the institution of higher learning's action is wrongfully retaliatory in nature.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(c) *Satisfactory attendance.* In order to receive educational assistance for pursuit of a program of education, an individual must maintain satisfactory attendance. VA will discontinue educational assistance if the individual does not maintain satisfactory attendance. Attendance is unsatisfactory if the individual does not attend according to the regularly prescribed standards of the institution of higher learning in which he or she is enrolled.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

(d) *Reentrance after discontinuance.*

(1) An eligible individual may be reentered following discontinuance because of unsatisfactory attendance, conduct, or progress when either:

(i) The individual resumes enrollment at the same institution of higher learning in the same program of education and the institution of higher learning has both approved the individual's reenrollment and certified it to VA; or

(ii) VA determines that—

(A) The cause of the unsatisfactory attendance, conduct or progress has been removed, and

(B) The program that the individual now proposes to pursue is suitable to his or her aptitudes, interests, and abilities.

(2) Reentrance may be for the same program, a revised program, or an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3474)

§ 21.9735 Other required reports.

VA will apply the provisions of § 21.7156 to individuals and institutions of higher learning under 38 U.S.C. chapter 33 as those provisions are applied to veterans and educational institutions under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3034(a), 3323(a))

§ 21.9740 False, late, or missing reports.

(a) *Eligible individual.* Payments may not be based on false or misleading statements, claims or reports. VA will apply the provisions of §§ 21.4006 and 21.4007 to any individual who submits false or misleading claims, statements, or reports in connection with benefits payable under 38 U.S.C. chapter 33 in the same manner as they are applied to people who make similar false or

misleading claims for benefits payable under 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3680, 3690, 6103)

(b) *Institution of higher learning.* (1) VA may hold an institution of higher learning liable for overpayments that result from the institution of higher learning's willful or negligent failure to report excessive absences from a course, discontinuance of a course, or interruption of a course by an individual or from willful or negligent false certification by the institution of higher learning. See § 21.9695(b).

(2) If an institution of higher learning willfully and knowingly submits a false report or certification, VA may disapprove that institution of higher learning's programs of education for further enrollments and may discontinue educational assistance to eligible individuals already enrolled. In doing so, VA will apply §§ 21.4210 through 21.4216.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3690)

§ 21.9745 Reporting fee.

In determining the amount of the reporting fee payable to institutions of higher learning for furnishing required reports, VA will apply the provisions of § 21.4206 in the same manner as they are applied in the administration of 38 U.S.C. chapter 36.

(Authority: 38 U.S.C. 3034(a), 3323(a), 3684)

Course Assessment

§ 21.9750 Course measurement.

VA will calculate an individual's rate of pursuit of an approved program of education during the individual's period of enrollment in accordance with this section. For the purpose of this chapter, VA will consider any rate of pursuit higher than 50 percent to be more than one-half time training.

(a) *Measurement of courses reported in credit hours.* If the courses are measured in credit hours, then the number of credit hours the individual is taking in a term, quarter, or semester will be divided by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester at the institution of higher learning as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(b) *Measurement of courses reported in clock hours.* If the courses are measured in clock hours, VA will—

(1) Convert the clock hours to equivalent credit hours by—

(i) Adding the total number of clock hours pursued during the term, quarter or semester;

(ii) Dividing the sum of paragraph (b)(1)(i) of this section by the total number of weeks in the term; and

(iii) Multiplying the result of paragraph (b)(1)(ii) of this section rounded to the nearest hundredth by—

(A) If the institution of higher learning measures courses using both credit and clock hours, the decimal determined by dividing the number of credit hours considered full-time at the institution by the number of clock hours considered full-time at the institution.

(B) If the institution of higher learning only measures courses using clock hours, the decimal determined by dividing 14 credit hours by the number of clock hours considered full-time at the institution.

(2) Divide the result of paragraph (b)(1) rounded to the nearest hundredth by the minimum number of credit hours considered to be full-time pursuit in a term, quarter, or semester as provided in paragraph (c) of this section. The resulting percentage will be the individual's rate of pursuit.

(c) Fourteen credit hours are full-time unless the institution of higher learning certifies that all undergraduate students enrolled for 13 credit hours, or for 12 credit hours, are charged full-time tuition or are considered full-time for other administrative purposes.

(d) *High school courses.* If an individual using transferred entitlement is eligible for pursuit of a secondary school diploma or equivalency certificate, VA will determine the rate of pursuit in accordance with this paragraph. For individuals pursuing high school courses measured in—

(1) Credit hours, VA will use the formula in paragraph (a) of this section.

(2) Clock hours, VA will use the formula in paragraph (b) of this section.

(3) Units, VA will convert the units to credit hours as follows—

(i) Divide the total number of units required for the program of education by 4 (the number of ordinary school years generally required for completion);

(ii) Round the result of paragraph (d)(3)(i) of this section to the nearest whole number.

(iii) Multiply the result of paragraph (d)(3)(ii) of this section by:

(A) 1.0 to determine the number of units required for a rate of pursuit equal to 100 percent. This number is equivalent to 14 credit hours;

(B) .75 to determine the number of units required for a rate of pursuit equal

to 75 percent. An individual will be considered to be enrolled in 10.5 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(A) of this section;

(C) .50 to determine the number of units required for a rate of pursuit equal to 50 percent. An individual will be considered to be enrolled in 7 credit hours for any number of units equal to or greater than the number determined in this paragraph but less than the number determined in paragraph (d)(3)(iii)(B) of this section;

(D) .25 to determine the number of units required for a rate of pursuit equal to 25 percent. An individual will be considered to be enrolled in 3.5 credit hours for any number of units up to the number determined in paragraph (d)(3)(iii)(C) of this section.

(Authority: 38 U.S.C. 3319(h))

Approval of Programs of Education

§ 21.9765 Program of education approval.

VA may provide educational assistance for pursuit of a program of education offered by an institution of higher learning if that program of education is approved under 38 U.S.C. chapter 30 in accordance with §§ 21.7220 and 21.7222.

(Authority: 38 U.S.C. 3034(a), 3313(b), 3323(a))

Administrative

§ 21.9770 Administrative.

In administering chapter 33, VA will apply the sections noted in paragraphs (a) through (f) of this section. For the purpose of application, the term "veteran" as used in these sections is deemed to mean "an eligible individual under 38 U.S.C. chapter 33," and the term "38 U.S.C. chapter 30" as used in these sections is deemed to mean "38 U.S.C. chapter 33".

(a) Section 21.7301—Delegations of authority;

(b) Section 21.7302—Finality of decisions;

(c) Section 21.7303—Revision of decisions;

(d) Section 21.7305—Conflicting interests;

(e) Section 21.7307—Examination of records; and

(f) Section 21.7310—Civil rights.

(Authority: 38 U.S.C. 511, 512(a), 3034(a), 3323(a), 3690, 3696)

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