

beginning in the fifth line, the sentence "Because the costs per entity of this rule are small, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities." is corrected to read "Because the costs per entity of this rule are small, the agency believes that the final rule will not have a significant economic impact on a substantial number of small entities."

Dated: June 19, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9-14981 Filed 6-24-09; 8:45 am]

**BILLING CODE 4160-01-S**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4001, 4901, and 4902

[Docket No. FR Doc E9-13323]

#### Disclosure and Amendment of Records Pertaining to Individuals Under the Privacy Act

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule; correction.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is correcting a final rule that appeared in the **Federal Register** of June 8, 2009 (74 FR 27080). The document amends PBGC's regulation on Disclosure and Amendment of Records Pertaining to Individuals Under the Privacy Act.

**DATES:** Effective July 8, 2009.

#### FOR FURTHER INFORMATION CONTACT:

Margaret E. Drake, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4400 (extension 3228). TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4400 (extension 3228).

**SUPPLEMENTARY INFORMATION:** In FR Doc. E9-13323 published on June 8, 2009 (74 FR 27080) the following corrections are made:

1. On page 27081, in the first column, in the preamble text under the heading Regulatory Changes, the last sentence of the first paragraph is corrected to read as follows: "PBGC received no comments on the proposed rule and the final regulation is unchanged from the proposed regulation, except that under the final regulation, an appeal from a denial of a request for amendment of a record maintained by the Office of the

General Counsel will be handled by the Director or the Director's designee.

2. On page 27081, in the first column, in the preamble text under the heading Regulatory Changes, the last sentence of the third paragraph is corrected to read as follows: "PBGC also is replacing all references to the term "Deputy Executive Director" in part 4902 with the term "Director or Director's designee".

#### § 4902.7 [Corrected]

■ 3. On page 27082, in the first column, in PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT, amendment 12 is corrected to read as follows:

■ "12. Section 4902.7 is amended:

■ a. In paragraph (a), by removing the words "Deputy Executive Director" and adding in their place "Director or Director's designee"; and

■ b. In paragraph (b) by removing the words "the Executive Director" and adding in their place "the Director", and by removing the words "Deputy Executive Director" wherever they appear, and adding in their place "Director or Director's designee"."

Issued in Washington, DC, this 22nd day of June 2009.

**Vincent K. Snowbarger,**

*Acting Director, Pension Benefit Guaranty Corporation.*

[FR Doc. E9-14975 Filed 6-24-09; 8:45 am]

**BILLING CODE 7709-01-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[DOD-2009-OS-0021; RIN 0790-AI43]

#### 32 CFR Part 65

#### Post-9/11 GI Bill

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness/ Office of the Deputy Under Secretary of Defense for Military Personnel Policy, DoD.

**ACTION:** Interim final rule.

**SUMMARY:** This part establishes policy, assigns responsibilities, and prescribes procedures for carrying out the Post-9/11 GI Bill. It establishes policy for the use of supplemental educational assistance "kickers", for members with critical skills or specialties, or for members serving additional service; for authorizing the transferability of education benefits; and for the DoD Education Benefits Fund Board of Actuaries.

The prompt implementation of the Interim Final Rule is of critical importance. It will procedurally close existing gaps in the implementation of the Post-9/11 Veterans Educational Assistance Act of 2008, title V, Public Law 110-252 (the "Post-9/11 GI Bill"), and ensure that key benefits provided for in the Post-9/11 GI Bill become available to military personnel by the date mandated by Congress.

Because of the complexity of implementing this provision throughout the Department of Defense, which will require each military branch to communicate its own administrative procedures to the military members for transferring their educational benefits, the need for overarching policy guidance is critical. In addition, Department of Defense policy is required to support the companion implementing rules from the Department of Veterans Affairs, which are already in place.

The Administration has expressed considerable interest in making this valuable benefit available to military personnel as quickly as possible. With a new academic year beginning in this autumn, it is critical that the Department of Defense begin immediately the complicated task of implementing administrative procedures and informing the military community about this program. Implementing this policy through an Interim Final Rule will make this possible.

**DATES:** This rule is effective June 25, 2009. Comments must be received by July 27, 2009.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

• *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Robert Clark, (703) 697-9267.

**SUPPLEMENTARY INFORMATION:****Executive Order 12866, “Regulatory Planning and Review”**

It has been certified that 32 CFR part 65 does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

**Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”**

It has been certified that 32 CFR part 65 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

**Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)**

It has been certified that 32 CFR part 65 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)**

It has been certified that 32 CFR part 65 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

**Executive Order 13132, “Federalism”**

It has been certified that 32 CFR part 65 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 65**

Armed forces, Education.

■ Accordingly 32 CFR part 65 is added to read as follows:

**PART 65—POST-9/11 GI BILL**

Sec.

- 65.1 Purpose.
  - 65.2 Applicability.
  - 65.3 Definitions.
  - 65.4 Policy.
  - 65.5 Responsibilities.
  - 65.6 Procedures.
  - 65.7 Eligibility.
  - 65.8 Reporting requirements.
- Appendix to 32 CFR Part 65—Additional Reporting Requirements

**Authority:** 38 U.S.C., chapter 33

**§ 65.1 Purpose.**

This part:

(a) Establishes policy, assigns responsibilities, and prescribes procedures under chapter 33 of title 38, United States Code (U.S.C.) for carrying out the Post-9/11 GI Bill.

(b) Establishes policy for the use of supplemental educational assistance (hereafter referred to as “kickers”) for members with critical skills or specialties, or for members serving additional service under section 3316 of title 38, U.S.C.

(c) Establishes policy for authorizing the transferability of education benefits (TEB) in accordance with section 3319 of title 38, U.S.C.

(d) Assigns responsibility to the Department of Defense Board of Actuaries to review valuations of the Department of Defense Education Benefits Fund in accordance with sections 183 and 2006 of title 10, U.S.C.

**§ 65.2 Applicability.**

(a) This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security (DHS) by agreement with the Department).

(b) The term “Military Services,” as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

**§ 65.3 Definitions.**

*Active Duty.* Defined in section 101(21)(A) of title 38, U.S.C. for Members of the regular components of the Armed Forces. Defined in section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S.C. for Members of the Reserve Components of the Armed Forces.

*EATP.* The Educational Assistance for Persons Enlisting for Active Duty program, chapter 106A (formerly 107) of title 10, U.S.C.

*Entry Level and Skill Training.* (1) In the case of members of the Army, Basic Combat Training and Advanced Individual Training, which includes

members attending One Station Unit Training (OSUT).

(2) In the case of members of the Navy, Recruit Training (or Boot Camp) and Skill Training (or so-called ‘A’ School).

(3) In the case of members of the Air Force, Basic Military Training and Technical Training.

(4) In the case of members of the Marine Corps, Recruit Training and Marine Corps Training (or School of Infantry Training).

(5) In the case of members of the Coast Guard, Basic Training.

*Family Member.* For the purpose of this part, a spouse or child enrolled in the Defense Enrollment Eligibility Reporting System (DEERS).

*Kickers.* Supplemental educational assistance paid to an eligible Service member besides the basic educational assistance, because of the individual’s qualifying service, as in section 3316 of title 38, U.S.C.

*Institution of Higher Learning (IHL).* A training institution as defined in section 3452(f) of title 38, U.S.C., and approved for purposes of chapter 30 of title 38, U.S.C., (including approval by the State approving agency concerned).

*Member of the Armed Forces.* For the purposes of this part, those individuals on active duty or in the Selected Reserve. Does not include other members of the Ready Reserve (such as the Individual Ready Reserve, standby Reserve, or retired members of the Armed Forces.)

*MGIB.* The All-Volunteer Force Education Assistance Program, Chapter 30 of title 38, U.S.C.

*MGIB–SR.* The Educational Assistance for Members of the Selected Reserve program, Chapter 1606 of title 10, U.S.C.

*Post-9/11 GI Bill.* The Post-9/11 Educational Assistance Program, Chapter 33 of title 38, U.S.C.

*REAP.* The Reserve Educational Assistance Program, Chapter 1607 of title 10, U.S.C.

*Secretary of the Military Department concerned.* For a member of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard when it is operating as a Service of the Department of the Navy, the term means the Secretary of the Military Department with jurisdiction over that Service member. For a member of the Coast Guard, when the Coast Guard is operating as a Service of the DHS, the term means, “the Secretary of Homeland Security has jurisdiction over that Service member.”

**§ 65.4 Policy.**

It is DoD policy:

- (a) That “kickers” may be authorized to assist in the recruitment and

retention of individuals into skills or specialties in which there are critical shortages or for which it is difficult to recruit, or in the case of units, retain personnel.

(b) That transferability of unused educational benefits be used by the Military Services to promote recruitment and retention.

(c) That the Secretary of Defense may limit the months of the entitlement that may be transferred to no less than 18 months, as specified in section 3319 of title 38, U.S.C., if needed to manage force structure and force shaping.

#### § 65.5 Responsibilities.

(a) The Deputy Under Secretary of Defense for Military Personnel Policy (DUSD(MPP)), under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Develop procedures to implement policy for the Post-9/11 GI Bill authorized by chapter 33 of title 38, U.S.C.

(2) Coordinate administrative procedures with the Department of Veterans Affairs (DVA), as applicable.

(3) Review and approve each Military Department plan to use supplemental assistance under the provisions of section 3316 of title 38, U.S.C.

(4) Establish the standard data elements needed to administer the Post-9/11 GI Bill Program. (see Appendix A to this part).

(b) The Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO) shall:

(1) Provide guidance on budgeting, accounting, and funding for the educational benefits program in support of policies established in § 65.6(b) of this part, and for investing the available DoD Education Benefits Fund balance.

(2) In coordination with the DUSD (MPP), review and approve the Military Department budget estimates for the supplemental payments under the provisions of section 3316 of title 38, U.S.C.

(c) The Secretaries of the Military Departments shall:

(1) Provide regulations, policy implementation guidance, and instructions governing the administration of the GI Bill program established under chapter 33 of title 38, U.S.C. consistent with this DTM and other guidance issued by the DUSD(MPP) and USD(C)/CFO consistent with the needs of the Military Services. Regulations must include Service implementation of kickers and the transfer of unused educational benefits as established in section 3319

of title 38, U.S.C., as outlined in § 65.6 of this part.

(2) Ensure that all eligible active duty members and members of the Reserve Components are aware that they are eligible for educational assistance under the Post-9/11 GI Bill program upon serving the required active duty time as established in Chapter 33 of title 38, U.S.C.

(3) Advise all officers without earlier established eligibility, following commissioning through Service Academies, with the exception the U.S. Coast Guard Academy, or Reserve Officer Training Corps (ROTC) Scholarship Programs, that their eligibility for benefits does not begin until they have completed their statutory obligated active duty service. Any active duty service after that obligated period of service may qualify and entitle the Service member to accrue active duty service for the Post-9/11 GI Bill eligibility.

(4) Ensure that Service members participating in the student loan repayment program under chapter 109 of title 10, U.S.C., receive counseling on qualification for the Post-9/11 GI Bill program and understand that their service commitment due to such participation does not count as qualifying active duty service. Any service after that obligated period of service may qualify and entitle the Service member to accrue active duty service for Post-9/11 GI Bill eligibility.

(5) Determine the need for Supplemental Educational Assistance (Kickers) for recruitment and retention of individuals with special skills under section 3316 of title 38, U.S.C., and submit plans to the DUSD(MPP) for approval. That submission shall include justification for providing benefits to those skills, identification of skills for which benefits shall be offered, other special incentives offered in those skills, estimated number of participants, costs, and eligibility requirements.

(6) Budget for and transfer funds to support the Supplemental Educational Assistance (Kickers), in accordance with § 65.6 of this part and guidance issued by the USD(C)/CFO.

(7) Provide active duty participants and members of the Reserve Components with qualifying active duty service individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly.

(8) Maintain records for individuals who participate in supplemental educational assistance programs under section 3316 of title 38, U.S.C. Ensure that records on that participation are

provided to the Defense Manpower Data Center (DMD) and the DVA.

(9) Use DoD standard data elements and codes established by DoD Instruction 1336.5 (available at <http://www.dtic.mil/whs/directives/corres/pdf/133605p.pdf>) and DoD Instruction 7730.54 (available at <http://www.dtic.mil/whs/directives/corres/pdf/773054p.pdf>) and listed in Table 1 of Appendix A to this part, when specified. A Military Service failing to comply either with the coding instructions or with codes registered in the DoD Data Element Program shall be responsible for the conversion costs in accomplishing data interchange.

#### § 65.6 Procedures.

(a) *General*—(1) *Eligibility*. The Department of Veterans Affairs is responsible for determining eligibility for education benefits under the GI Bill. Generally, to be eligible for the GI Bill, individuals must serve on active duty on or after September 11, 2001, for at least 30 continuous days with a discharge due to a service-connected disability; or an aggregate period ranging from 90 days to 36 months or more. See § 65.7 of this part for specific requirements.

(2) *Educational Assistance Benefits*.

(i) Benefits under the GI Bill are based on a percentage, as determined by a Service Member's aggregate length of active duty service.

(A) Amount of tuition and fees charged, not to exceed the most expensive in-State undergraduate tuition and fees at a public institution of higher learning (tuition and fees paid directly to the school);

(B) Monthly stipend equal to the basic allowance for housing (BAH) amount payable to a military E-5 with dependents, in the same ZIP code as the school that the student is attending (paid to the individual);

(C) Yearly books and supplies stipend of up to \$1000 per year (paid to the individual on a quarter, semester, or term basis, as appropriate); and

(D) A one-time payment of \$500 may be payable to certain individuals relocating from highly rural areas (paid to the individual).

(ii) "Kickers", for those who are eligible, will be paid to the individual in conjunction with, and only when receiving, the monthly stipend.

(iii) The monthly stipend and the books and supplies stipend are not payable to individuals on active duty.

(iv) The monthly stipend allowance is not payable for those pursuing education and/or training at half time or less or to some individuals taking distance learning. Individuals enrolled

at half time or less are eligible for an appropriately reduced stipend for books and supplies. The DVA will determine under what, if any, circumstances an individual will be eligible for the monthly stipend while undertaking distance learning.

(v) Post-9/11 GI Bill benefits are subject to change based on legislative changes. The benefits are different for educational programs pursued on a full-time basis or at an applicable reduced rate determined by the Secretary of Veterans Affairs for less than full-time enrollment.

(vi) Post-9/11 GI Bill benefits may be used for an approved program of education offered by an Institution of Higher Learning (IHL). This includes graduate and undergraduate training, and some vocational/technical training programs. DVA is the final authority on program eligibility.

(vii) Individuals may receive tutorial assistance (up to \$100 per month, not to exceed a total of \$1,200) and reimbursement of one licensing and certification test (not to exceed a total of \$2,000).

(viii) Additionally, individuals who were eligible for MGIB, MGIB-SR, or REAP, and elect to use benefits under the GI Bill will be eligible to receive benefits for programs approved under those provisions but not offered by IHLs, such as on-the-job training, apprenticeship training, correspondence courses, flight training, preparatory courses, and national exams at the benefit rate for MGIB, MGIB-SR, or REAP, as appropriate.

(3) *Benefits for Individuals Pursuing Education on Active Duty.* Educational assistance is payable under the Post-9/11 GI Bill Program for pursuit of an approved program of education while on active duty.

(i) The amount of educational assistance payable shall be the lesser of the amount of assistance authorized in the manner specified under section 3014(b)(1) of title 38, U.S.C., or the established institutional charges for tuition and fees required in similar circumstances of non-veterans enrolled in the same program.

(ii) *Concurrent Use of Post-9/11 GI Bill and Tuition Assistance* (commonly called "Top Up"). In accordance with section 3313(e) of title 38, U.S.C., a Service member entitled to basic educational assistance who is pursuing education or training described in subsection (a) or (c) of section 2007 of title 10, U.S.C., may use, at their discretion, Post-9/11 GI Bill benefits to meet all or a portion of the charges of the educational institution for the education or training that are not paid

by the Secretary of the Military Department concerned under such subsection. DVA shall administer fully that portion of the Post-9/11 GI Bill Program.

(4) *Time Limitation.* As a general rule, eligible individual entitlements expire at the end of a 15-year period beginning on the Service member's last date of discharge or release from active duty of at least 90 consecutive days (30 days if released or discharged for service-connected disability). The Secretary of the Military Department concerned shall determine the last date of discharge or release, if such date cannot be determined clearly from the Service member's records.

(5) *Issues for Members with Entitlement to Existing Education Programs—(i) Members Eligible for Existing Programs.* An individual may elect to receive educational assistance under chapter 33 of title 38, U.S.C., if such individual, as of August 1, 2009,

(A) Is entitled to basic educational assistance under MGIB, and has used, but retains unused, entitlement under chapter 30 of title 38, U.S.C.;

(B) Is entitled to educational assistance under EATP, MGIB-SR, or REAP, and has used, but retains unused, entitlement under the applicable program;

(C) Is entitled to basic educational assistance under MGIB, but has not used any entitlement under chapter 30 of title 38, U.S.C.;

(D) Is entitled to educational assistance under EATP, MGIB-SR, or REAP, but has not used any entitlement under such program;

(E) Is a member of the Armed Forces who is eligible for receipt of basic educational assistance under MGIB, and is making contributions toward such assistance under sections 3011(b) or 3012(c) of title 38, U.S.C.; or

(F) Is a member of the Armed Forces who is not entitled to basic educational assistance under MGIB, by reason of an election under sections 3011(c)(1) or 3012(d)(1) of title 38, U.S.C.; and

(G) As of the date of the individual's election under paragraph (a)(5)(i), meets the requirements for entitlement to educational assistance under chapter 33 of title 38, U.S.C.

(ii) *Election Process.* The method and process of making such election will be determined by DVA.

(iii) *Irrevocability of Election.* An election made under paragraph (a)(5)(i) of this section is irrevocable.

(iv) An individual entitled to educational assistance under the Post-9/11 GI Bill who is also eligible for educational assistance under the MGIB (chapters 30, 31, 32, or 35 of title 38,

U.S.C.), EATP (chapter 106A of title 10, U.S.C.), MGIB-SR (chapter 1606 of title 10, U.S.C.), REAP (chapter 1607 of title 10, U.S.C.), or the provisions of the Hostage Relief Act of 1980 (section 5561 note of title 5, U.S.C.) may not receive assistance under two or more such programs concurrently, but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) under which chapter or provisions to receive educational assistance.

(v) *Cessation of Pay Reduction Under Montgomery GI Bill.* Effective as of the first month beginning on or after the date of an election under paragraph (a)(5)(i) of this section, an individual having their pay reduced under the provisions of sections 3011(b) or 3012(c) of title 38, U.S.C., as applicable, shall have that pay reduction ceased, and the requirements of such section shall be deemed no longer applicable to the individual.

(vi) *Refund of Pay Reduction Under Montgomery GI Bill.* An individual who is described in paragraph (a)(5)(i) of this section, whose pay was reduced under the provisions of sections 3011(b) or 3012(c) of title 38, U.S.C., will receive a refund of that pay reduction subject to the following:

(A) A full refund for an individual who used no months of benefit under the MGIB.

(B) A refund reduced by a proportion calculated by the number of months of MGIB benefits remaining at the time of election divided by 36.

(C) The refund will be added to the monthly stipend allowance paid in the last month of eligibility under the Post-9/11 GI Bill. Individuals who do not exhaust entitlement under the Post-9/11 GI Bill will not receive a refund of the pay reduction.

(vii) *Treatment of Certain Contributions Under MGIB and REAP (commonly called "Buy-Up").* (A) There is no provision to allow for increasing the amount allowed for Post-9/11 GI Bill benefits based on any contributions made by an individual under the provisions of section 3015(g) of title 38, U.S.C.

(B) There is no provision to allow for increasing the amount allowed for Post-9/11 GI Bill benefits based on any contributions made by an individual under the provisions of section 16162(f) of title 10, U.S.C.

(viii) *Limitation on Entitlement for Certain Individuals.* In the case of an individual eligible for MGIB who has used but retains unused entitlement, making an election to receive benefits under the Post-9/11 GI Bill, the number of months of entitlement of the

individual to educational assistance under the Post-9/11 GI Bill shall be the number of months equal to the number of months of unused entitlement of the individual under MGIB as of the date of the election.

(ix) *Additional Educational and Training Availability.* In addition to the educational benefits as described in paragraph (a)(2)(vi) of this section, individuals who were eligible for benefits under MGIB, MGIB-SR, or REAP, and elect to use benefits under the GI Bill, will be eligible to receive benefits for on-the-job training, apprenticeship training, correspondence courses, flight training, preparatory courses, and national exams at the benefit rate for MGIB, MGIB-S, or REAP, as appropriate.

(x) *Treatment of Existing Supplemental Educational Benefits (Kickers).* Individuals eligible for kickers under either MGIB or MGIB-SR will remain eligible for such increased educational assistance. The payments shall be based upon the applicable monthly rate for the kickers. Payments shall be lump sum and made on a quarter, semester, or term basis as determined by the Secretary of Veterans Affairs.

(b) *Supplemental Educational Assistance ("Kickers")—(1) Enlistment Kickers.* (i) The Secretaries of the Military Departments may offer an increase to the monthly amount of educational assistance otherwise payable to the individual under paragraph (1)(B) of section 3313(c) of title 38, U.S.C., or under paragraphs (2) through (7) of such section 3313(c) of title 38, U.S.C. (as applicable), for members who initially enlist in a regular component in a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit. These increases in the monthly amount are known as enlistment kickers.

(ii) The use of enlistment kickers should be based on the criticality of the skill and/or the length of enlistment commitment and may be offered in amounts from \$150 per month to \$950 per month in increments of \$100. Reporting codes for enlistment kickers are listed in Appendix A to this part.

(2) *Affiliation Kickers.* (i) The Secretaries of the Military Departments may offer an increase to the monthly amount of educational assistance otherwise payable to the individual under paragraph (1)(B) of section 3313(c) of title 38, U.S.C., or under paragraphs (2) through (7) of such section 3313(c) of title 38, U.S.C. (as applicable), to a member who is separating honorably from a regular

component and who agrees to serve in the Selected Reserve in a skill, specialty, or unit in which there is a critical shortage of personnel or for which it is difficult to recruit and/or retain.

(ii) The use of affiliation kickers should be based on the criticality of the skill and/or unit and the length of Selected Reserve commitment, and may be offered in amounts from \$150 per month to \$950 per month in increments of \$100. If an individual is already eligible for an enlistment kicker, the amount of the Affiliation Kicker is limited to the amount that would take the total to \$950. For those individuals who are offered an Affiliation Kicker on top of an Enlistment Kicker, the increases will be in \$100 increments. Reporting codes for Affiliation Kickers are the same as the codes for Enlistment Kickers listed in Appendix A to this part.

(3) *Reenlistment Kickers.* (i) The Secretaries of the Military Departments may offer an increase to the monthly amount of educational assistance otherwise payable to the individual under paragraph (1)(B) of section 3313(c) of title 38, U.S.C., or under paragraphs (2) through (7) of such section 3313(c) of title 38, U.S.C. (as applicable), to a member who, after completing the initial term of service, elects to remain on active duty for a period of at least 2 years.

(ii) The use of reenlistment kickers should be based on the criticality of the skill and may be offered in amounts from \$100 per month to \$300 per month in increments of \$100, based on length of additional service. Reporting codes for reenlistment kickers are listed in Appendix A to this part.

(4) *Limitations.* Since kickers are paid in conjunction with the monthly stipend paid under section (1)(B)(i) of section 3313(c) of title 38, U.S.C., members eligible for kickers should be aware of the limitations on payment.

(i) No payment will be provided for education pursued on half-time basis or less.

(ii) No payment will be provided for education/training pursued solely through distance learning.

(iii) No payment will be provided for use while serving on active duty.

(c) *Transferability of Unused Education Benefits to Family Members.* Subject to the provisions of this section, the Secretaries of the Military Departments, to promote recruitment and retention of members of the Armed Forces, may permit an individual described in paragraph (c)(1) of this section, who is entitled to educational assistance under this Post-9/11 GI Bill to elect to transfer to one or more of the

family members specified, all or a portion of such individual's entitlement to such assistance.

(1) *Eligible Individuals.* Any member of the Armed Forces on or after August 1, 2009 who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill, and

(i) Has at least 6 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election, or

(ii) Has at least 10 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election and either standard policy (Service or DoD) or statute preclude the Service member from committing to 4 additional years and agrees to serve for the maximum amount of time allowed by such policy or statute, or

(iii) Is or becomes retirement eligible during the period from August 1, 2009, through August 1, 2013, and agrees to serve the additional period, if any, specified in paragraphs (c)(1)(iii)(A) through (c)(1)(iii)(E) of this section. A Service Member is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed under section 12732 of title 10, U.S.C.

(A) For those individuals eligible for retirement on August 1, 2009, no additional service is required.

(B) For those individuals who have an approved retirement date after August 1, 2009, and before July 1, 2010, no additional service is required.

(C) For those individuals eligible for retirement after August 1, 2009, and before August 1, 2010, 1 year of additional service is required.

(D) For those individuals eligible for retirement on or after August 1, 2010 and before August 1, 2011, 2 years of additional service is required.

(E) For those individuals eligible for retirement on or after August 1, 2011, and before August 1, 2012, 3 years of additional service is required.

(2) *Eligible Family Members.* (i) An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement to:

(A) The individual's spouse.

(B) One or more of the individual's children.

(C) A combination of the individuals referred to in paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) of this section.

(ii) A family member must be enrolled in the Defense Eligibility Enrollment

Reporting System (DEERS) and be eligible for benefits, at the time of transfer to receive transferred educational benefits.

(iii) A child's subsequent marriage will not affect his or her eligibility to receive the educational benefit; however, after an individual has designated a child as a transferee under this section, the individual retains the right to revoke or modify the transfer at any time.

(iv) A subsequent divorce will not affect the transferee's eligibility to receive educational benefits; however, after an individual has designated a spouse as a transferee under this section, the eligible individual retains the right to revoke or modify the transfer at any time.

(3) *Months of Transfer.* Months transferred must be in whole months. The Secretary of Defense may limit the months of entitlement that may be transferred to no less than 18 months. The number of months of benefits transferred by an individual under this section may not exceed the lesser of:

(i) The months of unused benefits available under the Post-9/11 GI Bill,

(ii) 36 months, or

(iii) the number of months specified by the Secretary of Defense.

(4) *Transferee Usage.* Dependent use of transferred educational benefits is subject to the following:

(i) A spouse:

(A) May start to use the benefit only after the individual making the transfer has completed at least 6 years of service in the Armed Forces.

(B) May use the benefit while the member remains in the Armed Forces or after separation from active duty after completing the additional service required to transfer the educational assistance under the Post-9/11 GI Bill referred to in paragraph (c)(1) of this section.

(C) Is subject to the same 15-year limitation as the member as stipulated in paragraph (a)(4) of this section.

(ii) A child:

(A) May start to use the benefit only after the individual making the transfer has completed at least 10 years of service in the Armed Forces.

(B) May use the benefit while the member remains in the Armed Forces or after separation from active duty after completing the additional service required to transfer the educational assistance under the Post-9/11 GI Bill referred to in paragraph (c)(1) of this section.

(C) May not use the benefit until they have met the requirements of a secondary school diploma (or

equivalency certificate), or reached 18 years of age.

(D) Is not subject to the time limitation in paragraph (a)(4) of this section, but may not use the benefit after reaching 26 years of age.

(5) *Nature of Transferred Entitlement.* The entitlement transferred will be available as follows:

(i) An eligible spouse:

(A) Is entitled to educational assistance under chapter 33 of title 38, U.S.C. in the same manner as the individual from whom the entitlement was transferred.

(B) Is not eligible for the monthly stipend or books and supplies stipend while the sponsor is serving on active duty.

(ii) An eligible child:

(A) Is entitled to educational assistance under chapter 33 of title 38, U.S.C. in the same manner as the individual from whom the entitlement was transferred as if the individual were not on active duty.

(B) Is entitled to the monthly stipend and books and supplies stipend even if the eligible individual is on active duty.

(6) *Designation of Transferee.* An individual transferring an entitlement to educational assistance under this section shall, through notification to the Secretary of the Military Department concerned as specified in paragraph (c)(9) of this section:

(i) Designate the dependent or dependents to whom such entitlement is being transferred;

(ii) Designate the number of months of such entitlement to be transferred to each dependent; and

(iii) Specify the period for which the transfer shall be effective for each dependent.

(7) *Time for Transfer, Revocation, and Modification—(i) Time for Transfer.* An individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual's dependent only while serving as a member of the Armed Forces.

(ii) *Modification or Revocation.* (A) An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred.

(1) An individual may add new dependents, modify the number of months of the transferred entitlement for existing dependents, or revoke transfer of the entitlement while serving in the Armed Forces.

(2) An individual may not add dependents after retirement or separation from the Armed Forces, but may modify the number of months of the transferred entitlement for existing

dependents or revoke transferred benefits after retirement or separation for those family members who had received transferred benefits prior to separation or retirement.

(B) The modification or revocation of the transfer of entitlement under this section shall be made by submitting notice of the action to both the Secretary of the Military Department concerned and the Secretary of Veterans Affairs. Additions, modifications or revocations made while in the Armed Forces will be made through the Transferability of Educational Benefits (TEB) Web site as described in paragraph (c)(9) of this section. Modifications or revocations after separation from the Armed Forces will be accomplished with the Department of Veterans Affairs.

(8) *Additional Administrative Matters—(i) Use.* The use of any entitlement to educational assistance transferred under this section shall be charged against the entitlement of the individual making the transfer at the rate of 1 month for each month of transferred entitlement that is used.

(ii) *Death of Transferee.* The death of an individual transferring an entitlement under this section shall not affect the use of the entitlement by the dependent to whom the entitlement is transferred.

(iii) *Scope of Use by Transferees.* The purposes for which a dependent to whom entitlement is transferred under this section may use such entitlement shall include the pursuit and completion of the requirements of a secondary school diploma (or equivalency certificate).

(iv) *Joint and Several Liability.* In the event of an overpayment of educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685 of title 38, U.S.C.

(v) *Failure to Complete Service Agreement.* (A) Except as provided in paragraph (c)(8)(v)(B) of this section, if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under paragraph (c)(1) of this section in accordance with the terms of the agreement of the individual under that section, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance (see paragraph (c)(8)(iv) of this section) and will be subject to collection by DVA.

(B) Paragraph (c)(8)(v)(A) of this section shall not apply in the case of an individual who fails to complete service agreed to by the individual due to:

- (1) The death of the individual,
  - (2) Discharge or release from active duty for a medical condition which pre-existed the service of the individual and was not service connected,
  - (3) Discharge or release from active duty for hardship as determined by the Secretary of the Military Department concerned,
  - (4) Discharge or release from active duty for a physical or mental condition not a disability and that did not result from the individual's own willful misconduct, but did interfere with the performance of duty.
- (9) *Procedures.* All requests and transactions for individuals who remain in the Armed Forces will be completed through the Transferability of

Educational Benefits (TEB) Web application at <https://www.dmdc.osd.mil/TEB/>. The TEB Users Manual will provide instruction for enrollment; verification; and additions, changes, and revocations. Modifications or revocations after separation from the Armed Forces will be accomplished with the Department of Veterans Affairs.

(10) *Regulations.* The Secretaries of the Military Departments concerned shall prescribe regulations for the purposes of administering the transferability of unused education entitlements to family members in accordance with this part. Such regulations shall specify:

- (i) The manner of verifying and documenting the additional service commitment, if any, under paragraph (c)(1) of this section, to be authorized to transfer education benefits.

(ii) The manner of determining eligibility to be authorized to transfer entitlements as allowed in paragraph (c)(1)(i), (c)(1)(ii) or (c)(1)(iii) of this section.

**§ 65.7 Eligibility.**

The DVA is responsible for determining eligibility for education benefits under the GI Bill. Generally, to be eligible for the GI Bill, individuals must serve on active duty after September 10, 2001, for at least 30 continuous days with a discharge due to a service-connected disability; or an aggregate period ranging from 90 days to 36 months or more. Benefits under the GI Bill are based on a percentage, as determined by a Service Member's length of active duty service, as shown in the following table:

TABLE TO § 65.7—MAXIMUM BENEFITS PAYABLE

Member serves	Percentage of maximum benefit payable
At least 36 months .....	100
At least 30 continuous days on active duty and discharged due to service-connected disability .....	100
At least 30 months, but less than 36 months .....	90
At least 24 months, but less than 30 months .....	80
At least 18 months, but less than 24 months* .....	70
At least 12 months, but less than 18 months* .....	60
At least 6 months, but less than 12 months* .....	50
At least 90 days, but less than 6 months* .....	40

If aggregate service is less than 24 months, initial entry training does not count as qualifying active duty.

**§ 65.8 Reporting requirements.**

The reporting requirements in this part have been assigned Report Control Symbols DD-P&R(AR)1221, DD-P&R(Q)2077, DD-RA(M)1147, DD-

RA(D)1148, DD-RA(D)2170, DD-RA(M)2171, DD-RA(D)2302, and DD-RA(M)2303 in accordance with the requirements of DoD 8910.1-M

(Available at <http://www.dtic.mil/whs/directives/corres/pdf/891001m.pdf>).

**Appendix A to 32 CFR Part 65—Additional Reporting Requirements**

TABLE 1—DATA ELEMENTS FROM DOD INSTRUCTION 1336.5 AND DOD INSTRUCTION 7730.54 RELEVANT TO THIS PART

Field	Data element name	Description	References
947-954 ...	d. <i>Initial Entry Training End Calendar Date.</i>	The date a member completed initial entry training, including skill training. Format: YYYYMMDD. If not applicable or unknown, report all zeros.	
293 .....	b. <i>Commissioned Officer Accession Program Source Code.</i>	The code that represents the accession program by which a member first obtained commissioned officer, other than commissioned warrant officer, status (also known as Source of Initial Commission.) Applicable only to commissioned officers, other than commissioned warrant officers. If not applicable or unknown, report Z. G ROTC scholarship program under section 2107(b) of title 10, U.S.C. R ROTC scholarship program under section 2107a of title 10, U.S.C.	See DoD Instruction 1336.5 for additional data elements.
955-971 ...	Active Duty Loan Repayment Incentive Program.		

TABLE 1—DATA ELEMENTS FROM DOD INSTRUCTION 1336.5 AND DOD INSTRUCTION 7730.54 RELEVANT TO THIS PART—Continued

Field	Data element name	Description	References
955–962 ...	a. Active Duty Loan Repayment Incentive Program Eligibility Effective Date.	The beginning date of a Service member's commitment based on eligibility for an educational incentive under the Active Duty Loan Repayment Incentive Program. Format: YYYYMMDD. If not applicable or unknown, report all zeroes.	
963 .....	b. Active Duty Loan Repayment Incentive Program Educational Type Code.	The type of active duty educational incentive for a Service member, who is appointed, enlists, reenlists, affiliates, or extends in an Active Duty Loan Repayment Incentive Program. If not applicable or unknown, report Z. A = Educational loan repayment assistance.	Chapter 109 of title 10, U.S.C.
964–971 ...	c. Active Duty Loan Repayment Incentive Program Eligibility Completion Date.	The completion date of a Service member's commitment based on eligibility for an educational incentive under the Active Duty Loan Repayment Incentive Program. Format: YYYYMMDD. If not applicable or unknown, report all zeroes.	
972–975 ...	GI Bill Incentive Program..		
972–973 ...	a. GI Bill Incentive Kicker Rate Code.	The code that represents the monetary level of a GI Bill kicker incentive for which a member is entitled upon enlistment or affiliation. If not applicable or unknown, report ZZ.	See Table 4 for a list of values.
974–975 ...	b. GI Bill Reenlistment Incentive Kicker Rate Code.	The code that represents the monetary level of a GI Bill reenlistment kicker incentive for which a member is entitled. If not applicable or unknown, report ZZ.	See Table 5 for a list of values.

TABLE 2—ENLISTMENT AND AFFILIATION KICKER CODES\*

Code	Rate	Other Information
D2 .....	\$150	Effective 1 August 2009. Requires a 2-year active duty service agreement.
D3 .....	150	Effective 1 August 2009. Requires a 3-year active duty service agreement.
D4 .....	150	Effective 1 August 2009. Requires a 4-year active duty service agreement.
D5 .....	150	Effective 1 August 2009. Requires a 5-year active duty service agreement.
D6 .....	150	Effective 1 August 2009. Requires a 6-year active duty service agreement.
D9 .....	150	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
E2 .....	250	Effective 1 August 2009. Requires a 2-year active duty service agreement.
E3 .....	250	Effective 1 August 2009. Requires a 3-year active duty service agreement.
E4 .....	250	Effective 1 August 2009. Requires a 4-year active duty service agreement.
E5 .....	250	Effective 1 August 2009. Requires a 5-year active duty service agreement.
E6 .....	250	Effective 1 August 2009. Requires a 6-year active duty service agreement.
E9 .....	250	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
F2 .....	350	Effective 1 August 2009. Requires a 2-year active duty service agreement.
F3 .....	350	Effective 1 August 2009. Requires a 3-year active duty service agreement.
F4 .....	350	Effective 1 August 2009. Requires a 4-year active duty service agreement.
F5 .....	350	Effective 1 August 2009. Requires a 5-year active duty service agreement.
F6 .....	350	Effective 1 August 2009. Requires a 6-year active duty service agreement.
F9 .....	350	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
G2 .....	450	Effective 1 August 2009. Requires a 2-year active duty service agreement.
G3 .....	450	Effective 1 August 2009. Requires a 3-year active duty service agreement.
G4 .....	450	Effective 1 August 2009. Requires a 4-year active duty service agreement.
G5 .....	450	Effective 1 August 2009. Requires a 5-year active duty service agreement.
G6 .....	450	Effective 1 August 2009. Requires a 6-year active duty service agreement.
G9 .....	450	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
H2 .....	550	Effective 1 August 2009. Requires a 2-year active duty service agreement.
H3 .....	550	Effective 1 August 2009. Requires a 3-year active duty service agreement.
H4 .....	550	Effective 1 August 2009. Requires a 4-year active duty service agreement.
H5 .....	550	Effective 1 August 2009. Requires a 5-year active duty service agreement.
H6 .....	550	Effective 1 August 2009. Requires a 6-year active duty service agreement.
H9 .....	550	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
J2 .....	650	Effective 1 August 2009. Requires a 2-year active duty service agreement.
J3 .....	650	Effective 1 August 2009. Requires a 3-year active duty service agreement.
J4 .....	650	Effective 1 August 2009. Requires a 4-year active duty service agreement.
J5 .....	650	Effective 1 August 2009. Requires a 5-year active duty service agreement.

TABLE 2—ENLISTMENT AND AFFILIATION KICKER CODES\*—Continued

Code	Rate	Other Information
J6 .....	650	Effective 1 August 2009. Requires a 6-year active duty service agreement.
J9 .....	650	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
K2 .....	750	Effective 1 August 2009. Requires a 2-year active duty service agreement.
K3 .....	750	Effective 1 August 2009. Requires a 3-year active duty service agreement.
K4 .....	750	Effective 1 August 2009. Requires a 4-year active duty service agreement.
K5 .....	750	Effective 1 August 2009. Requires a 5-year active duty service agreement.
K6 .....	750	Effective 1 August 2009. Requires a 6-year active duty service agreement.
K9 .....	750	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
L2 .....	850	Effective 1 August 2009. Requires a 2-year active duty service agreement.
L3 .....	850	Effective 1 August 2009. Requires a 3-year active duty service agreement.
L4 .....	850	Effective 1 August 2009. Requires a 4-year active duty service agreement.
L5 .....	850	Effective 1 August 2009. Requires a 5-year active duty service agreement.
L6 .....	850	Effective 1 August 2009. Requires a 6-year active duty service agreement.
L9 .....	850	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.
M2 .....	950	Effective 1 August 2009. Requires a 2-year active duty service agreement.
M3 .....	950	Effective 1 August 2009. Requires a 3-year active duty service agreement.
M4 .....	950	Effective 1 August 2009. Requires a 4-year active duty service agreement.
M5 .....	950	Effective 1 August 2009. Requires a 5-year active duty service agreement.
M6 .....	950	Effective 1 August 2009. Requires a 6-year active duty service agreement.
M9 .....	950	Effective 1 August 2009. Requires a 4-year service agreement: 2 years on active duty plus 2 years in the Selected Reserve.

\* This will be the same coding structure for DoD Instruction 7730.54, "Reserve Components Common Personnel Data System (RCCPDS)."

TABLE 3—REENLISTMENT KICKER CODES\*

Code	Rate	Other Information
N2 .....	\$100	Effective 1 August 2009. Requires a 2-year active duty service agreement.
N3 .....	200	Effective 1 August 2009. Requires a 3-year active duty service agreement.
N4 .....	300	Effective 1 August 2009. Requires a 4-year active duty service agreement.

\* This will be the same coding structure for DoD Instruction 7730.54, "Reserve Components Common Personnel Data System (RCCPDS)."

Dated: June 18, 2009.

**Patricia L. Toppings,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*

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BILLING CODE 5001-06-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG-2009-0430]

RIN 1625-AA08

**Special Local Regulation for Marine Events; Recurring Marine Events in the Fifth Coast Guard District**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Coast Guard is amending the list of recurring marine events within the Fifth Coast Guard District. These regulations make small changes to the regulated areas of two permitted

marine events listed in the table attached to the regulation. These special local regulations are necessary to provide for the safety of life on navigable waters during marine events. This action will restrict vessel traffic in portions of the Chesapeake Bay and Assateague Channel, Virginia.

**DATES:** This interim final rule is effective July 27, 2009. Comments and related material must reach the Coast Guard on or before July 10, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG-2009-0430 using any one of the following methods:

- (1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- (2) *Fax:* 202-493-2251.
- (3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call or e-mail, Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, 757-398-6204 or e-mail *Dennis.M.Sens@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.