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Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 79

Covering period of *Federal Register* issues
through November 3, 2008

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Custom Federal Regulations Service™

Supplemental Materials for *Book G*

Code of Federal Regulations

Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 79

5 November 2008

Covering the period of Federal Register issues
through November 3, 2008

When **Book G** was originally prepared, it was current through final regulations published in the *Federal Register* of 25 February 1992. These supplemental materials are designed to keep your regulations up to date. You should file the attached pages immediately, and record the fact that you did so on the *Supplement Filing Record* which is at page G-8 of Book G, *Vocational Rehabilitation and Education*.

**To ensure accuracy and timeliness of your materials,
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1. Always file your supplemental materials immediately upon receipt.
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3. After filing, enter the relevant information on the Supplement Filing Record sheet (page G-8)—the date filed, name/initials of filer, and date through which the *Federal Register* is covered.
4. If as a result of a failure to file, or an undelivered supplement, you have more than one supplement to file at a time, be certain to file them in chronological order, lower number first.
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FILING INSTRUCTIONS

Book G, Supplement No. 79
November 5, 2008

<i>Remove these old pages</i>	<i>Add these new pages</i>	<i>Section(s) Affected</i>
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Do not file this supplement until you confirm that all prior supplements have been filed

21.4138-1 to 21.4138-6	21.4138-1 to 21.4138-6	§21.4138
21.4200-4 to 21.4200-9	21.4200-4 to 21.4200-9	§21.4200
21.7076-2 to 21.7080-1	21.7076-2 to 21.7080-1	§21.7076
21.7136-1 to 21.7137-4	21.7136-1 to <u>21.7137-6</u>	§§21.7136–21.7137
21.7139-1 to 21.7140-4	21.7139-1 to 21.7140-4	§§21.7139–21.7140
21.7500-1 to 21.7500-2	21.7500-1 to 21.7500-2	Authority citation
21.7640-2 to 21.7642-1	21.7640-2 to 21.7642-1	§21.7640

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HIGHLIGHTS

Book G, Supplement No. 79 November 5, 2008

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book G (*Rehabilitation and Education*) was originally supplemented six times a year, in February, April, June, August, October, and December. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 3 November 2008, the VA published a final rule, effective that same date, to show increases in the monthly rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty program; show an increase in the percentage payable to veterans pursuing apprenticeship or other on-job training; make a change in the formula used to calculate the entitlement charge for individuals pursuing apprenticeship or other on-job training; amend procedural provisions and delegations of authority regarding continuation of payments during emergency school closings; and make non-substantive technical changes for purposes of clarity and to remove obsolete provisions.

- In §21.4138, added introductory text, and revised paragraphs (a)(1)(iv), (a)(4), and (f);
- In §21.4200, revised paragraph (o)(2);
- In §21.7076, revised paragraphs (b)(3)–(4);
- In §21.7136, revised paragraphs (b), (c), (d), and (f);
- In §21.7137, revised paragraphs (a) and (c);
- In §21.7139, revised paragraph (f)(1)(i);
- In §21.7140, revised paragraph (d); and
- In §21.7640, revised paragraph (b).

§21.4138 Certifications and release of payments.

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

(a) *Advance payments.*

(1) VA will make payments of educational assistance in advance when:

- (i) The veteran, servicemember, reservist, or eligible person has specifically requested such a payment;
- (ii) The student is enrolled for half time or more;
- (iii) The educational institution at which the veteran, servicemember, reservist, or eligible person is accepted or enrolled has agreed to and can satisfactorily carry out the provisions of 38 U.S.C. 3680(d)(4)(B) and (C) and (5) pertaining to receipt, delivery, or return of checks and certifications of delivery and enrollment;
- (iv) The Director of the VA Regional Processing Office of jurisdiction has not acted under paragraph (a)(4) of this section to prevent advance payments being made to the veteran's, servicemember's, reservist's, or eligible person's educational institution;
- (v) There is no evidence in the veteran's, servicemember's, reservist's, or eligible person's claim file showing that he or she is not eligible for an advance payment;
- (vi) The period for which the veteran, servicemember, reservist, or eligible person has requested a payment either:
 - (A) Is preceded by an interval of nonpayment of 30 days or more;
or
 - (B) Is the beginning of a school year that is preceded by a period of nonpayment of 30 days or more; and
- (vii) The educational institution or the veteran, servicemember, reservist, or eligible person has submitted the certification required by §21.7151.

(2) The amount of the advance payment to a veteran, reservist, or eligible person is the educational assistance for the month or fraction thereof in which the term or course will begin plus the educational assistance for the following month. The amount of the advance payment to a servicemember is the amount payable for the entire term, quarter, or semester, as applicable.

(3) VA will mail advance payments to the educational institution for delivery to the veteran, servicemember, reservist, or eligible person. The educational institution will not deliver the advance payment check more than 30 days in advance of the first date of the period for which VA makes the advance payment.

(4) The Director of the VA Regional Processing Office of jurisdiction may direct that advance payments not be made to individuals attending an educational institution if:

(i) The educational institution demonstrates an inability to comply with the requirements of paragraph (a)(3) of this section;

(ii) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the veteran, servicemember, reservist, or eligible person or return to VA; or

(iii) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034, 3680(d))

(b) *Lump-sum payments.* A lump-sum payment is a payment of all educational assistance due for an entire quarter, semester, or term. VA will make a lump-sum payment to:

(1) A veteran or servicemember pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 30;

(2) A servicemember pursuing a program of education at the half-time rate or greater under 38 U.S.C. chapter 30, provided that VA did not make an advance payment to the servicemember for the term for which a lump-sum payment would otherwise be due; and

(3) An eligible person pursuing a program of education at less than the half-time rate under 38 U.S.C. chapter 35. (Authority: 38 U.S.C. 3034(c), 3680(f))

(c) [Removed and reserved]

(d) [Removed and reserved]

(e) *Other payments.* An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to an individual (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lump-sum payment) only after:

(i) The educational institution has certified his or her enrollment as provided in §21.4203; and

(ii) VA has received from the individual a verification of the individual's enrollment or verification of pursuit and continued enrollment, as appropriate. Generally, this verification will be required monthly, resulting in monthly payments.

(2) VA will pay educational assistance to an individual pursuing a program of apprenticeship or other on-job training only after:

(i) The training establishment has certified his or her enrollment in the training program as provided in §21.4203; and

(ii) VA has received from the individual and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to an individual who is pursuing a correspondence course only after:

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the individual a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the individual's certificate, as to the number of lessons completed by the individual and serviced by the educational institution. (Authority: 38 U.S.C. 5113, 3680(b), 3680(g))

(f) *Payment for intervals and temporary school closings.* VA may authorize payment for an interval or for a temporary school closing that occurs within a certified enrollment period. If a school closing that is or may be temporary occurs during an interval, VA will apply any applicable provisions in paragraphs (f)(1) through (f)(5) of this section concerning intervals and in paragraph (f)(6) of this section concerning temporary school closings. For the purposes of this paragraph, interval means a period without instruction between consecutive school terms, quarters, or semesters or a period without instruction between a summer term and a term, quarter, or semester. (See definitions of divisions of the school year in §21.4200(b).)

(1) *Payment for intervals.* In determining whether a student will be paid for an interval, VA will first review the provisions of paragraph (f)(2) of this section. If none of the provisions apply, VA will review the provisions of paragraphs (f)(3), (f)(4), and (f)(5) of this section to determine if payments may be made for the interval. In determining the length of a summer term, VA will disregard a fraction of a week consisting of 3 days or less, and will consider 4 days or more to be a full week.

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

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

(ii) The student is on active duty;

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

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

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

(vi) The student withdraws from all courses in the term, quarter, semester, or summer session preceding the interval, or discontinues training before the scheduled start of an interval in a school not organized on a term, quarter, or semester basis; or

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

(3) *Payment for interval between periods of enrollment at different schools.* If the student transfers from one approved school for the purpose of enrolling in and pursuing a similar course at the second school, VA may make payments for an interval that does not exceed 30 days. If the student does not enroll in a similar course at the second school, VA may not make payments for the interval.

(4) *Payment for intervals that occur at the same school.*

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

(A) Semesters or quarters,

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

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

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

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

(ii) If the student remains enrolled at the same school, VA may make payment for an interval that does not exceed 30 days and that occurs between summer sessions within a summer term. (Authority: 38 U.S.C. 3680)

(5) *Payment for intervals that occur between overlapping enrollments.*

(i) If a student is enrolled in overlapping enrollment periods whether before or after an interval (either at the same or different schools), VA will determine whether the student is entitled to payment for the interval between the overlapping enrollment periods, and what dates the interval and enrollment periods will be considered to begin and end, as follows:

- (A) By treating the ending date of each enrollment period as though it were the student's last date of training before the interval,
- (B) By treating the beginning date of each enrollment period as though it were the student's first date of training after the interval,
- (C) By examining the interval payment that would be made to the student on the basis of the various combinations of beginning and ending dates, and
- (D) By choosing the ending date and beginning date that result in the highest payment rate as the start and finish of the interval for VA measurement purposes.

(ii) VA will not reduce the interval rate of payment as a result of training the student may take during the interval, but VA will increase the interval rate of payment if warranted by such training. (Authority: 38 U.S.C. 3680(a))

(6) *Payment for temporary school closings.* VA may authorize payment for temporary school closings that are due to emergencies (including strikes) or established policy based upon an Executive Order of the President. If a school closing that is or may be temporary occurs in whole or in part during an interval, VA will first review the provisions of paragraphs (f)(2) through (f)(5) of this section to determine if payment may be continued during the interval.

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

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

(1) The reason for the school closing does not result in the closing of a school or schools in the jurisdiction of the Director of another VA Regional Processing Office, and

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

(B) The Director, Education Service if:

(1) The reason for the school closing results in the closing of schools in the jurisdiction of more than one Director of a VA Regional Processing Office, or

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

(ii) A school that disagrees with a decision made under paragraph (f)(6) of this section may request an administrative review. The review request must be submitted in writing and received by the Director of the VA Regional Processing Office of jurisdiction within one year of the date of VA's letter notifying the school of the decision. A review of the decision will include the evidence of record and any other pertinent evidence the school may wish to submit. The affirmation or reversal of the initial decision based on an administrative review is final. The review will be conducted by the:

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

(B) Under Secretary for Benefits, if the Director, Education Service, made the initial decision to continue or discontinue payments. (Authority: 38 U.S.C. 512, 3680(a))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0604)

[43 FR 35295, Aug 9, 1978, as amended at 44 FR 62497, Oct. 31, 1979; 46 FR 20673, Apr. 7, 1981; 48 FR 37982, Aug. 22, 1983; 54 FR 33888, Aug. 17, 1989; 57 FR 24367, June 9, 1992; 58 FR 26239, May 3, 1993; 64 FR 52651, Sept. 30, 1999; 66 FR 44053, Aug. 22, 2001; 68 FR 34328, June 9, 2003; 68 35178, June 12, 2003; 73 FR 65263, Nov. 3, 2008]

Supplement *Highlights* references: 2(3), 6(2), 46(2), 62(2, 3), 79(1).

Next Section is §21.4145

(m) *Normal commuting distance.* Two locations that are within 55 miles of each other are within normal commuting distance. Furthermore, a branch, extension or additional facility of a school located more than 55 miles from the school's main campus or parent facility will be considered within normal commuting distance only if:

(1) School records show that, prior to the establishment of the additional teaching site, at least 20 students or 5 percent of the enrollment, whichever is the lesser, on the main campus or parent facility were regularly commuting from the area where the additional teaching site is located; or

(2) Other comparable evidence clearly shows that students commute regularly between the two locations. (Authority: 38 U.S.C. 3689(c))

(n) *Enrollment.* This term means the state of being on that roll, or file of a school which contains the names of active students.

(o) *Pursuit of a program of education.*

(1) This term means to work while enrolled, toward the objective of a program of education. This work must be in accordance with approved institution policy and regulations and applicable criteria of Title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through:

- (i) Resident courses,
- (ii) Independent study courses,
- (iii) Correspondence courses,
- (iv) An apprenticeship or other on-the-job training program,
- (v) Flight courses,
- (vi) A farm cooperative course,
- (vii) A cooperative course, or
- (viii) A graduate program of research in absentia.

(2) The Department of Veterans Affairs will consider a veteran or eligible person who qualifies under §21.4138 for payment during an interval or school closing, or who qualifies for payment but whose work is interrupted by a holiday vacation as defined in §21.7020(b)(16), to be in pursuit of a program of education during the interval, school closing or holiday vacation.

(p) *Enrollment period.*

(1) This term means an interval of time during which a veteran or eligible person:

- (i) Is enrolled in an educational institution; and
- (ii) Is pursuing his or her program of education.

(2) This term applies to each unit course or subject in the veteran's or eligible person's program of education.

(q) *Attendance*. This term means the presence of a veteran or eligible person:

(1) In the class where the approved course is being taught in which he or she is enrolled;

(2) At a training establishment; or

(3) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or eligible person is enrolled and is pursuing a program of education. (Authority: 38 U.S.C. 3680(g))

(r) *In residence on a standard quarter- or semester-hour basis*. This term means study at a site or campus of a college or university, or off-campus at an official resident center, requiring pursuit of regularly scheduled weekly class instruction at the rate of one standard class session per week throughout a standard quarter or semester for one quarter- or one semester-hour credit. (Authority: 38 U.S.C. 3688(c))

(s) *Deficiency course*. This term means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(t) *Remedial course*. This term means a special course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(u) *Refresher course*. This term means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed. (Authority: 38 U.S.C. 3491(a)(2))

(v) *Reservist*. The term *reservist* means a member of the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606. (Authority: 38 U.S.C. 3002)

(w) *Alternative teacher certification program*. The term alternative teacher certification program, for the purposes of determining whether an entity offering such a program is a school, educational institution, or institution as defined in paragraph (a)(5) of this section, means a program leading to a teacher's certificate that allows individuals with a bachelor's degree or graduate degree to obtain teacher certification without enrolling in an institution of higher learning. (Authority: 38 U.S.C. 3452(c))

(x) *State*. The term *State* has the same meaning as provided in §3.1(i) of this chapter. (Authority: 38 U.S.C. 101(20))

(y) *Pilot certificate*. A *pilot certificate* is a pilot certificate issued by the Federal Aviation Administration. The term means a pilot's license as that term is used in 10 U.S.C. chapter 1606 and 38 U.S.C. chapters 30 and 32. (Authority: 10 U.S.C. 16136(c); 38 U.S.C. 3034(d), 3241(b))

(z) *Proprietary educational institution.* The term proprietary educational institution (including a proprietary profit or proprietary nonprofit educational institution) means an educational institution that:

- (1) Is not a public educational institution;
- (2) Is in a State; and
- (3) Is legally authorized to offer a program of education in the State where the educational institution is physically located. (Authority: 38 U.S.C. 3680A(e))

(aa) *High technology industry.* The term *high technology industry* includes the following industries:

- (1) Biotechnology;
- (2) Life science technologies;
- (3) Opto-electronics;
- (4) Computers and telecommunications;
- (5) Electronics;
- (6) Computer-integrated manufacturing;
- (7) Material design;
- (8) Aerospace;
- (9) Weapons;
- (10) Nuclear technology; and
- (11) Any other identified advanced technologies in the biennial Science and Engineering Indicators report published by the National Science Foundation. (Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(bb) *Employment in a high technology industry.* *Employment in a high technology industry* means employment in a high technology occupation specific to a high technology industry. (Authority: 38 U.S.C. 3014A)

(cc) *High technology occupation.* The term *high technology occupation* means an occupation that leads to employment in a high technology industry. These occupations consist of:

- (1) Life and physical scientists;
- (2) Engineers;
- (3) Mathematical specialists;
- (4) Engineering and science technicians;
- (5) Computer specialists; and
- (6) Engineering, scientific, and computer managers. (Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(dd) *Computer specialists.* The term *computer specialists* includes the following occupations:

- (1) Database, system, and network administrators;

- (2) Database, system, and network developers;
- (3) Computer and network engineers;
- (4) Systems analysts;
- (5) Programmers;
- (6) Computer, database, and network support specialists;
- (7) All computer scientists;
- (8) Web site designers;
- (9) Computer and network service technicians;
- (10) Computer and network electronics specialists; and
- (11) All certified professionals, certified associates and certified technicians in the information technology field. (Authority: 38 U.S.C. 3014A, 3452(c), 3501(a)(6))

(ee) *Certification test.* The term *certification test* means a test an individual must pass in order to receive a certificate that provides an affirmation of an individual's qualifications in a specified occupation. (Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(ff) *Licensing test.* The term *licensing test* means a test offered by a State, local, or Federal agency, the passing of which is a means, or part of a means, to obtain a license. That license must be required by law in order for the individual to practice an occupation in the political jurisdiction of the agency offering the test. (Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(gg) *Organization or entity offering a licensing or certification test.*

(1) The term *organization or entity offering a licensing or certification test* means:

(i) An organization or entity that causes a licensing test to be given and that will issue a license to an individual who passes the test;

(ii) An organization or entity that causes a certification test to be given and that will issue a certificate to an individual who passes the test; or

(iii) An organization or entity that administers a licensing or certification test for the organization or entity that will issue a license or certificate, respectively, to the individual who passes the test, provided that the administering organization or entity can provide all required information and certifications under §21.4268 to the State approving agency and to VA.

(2) This term does not include:

(i) An organization or entity that develops and/or proctors a licensing or certification test but does not issue the license or certificate; or

(ii) An organization or entity that administers a test but does not issue the license or certificate if that administering organization or entity cannot provide all required

information and certifications under §21.4268 to the State approving agency and to VA. (Authority: 38 U.S.C. 3452(b), 3501(a)(5), 3689)

(hh) *Tuition assistance top-up*. The term *tuition assistance top-up* means a payment of basic educational assistance to meet all or a portion of the charges of an educational institution for the education or training of a servicemember that are not met by the Secretary of the military department concerned under 10 U.S.C. 2007(a) or (c). (Authority: 38 U.S.C. 3014(b))

(ii) *VA Regional Processing Office*. The term *VA Regional Processing Office* means a VA office where claims for educational assistance under 38 U.S.C. chapters 30, 32, and 35 and 10 U.S.C. chapter 1606 are allowed or disallowed. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241, 3685, 3689)

(jj) [Reserved]

(kk) *Fugitive felon*. The term *fugitive felon* means an individual identified as such by Federal, State, or local law enforcement officials and who is a fugitive by reason of:

(1) Fleeing to avoid prosecution for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees;

(2) Fleeing to avoid custody or confinement after conviction for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or

(3) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law. (Authority: 38 U.S.C. 5313B)

(ll) *Felony*. The term *felony* means a major crime or offense defined as such under the law of the place where the offense was committed or under Federal law. It includes a high misdemeanor under the laws of a State which characterizes as high misdemeanors offenses that would be felony offenses under Federal law. (Authority: 38 U.S.C. 5313B)

[31 FR 6774, May 6, 1966, as amended at 32 FR 3979, Mar. 11, 1967; 32 FR 13403, Sept. 23, 1967; 35 FR 9815, June 16, 1970; 38 FR 14935, June 7, 1973; 38 FR 32579, Nov. 27 1973; 39 FR 43221, Dec. 11, 1974; 40 FR 31762, July 29, 1975; 43 FR 35296, Aug. 5, 1978; 45 FR 48887, July 22, 1980; 48 FR 37584, Aug. 22, 1983; 53 FR 48549, Dec. 1, 1988; 55 FR 28027, July 9, 1990; 57 FR 29800, July 7, 1992; 61 FR 26114, May 24, 1996; 61 FR 29296, June 10, 1996; 62 FR 55760, Oct. 28, 1997; 63 FR 34128, June 23, 1998; 65 FR 81741, Dec. 27, 2000; 68 FR 35178, June 12, 2003; 70 FR 25786, May 16, 2005; 72 FR 16969, Apr. 5, 2007; 73 FR 65264, Nov. 3, 2008]

Supplement Highlights references: 27(1, 3), 39(2), 53(1), 62(3), 68(1), 73(1).

Reserved

(1) Except for those pursuing correspondence training, flight training, apprenticeship or other on-job training; those receiving tuition assistance top-up; those receiving educational assistance for taking an approved licensing or certification test; those receiving tutorial assistance; and those receiving an accelerated payment, VA will make a charge against entitlement:

(i) On the basis of total elapsed time (one day for each day of pursuit) if the servicemember or veteran is pursuing the program of education on a full-time basis,

(ii) On the basis of a proportionate rate of elapsed time, if the veteran or servicemember is pursuing the program of education on a three-quarter, one-half or less than one-half time basis. For the purpose of this computation, training time which is less than one-half, but more than one-quarter time, will be treated as though it were one-quarter time training.

(2) VA will compute elapsed time from the commencing date of the award to date of discontinuance. If the veteran or servicemember changes his or her training time after the commencing date of the award, VA will:

(i) Divide the enrollment period into separate periods of time during which the veteran's or servicemember's training time remains constant, and

(ii) Compute the elapsed time separately for each time period. (Authority: 38 U.S.C. 3013)

(3) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a charge against 38 U.S.C. chapter 30 entitlement of:

(i) .75 of a month in the case of payments made during the first six months of the veteran's pursuit of the program of apprenticeship or other on-job training,

(ii) .55 of a month in the case of payments made during the second six months of the veteran's pursuit of the program of apprenticeship or other on-job training, and

(iii) .35 of a month in the case of payments made following the first twelve months of the veteran's pursuit of apprenticeship or other on-job training. (Authority: 38 U.S.C. 3032(c))

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

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

(ii) For training that occurs on or after October 1, 2005, VA will reduce 38 U.S.C. chapter 34 entitlement proportionately based on the percentage rate (rounded to the nearest percentage) determined by dividing the amount of the training assistance paid for the month by the monthly educational assistance payable for full-time enrollment in an educational institution. (Authority: 38 U.S.C. 3015(e), 3032(c), 3687; §102, Pub. L. 108-454, 118 Stat. 3600)

(5) When a veteran or servicemember is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge:

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of educational assistance otherwise applicable to him or her for full-time training (disregarding in the case of a servicemember the cost of course comparison). (Authority: 38 U.S.C. 3032(d))

(6) When a veteran or servicemember is pursuing a program of education partly in residence and partly by correspondence, VA will make a charge against entitlement:

(i) For the residence portion of the program as provided in paragraphs (b)(1) and (2) of this section, and

(ii) For the correspondence portion of the program as provided in paragraph (b)(5) of this section. (Authority: 38 U.S.C. 3032(c), 3032(d))

(7) When a veteran or servicemember is paid an accelerated payment, VA will make a charge against entitlement for each accelerated payment made to him or her. The charge:

(i) Will be made in months and decimal fractions of a month; and

(ii) Will be determined by dividing the amount of the accelerated payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training. If the rate of basic educational assistance increases during the enrollment period, VA will charge entitlement for the periods covered by the initial rate and the increased rate, respectively. (Authority: 38 U.S.C. 3014A)

(8) If an individual is paid tutorial assistance as provided in §21.7141, the following provisions will apply.

(i) There will be no charge to entitlement for the first \$600 of tutorial assistance paid to an individual under 38 U.S.C. ch. 30.

(ii) VA will make a charge against the period of entitlement of one month for each amount of tutorial assistance paid under 38 U.S.C. ch. 30, to the individual in excess of \$600 that is equal to the amount of monthly educational assistance the individual is otherwise

eligible to receive for full-time pursuit of a residence course as provided in §§21.7136, 21.7137 and 21.7138, as appropriate. When the amount of tutorial assistance paid to the individual in excess of \$600 is less than the amount of monthly educational assistance the individual is otherwise eligible to receive, the entitlement charge will be prorated. (Authority: 38 U.S.C. 3019; Pub. L. 100-689) (Nov. 18, 1988)

(9) When a veteran or servicemember is pursuing a program of education through flight training, VA will make a charge against entitlement for each payment made to him or her. The charge:

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of basic educational assistance otherwise applicable to him or her for full-time institutional training. (Authority: 38 U.S.C. 3031(f))

(10) When a servicemember receives tuition assistance top-up, VA will make a charge against his or her entitlement as established under §21.7072 equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember's monthly rate of basic educational assistance as calculated under §21.7136. VA will make a charge against his or her tuition assistance top-up entitlement as established under §21.7075 by subtracting from that entitlement the total number of months and days in the term, quarter, or semester for which the servicemember received tuition assistance. (Authority: 38 U.S.C. 3014(b))

(11) When a veteran or servicemember receives educational assistance for taking an approved licensing or certification test, VA will make a charge against his or her entitlement equal to the number of months and days determined by dividing the total amount paid by an amount equal to the servicemember's monthly rate of basic educational assistance as calculated under §21.7136, excluding any additional "kicker" that may be paid under §21.7136(g). (Authority: 38 U.S.C. 3032(f)(2))

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

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, 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).

(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 the portion of the debt attributable to interest, administrative costs of collection, court costs and marshal fees from the compromise offer,

(ii) Subtracting the amount determined in paragraph (c)(3)(i) of this section from the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees)

(iii) Dividing the result obtained in paragraph (c)(3)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement which represents the whole overpaid period. (Authority: 38 U.S.C. 3013; Pub. L. 98-525)

(d) *Interruption to conserve entitlement.* A veteran may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An educational institution may not certify a period of enrollment for a fractional part of the normal term, quarter or semester, if the veteran or servicemember 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 veteran or servicemember is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;

(2) The veteran or servicemember cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The veteran or servicemember interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester;

(4) The veteran or servicemember 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. Whether the veteran or servicemember negotiated a check for educational assistance for the certified period is immaterial. (Authority: 38 U.S.C. 3013; Pub. L. 98-525)

(e) *No entitlement charge for some individuals.* When the criteria described in this paragraph are met, VA will make no charges against the entitlement as described in paragraph (b) of this section.

(1) VA will make no charge against an individual's entitlement when the individual:

(i) Either:

(A) While not serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, 673b, or 688 of title 10, U.S. Code; or

(B) While serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to a new duty location or assignment or to perform an increased amount of work.

(ii) Failed to receive credit or lost training time toward completion of the individual's approved educational, professional or vocational objective as a result of having to discontinue his or her course pursuit.

(2) The period for which receipt of educational assistance allowance is not charged against the entitlement of an individual described in paragraph (e)(1) of this section shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time. (Authority: 38 U.S.C. 3013(f); Pub. L. 102-127 (Oct. 10, 1991))

[53 FR 1757, Jan. 22, 1988, as amended at 55 28385, July 11, 1990; 56 FR 20134, May 2, 1991; 56 FR 26035, June 6, 1991; 56 FR 31332, July 10, 1991; 57 FR 15024, April 24, 1992; 58 FR 26241, May 3, 1993; 68 FR 35179, June 12, 2003; 72 FR 16980, Apr. 5, 2007; 73 FR 65264, Nov. 3, 2008]

Supplement *Highlights* references: 6(3), 62(3), 73(1), 79(1).

Next Section is §21.7080

Transfer of Entitlement to Basic Educational Assistance to Dependents

§21.7080 Transfer of entitlement.

An individual entitled to educational assistance under the Montgomery GI Bill—Active Duty (38 U.S.C. chapter 30) program based on his or her own active duty service, and who is approved by a service department to transfer a portion of his or her entitlement, may transfer up to a total of 18 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.

(a) *Application of sections in subpart K 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 21.7020—Definitions. (Authority: 38 U.S.C. 3020)

(2) *Claims and Applications.* Section 21.7030—Applications, claims, and time limits. (Authority: 38 U.S.C. 3020)

(3) *Eligibility.*

(i) Section 21.7050—Ending dates of eligibility, only paragraphs (h) and (i); and

(ii) Section 21.7051—Extended period of eligibility, except that extensions to dependents are subject to the transferor's right to revoke 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. 3020)

(4) *Entitlement.*

(i) Section 21.7070—Entitlement;

(ii) Section 21.7075—Entitlement to tuition assistance top-up; and

(iii) Section 21.7076—Entitlement charges. (Authority: 38 U.S.C. 3020)

(5) *Counseling.*

(i) Section 21.7100—Counseling; and

(ii) Section 21.7103—Travel expenses. (Authority: 38 U.S.C. 3020)

(6) *Programs of Education.*

(i) Section 21.7110—Selection of program of education;

§21.7136 Rates of payment of basic educational assistance.

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

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

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

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

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

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

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

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

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

(1) Continues on active duty; or

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

(3) Is released after service on active duty characterized by the Secretary concerned as honorable service and is placed on the retired list, transferred to the Fleet Reserve or the Fleet Marine Corps Reserve, placed on the temporary disability retired list; or

(4) Is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service. (Authority: 38 U.S.C. 3015(a))

(b) *Rates.*

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

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

<i>Training</i>	<i>Monthly rate</i>
Full time.....	\$1034.00
$\frac{3}{4}$ time.....	775.50
$\frac{1}{2}$ time.....	517.00
Less than $\frac{1}{2}$ but more than $\frac{1}{4}$ time	517.00
$\frac{1}{4}$ time.....	258.50

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

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

<i>Training</i>	<i>Monthly rate</i>
Full time.....	\$1075.00
$\frac{3}{4}$ time.....	806.25
$\frac{1}{2}$ time.....	537.50
Less than $\frac{1}{2}$ but more than $\frac{1}{4}$ time	537.50
$\frac{1}{4}$ time.....	268.75

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

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

<i>Training</i>	<i>Monthly rate</i>
Full time.....	\$1101.00
$\frac{3}{4}$ time.....	825.75
$\frac{1}{2}$ time.....	550.50
Less than $\frac{1}{2}$ but more than $\frac{1}{4}$ time	550.50
$\frac{1}{4}$ time.....	275.25

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

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$878.90
Second six months of training.....	672.10
Remaining pursuit of training	465.30

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$913.75
Second six months of training.....	698.75
Remaining pursuit of training	483.75

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$935.85
Second six months of training.....	715.65
Remaining pursuit of training	495.45

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$825.75
Second six months of training.....	605.55
Remaining pursuit of training	385.35

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

(3) If a veteran’s service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

- (i) \$1034.00 for training that occurs after September 30, 2005, and before October 1, 2006;
- (ii) \$1075.00 for training that occurs after September 30, 2006, and before October 1, 2007; and
- (iii) \$1101.00 for training that occurs after September 30, 2007, and before August 1, 2008. (Authority: 38 U.S.C. 3015)

(c) *Rates for some veterans whose qualifying obligated period of active duty is less than three years.* If a veteran has established eligibility under §21.7042, but the veteran's service is not described in paragraph (a)(2) of this section, the monthly rate of educational assistance payable to the veteran will be determined by this paragraph.

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

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

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

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

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

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

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

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

<i>Training period</i>	<i>Monthly rate</i>
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Full time.....	\$894.00
$\frac{3}{4}$ time.....	670.50
$\frac{1}{2}$ time.....	447.00
Less than $\frac{1}{2}$ but more than $\frac{1}{4}$ time	447.00
$\frac{1}{4}$ time or less.....	223.50

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

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$714.00
Second six months of training.....	546.00
Remaining pursuit of training	378.00

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$742.05
Second six months of training.....	567.45
Remaining pursuit of training	392.85

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$759.90
Second six months of training.....	581.10
Remaining pursuit of training	402.30

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

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

<i>Training period</i>	<i>Monthly rate</i>
First six months of training.....	\$670.50
Second six months of training.....	491.70
Remaining pursuit of training	312.90

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

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

- (i) \$840.00 for training that occurs after September 30, 2005, and before October 1, 2006;
- (ii) \$873.00 for training that occurs after September 30, 2006, and before October 1, 2007; and
- (iii) \$894.00 for training that occurs after September 30, 2007, and before August 1, 2008. (Authority: 38 U.S.C. 3015)

(d) *Increase in basic educational assistance rates (“kicker”)*. The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but (except as provided in paragraphs (f) and (g) of this section):

(1) For individuals, who first become members of the Armed Forces before November 29, 1989, (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training) it may not exceed:

- (i) \$400 per month for full-time training,
- (ii) \$300 per month for three-quarter-time training,
- (iii) \$200 per month for one-half-time training, or for training which is less than one-half, but more than one-quarter-time, or
- (iv) \$100 per month for one-quarter-time training or less.

(2) For individuals, who become members of the Armed Forces during the period beginning November 29, 1989 and ending September 30, 1998 (other than those pursuing

cooperative training before October 9, 1996, or apprenticeship or other on-job training), it may not exceed:

- (i) \$700 per month for full-time training,
- (ii) \$525 per month for three-quarter-time training,
- (iii) \$350 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or
- (iv) \$175 per month for one-quarter-time training or less.

(3) For individuals, who first become members of the Armed Forces after September 30, 1998, (other than those pursuing apprenticeship or other on-job training), it may not exceed:

- (i) \$950.00 per month for full-time training,
- (ii) \$712.50 per month for three-quarter-time training,
- (iii) \$475.00 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or
- (iv) \$237.50 per month for one-quarter-time training or less. (Authority: 38 U.S.C. 3015, 3032)

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

- (i) During the first 6 months of training the increase may not exceed \$300 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$340 per month.
- (ii) During the second 6 months of training the increase may not exceed \$220 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$260 per month.
- (iii) During the remaining months of training the increase may not exceed \$140 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$180 per month.

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

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

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

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

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

(i) During the first 6 months of training the increase may not exceed \$712.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$807.50 per month.

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

(iii) During the remaining months of training the increase may not exceed \$332.50 per month, except that during the period October 1, 2005, through December 31, 2007, for training that occurs during that period, the increase may not exceed \$427.50 per month. (Authority: 38 U.S.C. 3015, 3032; §103, Pub. L. 108-454, 118 Stat. 3600)

(7) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing cooperative training, it may not exceed \$320 per month for training received before October 9, 1996.

(8) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing cooperative training, it may not exceed \$560 per month for training received before October 9, 1996. (Authority: §108(a)(2), Pub. L. 100-689, 102 Stat. 4170; §5(a), Pub. L. 102-83, 105 Stat. 406)

(e) *Less than one-half-time training and rates for servicemembers.* Except as provided in paragraph (g) or (h) of this section, the monthly rate for a veteran who is pursuing a course on a less than one-half-time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of:

(1) The monthly rate stated in either paragraph (b) or (c) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (d) or (f) of this section, or

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable. (Authority: 38 U.S.C. 3015, 3032)

(f) *Increase in basic educational assistance rates (“kicker”) for those eligible under §21.7045.* A veteran who formerly was eligible to receive educational assistance under 38 U.S.C. ch. 32, and becomes eligible for educational assistance under 38 U.S.C. ch. 30 as described in §21.7045(b)(1)(ii), (c)(1)(ii), (d), or (e) may receive an increase in basic educational assistance allowance (kicker). The increase will be determined as follows.

(1) The basis of the increase will be that portion of the amount of money:

(i) Which remains in the VEAP fund after the veteran has been paid all assistance due him or her under 38 U.S.C. ch. 32 and refunded all of his or her contributions to the VEAP fund, and

(ii) Which represents the Secretary of Defense’s additional contributions for the veteran as stated in §21.5132(b)(3) of this part.

(2) For a student pursuing a program of education by residence training:

(i) VA will determine the monthly rate of the increase by dividing the amount of money described in paragraph (f)(1) of this section by the number of months of entitlement to educational assistance under 38 U.S.C. chapter 30 which the veteran has at the time his eligibility for benefits under 38 U.S.C. chapter 30 is first established;

(ii) VA will use the monthly rate of the increase determined in paragraph (f)(2)(i) of this section if the veteran is pursuing his or her program full time;

(iii) VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section by .75 for a student pursuing his or her program three-quarter time;

(iv) VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section by .5 for a student pursuing his or her program half time; and

(v) VA will multiply the monthly rate determined by paragraph (f)(2)(i) of this section by .25 for a student pursuing his or her program less than one-half time.

(3) For a veteran pursuing cooperative training VA will multiply the rate determined by paragraph (f)(2)(i) of this section by .8 for training received before October 9, 1996.

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

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

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

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

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

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

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

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

(C) By .45 for a veteran in the remaining months of pursuit of training. (Authority: 38 U.S.C. 3015(e); §103, Pub. L. 108-454, 118 Stat. 3600)

(g) *Increase (“kicker”) in basic educational assistance rates payable for service in the Selected Reserve.*

(1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraph (b), (c), (d), (e), or (f) of this section, as appropriate. The increase (“kicker”) is payable to an individual, who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for education under §§21.7042(a), 21.7045, or 21.7080; and

(ii) Meets the criteria of §21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned:

(i) Will, for such an increase (“kicker”), set an amount of the increase (“kicker”) for full-time training, but the increase (“kicker”) may not exceed \$350 per month; and

(ii) May set the amount of the increase (“kicker”) payable, for an individual pursuing a program of education less than full time or pursuing a program of apprenticeship or other on-job training, at an amount less than the amount described in paragraph (g)(2)(i) of this section.

(h) *Increase in monthly rates due to contributions.* Effective May 1, 2001, a servicemember who establishes eligibility under §21.7042(a), (b), or (c) may contribute up to \$600 to the Secretary of the military department concerned in multiples of \$20.

(1) VA will increase the monthly rate provided in paragraphs (b)(1) through (b)(4) and (c)(1) through (c)(4) of this section by:

- (i) \$5 for every \$20 an individual pursuing a program of education full time has contributed;
- (ii) \$3.75 for every \$20 an individual pursuing a program of education three-quarter time has contributed;
- (iii) \$2.50 for every \$20 an individual pursuing a program of education half time or less than one-half time but more than one-quarter time has contributed; and
- (iv) \$1.25 for every \$20 an individual pursuing a program of education one-quarter time has contributed.

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

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

- (A) During the first 6 months of pursuit of training, by \$3.75 for every \$20 the veteran contributed,
- (B) During the second 6 months of pursuit of training, by \$2.75 for every \$20 the veteran contributed, or
- (C) During the remaining months of the veteran's pursuit of training, by \$1.75 for every \$20 the veteran contributed.

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

- (A) During the first 6 months of pursuit of training, by \$4.25 for every \$20 the veteran contributed,
- (B) During the second 6 months of pursuit of training, by \$3.25 for every \$20 the veteran contributed, or
- (C) During the remaining months of the veteran's pursuit of training, by \$2.25 for every \$20 the veteran contributed.

(3) VA will increase the monthly rate provided in paragraphs (b)(9) or (c)(9) of this section by \$5 for every \$20 the veteran has contributed. (Authority: 38 U.S.C. 3015(g); §103, Pub. L. 108-454, 118 Stat. 3600)

[55 FR 28386, July 11, 1990, as amended at 55 FR 50324, Dec. 6, 1990; 56 FR 20135, May 2, 1991; 57 FR 11911, April 8, 1992; 57 FR 57104, Dec. 3, 1992; 59 FR 24053, May 10, 1994; 61 FR 6788, Feb. 22, 1996; 61 FR 15191, Apr. 5, 1996; 61 FR 24237, May 14, 1996; 62 FR 14824, Mar. 28, 1997; 62 FR 55519, Oct. 27, 1997; 62 FR 58655, Oct. 30, 1997; 64 FR 31694, June 14, 1999; 65 FR 44980, July 20, 2000; 65 FR 55193, Sept. 13, 2000; 66 FR 32228, June 14, 2001; 68 FR 34322, June 9, 2003; 68 FR 34331, June 9, 2003; 68 FR 37206, June 23, 2003; 69 FR 74978, Dec. 15, 2004; 71 FR 75677, Dec. 18, 2006; 72 FR 19383, Apr. 18, 2007; 73 FR 65265, Nov. 3, 2008]

Supplement *Highlights* references: 12(3), 23(1), 25(2), 26(2), 30(1), 35(1, 3), 43(1), 51(1), 55(2), 62(1,2), 67(1), 71(2), 72(1), 73(2), 79(1).

**§21.7137 Rates of payment of basic educational assistance for individuals with
remaining entitlement under 38 U.S.C. chapter 34.**(a) *Minimum rates.*

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

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

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

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

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

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

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

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

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

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

(2) For veterans pursuing apprenticeship or other on-job training, basic educational assistance is payable for training at the following monthly rates:

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

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

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

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

Monthly Rate

Additional

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

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

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

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

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

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

<i>Training</i>	<i>Monthly Rate</i>				<i>Additional for each additional dependent</i>
	<i>No dependents</i>	<i>One dependent</i>	<i>Two dependents</i>		
1st six months of pursuit of program	\$928.50	\$940.88	\$951.75	\$5.25	
2nd six months of pursuit of program	661.93	671.28	678.98	3.85	

3rd six months of pursuit of program	409.15	415.28	420.00	2.45
Remaining pursuit of program	397.25	403.03	408.28	2.45

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

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

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

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

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

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

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

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

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

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

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

(b) *Less than one-half-time training.* Except as provided in paragraph (d) of this section, the monthly rate of basic educational assistance for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of:

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

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

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

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

(2) The monthly rate of the cost of the course. If there is no cost for the course, educational assistance is not payable. (Authority: 38 U.S.C. 3015)

(d) *Increase (“kicker”) in basic educational assistance rates for service in the Selected Reserve.*

(1) The Secretary of the service department concerned may increase the amount of basic educational assistance payable under paragraphs (a), (b), or (c) of this section, as appropriate. The increase (“kicker”) is payable to an individual who has a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit, or, in the case of critical units, retain personnel, if the individual:

(i) Establishes eligibility for educational assistance under §21.7044(a) or §21.7080;

(ii) Meets the criteria of §21.7540(a)(1) with respect to service in the Selected Reserve.

(2) The Secretary of the military department concerned:

(i) Will, for such an increase, set the amount of the increase (“kicker”) payable for full-time training, but the increase (“kicker”) may not exceed \$350 per month;

(ii) May set the amount of the “kicker” payable, for a veteran pursuing a program of education less than full time or pursuing an apprenticeship or other on-job training, at an amount less than the amount described in paragraph (e)(2)(i) of this section. (Authority: 10 U.S.C. 16131(i)(2))

(e) *Concurrent benefits.* VA may pay additional educational assistance to a veteran for a dependent concurrently with additional pension or compensation for the same dependent. (Authority: 38 U.S.C. 3015(d), Pub. L. 98-525)

(f) *Two veteran cases.* VA may pay additional educational assistance to a veteran for a spouse who is also a veteran. This will not bar the payment of additional educational assistance or subsistence allowance under §21.260 of this part to the spouse for the veteran. If the veteran is paid additional educational assistance for a child, that will not bar payment of additional educational assistance or subsistence allowance under §21.260 of this part to the spouse for the same child. (Authority: 38 U.S.C. 3015(d); Pub. L. 98-525)

[53 FR 1757, Jan. 22, 1988, as amended at 54 FR 34987, Aug. 23, 1989; 55 FR 28387, July 11, 1990; 56 FR 20135, May 2, 1991; 56 FR 31332, July 10, 1991; 57 FR 11911, April 8, 1992; 61 FR 6789, Feb. 22, 1996; 61 FR 15191, Apr. 5, 1996; 61 FR 24238, May 14, 1996; 62 FR 14825, Mar. 28, 1997; 62 FR 55519, Oct. 27, 1997; 62 FR 58655, Oct. 30, 1997; 63 FR 27854, Mar. 21, 1998; 64 FR 31694, June 14, 1999; 65 FR 44980, July 20, 2000; 65 FR 55193, Sept. 13, 2000; 66 FR 32229, June 14, 2001; 68 FR 34324, June 9, 2003; 69 FR 74978, Dec. 15, 2004; 73 FR 65267, Nov. 3, 2008]

Supplement *Highlights* references: 23(1), 25(2), 26(2), 30(1), 35(1, 3), 38(2),
43(1), 51(1), 55(2), 62(1), 67(1), 71(2), 79(1).

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

The monthly rates established in §§21.7136, 21.7137 and 21.7138 shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* Withdrawal from a course or receipt of a nonpunitive grade affects payments to a veteran or servicemember. VA will not pay benefits to a veteran or servicemember for pursuit of a course from which the veteran or servicemember withdraws or receives a nonpunitive grade which is not used in computing requirements for graduation unless the provisions of this paragraph are met.

(1) The veteran withdraws because he or she is ordered to active duty; or

(2) All of the following exist:

(i) There are mitigating circumstances; and

(ii) The veteran or servicemember submits a description of the mitigating circumstances in writing to VA within one year from the date VA notifies the veteran or servicemember that he or she must submit a description of the mitigating circumstances, or at a later date if the veteran or servicemember 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

(iii) The veteran or servicemember submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA, or at a later date if the veteran or servicemember 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.

(b) *No educational assistance for some incarcerated veterans or servicemembers.* VA will pay no educational assistance to a veteran or servicemember, who:

(1) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course:

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course. (Authority: 38 U.S.C. 3034, 3482(g))

(c) *Reduced educational assistance for some incarcerated servicemembers.*

(1) VA will pay reduced educational assistance to a servicemember who:

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course where his or her tuition and fees are being paid for entirely or partly by a Federal program (other than one administered by VA) or by a State or local program, and

(iii) If all the tuition and fees are paid for by such a program, must buy books, supplies or equipment for the course.

(2) The monthly rate of educational assistance payable to a servicemember described in this paragraph shall equal the lowest of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the monthly rate of any charges to the servicemember for the cost of necessary supplies, books and equipment;

(ii) The monthly rate of the portion of the tuition and fees paid by the servicemember plus the monthly rate of the portion of tuition and fees paid by the Federal, State or local program; or

(iii) The monthly rate found in §21.7136(e) or §21.7137(c), as appropriate.
(Authority: 38 U.S.C. 3034, 3482(g))

(d) *Reduced educational assistance for some incarcerated veterans.*

(1) VA will pay reduced educational assistance to a veteran who:

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course for which the veteran pays some (but not all) of the charges for tuition and fees, or for which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the veteran to pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a one-half time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that are not paid by a Federal program (other than one administered by VA) or a State or local program plus the

monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(ii) If the veteran has remaining entitlement under 38 U.S.C. chapter 34 monthly rate stated in §21.7137(a) for a veteran with no dependents and the increase provided in §21.7137(d) or (e), if appropriate, plus the monthly rate stated in §21.7138(a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance, or

(iii) If the veteran has no entitlement under 38 U.S.C. chapter 34, the monthly rate stated in §21.7136(a) or (b), as appropriate, and the increase provided in §21.7136(d), (f), or (g), if appropriate, plus the monthly rate stated in §21.7138(a) and (b) for a veteran if the veteran is entitled to supplemental educational assistance.

(3) The monthly rate of educational assistance payable to such a veteran who is pursuing the course on a less than one-half time basis or on a one-quarter time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course,

(ii) The monthly rate of the tuition and fees which the veteran must pay plus the monthly rate of the charge to the veteran for the cost of necessary supplies, books and equipment, or

(iii) The monthly rate determined by §21.7136(e) or §21.7137(b), as appropriate, plus the monthly rate stated in §21.7138(c) if the veteran is entitled to supplemental educational assistance. (Authority: 38 U.S.C. 3034, 3482(g))

(e) *Payment for correspondence courses.* The amount of payment due a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course is 55 percent of the established charge which the educational institution requires nonveterans to pay for the lessons that the veteran or servicemember has had completed and serviced and for which payment is due. (Authority: 38 U.S.C. 3034, 3686(a)(2))

(f) *Failure to work sufficient hours of apprenticeship and other on-job training.*

(1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training, VA will reduce proportionally:

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

(ii) Any increase (“kicker”) set by the Secretary of the service department concerned as described in §§21.7136(g) and 21.7137(d).

(2) In making the computations required by paragraph (g)(1) of this section, VA will round the number of hours worked to the nearest multiple of eight.

(3) For the purpose of this paragraph *hours worked* include only:

(i) The training hours the veteran worked, and

(ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See §21.4270(c), footnote 5, as to the requirements for full-time training.) (Authority: 38 U.S.C. 3034, 3687(b)(3))

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 11672, Mar. 20, 1991; 57 FR 15025, April 24, 1992; 58 FR 26242, May 3, 1993; 60 FR 32272, June 21, 1995; 62 FR 55520, Oct. 27, 1997; 71 FR 75678, Dec. 18, 2006; 73 FR 65269, Nov. 3, 2008]

Supplement *Highlights* references: 6(3), 19(1), 35(1), 71(2), 79(1).

§21.7140 Certifications and release of payments.

(a) *Advance payments and lump-sum payments.* VA will apply the provisions of §21.4138(a) and (b) in making advance payments and lump-sum payments to veterans and servicemembers. (Authority: 38 U.S.C. 3034 and 3680)

(b) *Accelerated payments.* VA will apply the provisions of §§21.7151(a), (c), and 21.7154(d) in making accelerated payments. (Authority: 38 U.S.C. 3014A)

(c) *Other payments.* Except for an individual who is seeking tuition assistance top-up, an individual must be pursuing a program of education in order to receive payments of educational assistance under 38 U.S.C. chapter 30. To ensure that this is the case, the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship, other on-job training, or a correspondence course; one seeking tuition assistance top-up; one seeking reimbursement for taking an approved licensing or certification test; one who qualifies for an advance payment; one who qualifies for an accelerated payment; or one who qualifies for a lump sum payment) only after:

(i) The educational institution has certified his or her enrollment as provided in §21.7152; and

(ii) VA has received from the individual a verification of the enrollment. (Authority: 38 U.S.C. 3680(g), 3689)

(2) VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after:

(i) The training establishment has certified his or her enrollment in the training program as provided in §21.7152; and

(ii) VA has received from the veteran and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course only after:

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(iii) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution.

(4) VA will pay educational assistance to a veteran or servicemember as reimbursement for taking an approved licensing or certification test only after the veteran or servicemember has submitted to VA a copy of the veteran's or servicemember's 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 veteran or servicemember took the test; and
- (iv) The cost of the test. (Authority: 38 U.S.C. 3689)

(5) 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 claimant wants tuition assistance top-up. If the form(s) submitted did 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))

(d) *Payment for intervals and temporary school closings.* In administering 38 U.S.C. chapter 30, VA will apply the provisions of §21.4138(f) when determining whether an individual is entitled to payment for an interval or temporary school closing. (Authority: 38 U.S.C. 3034, 3680)

(e) *Payee.*

(1) VA will make payment to the veteran or servicemember or to a duly appointed fiduciary. The VA will make direct payment to the veteran or servicemember even if he or she is a minor.

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

(f) *Limitations on payments.* VA will not apportion educational assistance. (Authority: 38 U.S.C. 3034, 3680)

(g) *Payments of accrued benefits.* Educational assistance remaining due and unpaid at the date of the servicemember's or veteran's death is payable under the provisions of §3.1000 of this chapter. (Authority: 38 U.S.C. 5121)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0695 and 2900-0698.)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28388, July 11, 1990; 56 FR 20136, May 2, 1991; 56 FR 31332, July 10, 1991; 57 FR 15025, April 24, 1992; 61 FR 26117, May 24, 1996; 62 FR 55761, Oct. 28, 1997; 64 FR 52652, Sept. 30, 1999; 68 FR 35180, June 12, 2003; 72 FR 16982, Apr. 5, 2007; 73 FR 65269, Nov. 3, 2008]

Supplement *Highlights* references: 27(1), 46(2), 62(3), 73(1), 79(1).

Reserved

Subpart L—Educational Assistance for Members of the Selected Reserve

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

Source: 53 FR 34740, Sept. 8, 1988, unless otherwise noted.

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(i) The educational institution certifies the reservist's enrollment in the form prescribed by the Secretary of Veterans Affairs; and

(ii) VA has received a report by the reservist of the flight training the reservist has completed, which report is endorsed by the educational institution. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(b) *Payment for intervals and temporary school closings.* In administering 10 U.S.C. chapter 1606, VA will apply the provisions of §21.4138(f) when determining whether a reservist is entitled to payment for an interval or temporary school closing. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(c) *Payee.*

(1) VA will make payment to the reservist or to a duly appointed fiduciary. VA will make direct payment to the reservist even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, VA will apply the provisions of §§21.4146(a), (b), (c) and (e) of this part to 10 U.S.C. chapter 1606 in a manner not inconsistent with the way in which they are applied in the administration of 38 U.S.C. chapters 34 and 36. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680, 5301(a))

(d) *Advance payments.* VA will apply the provisions of §21.4138(a) in making advance payments to reservists. (Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680)

(e) *Frequency of payment.* Except as provided in §21.4138(a), VA shall pay educational assistance in the month following the month for which training occurs. VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree for any month until the reservist's attendance has been reported for that month. VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680(g))

(f) *Apportionments prohibited.* VA will not apportion educational assistance. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3680)

(Approved by Office of Management and budget under control number 2900-0073)

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Supplement *Highlights* references: 27(4, 5), 46(2), 76(1), 79(1).

Next Section is §21.7642

§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. ch. 30;
- (2) 38 U.S.C. ch. 31;
- (3) 38 U.S.C. ch. 32;
- (4) 38 U.S.C. ch. 34;
- (5) 38 U.S.C. ch. 35;
- (6) 10 U.S.C. ch. 107;
- (7) Section 903 of the Department of Defense Authorization Act, 1981;
- (8) The Hostage Relief Act of 1980; or
- (9) The Omnibus Diplomatic Security Act of 1986. (Authority: 10 U.S.C. 2136(b); 38 U.S.C. 3695; §705(a)(1), Pub. L. 98-525, 98 Stat. 2565, 2567; §§642(c), (d), Pub. L. 101-189, 103 Stat. 1457-1458)

(b) *Election of benefits.* When paragraph (a) of this section applies, the reservist must elect in writing which benefit he or she wishes to receive. The reservist may make a new election at any time, but may not elect more than once in any calendar month. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3695; Pub. L. 98-525)

(c) *Senior Reserve Officers' Training Corps scholarship program.* Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program. (Authority: 10 U.S.C. 16134; Pub. L. 98-525)

(d) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist:

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty.

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service, or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act. (Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3681; Pub. L. 98-525)

(e) *Service Members Occupational Conversion and Training Act of 1992.* A reservist may not receive educational assistance under the Montgomery GI Bill-Selected Reserve program during the period for which benefits are payable under the Service Members Occupational Conversion and Training Act of 1992. (Authority: §4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)